



## AFRICAN PEER REVIEW MECHANISM



## SOUTH AFRICAN SECOND GENERATION COUNTRY REVIEW REPORT

January 2022

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

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### 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 & 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*)

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## ACKNOWLEDGEMENTS

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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 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 Minister for Public Service & Administration, Hon. Ayanda Dlodlo as well as Deputy Minister for Public Service & 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 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 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

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Source: Statistics South Africa

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

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

Key economic sectors: Mining, transport, energy, manufacturing, tourism and agriculture.

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

#### 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 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.

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## EXECUTIVE SUMMARY

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

#### Historical Background

- i. South Africa has waged a protracted and bloody struggle for democracy. Generations of the vast majority of South Africans have suffered severely from deprivation and subjugation as a result of the colonial and apartheid rule that lasted for 342 years until 1994.
- ii. The country's first democratic elections on 27 April 1994 paved the way for the transition from the race-based system of oligarchic rule – in which the white minority were the primary beneficiaries – to a system of democratic governance with a strong emphasis on the sovereignty of the people. This leap of faith was not achieved without compromise. The peaceful transition, always shadowed by the prospect of civil war, was the beginning of a profound process of transformation of the state. The resurgence of popular participation made it possible for civil society organisations (CSOs), including the media, to play an important role in maintaining the momentum for reform.
- iii. While post-apartheid South Africa is imbued with a vibrant political democracy, it is nevertheless a democracy under severe socio-economic stress. The repudiation of apartheid has not meant the end of racial divisions and racism, nor has it signalled the end of the economic and social problems that have increasingly bedevilled South Africa's thriving democracy since 1994. Racially discriminatory policies enforced by successive governments throughout the 20th century left the black majority of the population poor and dispossessed, owning less than 30 per cent of the country's land, much of which is barren and unproductive. Unable to achieve sustainable agricultural development, the poor began to flock to cities with the disbandment of homelands and the dawn of freedom of movement. Urban migration, in turn, has exacerbated the problem of informal settlements. Consequently, enormous informal settlements encampments have developed, particularly in and around Johannesburg and Cape Town. Most of these informal settlements and a large percentage of the adult African population nationwide cannot find work within the formal sector of the economy and the operating environment of informal businesses are considered hostile for subsistent start-ups to thrive.
- iv. The results are widespread poverty, dichotomisation of the economy, appalling living conditions and an increasing incidence of crime. South Africa's per capita crime rate, overall, exceeds that of many other countries. The government has acknowledged the seriousness of the problem but has not been able to end the wave of crime against persons and property that is fuelled, among other things, by high levels of 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 full respect for democratic principles, human rights, rule of law, the acceleration of political, social and economic integration in Africa;
- vi. The primary purpose of the APRM is to foster the adoption of policies, standards and practices leading to political stability, high economic growth, sustainable development and accelerated regional and continental economic integration, with codes and standards contained in the

Declaration on Democracy, Political, Economic and Corporate Governance and the African Charter on Democracy, Elections and Governance (ACDEG); and

- vii. The governance review assessments of the APRM 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.
- viii. South Africa is to be commended 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. 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 1st of July 2007. South Africa then produced three progress reports based on the recommendations of the first Country Review Report, with the final progress report tabled at the APR Forum in 2014.
- ix. In December 2018, Cabinet re-invigorated the second generation APRM processes in South Africa by establishing an inter-ministerial committee. South Africa renewed its APRM National Structures by establishing a new APRM National Governing Council (NGC) under the leadership of Chairperson Thulani Tshefuta.
- x. From July 2020, over 17 months, the APRM NGC oversaw the completion of a country self-assessment report that was submitted to the APRM Panel of Eminent Persons and APRM Continental Secretariat in early December 2021, leading to the Country Review Mission to South Africa taking place later that month.

### **The Country Review Mission**

- xi. The Country Review Mission to South Africa took place from 07 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, led by the Lead Panelist for South Africa at the APR Panel of Eminent Persons, Bishop Dinis Sengulane met with national, provincial and local government as well as civil society and private sector representatives. During the Mission, the Review Team also held working sessions on good governance practices with the Deputy Speaker of the National Assembly, Hon. S.L Tsenoli, MP who was accompanied by MPs from the National Assembly, a meeting 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.
- xiii. The Review Mission held stakeholder meetings in all nine regions of the country, meeting with MECs, MMCs, mayors, and members of provincial and local councils across all nine provinces of



the Country, as well as stakeholders 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 falls within the ambit of the Medium-Term Strategic Framework 2019-2024 which assigns responsibility for implementation to competent agencies, and is in line with the National Development Plan.

## 2. DEMOCRACY AND POLITICAL GOVERNANCE

- xv. South Africa became independent with much promise and hopeful aspiration to become a vibrant multi-cultural, multi-national, multi-racial republic. The ambitions of the political leaders shaped the structures of state institutions created under the new Constitution. The clearest indication of their chosen future developmental path can be found in the liberal provisions of the constitution such as the 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 Equity, the Auditor-General, the Electoral Commission), which are independent and subject only to the constitution and the law.
- xvi. South Africa faces a number of challenges. A major one is the growing erosion of trust in the government and state institutions. This is partly because state institutions, especially the executive arm of government, but also the SOEs have failed the people through unethical behaviour and glaring ineffectiveness in service delivery. Another area where there is a mismatch between state aspirations and society's attitude is the handling of the migrants and refugees in South Africa. South Africa is a political and economic leader in the SADC region and the continent at large. Despite its economic challenges, other Africans see the country as a land of refuge or opportunities, and most arrive with talents and skills that contribute positively to the development of the country. The third major challenge is that of poor service delivery, which also contributes significantly to the people losing hope and faith in the state. The CRM repeatedly heard stakeholders denounce the service delivery quality and restricted access in worrisome narrative at consultations in the provinces. The crux of the service delivery gap is primarily the weakness or lack of capacity of government at the local level, where the people most frequently encounter the state and experience the best or worst or lack of service provision or disconcerting treatment from officials.
- xvii. South Africa has a progressive constitution that could promote democracy and a credible rule of law regime. The country's multi-party system allows for free competition for power among political parties and various interest groups. The African National Congress, which led the liberation struggle against white minority rule, has governed the country since 1994; winning significant majority of the vote at every election. But in recent years, viable opposition parties are being established regularly to participate in elections. These parties continue to give South Africans alternative policy choices during elections, and as a result the representation of opposition parties has been increasing steadily at all levels of governance over the years.
- xviii. However, there are some limitations in the democratic system as it is operated in South Africa. First, there is the lack of direct accountability relationship between the elected officials and the electorate; and the tendency for elected representatives to be more loyal to party leaders than the electorate despite the forums of engaging with legislators at both the national and local levels. This has led to the embrace of independent candidature as granted by the Constitutional Court.

The CRM observed that recent local elections in 2021 have seen the emergence of special interest groups that have brought independent candidates together and provided them the platforms to contest elections as was seen in the recent local elections, where several individuals who ditched the mainstream political parties and organised social movements that contested the elections as independent candidates. This is a clear indication that South Africa's constitutional democracy is evolving in response to the popular call of the citizens.

- xix. An associated clog to self-emancipation is in terms of access to justice, which has been identified as a challenge for most South Africans, particularly the poor and those living in rural areas. The CRM mission noted that many South Africans are unable to get 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 and unaffordable 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. Some efforts made by the government in addressing the challenge include provision of free legal services for indigents through a government funded institution called Legal Aid South Africa. However, and despite concerted efforts by the government, access to justice still 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) provides elaborate Bill of Rights for the individual, and it guarantees the right to access justice, free trial, equality before the law, among others. To facilitate this important constitutional provision, the South African government has established numerous institutions — 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, the reach of these institutions and services remains constrained by several factors that affect their ability to deliver. First, South Africans lament about corruption in the police service, and stakeholders in some provinces suggest that the justice system favours mostly the wealthy and more powerful individuals because most of the time the police do not take complaints filed against the rich and influential members of the society seriously. 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 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. Also, administrative inefficiency at many lower courts affects citizen's access to justice. Hence, some courts experience huge backlog of cases and incidents of missing documents in courts sometimes compound this situation.
- xxii. The South African Constitution of 1996 (with amendments through 2012) establishes a firm foundation for the separation of powers and checks and balances between the three branches of government — the legislature (Parliament), executive and judiciary. Parliament has the constitutional authority to make laws and exercise oversight powers over the executive. Despite its clear constitutional authority that is clearly laid out in Chapter 4 of the Constitution that envisages an independent, robust, and effective parliament for the exercise of legislative powers, stakeholders suggested that parliament is not fully independent of the executive and has not over the years exercised its constitutional oversight effectively.
- xxiii. The CRM noted that 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 of parliament (MPs) are expected to support party political positions to remain in good standing with their party leaders. Thus, MPs in most cases demonstrate more loyalty to the political party over constitutional principles in crucial matters of parliamentary oversight over executive institutions.

- xxiv. 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. South Africans look to the 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 more effectively and with the integrity the public expects of it.
- xxv. The CRM observed racism and xenophobia particularly against black Africans as a potential conflict issue. 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 institutional and in white-colour employment. This issue remains a threat to the stability of the country, and it has not only instigated internal uprisings, but has led to rupturing relationship between South Africa and other African countries whose nationals have become targets of racist attacks in South Africa.
- xxvi. The government has attempted to address issues of xenophobia and racism by strengthening laws, policies, and promoting dialogues 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 programs and dialogues on integration and social cohesion.
- xxvii. However, South African citizens continue to harbour resentment towards foreign nationals residing in the country. Most South Africans seem far more resentful to fellow Africans from the rest of the continent than they are of the structural and subtle racial divides in their society. 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. Also, some populist politicians galvanise the impasse by blaming foreigners for the increasing rate of crime and incidence of poverty in the country. This has prompted numerous hate speeches against immigrants and, prompted the use of derogatory terms in describing migrants, despite their contributions to the socio-economic development of the country. Stakeholders noted that incidence of hate speech and statements that incite xenophobic attacks increase more during periods of elections. Statements against foreigners in South Africa are now populist attempts to appeal to public sentiments in efforts to mobilise votes. The electoral campaign promises of a few politicians is coalesced to get rid of foreigners when elected play well into the hands of locals who already see foreigners as causes of their conditions of joblessness, poverty, and crime.
- xxviii. 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. 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 in time.

- xxix. With regards to freedom of religion, the South African Constitution establishes 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 right to freedom of religion and right to freedom of expression are enshrined in the Constitution of South Africa. However, there have been concerns raised around media freedom, freedom of expression and censorship in South Africa.
- xxx. In South Africa, the inadequacy of public service performance at all levels of government constitutes a cog in the wheels of progress towards the country becoming a developmental state, long the goal of the political leadership as the surest way to achieve rapid economic growth, and 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 and need basic services. 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 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. Municipal government is distinct as the Constitution stipulates. 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. While there are universal management systems, processes, regulations, and procedures which apply across levels of government, they are most effective where the operators understand and can adapt these instruments to the environment in which they apply them. Thus, it is important that South Africa embrace the idea that there is a *municipal government service* with distinct characteristics, of which managers that strive to succeed in local public service delivery must master.
- xxxii. 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. Also, the 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. 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 among vulnerable groups. Although these mechanisms are in place, South Africa still faces significant problems with violence against women on the rise such that the statistics often quoted are considered 'non statistics' based on the prevalence of under-reporting.
- xxxiii. The CRM learnt that despite the provision of 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 and enforcing these rights, such as the right to have access to adequate housing, the right to work, the right to education, the right to health care services and the right to social security. Refugees, illegal immigrants and undocumented persons encounter various challenges in securing or renewing their residential status due to the recent closure of refugee reception centers in major cities and the delays in finalising asylum applications. 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 being given the opportunity to apply for permanent residency as stipulated in Section 24 of the Refugees Act that,

a recognised refugee can begin the process of applying 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) and, as a result, it affects their access to healthcare services and learning institutions. These children are often not allowed to register in schools for to lack of study permits.

- xxxiv. The Panel therefore recommends that the Government strengthens the lower courts with requisite resources and enhanced capacity to accentuate their efficiency at the local level; and establish more courts to alleviate subsisting pressure on existing ones. Also, the judiciary should be capacitated and well-resourced to 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. 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 pass the Prevention and Combatting of Hate Crimes and Hate Speech Bill to discourage incitement against minorities group 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 origin of sexual abuse, including through social programmes to help socialise 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 the basic fundamental human rights.

### **3. ECONOMIC GOVERNANCE AND MANAGEMENT**

- xxxv. 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 to 1993 was 1%. Thus, as the April 27, 1994 general elections approached, there were high expectations and aspirations for a marked increase in the quality of life in the post-apartheid era. Certainly, the renowned wide gap between black and white subjective well-being somewhat contracted. South Africa experienced relatively high and consistent economic growth from 2.9% in 1994-2003 to 3.4% in 2004-2013, which supported poverty reduction. The growth, however, took a significant downturn between 2014 and 2019 as the growth rate hovered between 0.1% to 1.8% before Covid-19 pandemic led to a contraction of -7.0% 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. Nonetheless, after almost three decades since apartheid ended, the aspirations 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 National Development Plan (Vision 2030), which comprehensively shows the 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 rate in the country. More so, the following targets are documented: economic growth of 5.4%, lower unemployment rate of 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. 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 domestic savings; thus promoting the 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 in absolute terms.

- xxxvii. However, the growth rates of real output and income per person from 1994 to 2020 in South Africa are markedly divided into two episodes by the global financial crisis (GFC) of 2008-2009. The country has struggled to achieve the pre-financial crisis figures. The bad situation was made worse in 2020 as the country got hit by the negative impact of Covid 19 pandemic. As output growth declined consistently, the growth of income per person declined faster, which indicates significant drop in the standard of living. Additionally, the structural change weakened the uneasy economic challenges.
- xxxviii. In addition, the structure of the economy has also changed significantly. The primary and secondary sectors have been 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 are supposed to deliver broad-based growth are outweighed by the exceptional growth in the tertiary sector. The larger share of population is unskilled hence, they do not possess the required skill to benefit from the burgeoning tertiary sector. More so, the shift to tertiary (especially financial and communication sectors) has not generated the required job opportunities needed to address the structural problem of joblessness in the country.
- xxxix. In addition to output decline especially since GFC, investment and household consumption expenditure, have also deteriorated. An analysis of the distribution of consumption expenditure per capita in the recent Living Conditions Survey 2014/15 in a 2018 World Bank report on Overcoming Poverty and Inequality in South Africa, which found that the country had a Gini coefficient of 0.63 in 2015, the highest in the world and this has remained stubbornly significant since 1994. South Africa is characterised with low-growth trap with slight reduction in poverty levels but growing inequality. After the GFC, the poverty headcount ratio at national poverty lines climbed from 53.2% in 2010 to 55.5% in 2014. In absolute term, 30.3 million of the population are below poverty lines as of 2014.
- xl. Other challenges that have confronted the country include growing unemployment rate and youth unemployment rate. The fragile growth recorded after political emancipation to democratic rules failed to absorb people into the production process. Although, unemployment rate was declining before GFC, the post-GFC indicates an upward trend till 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 marginal decline in unemployment rate. This suggests inherent structural problem the country has not been able to address. 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 population are unemployed, which manifests in the pockets of conflict witnessed in the country.
- xli. The CRM observes that South Africa is concerned about the poor performance of the development plans adopted since political emancipation, and therefore undertook a holistic assessment to better appreciate the drags to the attainment of set targets. It is noted that while in the formulation of the NDP, the issue of implementation was not given the desired level of attention, which may explain why the plan has not translated into an overwhelmingly positive lived experience. A major issue identified was that the NDP is devoid of well-detailed and robust

implementation plan. A critical element of the success is the broad stakeholder and societal support, which it has after its adoption. However, this did not translate into robust implementation and the envisaged broad social impact of the Plan became elusive.

- xlii. The CRM also noted during the stakeholders' engagements across the provinces that the major issue that have led to the observed undesirable outcomes is a combination of various factors including skills deficiency, non-adherence to rules and regulations in the recruitment process of the public sector and unaccountability of public officials. The background to the observed abnormality can be linked to the general uptake of governance from 1994 by the largely incapacitated historically disadvantaged persons. A combination of these factors has transformed into wide-spread ineffectiveness in the public service thus hampering institutional capacity to deliver on predetermined targets and goals.
- xliii. As stated in the CSAR, South Africa has a constitutional mandate that requires consultation with all key stakeholders. In this regard, there are mechanisms and processes that currently exist to ensure continuous public and community engagement and these include mandatory community consultations in formulating IDPs, 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 follow a highly consultative decision-making process. This is grounded in the "Batho Pele" ("people first") principle - consultation - which lays much emphasis on citizen and community engagement. In the South African context, public consultation is the process whereby the parliamentary and provincial legislatures and local municipalities consult the citizens and the affected or interested groups, civil society organisations and government agencies before a decision is made.
- xliv. The first progress report stated that although public consultation increased since the beginning of democracy in South Africa, it remains inadequate. There are a number of institutions enhancing public participation in public policy. These include the South African National Civic Organisation, which encourages its local structures participation in integrated development plan's hearings and ward committee's processes. Also, Sector Education and Training Authorities (SETAs) for skills development and Presidential Working Groups were strengthened in an effort to promote participatory democracy and interface regularly with organised sectors.
- xlv. However, Civil Society Organisations (CSO) have raised concerns with regards to their involvement in the implementation of policies. They indicated that their involvement at the stage of policy implementation is limited. While the involvement of CSOs in participatory decision making process have increased dramatically since the advent of democracy, their views and concerns are not reflected in the implementation phase. The CRM notes that funding of the civil society has been a challenge as the relevant ones making grassroot impact are often not supported adequately by the government, thereby incapacitating them to enhance their functionality, as well as to monitor the implementation of government programmes.
- xlvi. As regards the management of public funds, the South African government has implemented numerous structures and legislative frameworks since 1994 to develop and guarantee the maintenance of sound public finance management. These are secured by the Public Finance Management Act, the Municipality Financial Management Act and the Public Service Management Framework. In addition, the government took the following actions: the launched of Operation Clean Audit 2014. Through this instrument, municipalities and provincial departments accounting officers are mandated to include integrated risk management, functioning of audit committees and internal audit units in their performance contracts, as well as in audit

management; and the implementation of the Financial Capacity Building Model. As a result of these, South Africa has been 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).

- xlvi. Despite these efforts, the country continues to find evidence of serious weaknesses in financial management leading to a systemic financial haemorrhage. Some lapses were noted in the Auditor-General's Report. The weaknesses in financial management, controls, fraud prevention and legislative compliance, as evidenced by the audit outcomes and the special reports, resulted in material financial losses at some entities. The Auditor General South Africa's annual reports offer disturbing insights into weak governmental financial systems, and the lack of power and authority of the office to enforce its recommendations is also a major challenge. This gap has a tendency for citizens to lose trust in the government when certain public officials are seen as protected. For an effective fight against corrupt practices and for the office to be seen as effective, efforts are required to decisively tackle the identified inherent weaknesses in the system .
- xlviii. The CRM notes that the Public Service Commission (PSC) that is vested with custodial oversight responsibilities for the Public Service and monitors, evaluates, and investigates public administration practices, reported that the commission received an enormous number of cases relating to fraud and corruption and has completed about 70% of all reported cases. Overall, reported cases are primarily associated with anomalies in the 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 alleged 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.
- xlix. During the engagements with stakeholders, it was revealed that while corruption was evident and endemic in the country, a particular emphasis was placed on procurement as highly prone to corruption. Again, as in the general context, the Government institutionalised a series of initiatives to address what was determined to be flaws in the procurement system. Stakeholders alluded to moral deficit and degeneration as the cause of the problem that has blossomed into greed as nurtured by the lack of functional lifestyle audit system 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 unaccountability has exacerbated corruption and widened the fault line of 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. 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 state of South Africa joined SADC in 1994. Some of its declared aims after the transformation include 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.
  - ii. Unfortunately, while imbued with ambitious goals, objectives, and targets, implementation has been less than impressive. The trend in the intra-regional trade of South Africa with 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 recorded significant success. 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. 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 bring about a boom of foreign investment, but that has yet to materialise. Some argue this is due to a lack of skilled labour. Apart from a few anomalies where there have been significant transactions (typically mergers and acquisitions) and disinvestments during apartheid, investment flows have not shifted significantly in percentage terms since the 1970s.
- liii. More specifically, investment potential is hampered by legal uncertainties that 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 recovery needs in the current pandemic context, falling into recession, being downgraded to junk status by international credit rating agencies, and the low ability to attract FDI. Foreign direct investment 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.
- liv. South Africa is a member of several regional and multilateral trade agreements. There is the Southern African Customs Union (SACU), duty-free trade between South Africa and the other four countries (Botswana, Lesotho, Namibia, and eSwatini). Another regional arrangement is the Southern African Development Community (SADC) Free Trade Agreement, which as of 2012, allows duty-free trade among 12 of the 15 members. There is also the European Union-South African Trade and Development Cooperation Agreement that came into effect in 2000, 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 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).
- lv. The country's trading with the rest of the world has indeed been impressive. South Africa has a diversified export basket, including natural resources, exporting to countries such as China, Germany, the United States, and the United Kingdom. In addition, the country exports more 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.
- lvi. However, the CRM observes in a 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 that 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. Trade misinvoicing has been noted in the literature as a substantial share of capital flight from developing and emerging countries. The role of transnational corporations in fuelling the outflow of unrecorded capital from these countries in the form of tax evasion and profit shifting by extractive industries has received more prominent attention recently.

- lvii. 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 those recorded in its trading partner's record. The total misinvoicing of gold exports to South Africa's leading trading partners was estimated to be \$113.6 billion within a 15-year period. The report further noted that export underinvoicing 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.
- lviii. As regards investment, the CRM observes a recent decline in foreign direct investment (FDI). While the trajectory of FDI in South Africa presents a chequered history, it showed a direction of the trend. Prior to 1994, net inflows FDI as a share of GDP was recovering from a decline and continued to increase, peaking at 5.4% in 2001. Subsequently, FDI inflows dwindled markedly from 2008. The inflows into South Africa fell from \$4.6 billion in 2019 to \$2.5 billion in 2020, in line with the global reduction of FDI inflows.
- lix. The Panel recommends the adoption of a bottom-top approach to development plan design and implementation framework and also strengthening of government institutions capacity to increase citizens' involvement in economic policy formulation, adoption, implementation and evaluation. The authorities also need to ensure unified prosecution of corruption cases through the establishment of an overarching body that also make a nationwide re-orientation and life style audit system a priority. Equally important is the need for the country to sign-on the Extractive Industries Transparency Initiative and institute appropriate regulatory policy in dealing with trade misinvoicing, profit shifting, smuggling, and tax evasion.

#### **4. CORPORATE GOVERNANCE**

- lx. Most economies in Africa rely heavily on agriculture, mining and other extractive industries that may potentially have adverse effects on the environment. Such business operational activities imply the need to have consideration for the impact that organisations' operations have on the environment, economic, history and social life of the communities where they operate. When viable, organisations tend to engage in corporate social investment initiatives as good corporate citizens, as well as on-board small businesses into their value chain, thus positively impacting communities they choose to support, by contributing to economic growth and development, more so as Corporate Governance means leadership, sustainability and corporate citizenship.
- lxi. The South African Constitution is the supreme law, and all laws, including the common law regulating companies in particular, derives its force from the Constitution and it is subjected to constitutional control. The Companies Act 71 of 2008 as amended in 2011 and amendment 2021 in process, is the primary source of company law in South Africa and South Africa was one of the first countries outside of the United Kingdom to introduce a code of corporate governance. The Institute of Directors of Southern 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 balance of the King Code's recommendations to be implemented on an 'apply and explain' basis.
- lxii. South Africa has made concerted progress towards demonstrating domestic, sub regional and continental leadership in Corporate Governance Principles and Commendable Practice Guides,

International Standards and Codes, including the Principles of Corporate Governance designed by the Organisation for Economic Cooperation and Development (OECD) and Commonwealth Association. 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 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; further demonstrates that progress is being made to promote good governance and to curb corruption.

- lxiii. However, despite the impressive gains achieved in stabilising the economy and the higher rates of economic growth that have been consistently realised since the end of apartheid in 1994 and even after the global financial crises of 2008/2009, South Africa remains a country of imbalances, disparities, distortions and a number of paradoxes. Faced with sluggish economic growth and in the mist of the global Covid-19 pandemic, South Africa has hit its lowest global competitiveness ranking according to the latest World Competitiveness Yearbook (WCY) 2020, as South Africa fell by three notches to be ranked 59 out of 63 countries rated by the IMD. In terms of Ease of Doing Business, South Africa is ranked 84 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings. The rank of South Africa deteriorated to 84 in 2019 from 82 in 2018 and a sterling 32 in 2008, averaging 56.83 from 2008 until 2019.
- lxiv. Consequently, this 2nd Generation Country Review Mission (CRM) chose to focus on five key issues that are considered critical to enable South Africa (a) leverage investments and leadership 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 the corporate governance space, so that South Africa can optimise possible systemic outcomes. The five key issues identified are:
- *Regulatory Frameworks for Inclusive Oversight and Supervision* – the trend in South Africa's Competitiveness, Ease of Doing Business Ratings, Gross Domestic Product, Performance of State-Owned Enterprises and State-Owned Companies, Municipalities and Local Governments have intensified public interest and regulatory scrutiny of corporate governance practices. 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, call for innovative partnerships to make corporate governance work for the South African economy, especially inclusiveness of 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 deny South Africa of high performing and value adding SOEs even though there are frameworks and strong oversight Chapter 9 Institutions. Many South African listed and public organisation have produced 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, the need for improved accountability of SoEs.
  - *Practical Ethics and Corporate Governance Continued Education and Mentorship across Sectors* – CRM findings indicate broad awareness and knowledge of the King IV principles

and guidelines, as well as attendance of requisite training on these instruments. However, this awareness and knowledge needs to be translated into actual operations of boards and decision-making processes. This situation, whereby the present socio-economic situation appears to indicate King IV has not augmented aggregate governance performance outcomes sufficiently, thereby requiring concise review and upgrades to existing supervisory frameworks that fosters 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. The present arrangement is that 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 as shareholder. Emerging findings of the Zondo Commission of Enquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State have raised several corporate governance red flags and makes it pertinent to rescoped the definition of ‘Shareholder’ of State-Owned Enterprises.
- *Enhanced Listed Companies’ Partnership in Socio-Economic Development* – South Africa is a pioneer in Public – Private – Partnership (PPP) arrangements on the continent and home jurisdiction to many Multinational Enterprises (MNEs). Present socio-economic situation in South Africa’s domestic environment and socioeconomic downturns that affect the country’s image globally, call for innovation in PPP to address socio – economic challenges. JSE Listed Entities can, in partnership with the South African government, 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 into 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 strides in Socio-economic Development (SED) since the previous review, including setting up the National Governing Council (NGC) to monitor and follow up on the APRM National Programme of Action. The NGC formation was officially approved by the Cabinet on 27th 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 in promoting equality of gender in empowerment initiatives in order to increase women participation in public sector, and in parliament from 33% in 2004 to 44% at present (2022). Through Statistics South Africa, the country has also developed a transparent integrated tool to measure and assess progress in the implementation of both 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, suggests that some underlying challenges persist in the quest to foster 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: (1) the need for multi-dimensional capacity building to implement socio-economic development programmes, and (2) the need to accelerate land reform. (3) the need for sustainable model for social-assistance; (4) augmentation of mechanisms to promote broad-based participation at local and provincial levels; (5) strengthening civil society and private sector participation in formulation, design, and implementation of development strategy, especially at local level; (6) Socio-Economic Emancipation and, (7) Mainstreaming gender and issues of disability into all government programmes at all levels.
- lxix. One of the key recommendations of CRM of 2007 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 meal for more than 9 million learners.
- lxx. Another key recommendation was that of the 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 has 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 show of commitment and determination to deal with the burden of socio-economic issues facing the country, it may take longer than expected for South Africa to achieve a sustainable, and equitable social protection programme to deal with 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 premised on “poor governance, corruption, slow growth, and lack of requisite capacity, among other factors”. The weak institutional capacity has thus hampered the drive to eradicate poverty, increase employment especially among young people, and reduce inequality; since 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.

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

- lxxiii. CSAR 2021 as well as CRM consultations suggest that the current capacity gaps are similar to those in the period prior to 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 are premised on “a lack of ability to create and lead a capable state and to select and develop the right technical skills and capabilities to government functionaries due to cadre deployment policy and a leadership gap”, both of these have 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 the public service are not qualified for the positions they hold. This has led to poor administration at various levels of government and the collapse of service delivery in certain municipalities. The resultant uprising has been unprecedented and concerning. There is a need for South Africa to develop and implement a multi-dimensional capacity framework to improve: institutional, human technical skills, as well as transformational and operational capacities across government.
- lxxiv. Social protection is aimed at protecting and preventing citizens from socio-economic risks and stress that has potential to catapult an individual or a family out of poverty trap. This system may also help to ameliorate and douse the prevalent generational poverty cycles by dealing with issues of poverty and inequality. However, the CRR 2007 (para. 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 level. It is thus suggested that the South African Government review the current social protection model to gauge its efficacy in transformational empowerment and its ability to atone the risks of creating a dependency syndrome. The government should also develop a sustainable funding and resource mobilisation model for social protection programmes.
- lxxv. Although, the Government has taken considerable steps to address the gaps in improving mechanisms to promote, extend and encourage stakeholder participation in socio-economic development. However, this initiatives have gained more traction and prominence at the national, rather than at the local authority levels where it is more desirable. The government is encouraged to urgently lead social cohesion/ contract discussions at provincial and local authority levels to enhance social compact with citizens. Mismatching budget allocations with planning causes failure to deliver requisite services. The government and provinces need to ensure proper budget allocation and accurate financial planning.
- lxxvi. Inability of government to create sustainable employment opportunities remain 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, page 52) acknowledges that unemployment has been worsened by COVID-19 pandemic, although the rate of unemployment has persistently being concerning for decades. According to the report, unemployment has

increased tremendously from 23.3 percent in 2009 to 34.6 percent in 2020. Although, the overall unemployment rate has been disturbing, the situation is particularly dire among Black African youth and women, especially those in the age bracket of 15 to 24 years – who accounted for 64.4 percent of total unemployed people.

- lxxvii. The CRM noted that the creation of sustainable employment opportunity, especially for the youth and women, is a catalytic to eradicate poverty. The same sentiment was echoed in the first CRR (2007, page 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.
- lxxviii. The country self-assessment report (2021) acknowledges various initiatives and policy interventions by the government to address inequality, which is aligned with the outcomes presented in the earlier reports. Of note is the fact that the report (page 42) 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 suggests that inequality remains one of the gruesome 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 capable hands and diligence to implement the policies is more crucial and utterly urgent.
- lxxix. The Panel recommends that the South African Government develop a home-grown barometer to measure inequality, by identifying sources of inequality in South Africa, their intensity and ultimately diagnose inequality through a modular approach. The Panel also recommends that the Government 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.*

## **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 it creates conditions for vulnerability of many communities, especially the poor settlements in urban and rural areas, 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 subject to a significant level of wildfire risk. Grassland and savanna areas, 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 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 whose implementation has to be expedited. 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 that have potential to not only undermine achieving the attainment of a capable state but the viability and sustainability of the state itself. In a globalising world, building resilience within broader context of "better Africa and the world" is key to achieving capable state. Whereas its efforts to 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 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), 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, as well as early warnings.
- lxxxiv. Linked to these are the academic institutions that contribute to bridging the gap within and between the community of practice 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 the information is fragmented, with most of them not up to date. Many existing National Disaster Management Centre risk information management platforms are not operational. Remarkably, there is no central repository to store information on hazard events and risks.
- lxxxv. In terms of disaster governance, over the years, South Africa has shown a strong and unprecedented commitment to address 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 recently, the Paris Agreement (2015), Sustainable Development Goals and Agenda 2063: The Africa We Want, are some of the country's demonstration of commitment to addressing challenges facing Africa and the world.
- lxxxvi. Such commitment translated into the adoption of both the Disaster Management Act No. 57 of 2002 (DMA) on 30 December 2002 and the National Disaster Management Policy Framework (NDMF), 2005, as the main policy frameworks for disaster management in South Africa. They have been instrumental in the South African government's decision to overhaul its approach to disaster management over the past 20 years. 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. The CRM



noted many instances where there was lack of participation of public officials and political decision makers 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 an important implication on disaster management policy implementation. The tendency by some leaders to accord less priority to disaster management results in deficiencies in integrated DRR planning in some provinces and municipalities.

- lxxxvii. In addition, the CRM further noted with dissatisfaction that the focus of the DMA rests mostly on natural disasters with little regard on other disasters, such as pandemics and those happening most frequently in the mining sector. Such narrow scope of understanding, preparedness and diagnostics constitute major weaknesses that deserve broadening the scope of the current Disaster Management Act.
- lxxxviii. The CRM found that the administrative location of 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 with account to the highest political office being 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. These ingherent natural phenonmenon precipitates unequal access to and control over water, with poor people typically being deprived of 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 further found dismal performance and compliance of some provinces and municipalities with the DMA by not 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-event reviews following disasters and significant events. What is certainly required is the stringent enforcement of the legislation.
- xci. 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 provides an overview of the socioeconomic vulnerability of the population a more than a decade after the country's political emancipation into democratic rule. The report underscores 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 imply huge investments in order to reduce the vulnerability of the country, communities, and citizens.

- xciii. Through 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 addressing disaster-related issues. 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 burning coal to generate the bulk of its electricity to using clean energy technologies. Despite the commitment to the global climate agenda, more concerted efforts are still expected to expedite the transition from coal to clean energy.
- xcv. The CRM found that the current disaster management funding structure highlights the lack of funding for disaster risk reduction, coupled with the late, untimely, and sometimes unavailability of government support is a major constraint. In addition, the country's overall funding approach has been more reactive than proactive. In addition, despite their availability, South Africa has not been able to integrate the available innovative and sustainable disaster risk financing mechanisms such as the Forecast-based Financing (FbF) and the African Risk Capacity in its disaster management.
- xcvi. Although the South African Government provided the most effective support to organisations, including tax relief, the release of disaster relief funds, emergency procurement, wage support and funding to small businesses, these efforts are 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.
- xcvii. The CRM found that South Africa's early warning system is mainly managed at functional entities and 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 timely issued, 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.
- xcviii. The African Peer Review Panel recommends the review of the National Disaster Management Act, 2002 in light of lessons learnt from Covid-19, with stronger powers to the NDMC and a location at the centre of Government such as in the Presidency in order 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 Emission in line with the Paris Agreement (2015) while implementing innovative, sustainable and efficient disaster funding mechanisms such as Forecast-based Financing (FbF), with investments focused more on preparedness than disaster response. The Panel urges the Government to establish a disaster recovery facility in order to rebuild resilience of affected communities by disasters, including 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 of provincial and municipal governments to risk assessment processes in a diagnostic manner.

## 7. COMMENDABLE PRACTICES, CROSS-CUTTING ISSUES & CONCLUSION

### Commendable Practices

xcix. South Africa is blessed with many commendable governance and socio-economic development policies and practices. The following 15 Commendable Practices have been selected 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 was 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 Equity; (e) The Auditor-General; and (f) The Electoral Commission, which it stipulates are independent. 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. 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.
- *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 not only serve to heighten awareness but empower 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 far-reaching implications of improving budget transparency. The Survey report suggests reforms that countries might 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 was ranked second in the world, after the United Kingdom. Amongst the set of 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, includes 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 provide for a township and rural entrepreneurship programme to formalise the informal businesses of micro enterprises 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 were 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 Department of Trade and Industry (DTI) 's Enterprise Investment Programme (EIP), launched in 2008, is an incentive grant which encompasses the Manufacturing Investment Programme and Tourism Support Programme and is accessible to both local and foreign owned entities intending to implement Corporate Social Responsibility (CSR) initiatives. In the period between 2008 and 2021, reports from the Annual Small Business Summit notes a significant increase of CSR programmes that include local communities and integration of SMEs in economic and technological corporate activities.
- *The National Development Plan and PPP Arrangements:* 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, and 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 R&D 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 produced 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 Imbizo, which was highlighted as a best practice in the 2007 APRM Country review report, as well as 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 National Planning Commission at the Presidency, and it 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 issues. An example is where businesses work with NEDLAC in KwaZulu-Natal to support community efforts to address challenges of skills gap. In Durban, the city is developing training programs in three districts, which focuses on the ability to foster skills necessary to drive the 4th industrial revolution and the blue and green economies. The programmes respond to the comparative advantages present in each district and focus on building entrepreneurship, with plans to have a community college in each district.
- *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, and presents various *adaptation* actions that can be implemented by local governments to support climate resilience 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 conduct of 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 classified as disasters, with the findings used to update Disaster Risk Management plans in the Province. The Province has made it mandatory to undertake a conduct of 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 bring aid to those in need 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, the 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 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, 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 start of the democratic era 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 challenges are of a cross-cutting nature, and are of a persistent and recurring 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 aspects. Persistent and pervasive norms that encourage violence against women and girls continue largely unchecked. 51% of women in SA say they've 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 report that they have experienced violence at the hands of a partner. 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 were cases of rape. Of this, 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 the WHO in 2016. The CRM identified deeply rooted cultural discrimination 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 made progress in establishing numerous laws and mechanisms directed at addressing 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 opportunities available to women also has a significant effect on their susceptibility 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 limits their access to other basic human rights.
- cv. The APR Panel recommends that the Government of South Africa (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.
- cvi. The aggregated data suggests that 28% of the reported cases related to bribery, while procurement irregularities was the second highest case (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 reformation of the State Investigation Unit (SIU), which is the main organ charged with the responsibility of collecting hard evidence needed for prosecution. In addition, the Panel recommends that the notable vacancies at the National Prosecution Authority (NPA) should be addressed in order to strengthen the institution with competent and desirous members to effectively prosecute suspects without delay. Although, the country is deemed appropriately positioned to protect whistle-blowers, recent attacks and assassination of whistle-blowers is an ugly reality 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 should be implemented with utmost urgency; and with all the seriousness that anti-graft interventions require.
- 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), the current period being 2019-2024, 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. This manifests in a myriad of ways such as poor performance by SoE's, poor service delivery at municipal levels, weak administration, financial mismanagement and corruption, all of which have led to unrealised development outcomes and eroded public trust and confidence. The CRM identified 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.
- cx. The APR Panel recommends that the Department of Planning, Monitoring and Evaluation (DPME) (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 Municipality 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 Skill 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 while implementing 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 including 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 improving governance and contributing to the attainment of the National Development Plan as well as the AU Agenda 2063, Africa's long term plan for socio-economic development.
- cxiii. The APR Panel commends South Africa 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. It is also grateful to the Government and People of South Africa for their warm welcome and hospitality, and for the facilities and resources put at the disposal of the review mission and for South Africa continuing its leadership position, as only the fifth AU Member State to complete two APRM governance reviews.

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## CHAPTER ONE

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### 1. HISTORICAL BACKGROUND AND THE APRM IN SOUTH AFRICA

1. This Chapter commences with a brief introduction to the APRM second generation review of South Africa, and presents a historical background, followed by a brief outline of the APRM process in South Africa, from accession until the start of the APRM second generation review mission in 2021.

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

2. South Africa has waged a protracted and bloody struggle for democracy. Generations of the vast majority of South Africans have suffered severely from deprivation and subjugation as a result of the colonial and apartheid rule that lasted for 342 years. Therefore, it is to be expected that the country will cherish dearly its freedom and, like a good farmer, tender most carefully the democratic plant that was planted following the adoption of the Constitution of the Republic of South Africa in 1996.
3. The South African Constitution has been hailed as one of the most progressive in the world. Its vision for the country is one of a progressive, non-racist, non-sexist and human rights-based society. The Bill of Rights provides for a society based on human dignity, human security, freedom, equality and justice. Given the country's long suffering and bitter experience, the makers of the Constitution avoided the path of low-intensity democracy. Rather, it opted for a cooperative state with three spheres of government and separation of powers between the executive, the legislature and the judiciary. The judiciary is empowered to uphold the Constitution, and both the parliament and the executive are required to uphold the authority of the judiciary.
4. The country's first democratic elections on 27 April 1994 paved the way for the transition from the race-based system of oligarchic rule – in which the white minority were the primary beneficiaries – to a system of democratic governance with a strong emphasis on the sovereignty of the people. This leap of faith was not achieved without compromise. The peaceful transition, always shadowed by the prospect of civil war, was the beginning of a profound process of transformation of the state. The resurgence of popular participation made it possible for civil society organisations (CSOs), including the media, to play an important role in maintaining the momentum for reform.
5. While post-apartheid South Africa is imbued with a vibrant political democracy, it is nevertheless a democracy under severe socio-economic stress. The repudiation of apartheid has not meant the end of racial divisions and racism, nor has it signalled the end of the economic and social problems that have increasingly bedevilled South Africa's thriving democracy since 1994. Racially discriminatory policies enforced by successive governments throughout the 20th century left the black majority of the population poor and dispossessed, owning less than 30 per cent of the country's land, much of which is of poor quality. Unable to achieve sustainable agricultural development, the poor began to flock to cities with the disbandment of homelands and the dawn of freedom of movement. Urban migration, in turn, has exacerbated the problem of squatters. Consequently, enormous squatter encampments have developed, particularly in and around Johannesburg and Cape Town. Most of these squatters and a large percentage of the adult African population nationwide cannot find work within the formal sector of the economy.
6. The results are widespread poverty, dichotomisation of the economy, appalling living conditions and an increasing incidence of crime and aggravated violence. South Africa's per capita crime rate, overall, exceeds that of many other countries in recent years. The government has acknowledged the seriousness of the problem but has not been able to end the wave of crime against persons and property that is fuelled, among other things, by high levels of poverty.

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

## 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, rule of law, the acceleration of political, social and economic integration in Africa;
8. The primary purpose of the APRM is to foster the adoption of policies, standards and practices leading to political stability, high economic growth, sustainable development and accelerated regional and continental economic integration, with codes and standards contained in 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 APRM, APSA and AGA, and Assembly/AU/Dec.720(XXXII) of Feb 2019 requesting the Africa Governance Report be developed by APRM, in collaboration with AGA for presentation every 2 years, and also requested APRM to assist States in developing national governance reports.
10. The governance review assessments of the APRM 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. Five successive stages make up the APRM process. They are defined in the APRM Base Document and briefly outlined below:
12. *Stage One* involves the preparatory process, both at the APRM Secretariat level and at the national level. Under the direction of the APRM Panel, the Secretariat will send to countries to be reviewed a questionnaire on the five areas of the APRM. The country will develop a self-assessment on the basis of the questionnaire, and with the assistance, if necessary, of the APR Secretariat and/or relevant Partner Institutions. Having completed the self-assessment, the country will formulate 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, has developed a background document on the country through desk research and gathering all available current and pertinent information on the country's situation on governance and development status. It covers four (now five) thematic areas.
13. *Stage Two* is the Country Review Visit. Under the leadership of the APR Panel, the CRM visits the country concerned where its priority order of business will be to carry out the widest possible range of consultations with the Government, officials, political parties, parliamentarians and representatives of civil society organisations including the media, academia, trade unions, business and professional bodies. The main objectives are as follows:
  - Learn about the perspectives of the different stakeholders on governance in the country;

- Clarify issues identified in the Issues Paper that are 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 plays a role of facilitator, so that the Review Team can efficiently carry out its duties. To that end, the CRM should be given free access to all sources of information and to the various stakeholders, as laid out in the technical review mission's MOU and agreed 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. First of all, the draft report is examined by the Panel whose members are the official authors before it is discussed with the Government concerned to ensure accuracy of the information therein. It thus offers the government an opportunity to react to the CRM's findings and also express its own views on the shortcomings identified. These responses of the Government will be 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. Amongst them are 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 part of the third stage of the APRM process in South Africa. It submits 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 1st of July 2007. South Africa then produced three progress reports based on the recommendations of the first Country Review Report, with the final progress report tabled at the APR Forum in 2014.

22. In December 2018, Cabinet re-invigorated the second generation APRM processes in South Africa by establishing an inter-ministerial committee. South Africa renewed its APRM National Structures by establishing a new APRM National Governing Council (NGC) under the leadership of Chairperson Thulani Tshefuta.
23. From July 2020, over 17 months, the APRM NGC oversaw the completion of a country self-assessment report that was submitted to the APRM Panel of Eminent Persons and APRM Continental Secretariat in early December 2021, leading to the Country Review Mission to South Africa taking place later that month.

### **The Country Review Mission**

24. The Country Review Mission to South Africa took place from 07 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.
25. During the Country Review Mission, the team, led by the Lead Panellist for South Africa at the APR Panel of Eminent Persons, Bishop Dinis Sengulane met with national, provincial and local government as well as civil society and private sector representatives. During the Mission, the Review Team also held working sessions on good governance practices with the Deputy Speaker of the National Assembly, Hon. S.L Tsenoli, MP who was accompanied by MPs from the National Assembly, a meeting 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 held stakeholder meetings in all nine regions of the country, meeting with MECs, MMCs, mayors, and members of provincial and local councils across all nine provinces of the Country, as well as stakeholders 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. The NPoA will assign responsibility for implementation to institutions including governmental, CSO and private sector bodies and associations, and will be harmonised with the National Development Plan.

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## CHAPTER TWO

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### 2. DEMOCRACY AND GOOD POLITICAL GOVERNANCE

#### 2.1 Overview

28. South Africa became independent with much promise and hopeful aspiration to become a vibrant multi-cultural, multi-national, multi-racial republic. The ambitions of the political leaders shaped the structures of state institutions created under the new Constitution. The clearest indication of their chosen future developmental path can be found in the liberal provisions of the constitution such as the 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 Equity, the Auditor-General, the Electoral Commission), which are independent and subject only to the constitution and the law. Regarding the latter, the constitution stipulates that they must be impartial and exercise their powers and perform their functions without fear, favour, or prejudice, while enjoining other state organs to assist and protect these institutions to their independence, impartiality, dignity, and effectiveness.
29. The liberal democratic state such as the constitution-makers envisaged that South Africa would evolve into an ongoing project. It faces challenges, but they are not insurmountable and the successive Governments since independence have grappled with them to varying degrees of success. A major challenge that the state faces is the growing erosion of trust in the government and state institutions. This is partly because state institutions, especially the executive, but also the SOEs have failed the people through unethical behaviour and glaring incompetence in service delivery. The release of the Zondo Commission Report has fuelled popular disenchantment with state institutions. On the other hand, the Zondo Report is also an affirmation of the strength of a few state institutions – the Chapter 9 institutions – which should give hope to South Africans that the shortcomings in governance is remediable, given focus, dedication and the political will to follow through with the reforms necessary to curb abuses and revamp failing institutions.
30. Another area where there is a mismatch between state aspirations and society's attitude is the handling of the migrants and refugees in South Africa. 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 or opportunities, and most arrive with talents and skills that contribute positively to the development of the country. It is in the interest of South Africa, while it remains a regional and one of the continental leaders not to create and foster a negative image of the country or its welcome of other Africans through periodic acts of hate speeches against foreigners and ascribing to them all the ills of society. Morally, South Africa should not be seen to turn its back on citizens of neighbouring countries with which it shared common experiences of liberation struggle, and where they received support and encouragement in the past. 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 evolving coherent immigration policy which modulate the inflow of refugees and migrations into South Africa humanely, responsibly, and effectively to ensure that those refugees and migrants that qualify reside in South Africa peacefully and safely. The 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 that of poor service delivery, which also contributes significantly to the people losing hope and faith in the state. The CRM repeatedly heard stakeholders denounce the service delivery quality and restricted access in worrisome declamation at consultations in the provinces. The crux of the service delivery gap is primarily the weakness or lack of capacity of

government at the local level, where the people most frequently encounter the state and experience the best or worst or lack of service provision. To turnaround attitudes towards the state positively, the government has to prioritise revamping governance at that level decisively and urgently.

32. In the following sections of this Chapter, we examine some of key issues of nation-building that South Africa has faced, the degrees of success attained and where it should re-evaluate its options and seek new routes.

## 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
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)	<i>No Action Taken</i>	<i>No Action Taken</i>
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)	<i>No Action taken</i>	<i>No Action taken</i>
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, 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 recommends:
- South Africa ratify those outstanding Standards and Codes on refugees, internally displaced persons, and Migrant Workers expeditiously.

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

**OBJECTIVE  
ONE:****Constitutional Democracy and the Rule of Law****i. Evolution of the Issue****Political Representation**

36. South Africa has a progressive constitution that promotes democracy and a credible rule of law regime. 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 white minority rule has governed since 1994, winning significant majority of the vote at every election. But in recent years, thanks to the credibility of the political system, mainly the Independent Electoral Commission, and the commitment of the government to abide by constitutional principles of competitive democracy and free and fair election, viable opposition parties are being established regularly to participate in elections. These parties continue to give South Africans alternative policy choices during elections, and as a result, the representation of opposition parties has been steadily increasing at all levels of governance over the years.
37. The CRM observed that South Africans are relatively content with their current system of competitive democracy, and throughout the CRM consultations the major issues raised concerned the electoral system of proportional representation.
38. The CRM observes that South Africans are increasingly concerned 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 largely determined by leaders of the parties.
39. The controversial 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 party lists system. Numerous accounts, including the first APRM CRM Report of 2007 and the recent CSAR of 2021 identified some limitations of this system — the lack of direct accountability relationship between the elected and the electorate; and the tendency for elected representatives to be more loyal to party leaders than the electorate.
40. South Africans attending CRM meetings in the provinces confirm that they have not been able to directly hold MPs and members of provincial legislatures accountable and to change them when they poorly perform since these are chosen by the parties. There are, however, numerous local forums of engaging with legislators at both the national and local levels. Sessions of the Parliament are open to the public and broadcast on various channels including social media, while citizens have opportunities to submit proposals to parliament.
41. Nonetheless, these seem insufficient for the accountability relationship desired by citizens. Stakeholders suggest that most South Africans favour a direct election to parliament and opportunities for those without political parties to contest elections as independent candidates.
42. The CRM observed that recent elections have seen the emergence of special interest groups that have brought independents together and provided them the platforms to contest elections as was seen in the recent local elections, where several individuals who left mainstream parties organized social movements that contested the election.
43. The CRM also noted that a petition filed by the New Nation Movement that the Electoral Act 73 of 1998 is unconstitutional to the extent it does not allow an adult citizen 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 had no reservation with the ruling of the Constitutional Court regarding the reform of the electoral laws and institutions to implement this ruling. The Deputy-Speaker of parliament, Hon. Lechesa Tsenoli assured the CRM that it was far from the thinking of Parliament to demur after the Constitutional Court had decided on a matter. However, stakeholders did appear to know where parliament was at in implementing this decision. But the CRM notes that the 24-month period given by the Constitutional Court for Parliament to effect this legal 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 judgement by the Constitutional Court settles a major controversy that have dogged South Africa's system of representation and constitutional democracy. The only major issue under this thematic area therefore, which stakeholders in nearly all provinces raised and identified as a major limitation to South Africa's system of constitutional democracy and rule of law regards citizens' access to justice. This was also raised during the first APRM 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 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 then recommended a transformation of the justice system to include more people of black and coloured descents 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 and vulnerable to access civil justice. These courts allow people to institute civil claims to the value of R15,000 without the need for legal representation, and by the publication of the third report on the implementation of the recommendations 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 made 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 of 1996 (amended through 2012) provides elaborate Bill of Rights for the individual which guarantees the right to access justice, free trial, 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 Commission on Gender Equality, Human Rights Commission) and law enforcement agencies like the South African Police Service.
52. The CRM notes that the structure of the South African judiciary has potentials for individuals at all levels and social status to access courts of various nature and seek relief in the event they feel violated. There are magistrate courts at the lowest level that deal with criminal cases 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 relief for violations suffered.
53. The CRM observed that these lower courts are crucial to strengthening the rule of law, as most participants mostly speak of these courts, which are closer to them and having jurisdiction over matters concerning them. For instance, not much was heard of the Constitutional Court, but issues of accessing justice and allegations of corruption within the judiciary were mainly directed at these lower courts. Given their proximity to the citizens, strengthening these courts with resources and trained personnel with outstanding credibility will be crucial in building public confidence in them and 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 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 very costly to access.
55. Individuals not satisfied with rulings of the high court can seek appeal at the Supreme Court of Appeal which hears and determines an appeal against any decision of a high court in the country. The highest court in the country is the Constitutional Court which hears all cases involving constitutional matters and dispute between the various spheres of government, and various organs of the state. The primacy of the Constitutional Court is that it 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 Courts are binding, and it plays a crucial role in strengthening democracy and the rule of law. Stakeholders indicated that one of the greatest tests to ever confront the Constitutional Court in recent time was the attempt by a former president to defy the court's ruling that mandated him to appear before the Commission of Inquiry into State Capture. However, the court reasserted itself 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 prison sentence in South Africa. The subsequent detention of the former president on orders of the Constitutional Court demonstrated the independence and assertiveness of the South African judiciary in dispensing the rule of law regardless of the social and political status of those involved.
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 lament about corruption in the police service, and stakeholders in some provinces suggest that the justice system favours mostly the wealthy and more powerful individuals because most of the time the police do not take seriously complaints filed against the rich and influential members of the society.

58. The CRM notes that other factors that limit access to justice for most South Africans, as gathered during public consultations include, poverty level among the population which constrains the ability of the majority to pay for legal services where desperately needed. 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 backlog 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 recommends the Government:
- 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
  - The judiciary should deal expeditiously with allegations of corruption in the judiciary, particularly in the lower courts, 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 and checks and balances between the three branches of government — the legislature (Parliament), executive and 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 suggest to the CRM that all matters of judicial services be the sole prerogative of the judiciary, and all administrative issues including appointment of court officials and

establishment of magistrate courts 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 of 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 issue, 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 — 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 acts 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 strength 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 proved to be more powerful than the parliament in holding the presidency accountable.

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

### **Parliamentary Independence and Oversight of the Executive**

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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 — president, 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 President Jacob Zuma and hold him accountable for issues raised in the Public Protector's report regarding misuse of public funds in doing non-security upgrades at his home. By failing to hold the presidency to account even after the Public Protector had released such a report accusing the president, stakeholders suggest that the National Assembly 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 effort to compel the National Assembly to exercise its oversight functions.
72. The CRM views 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 through which members of parliament are elected through their parties. Under this system, the electorate 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 list 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 prevalence of corruption in 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 are 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 resolutions.
76. An important observation of the mission 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 situation of 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 suggest, 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:

- The Government trains 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 devises 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.

<b>OBJECTIVE THREE:</b>	<b>Prevention and reduction of intra and inter-state conflicts</b>
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### i. Evolution of the Issue

78. South Africa has been a relatively peaceful society since the end of Apartheid and 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 issues of 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 it has not always caused internal violent disputes but has 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 life opportunities or 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, were causing resentment among the majority black South Africans already struggling with 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 brooding tensions in some communities as identified by the CRM of 2007. The CRM also noted that residues of racism was 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.

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82. The first country review report (2007) thus recommended that South African government, particularly the Department of Home Affairs, Department of Education, and civil society organisations, implement 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, incidence of xenophobic attacks and killings escalated into a nationwide conflict. In May 2008, locals in Johannesburg and the settlement of Alexandra (Gauteng Province) launched strains of xenophobic attacks against foreign nationals living in those areas. The attacks quickly spread to seven other provinces. These nationwide attacks led to 62 death (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, additional 30 deaths from xenophobic violence were reported. The South African government's approach to dealing with 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 crime and for not providing enough protection for the internally displaced foreigners who were exposed to further attacks.
  84. After 2008 attacks, other sporadic outbreaks of widespread xenophobic attacks continue 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 thousand 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 institutional and in white-colour 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 dialogues 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 dialogues on nation building and social cohesion organised by the Departments 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 has 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 identifies 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 incidence of 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 employment 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, but also risks 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 for foreign nationals residing in the country. It was noted from numerous 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 better housing facilities are resentful of seeing foreign nationals in public housing facilities, which they might have obtained through collusion with 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 incidence of 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 incidence 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 the electioneering process, they make promises to get rid of foreigners when elected, and this ploy plays well into the hands of locals who already see foreigners as causes of their conditions of joblessness, poverty, and crime.
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 ruling African National Congress, South African President Cyril Ramaphosa, promised to end foreign business operating in the townships and rural areas without obtaining 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 Patriotic Alliance political party, accused white businesses of finding slaves among foreigners who provide cheap labour in the country. He reportedly promised to arrest and deport all illegal migrants in administrative areas that is controlled by his party.
95. Other notable statements made by politicians with potentials for xenophobic violence include those by 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 strains on South Africa's health system, and repeated public statements made by a former mayor of Johannesburg from 2016 to 2019 that foreigners were responsible for the rising crime rates 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 observes that the scapegoating of foreigners (legal and undocumented migrants alike) for nearly all South Africa's ills by politicians is undermining government efforts and civil society organisations' sensitisation campaigns against xenophobia.
98. The CRM notes 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 was 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 aims of raising public awareness about 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 achieve its goal 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 the development of 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 are 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 the objectives of the plan, particularly in sensitising communities against racism and xenophobia are quite noteworthy. The CRM calls on all stakeholders to vigorously implement this plan and systematically monitor and report on its achievements, outcomes, and challenges periodically.

100. The CRM also notes that as the Covid-19 pandemic ravages the South African economy and situation of unemployment increases, there is a likelihood that crime will increase mainly 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 President Jacob Zuma led to major riots in the provinces of KwaZulu Natal and Gauteng, causing more than 200 lives and damages 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 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 inability 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 state architecture as regards 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 proposition 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 the Government:
  - Step up efforts at civic education that promotes integration, social cohesion, and unity among South Africans of all races and foreigners residing in South Africa.
  - Passes the Prevention and Combatting of Hate Crimes and Hate Speech Bill to discourage incitement against minorities and foreigners.
  - And political parties commit to communicating their policies on immigration and border control in a professional and humanistic manner that highlights the positive contribution of migrants and competitive advantages that comes with diversity

<b>OBJECTIVE FOUR:</b>	<b>Promotion and protection of civil and political rights</b>
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### 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 law, and binds the legislature, the executive, the judiciary, and all organs of state.

### ii. Findings of the CRM

<sup>4</sup> South Africa Constitution, Article 7 (1)

105. With regards 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 association of their choice including political parties, trade unions and so forth. This can be witnessed through several political parties that are formed in South Africa, as well as through people's participation in the different trade union.
107. As for the Freedom of expression and media freedom; the constitution makes provision that everyone has the right to freedom of expression, which include freedom of the press and other media.<sup>6</sup> However, there have been several concerns raised around 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 was under extreme scrutiny, with the parliamentary ad hoc committee on the SABC Board Inquiry making several findings against the SABC Board, Minister of Communications, and others. In 2016, the SCA handed down a judgment in relation to the incident at the 2015 State of the Nation Address (SONA) where 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; through another independent and impartial tribunal or forum. It 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. Regarding Correctional Centres, overcrowding and poor conditions has been reported. The South African Human Rights Commission call for the urgent need to address the issue of overcrowding in correctional centres across the country and increase its efforts to guarantee the rights of detainees to be treated with humanity and 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) and the notoriously slow and inefficient criminal justice system. It has been noted that reasons for overcrowding include the high number

<sup>5</sup> South African constitution, Chapter 2, Article 15 (1)

<sup>6</sup> South African Constitution, Article 16, (1) (a)

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

<sup>8</sup> Human Rights Commission. 2021. Access to Justice.

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

<sup>9</sup> Legal Aid South Africa Integrated Annual Report 2016/2017

of prisoners awaiting trial; bottlenecks in the parole process; mandatory minimum sentencing; and the increase in life sentences.

### 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 Equity; (e) The Auditor-General; and (f) The Electoral Commission, which it stipulates are independent. Regarding their special status, the Constitution states as follows:

#### Section 9

(2) 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.

(3) 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.

(4) No person or organ of state may interfere with the functioning of these institutions.

(5) 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 and any information held by another person and that is required for the exercise or protection of any rights. Section 32(2) of the Constitution 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. Research notes 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 information. Firstly, PAIA provides 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 lie to

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

one of the main objects of PAIA which is 'to promote transparency, accountability and effective governance of all public and private bodies.

113. Thirdly, 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

<b>OBJECTIVE FIVE:</b>	<b>Ensuring accountable, efficient and effective public service delivery at the national and decentralized levels</b>
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### 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 two-fold: (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 has 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, and adopted participatory planning and implementation frameworks to involve citizens more 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. For the subnational level, the Municipal Financial Management Act of 2003 was pivotal as it tried to modernise and make transparent 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 CRM 2007 found that despite the commitment to unify the public service and improve its capacity the constitutional three spheres of government has made things difficult, inhibiting dynamic movement of skilled personnel across jurisdictions to enhance performance. Most of the reforms in development planning and skills enhancements concentrated on the national and provincial services, leaving the local government service less catered for, which has created wide

<sup>11</sup> CRR South Africa, 2007 p. 128

disparities in service delivery capacities. The report also mentioned that there was a gap between councillors and local government officials on the one hand, and citizens and communities on the other, which could have been bridged by non-existent or few intermediary development-oriented non-governmental organisations. Those that existed were poorly resourced to impact the relationship between local governments and their communities.

118. The CRM also found that national affirmative action directed focus at 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, recommended among others that the Government create conditions that will facilitate recruitment and retention of qualified talent into the public service based on criteria which, besides skills competencies, 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 to 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 the following:
- 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 report specifically on 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 and 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 subnational 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 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 intergovernmental collaboration is identified 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 formalising 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 performance levels 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 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. The *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 by the public service 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 as the organ that drives government policies, will have profound consequences for the sustainable economic and socioeconomic wellbeing of the people. In South Africa, the deficient performance of the public service at all levels of government constitutes a cog in the wheels of progress towards the country becoming a developmental state, long the goal of the political leadership as the surest way 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 most of the population interface directly with government as they yearn 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 Nkadameng, confirmed the poor state of governance at the local level. She disclosed that based on assessments which used 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."
128. Operating under enabling constitutional provisions, the Ministry of Cooperative Governance 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

<sup>12</sup> P. 96

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

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

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 the management systems of the weakest municipalities in the land. 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 argument of 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 deficiencies in the performance of the municipalities requires 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 in ensuring satisfactory organisational performance. All of these important measures are largely lacking at the local authority levels.
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 managements systems, processes, regulations, and procedures that apply across levels of government, they are most effective where the operators 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 exigent. 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 out of their reach. Therefore, the persistence of the deficiencies until 2019 was the result of the incapability of the regulators to enforce compliance. These 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 ensure that such municipalities can 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.

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<sup>15</sup> 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)

<sup>16</sup> 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

<sup>17</sup> Ibid, p. 1



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.
- Set the rule for recruitment, promotion, and discipline of staff of municipal authorities.
- Receive and determine appeals from aggrieved senior management staff of municipal authorities on recruitment, appointment, promotion, and discipline.
- Undertake monitoring and evaluation of the performance of municipal managers, applying criteria determined by COGTA and NT.
- Promote staff development by giving scholarships for training programmes, exchanges of staff between provincial and municipal services through transfers, internships, attachments, etc., to enhance the competencies of municipal managers.
- Any other functions devolved to the department by the Provincial Government.

134. The CRM also considers the training need of the municipal authorities so critical that it should receive special attention of 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:

- 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 evolution 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.

<b>OBJECTIVE SIX:</b>	<b>Promotion and protection of the rights of women</b>
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### i. Evolution of the Issue

#### Gender-Based Violence

136. Various laws and mechanisms are in place to address violence against women in South Africa, but gender-based violence has been and is still a widespread problem. One in five (21%) of partnered women has experienced physical violence by a partner. In addition, in 2018 Statistics South Africa estimated that women and girls are the primary victims of 68.5% of reported sexual offenses cases. Further, in 2019 it was reported that 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 that are 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 will focus on government efforts to deal with various and related aspects of gender-based violence since 2007. Based on this time span, the first South African Country Review Report, three (3) National Plans of Action Implementation Reports, as well as the Close-out Report will be used to analyse how these issues have been addressed.

*Assessment of the Level of Effort 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 in and control over one's body.
138. With regards to gender-based violence the 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 2nd Implementation Report of 2010 noted that the Government introduced and spearheaded the implementation of the first (1st) phase of the National Register for Sex Offenders in June 2009, as part of the 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 by then contained the names of nearly 600 people who 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 proved to be an important instrument that gives employers in the public or private sectors including schools, pre-schools, and hospitals the right and access to check the background of persons being hired for fitness to work with children or persons living with mental disabilities. The National Register for Sex Offenders has been made more useful particularly 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 (3rd) 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 have 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 leaders, traditional, women movement, 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 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 (3rd) 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 to also strengthen the fight against violence and crimes directed at women.
144. The 3rd report acknowledged that the Government had enacted various pieces of legislation to provide better protection for women and children. It however noted and emphasised that there was a need for a strong shift from policy to action towards a stronger focus on prevention and early intervention to support women and children.
145. The Close-out Report of 2016 in summation noted that the focus on violence and crime, particularly against women, children, senior citizens, and people with disabilities had grown over the reporting period. This accounts for the numerous interventions that have 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 should 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 (Pg 34 & 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 make it wide-spread. The 2009 1st 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 1st 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 3rd Implementation Report of 2014 highlighted that fifty percent (50%) 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 (pg. 90). The report also highlighted efforts that had been made by the Government to better ensure that the poor could access justice at the basic and more direct level. The report highlighted that access to justice in the country is affected by the proximity of the courts and other justice facilities in the townships and villages where most of the population reside.
149. The report noted increase in the knowledge 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 was noted to bring the judicial system closer to communities whose pursuit of ordinary justice system is often unaffordable, lengthy, and cumbersome. The 3rd Implementation Report of 2014 also noted that the DoJCD has a programme for extending these services to township and rural areas. Further outlined was the establishment of twenty-three (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 two hundred and forty-seven (247) at the end of March

2012. In 2012, the courts that were established in the traditionally black areas and villages as branches of main courts situated in towns were being rehabilitated to equip them with substantive jurisdiction and sufficient capacity to function as full-service courts. Twenty-four (24) of the ninety (90) branch courts were identified for rehabilitation into full-service courts by 2014. By 2014, fifteen (15) of the twenty-four (24) courts have already been converted into full-service court, thus a 62.5% accomplishment.

#### *Conviction Rates and Law Enforcement*

150. The 1<sup>st</sup> Implementation Report of 2009 noted that to decrease crime and violence as well as to strengthen anti-crime strategies, especially in relation to women and children, 713 sector policing initiatives were undertaken. Additionally, the Interdepartmental Management Team (IDMT) that addresses key pillars of gender-based violence initiated a process for implementing sexual offences training for the police and court services. They also established reference teams for the development and monitoring of the implementation.
151. Further, the 2014 3rd Implementation Report outlined the Family Violence Child Protection and an effort to address gender-based violence. Nationally, the Government 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. Since 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 has been life imprisonments.<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 painted a picture that the level of violent crime was decreasing during the period 2009 -2011; 2012-2013; 2014-2015 but this picture has not been consistent especially for the periods after 2015.

#### **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 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.

Further, the central Government has collaborated strongly with Premiers in the different Provinces working with traditional leaders in partnership with NGOs for 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

<sup>18</sup> Pg. 38 APRM 3rd Implementation Report (2014)

<sup>19</sup> Ibid, pg119.

mobilise all sectors of society up to the local and community levels to put an end to the cycle of violence.

The campaigns not only serve to heighten awareness but 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 with the aim to engender societal change. Irrespective 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 gender position of women in society is still low and their abuse is still persistent. This is still a concern with regards to gender equity and equality.
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 2nd Implementation Report of 2010 registered Government progress in its quest to comply with domestic and international obligations to ensure gender equity in political representation. South Africa ratified the 2008 SADC Protocol on Gender and Development, which requires 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 and higher income is positively related to lower rates of abuse. The 2007 1st 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 1st 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 outlined as 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. The report also outlined that from consultations with stakeholders it was found that although the constitution protects women's rights, some women lack the confidence to speak out when victimised. This is largely because most women, particularly in rural areas, are illiterate and are not fully aware of their rights. They fear to report cases of domestic violence of which they are the

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

160. According to the 2009 first implementation report, 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 2<sup>nd</sup> Implementation Report of 2010 noted that remuneration disparity based on race and gender continues (pg. 58). It also outlined that those disparities continue to exist between the public and private sectors regarding employment equity targets. 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- 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 (pg. 19).
162. The 2014 3<sup>rd</sup> Implementation Report highlighted that the number of women in executive leadership positions in the public sector continues to grow, reflecting the commitment to the empowerment of women and less so in the private sector. Overall, the aggregate growth of women in leadership positions has slowed since 2010 due to reduced transformative gains in the private sector (pg. 133).

## ii. Findings of the Country Review Mission

163. The Government has put in place a set of important mechanisms to help implement policies and legislation geared towards securing the rights and protection of women, children and persons living with disabilities. 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 among vulnerable groups. Although these mechanisms are in place, South Africa still faces significant problems with violence against women that has been on the rise.
164. Substantive advancements have been cited towards a constitutional framework and domestic policy that is 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' based on the prevalence of under-reporting. The statistical measures are considered as broad indicators of the pattern of gender- based violence and not necessarily definitive' (Meyiwa & Williamson et.al 2017). The prevalence of physical violence is greater among less educated women than those with secondary education or higher (StatsSA- Crimes Against Women in South Africa 2020). According to the 2009 1<sup>st</sup> 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 1<sup>st</sup> Country Review Report and the NPoA implementation reports. Despite such opportunities, the elected representatives are expected to promote party positions above personal and community positions on gender equality, hence less room 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 unfavourable economic growth and 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 recorded advances in tackling issues that affect them because of the broader macro-economic challenges.

166. The South African Women in Dialogue (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 less economic opportunities than men are often grossly violated. Further, the unemployment rate among women eligible for employment 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 women with violent or controlling male partners are at a higher risk of HIV and AIDS infection (Dunkle & 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 & Taffa (2013) also purported that economic dependence is the principal cause of disproportionate burden of the HIV and AIDS disease among the poor and vulnerable in South Africa.
168. To solve 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 & Fatoki 2012), Women entrepreneurs do not enjoy the same opportunities as men in accessing start-up capital due to several 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 with regards to gender-based violence reported cases is currently at around 25%. Questions are still being raised with regards to the nature of innovative policies and mechanisms that can be introduced to increase the rate of prosecution and help lower the cases. This situation calls into question the effectiveness of Sexual Violence Courts, the policing and community attitudes as the rate of arrest is still regarded as similar to that of 2007.
  - It is also purported that only 50% of victims of GBV receive psychosocial support because of gender-based violence
  - Organisations working to help curb gender-based 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.
  - Less funding for gender-based violence organisations and programmes in poor areas of South Africa hence, 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:
- The Government prioritise and resource more local and community-oriented initiatives to target the causes and actual sources of sexual abuse, including through social programmes to help socialise offenders.

- The Government mainstream inter-departmental programmes, for instance with the Department of Social Development, which aim to empower communities through awareness and prevention of sexual abuse.
- The Government 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.

<b>OBJECTIVE EIGHT:</b>	<b>Promotion and protection of the rights of vulnerable groups</b>
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### 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, 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 several international and regional instruments that protects and promotes the rights of refugees, illegal immigrants and undocumented persons such as the Convention relating to the Status of Refugees 1951; Protocol relating to the Status of Refugees 1967 and the OAU Convention of 1969. At the National level, it has enacted the Refugees Act No 130 of 1998, the Immigration Act 13 of 2002. It has also established the Refugees Appeal Board and a Standing Committee for Refugees Affairs to attend to matters related to the appeal of refugee application rejection. South Africa has also made provision for 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 putting the legislation and mechanisms for the protection and promotion of the rights of refugees, illegal immigrants and undocumented persons in place, the country still faces a recurrence of xenophobic attacks due to the tension between foreigners and citizens that arises because of competition to scarce resources in the country.
173. The challenge of refugees, illegal and undocumented persons has been documented 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, para 268), the protection of the rights of refugees, illegal immigrants and undocumented migrants remains a cause of concern in the country (CRR 2007, para 3.21).
174. The CRR 2007 (para. 269) notes that the country has approximately 142 000 registered refugees, and 115 pending applications. With many of the refugees originating from Burundi, Cote D' Ivoire, Democratic Republic of Congo and Zimbabwe.
175. The report mentions efforts by the South African Government to accommodate refugees such as granting of asylum in the country by the Department of Home Affairs and the establishment of a National Immigration Branch that includes refugees' affairs section and a counter Xenophobia and Counter Corruption Unit that works to prevent abuse of refugees and asylum seekers (CRR 2007 para. 270). In addition, South Africa has been accommodating refugees at reception centers where they are documented or deported. Humanitarian assistance is also provided to deserving

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



- cases at the same Centers. Despite the tremendous effort by the South African Government, the refugee's determination process was reported to be facing serious challenges, due to incidence of bribery and extortion involving the police (CRR 2007, para. 270).
176. However, the CRR 2007 (Para. 272) noted an increase in refugee cases and the pressure posed on infrastructural and social services which resulted in the rise in tension between migrants and citizens due to shortage of resources.
  177. To address the highlighted issues, the CRR 2007 (para. 276) proposed the following recommendations: (a) Seek ways of mitigating the push factors from neighbouring countries to reduce the influx of refugees, 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 were made to ensure implementation of the recommendations, even though these issues remain a cause for concern. For example, in its 1<sup>st</sup> Progress report covering the period of 2007-2008, South Africa ratified the Protocol on the Facilitation of the Movement of Persons (SADC) on 04 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. Further, the then President of South Africa, Jacob Zuma acknowledged the growing tension between migrants and citizen in the country that resulted in xenophobic attacks as noted in the 2<sup>nd</sup> Progress report covering the period January 2009 to November 2010. However, the South African Government made several efforts to address the xenophobic attacks including: (a) Reviewing its immigration policy focusing on definition of refugees and asylum seekers in the Refugee Act of 1998; (b) Government addressed the delegation of powers and the establishment of refugee reception Centers; (c) The dissolution of the Standing Committee for Refugee Affairs and Refugee Appeals Board in favour of a new Refugee Appeals Authority; (d) Clarification and the revision of procedures relating to the process of determining refugee status; (e) Government rolled out a communication strategy identifying key messages for encouraging mutual respect between foreign nationals and citizens; (f) Piloted a project on xenophobia in secondary schools around the Gauteng province; (g) Established 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 and countered, both within government and civil society; (h) Developed a strategy for local integration of refugees and asylum seekers aimed, at promoting and facilitating the full integration of refugees into the local communities, education institutions and the labour market; (i) the APRM National Consultative process directed the NGC to convene a special Summit to discuss xenophobia in order to capture all perspectives with a view to formulate the country's strategy (Progress Report 2010 pg. 54-54)
  180. In addition, the 3<sup>rd</sup> Progress Report covering the period October 2010 to January 2013 revealed that the government acknowledged incidences of xenophobia that have persisted in the three implementation reports. The xenophobic attacks, commenced in Alexandra in May 2008, subsequently spread to other areas in and around Johannesburg, including Cleveland, Diepsloot, Hillbrow, Tembisa, Primrose, Ivory Park and Thokoza. Reports of xenophobic violence were reported in other provinces such as Kwazulu-Natal, Mpumalanga, and the Western Cape (Progress Report 2013 pg. 108). However, in response to the attacks the Government developed various mechanisms including: (a) The 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 was 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 3<sup>rd</sup> Progress report notes 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 (pg. 74) and the Country Self-Assessment report (CSAR, 2021) highlighted that Xenophobia occurred in 2009 and 2015; but 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 (pg. 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, pg. 16); (c) Refugee and asylum seeker children, 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, pg. 134). In efforts to resolve the issue, the CSAR 2021 (pg.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 pg. 134).

## ii. Findings of the Country Review Mission

182. The CRM learnt that despite the provision of the protection of the rights of refugees in the Constitution through the Bill of Rights, refugees, illegal immigrants, and undocumented persons experience difficulties in accessing and enforcing these rights, such as the right to have access to housing, the right to work, the right to education, the right to healthcare services and the right to social security. This problem has been narrated since the APRM governance assessment of South Africa in 2007.
183. Regarding access to documentation, refugees, illegal immigrants and undocumented persons are facing problems in securing or renewing their permits due to the recent closure of refugee reception Centers 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 the children born in South Africa to refugees, illegal migrants and undocumented persons are denied access to documentation (including birth certificates) and, as a result, it affects their 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' 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 regards to access to health care, refugees, illegal migrants, and undocumented migrants have difficulties in receiving treatment as they fail to provide legal residential status. The CRM

<sup>21</sup> 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.

learnt that whilst the Constitution, the National Health Act, and the Refugees Act spell out refugees and migrants' rights to access healthcare, the Immigration Act is quite different as it states that staff at clinics and hospitals must find out the legal status of patients before providing care except in an emergency. They are also expected to pay consultation and treatment fees, given 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 result in diminished salaries and deplorable working conditions. This has been witnessed in the unskilled labour sector such as construction, mining, security, and farms, where refugees in South Africa often work for poor wages. Further, CRM learnt that some employers do not recognise the asylum documentation, which complicates the lives of refugees.
187. The CRM noted that the competition for resources and jobs in South Africa has led to a rise in tension in the township communities. The participants complained that the small enterprises businesses in their communities operating as SPAZA shops are mainly owned by foreigners, yet it is difficult for citizens to establish and operate similar businesses. Reasons given be that the foreign owned Spaza shops are not regulated as compared to the citizen's businesses that face intense regulation, which places citizens at competitive disadvantage. This tension has resulted in the recurrence of the xenophobic attacks in Township Communities whereby foreign owned businesses are looted and destroyed.
188. In trying to accommodate illegal migrants in South Africa, the CRM learnt that in 2009 South Africa awarded 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 to Zimbabwe Exemption Permit. However, in 2021, the government announced that this type of permit which is expiring in December 2021 will not be renewed any further. 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 states that unsuccessful applicants for mainstream permits will 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 enervate the teeming number of illegal immigrants in the country.

### iii. Recommendations

189. The African Peer Review (APR) Panel recommends the Government:
  - 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 provide them with basic human rights.
  - Establish a national register of children of refugees and undocumented persons to assist with providing them with requisite socioeconomic 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.

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## CHAPTER THREE

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### 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 an essential prerequisite for addressing the triple challenge of poverty, unemployment, and inequality through promotion of economic growth. It is thus a firm belief of APRM participating Member States that promoting 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 April 27, 1994 elections approached, there were high expectations and aspirations for a marked increase in the quality of life in the post-apartheid era. Certainly, the renowned wide gap between black and white subjective well-being somewhat contracted. South Africa experienced relatively high and consistent economic growth from 2.9% in 1994-2003 to 3.4% in 2004-2013, which supported poverty reduction. The growth however took a significant downturn between 2014 and 2019 as the growth rate hovered between 0.1% and 1.8% before Covid-19 pandemic led to a further contraction of -7.0% in 2020. Nonetheless, after almost three decades since apartheid ended, the aspirations for a more progressive society has 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.
192. The challenges of inequality, poverty and unemployment that South Africa has always been confronted with have gained traction in the almost three decades post-apartheid despite the numerous policies, programmes and strategies. The government of South Africa has an elaborate planning space, which is underpinned by the National Development Plan that is aimed 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 emergency 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 have some mixed bag of results.
193. Despite the elaborate plans and strategies, the long-standing challenges remain in the area of changing the emblem of a most unequal country in the world ravaged by high unemployment and debilitating poverty. The CSAR 2021 and the country review mission consultations and engagements with critical stakeholders across the provinces and municipalities suggest that South Africa is on a trajectory that must be urgently reversed. The fault lines were highlighted in the country review report of 2007, but 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 (CRM) 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 manifested into fragile growth with no ability to create job opportunities for the huge unemployed population in the country

(especially among the youth), thus sustaining the economic fault line of a non-inclusive nation.

- **Inadequate public consultation and poor monitoring:** South Africa has moved towards participatory policy making approach since 1994, taking into consideration local needs so that the policy making process becomes interactive. Government has introduced the District Development Model, which was set up to improve Cooperative Governance aimed at building a capable, ethical Developmental State aimed to foster collaborative planning among the three spheres of government and state entities with overall goal of coherent service delivery and development outcomes. At the core of its operation is technically driven consultative process within government and with communities and stakeholders. However, the extent of public consultations in the design, implementation and monitoring has not lived up to expectation thus resulting in a system with no grassroots driven projects.
- **Public Finance Management Capacity:** The state of the public service as demonstrated by the delivery of basic services to the citizenry is a manifestation of some underlying weaknesses. Chief among them being the quality of the management of public funds. Since 1994, the South African government has implemented numerous structures and legislative frameworks to develop and guarantee the maintenance of sound public finance management. These are secured by the Public Finance Management Act (PFMA), the Municipality Financial Management Act (MFMA) and the Public Service Management Framework. However, the economy is incessantly being plagued by an acute lack of capacity, particularly financial expertise for managing social programmes, social support spending, and facilitation 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 many of the services, and to perform functions that are central to Government's overarching objectives of redistribution and poverty-alleviation. National government raised revenue 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 hemorrhage.
- **Corruption in the Public Sector:** A low level of 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 outward-oriented economic policy and plays a leadership role in Africa's regional and continental economic integration agenda, which will require reinforcement and effective implemented. The economic position of South Africa in SADC makes it the most developed and advanced economy and with its role in the global space, has become 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 as it pertains to monetary, trade, and investment, is considered critical to regional development. Regional Economic Communities role is, in general, to pursue, support and nurture the integration of its member states in those domains and others. The Southern Africa Development Community (SADC) is one of the RECs and is considered pivotal to the regional integration process in southern Africa. However, intra-regional trade of South Africa with 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 recorded 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 continue to experience the challenges of unemployment, inequality, and poverty. To confront these challenges requires, among other things, robust quality economic growth and sustainable development of which the attraction of inflow of foreign direct investment (FDI) is critical. The country however, has been experiencing a decline in inflow of FDI, which can be attributed to low reinvested earnings and reduced borrowing. There is the need for further reforms and policy consistency to reverse the dwindling fortune of investment in the country

194. These issues are critical to the state of economic governance and management in South Africa today, but also cut across the objectives of the thematic area. In the rest of this chapter, each of the above issues are 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 to all Standards and Codes that have been adopted and that have been or 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 yielded in part to comments raised in the first CSAR about provision of reasons for non-signing and non-ratification of certain standards and codes as it provided explanation for non-signing of the Extractive Industry Transparency International (EITI) initiative. It explained that the South African government was reluctant to join the initiative for two main reasons. First, it argues that key northern states have also yet to join the initiative, and that current membership consists mainly of developing countries from the global South. Second, it argues 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 problem still persists as there are some other standards and codes that are not signed/ratified without any concrete reason. For example, the reason 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) was not discussed. Also, the report did not discuss the enforcement mechanisms and reporting structures that are available in respect of standards and codes that have been ratified. Progress on some specific guidelines identified in the first CSRA was also not discussed.
199. Meanwhile, the 2021 CSR 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. 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 were 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 African Charter on Statistics, Extractive Industries Transparency Initiative (EITI) and the Stolen Assets Recovery Initiative.

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

201. After assessment of the first Country Review Report (CRR) in 2007, the issue raised was that, where the country has not signed or approved certain protocols or codes the CSAR (Country Self-Assessment Report) should suggest reasons for this, as well as what could be done to remedy the situation. This recommendation was not adequately followed.
202. 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 yielded in part to comments raised in the first CSAR about provision of reasons for non-signing and non-ratification of certain standards and codes as it provided explanation for non-signing of the Extractive Industry Transparency International (EITI) initiative. It explained that the South African government was reluctant to join the initiative for two main reasons. First, it argues that key northern states have also yet to join the initiative, and that current membership consists mainly of developing countries from the global South. Second, it argues 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.
203. However, the problem still persists as there are some other standards and codes that are not signed/ratified without any concrete reason. For example, the reason 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) was not discussed. Also, the report did not discuss the enforcement mechanisms and reporting structures that are available in respect of 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 the country signed, ratified and adopted was not well documented. This was further noted by the second-generation CRT. The CSAR indicated the level of compliance with some of the standards that do not need ratification and accepted as best practices such as 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). The CRT could not establish the extent to which the codes and standards were translated into policy, legislations and specific actions.

### iii. Recommendations

206. The African Peer Review (APR) Panel recommends:
- 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 African Peer Review Mechanism (APRM) Objectives

<b>OBJECTIVE ONE:</b>	<b>Design and implement economic policies for sustainable development</b>
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### 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 deplore and explore its economic policies to address low and unstable growth, inaccurate projections and structural decadence as well as improving monitoring and evaluation of performance with an overarching goal of achieving a more inclusive South Africa. After the apartheid regime in 1994, the 2007 base review identified macroeconomic stability as a key feature of the South African economy. To bridge the wellbeing gap, the government embarked on social spending, by increasing tax relief towards putting the economy on 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 remains a mirage in the country over the years.
208. The base review also indicated the efforts towards increasing investment and economic growth through resource mobilisation as well as expanding domestic saving, improving capital formation and minimising capital flight. Also, 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 has consistently proved abortive due to limited institutional capacity that is anchored on poor skills and sub-optimal resource management. Skittish investors have further been unnerved by unrelenting skill shortages, misguided policies, and overregulation.
209. Furthermore, the based 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%. More so, the Broad-Based Black Economic Empowerment programme introduced to address inequality does not capture larger 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 remained elusive.

210. After 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 Municipal Infrastructure Grant. Also, the country introduced National Capacity Building Framework in 2008. Another critical issue identified in the country is unemployment. The country provides limited employment opportunities and introduced the Expanded Public Works Programme to create employment opportunity with the aim of reducing unemployment by 50% in 2014. In the second progress report in 2010, the issues 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 is Community Works programme. In sum, all the reports acknowledged endemic structural decadence in addressing persistent unemployment challenges in the country.

#### **Non-Inclusive Growth**

211. The 2007 Country Review Report (2007 CRR) pointed out the challenge of non-inclusive and broad-based growth in the country. Thus, broad-based inclusive growth is required to address challenge of structural factors 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 has 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 low inflation rate, low long-term interest rate, and reduction in budget deficit. Despite impressive macroeconomic management, the CRR noted less-inclusive and broad-based growth. Specifically, growth was relatively high before Global Financial Crisis (GFC) but remained below the yearly target of 6%. The growth challenge in the country started after the GFC when the country entered recession in 2009.
213. Given the long-time space between 2007 CRR, the progress reports and the 2021 Country Self-Assessment Report (CSAR 2021), the country is expected to have witnessed significant improvement. However, 2021 CSAR still expressed serious concern about fragility of economic growth in South Africa. Despite relatively stable macroeconomic policy, CSAR 2021 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 stood at -7% in 2020, a clear manifestation of long years of weakened base of the economy. Though, the economy is recovering slowly as it recorded a growth rate of 1.2% in 2021Q2.
214. Additionally, the country witnessed a slight improvement in economic growth in quarters one and two of 2021, as compared to huge decline experienced in 2020, and 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 aggravated violence that occurred in July 2021 would most likely undermine the attainment of these projections. The country does not have strong broad-based growth that can create huge job opportunities and employment for the citizens. The infrastructure and human capital needed to support strong and sustainable economic growth are very weak. Specifically, the generation and supply of electricity remains a major challenge to economic trajectories as load shedding continues to impose running and economic costs (from businesses' losses). Education system that is expected to generate and augment requisite skills is also witnessing disturbing phase due to poor infrastructure and maladministration. The 2021 CSAR explained that the high unemployment rate in the country

was due to poor design of education system. The education system faces deteriorating infrastructure, high population density in classrooms and low educational outcomes.

215. However, the informal sector plays significant role in the economy. Specifically, informal employment accounts for 30% of non-agriculture with close to five million jobs. Efforts by government to integrate the sector into formal economy through the National Informal Business Upliftment Strategy (2014) proved abortive as business owners refused to migrate to formal sector. This was attributed to strict regulation and high taxes. In addition and 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 tertiary sector that requires high skills. This further aggravates unemployment rate (due to skill mismatch). More so, the overdependence on extractive sector compounded 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 New Growth Path (2010) and 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 National Development Plan (Vision 2030), which comprehensively shows the 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. More so, the following targets are documented: 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 as well as increased poverty and inequality in 2021Q2. Given these challenges, the government introduced Economic Reconstruction and Recovery Plan (ERRP) to protect lives, provide intervention to vulnerable households and build strong and resilient economy. The ERRP was supported with Operation *Vulindlela* to significantly address worsened structural factors.
218. From the foregoing, broad-based inclusive growth remains quite elusive between the timeline of base review in 2007 and the second generation CSAR of 2021.

### **Rising Unemployment**

219. In the first review of 2007 (base review), the high unemployment rate was identified as fundamental factor affecting the country. This was linked with '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, but there are aspersions on the success of the policy initiative. Furthermore, the high inequality in the country is attributed to ineffectiveness of Broad-Based Black Economic Empowerment (BBBEE) due to poor skills and fiduciary risks. This 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 recorded in job creation. During the period, informal employment declined by 100,000 while formal sector registered employment of 24,000. More so, government introduced the Expanded Public Works Programme (EPWP) which achieved

more than its target of creating one million job opportunity. Nevertheless, the progress was reversed due to increase in job losses after global financial crisis. However, the first report indicated the dedication of government to reduce unemployment by 50% in 2014.

221. The second progress report also highlighted the issue around 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 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 youth employment subsidy in 2010 budget. Also, Industrial Policy Action Plan (IPAP) was launched to complement government's effort towards reducing unemployment. Four areas were identified, which are: 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 small job opportunities for the unemployed population. In addition, Community Works Programme was launched to support country's drive towards job creation. The implementation of Expanded Public Works Programme was also introduced to complement the existing efforts on unemployment reduction. This was aimed at training, educating and developing capacity of the large unskilled population. Also, state and non-state organs were expected to be mobilised to create job opportunities. The subsequent phases were expected to achieve 4.5 million job opportunities 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. Furthermore, total unemployment rate 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 National Development Plan (Vision 2030), Medium-Term Strategy Framework (2019-2024), and the Economic Reconstruction and recovery Plan. However, the CSAR revealed that much progress has not been recorded. Specifically, the total unemployment stood at 34.4% in 2021Q2 and youth unemployment was 60% in 2021Q1. 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 huge shift to tertiary sector which required high skills and experience. Larger proportion of the population do not possess those skills required to drive service sector intensity, which explains the high unemployment rate in the country. More so, there is huge reliance on extractive sector that is capital intensive and a disincentive for labour. This further aggravates the unemployment problem in the country. Additionally, human capital is largely dwindling in the country. The annual industrial policy action plan introduced with special interest in manufacturing sector projected to create additional 350,000 specialised skills by 2020. Nevertheless, sector consistently shed jobs and it has not been absorbing new entrances in notable numbers. From the reports, structural unemployment remains a critical challenge in South Africa.

## ii. Findings of the CRM

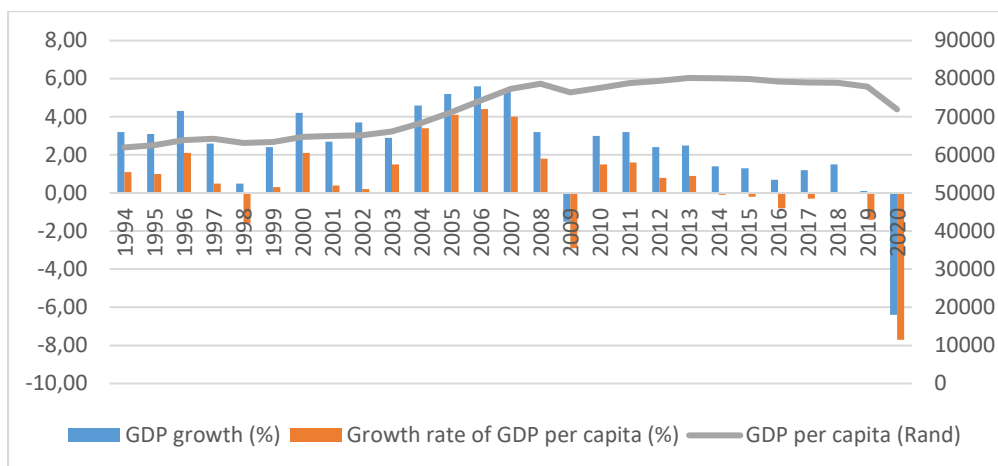
224. This section provides evidence from the various engagements and interactions of the country review mission (CRM) with stakeholders from the national, provincial and municipality levels. The key focus of the engagements is on understanding the reasons for the absence of palpable impact of the various 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 various plans with clear strategies to achieve the plans. The first of such plans in the post-apartheid era was the Reconstruction and Development Programme (RDP). The programme includes 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 the reduction of unemployment, poverty and inequality. To ease the implementation of the plan, the Medium-Term Strategic Framework, 2014-19 as the first five-year building block of the plan was established. This would be 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 notes 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, 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; thus promoting 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 foundation of the problems through enhanced human capital, improved productive capacity and infrastructure to raise exports thereby increasing investment in the country. Doing so should improve the productivity in the country, thus growing the economy faster and raising employment, augmenting incomes and ensuring 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.
230. Figure 3.1 presents the trend in growth rate of real output and income per person from 1994 to 2020. The indicators depict the wellbeing of country and its citizenry. The trend clearly depicts two episodes. The period before the global financial crisis (GFC) 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 measures have struggled to sustain the earlier trend. Income per person remained unstable while the output growth rate has declined consistently. The bad situation was made worse in 2020 as the country experienced negative impact of COVID-19 pandemic. As output growth declined consistently, the growth of income per person declined faster, which indicates 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**

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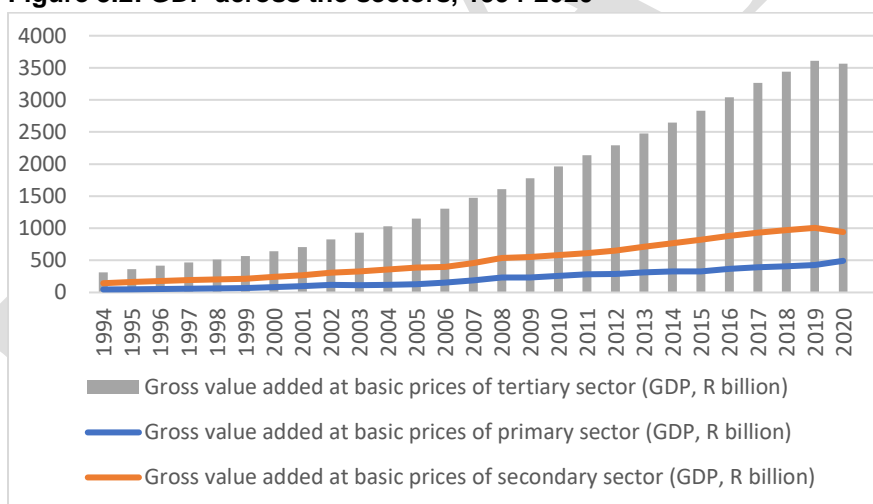
<sup>22</sup> Social wage refers to the government's investment in education, health services, social development including social assistance to vulnerable households and individuals as well as contributory social security, public transport, housing, and local amenities.



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

Figure 3.2 shows the trend of sectoral GDP from 1994 and 2020. The primary and secondary sectors have been outpaced by the tertiary sector, which signifies increasing “jobless growth”. There is structural problem in the country before pandemic, the primary and secondary sectors that are supposed to deliver broad-based growth are outweighed by the exceptional growth in the tertiary sector. The larger share of population is unskilled hence, they do not possess the required skilled to benefit from the burgeoning tertiary sector. More so, the shift to tertiary (especially financial and community sectors) has not generated the required job creation needed to address the structural problem in the country.

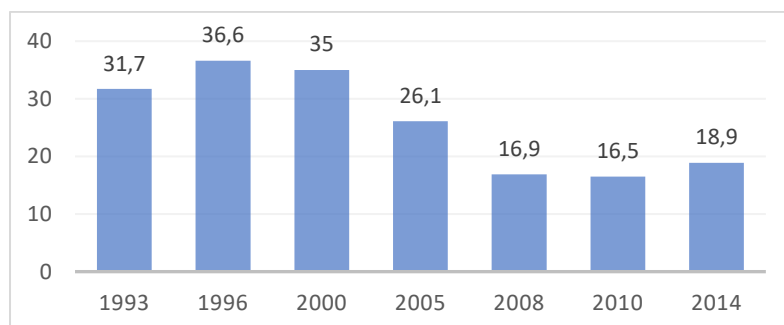
**Figure 3.2: GDP across the sectors, 1994-2020**



Source: Reserve Bank of South Africa, 2021

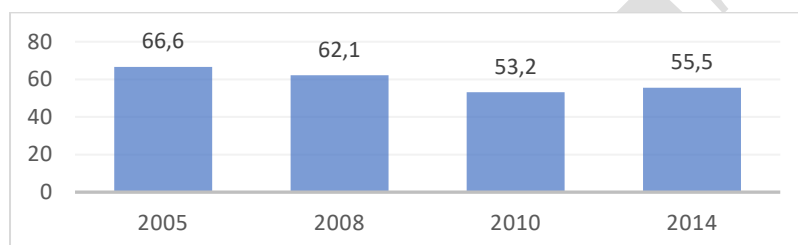
232. According to the Africa Growth Initiative, South Africa is characterised by a low-growth trap with a slight reduction in poverty levels but growing inequality, although poverty levels fell from 1996 to 2005 as presented in Figures 3.3 and 3.4.
233. After the GFC, the poverty headcount ratio at national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

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



Source: World Bank Development Indicators, 2020

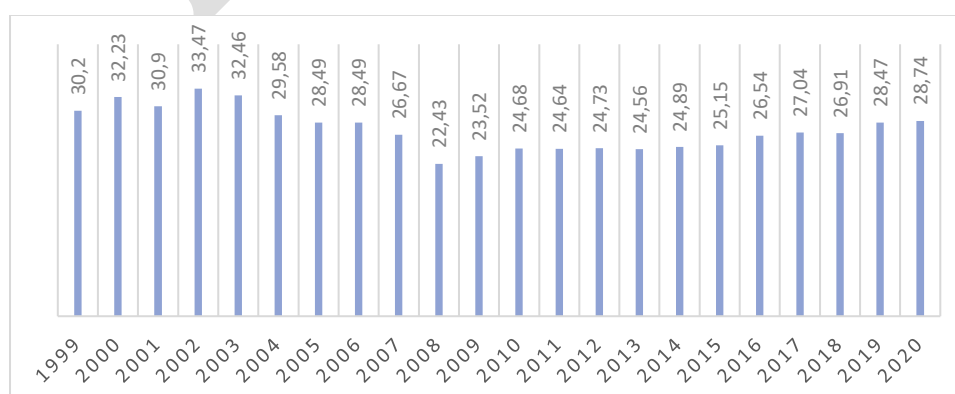
**Figure 3.4: Poverty headcount ratio at national poverty lines (% of population)**



Source: World Bank Development Indicators, 2020

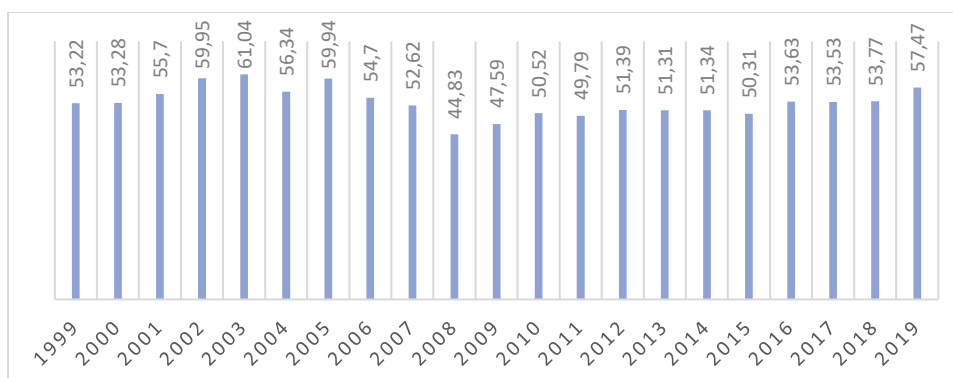
234. The growing unemployment rate and youth unemployment rate shows structural challenge facing the country. The fragile growth failed to absorb people into the production process. Figures 3.5 and 3.6 depict the pattern of aggregate and youth unemployment rates. Unemployment rate was declining before GFC but post-GFC indicates uptrend till 2020. It has been projected to increase further in 2021 due to adverse effect of COVID-19 pandemic. For instance, 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 marginal decline in unemployment rate in 2013 and 2018. This suggests inherent structural problem the country has not been able to address. With the pandemic, unemployment rate may be aggravated. Another growing concern is the alarming youth unemployment rate as it markedly increased between 2011 and 2019. Youth unemployment rate 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 are 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

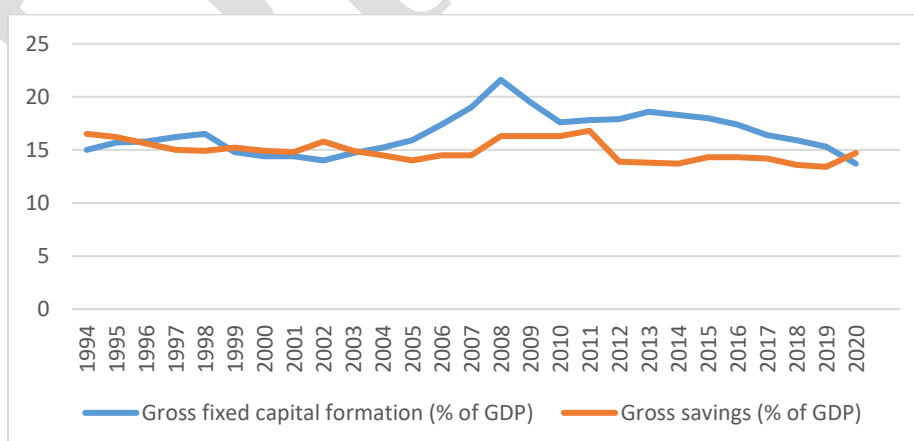
**Figure 3.6: Youth unemployment rate (%), 1999-2019**



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 markedly two parts as defined by the GFC. The 2020 pandemic exacerbated the already dire situation. This suggests that the acquisition of productive assets have reduced substantially since 2009. It was also observed that household consumption expenditure reduced consistently over the period and deeply after the financial crisis (see appendix 1). An analysis of the distribution of consumption expenditure 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 level of wealth generation and accumulation is even higher, and intergenerational mobility is low; meaning inequalities are passed down from generation to generation with little change over time. The report also noted that the consumption expenditure of 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 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 notes that South Africa has made significant efforts in terms of development plan, policies and frameworks towards addressing the perennial challenges of economic conflagration, in order to improving the wellbeing of its citizens since 1994. However, not much

progress has been made in the last decade. A vast majority of the population continue 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 have been exacerbated by the COVID-19 pandemic. The achievement of progress in household welfare has severely been constrained by rising unemployment, which reached an unprecedented 34.9% in the third quarter of 2021 coupled; with being one of the highest unequal society in the world.

237. The CRM observes that South Africa is concerned with the poor performance of various plans and initiatives directed towards addressing fundamental challenges, and therefore undertook an assessment to better appreciate the drags to the attainable of set targets. It is noted that while in the formulation of the NDP, the issue of implementation was given an ample attention. However, this has not translated into an overwhelmingly positive lived experience. A major issue identified was that the NDP is devoid of well-detailed and robust implementation plan. Although, marginal level of 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 became elusive.
238. At the core of the delivery of the desired transformation of the economy through the aforementioned plans and policies are frameworks such as the Integrated Development Plan, which involves Provincial and Municipality authorities. A major challenge has been inability of various sectors of society to place the broader national interest before their own sectoral interest, and the lack of trust between government, business and labour.
239. The CRM also noted during the stakeholders' engagements across the provinces that the major issue that have led to the observed undesirable outcomes is a combination of various factors including skills deficiency, non-adherence to rules and regulations in the recruitment process of staff members in the public sector and unaccountability of public officials. The background to the observed abnormality can be linked to the general uptake of governance from 1994 by the largely incapacitated historically disadvantaged persons. A combination of these factors has transformed into wide-spread incompetence in the public service, thus hampering institutional capacity to deliver on predetermined targets and goals.

### iii. Recommendations

240. The African Peer Review (APR) Panel recommends:
- Overhaul the National School of Government towards building public sector capacity to implement the government's developmental 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-top approach to the design of development plans and the establishment of implementation framework [*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 goal of government in achieving good governance.
242. Ensuring citizen participation and their role in decision-making process in the direction of greater democracy, participation and empowerment is critical. In this context, South Africa has moved towards participatory policy making approach since 1994, taking into consideration local needs so that the policy making process becomes an interactive process.
243. As stated in the CSAR, South Africa has a constitutional mandate that requires consultation with all key stakeholders. In this regard, there are mechanisms and processes that currently exist to ensure continuous public and community engagement and these include mandatory community consultations in formulating IDPs, *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 follow a highly consultative decision-making process. This is grounded in the “Batho Pele” (“people first”) principle – consultation – which lays much emphasis on citizen and community engagement. In the South African context, public consultation is the process whereby the parliamentary and provincial legislatures and local municipalities consult the citizens and 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 identifying key institutions and stakeholders and how they can be involved in the drafting and formulating the development, economic, and social policies.

#### **Higher commitment to public consultation in the post-1994 period**

244. The first progress report stated that there were improved levels of 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 1996 South African constitution, which is very assertive about representation and participatory public democracy.
245. The post-1994 paradigm shift to citizen inclusivity in public administration and management places a huge emphasis on co-production and co-creation of service delivery and decision-making in all policy-making processes. It emphasises 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 established the National Economic Development and Labour Council (NEDLAC) in 1995 to ensure that economic decision-making in South Africa follows 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 inclusive of the very persons and institutions it will affect. Basically, organised business, organised labour, civil society and the government are the constituencies allowed to participate in the workings of NEDLAC and may table issues for consideration by the Council.

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

247. The first progress report stated that although public consultation increased since the beginning of democracy in South Africa, it remains inadequate. There are a number of institutions enhancing public participation in public policy. These include the South African National Civic Organisation (SANCO), which encourages its local structures participation in IDPs hearings and ward committee’s processes. Others including NEDLAC and the Sector Education and Training Authorities (SETAs) for skills development were strengthened in an effort 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 reported the number of Mayoral and Premiers' *izimbizo* that were held, number of issues raised and resolved, number of *Thusong* Service Centres established, 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 failed to follow up on existing institutions and indicators, the second generation CSAR identified some new measures, challenges and explanation for some situation about the status of public participation in public policies in South Africa. For example, the report identified that government has 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 and "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 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 process.
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 policy making 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 adopts 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 provinces, Civil Society Organization (CSO) representatives raised concerns with regards 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 have increased dramatically since the advent of democracy, however, their views and concerns are not reflected in the implementation phase. The CRM notes that funding of the civil society has been a challenge as the relevant ones that are making the grassroot impact are often not supported financially, thereby incapacitating their efficiency, especially as regards monitoring the implementation of government programmes.
256. Additionally, research suggests that most of the programmes failed due to poor monitoring and evaluation (M&E) by Department of Social Development in the country as a result of limited traceable link between the civil society and government. It is expected that this Department should identify any obstacle hindering the achievement of programme's target and provide plausible remedy to such hindrance. However, the role of the department is not apparent due to poor outcome and collapse of several 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 coupled with skill deficiency, lack of clarity and standard template for monitoring projects, lack of training of M&E officials, divergence between training and challenges in the field, and huge workload.
257. The CRM observes an absence of the institutional processes and forums for various stakeholder categories to participate in the implementation of economic policy in the country; in public sector, private sector and civil society.

### iii. Recommendations

258. The African Peer Review (APR) Panel recommends:
- Assess and enumerate the active civil society organisations across the provinces and local authorities. [*Department of Social development*].
  - Establishment of a mechanism that will improve CSOs engagement during policy implementation phase of economic policy to harness their role in promoting accountability and transparency. [*Department of Social development*]
  - Strengthening of government institutions capacity to increase citizens' involvement in economic policy formulation, adoption, implementation and evaluation. [*National Planning Commission*].

<b>OBJECTIVE THREE:</b>	<b>Promote sound public finance management</b>
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### i. Evolution of the Issue

#### Public Finance Management Capacity

259. The state of the public service as demonstrated by the delivery of basic services to the citizenry is a manifestation of some underlying factors, chief among them being the quality of public funds management. Public Financial Management (PFM) is thus about the collection of revenue by government and their expenditure in a manner that maximises value for money. Since 1994, the South African government has implemented numerous structures and legislative frameworks to develop and guarantee the maintenance of sound public finance management.

These are reinforced by the Public Finance Management Act (PFMA), the Municipality Financial Management Act (MFMA) and the Public Service Management Framework. These initiatives have significantly improved PFM since 1994.

260. However, the economy is incessantly being 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 has instituted several 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 has developed the required legislation and regulation in order to enhance the quality of financial management at local and provincial governments. Despite this, it is widely agreed that South Africa's biggest problem in fiscal management encompasses poor control, and lack of transparency and accountability at sub-national levels.
262. The first progress report noted that the South African economy is challenged with the issues of underdeveloped capacity and skills in public expenditure management. This has resulted in poor audit outcomes of some public and private entities.
263. The second progress report indicated that for the South African government to enhance capacity and skills in public finance management, the following actions were taken, including the launching of *Operation Clean Audit 2014*; through which municipalities and provincial departments accounting officers were mandated 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. In order to institutionalise these capacity and skills improvement measures as well as in dealing with the public expenditure management gaps, Public Administration Leadership and Management Academy (PALAMA) offers public servants training in the interest of improving service delivery.
264. Further, the third progress report highlighted the strategic interventions by 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 continues to be confronted with acute lack of capacity, especially, financial expertise to manage social programmes, public spending and facilitation of the delivery of services at the provincial, district and local levels.
265. Even though the 2011/2012 Audit outcomes reflected that the country was making progress as the number of entities and departments reporting clean audits as a key indicator of sound public finance management increased year-on-year, this was happening 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 remain: the absence of a legal requirement for the publication of contingent liabilities between spheres of government; Guarantees and extra-budgetary activities remains a major gap in South Africa's transparency requirements; legislation aimed at empowering and enabling Parliament and provincial legislatures to amend budgets is still outstanding; and there is

legislation that details executive transparency requirements, but none when it comes to any one body tasked with policing these requirements.

266. Furthermore, the close-out report indicated that the South African government has made improvement as shown in the three reports: 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) in building sound financial management capacity in the public sector and in improving 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 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 pieces of legislation 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 confronted with the challenges of adopting and implementing a practicable medium-term fiscal framework, which negatively affects economic growth and job creation. When GDP growth is supported by sound social policy framework, infrastructure development, sound industrial policy, promotion of small and medium enterprises, redistributive measures, and approaches aimed at overcoming spatial inequalities, economic growth can promote greater social and economic inclusion.
269. The report showed that saving and investment have been declining over the years as South Africa's national saving rate (gross saving 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 declining to 19.2% by 2012. Also, since 2014, gross fixed capital formation by the private business enterprises has been falling, from ZAR 405.8 billion in 2014 to ZAR 389 billion in 2017. These indicators give evidence 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 time period.
270. Also, despite high tax-to-GDP recorded in South Africa, the country has a challenge of 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 a rise in unemployment and income stagnation, and 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 poor 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 are problems with respect to financing/expenditure control, tracking and monitoring, particularly at municipal level.

## ii. Findings of the CRM

273. Public finance is a fundamental resource for financing government activities, public works and general service delivery. A critical part of public finance is budget. Budget is used to transform government policies and programmes into palpable impact through provision of quality service to the people. The management of public finance through the budget is expected to ensure 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, 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 toward 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, part of 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 Constitution and specific regulations govern the management of public finances in South Africa. At the national and provincial level, public finance management is administered by the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) (as amended by Act No. 29 of 1999) and by the Treasury Regulations and various briefing and instructions notes issued by National Treasury. At the municipal level, the primary legislation is the Municipal Financial 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, showed signs of improvement in the Public Finance Management System in the South African Public Service.

275. The Constitution of the Republic of South Africa Act 1996 had restructured South Africa as a nonracial federal polity comprised of a national government, nine provincial authorities, and over 700 municipalities. The Constitution specifically created a Financial and Fiscal Commission to organise and manage a new system of intergovernmental grants designed to ameliorate vertical fiscal imbalance and deliver horizontal equity to governments at all levels. The municipalities were restructured and rationalised leading to a reduction of 843 municipalities into 284 new municipalities. 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 also take responsibility for the delivery of 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 the provision of 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 notes 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 poor financial management. The Government Technical Advisory Centre and provincial treasuries assess programme relevance, effectiveness and efficiency to improve value for money in selected provincial departments in 2021. On its part, the National government provides 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 poor financial position. However, the situation is mainly caused by weak financial management but exacerbated by COVID-19. It was noted that the poor position is a fallout of decision to withhold or reallocate transfers to 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 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 the

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 of the Republic of South Africa, Act No. 108 of 1996 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. In exercising its power, the Auditor-General’s report on local government finances in 2017/18 noted that about 47 per cent of municipalities incurred a deficit, and total deficits grew from R669 million in 2017/18 to R2.3 billion in 2018/19. The Auditor-General’s report for 2019/20 noted a net improvement in the audit outcomes in national and provincial government. The report highlighted the good practices that led to the observed improved outcomes. They are 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 were improved – this includes preventative controls being implemented.
  - Accounting officers and authorities, executive authorities, internal audit and audit committees provided oversight, monitoring and assurance.
283. The CRM notes that despite all these efforts, the country continue to find evidence of serious weaknesses in financial management leading to a systemic financial hemorrhage. Some noted lapses were noted. First, there is a preponderant submission of poor-quality financial statements for auditing. Secondly, there were also some entities that received a disclaimed opinion. This is the worst audit opinion an auditee can get, as it means that they could not provide 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 North West Province.

### Box 3.1 Progress in improving financial management in 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 contained three phases: the first phase aimed to stabilise the province’s finances, the second aimed to strengthen supply chain management and the third monitor ongoing implementation. Following successful completion of the first and second phases, the audit results for 2019/20 show a turnaround after five years of decline and stagnation. The province reported a decrease in annual irregular expenditure from R4.7 billion

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



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 financial losses at some entities. The AGSA's office is empowered to report on matters as 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 the simple areas that require basic disciplines and processes in place to obtain value for money spent and to prevent corruption.
285. Beside the mandate of making the audit report public, the AGSA is also mandated to submit 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 institutions empowered by the constitution to carry out such mandate is the National Prosecuting Authority (NPA). Section 179(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), expressly empowers the NPA to institute criminal proceedings on behalf of the state and to carry out any necessary functions incidental thereto.
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 conviction of 416 persons. The Public protector also reported that the number of complaints finalised in the 2020/21 financial year is lower than previous years but noted that the municipalities remain consistent as the institutions with the most complaints.
287. The CRM notes 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 gap has a tendency for citizens to lose trust in the government when certain 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 reward or punish whoever was responsible for the wrongdoing.

### iii. Recommendations

288. The African Peer Review (APR) Panel recommends:

- The Office of the Public Protector, National Prosecuting Authority, and the Auditor General should synergise towards ensuring unified prosecution of 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 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 introduced and promoted numerous pieces of legislation to combat and prevent corruption activities (practices). In addition, to support the battle against corruption, the government has adopted different international audit standards, signed protocols against corruption, and ratified several international conventions on combating and preventing corruption.
291. The first CRR document of 2007 revealed that to address the systemic lapses that make corruption possible, the South African government presented and promoted some key pieces of legislation. These include the Protected Disclosure Act of 2000; Promotion of Access to Information Act of 2000; Financial Intelligence Centre Act (FICA) of 2001; Promotion of Administrative Justice Act of 2000; and the Prevention and Combating of Corrupt Activities Act of 2004. The nation has also created an institutional framework at national and provincial levels to complement the South African Police Service (SAPS), including the Public Protector; National Prosecuting Authority (NPA); Special Investigating Unit; PSC; Financial Intelligence Centre; and the Auditor-General. The CRR also showed that South Africa belongs to other regional and global bodies 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 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 with the main statutes such as the Prevention of Organised Crime Act (POCA) and the FICA, but the country is challenged with capacity issues related to the efficient implementation of the new system. However, many of these measures are unique 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 reports provided a brief discussion on this issue, the 2021 CSAR noted that public procurement is prone to corruption, and 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 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 fight against money laundering measures have been instituted in South Africa; however, corruption activities remain endemic. The primary issue is that most of these measures are new and have not been fully explored yet. All sectors need to continue to increase their focus on training in anti-corruption and anti-money laundering issues. Also, there is a misunderstanding about 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 reporting on money laundering statistics 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. The CPI rank of South Africa hovers between 42 and 45 among 180 countries, which is indeed moderate. However, an increase in CPI was experienced in recent years, as the CPI of South Africa increased by a step from 43 between 2017 and 2018 to 44 between 2019 and 2020. The rising corruption perception about South Africa suggests a relative increase in the level of corruption and the country and evidence 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 reveal 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, but 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 notes that the Public Service Commission (PSC) that is vested with custodial oversight responsibilities for the Public Service and monitors, evaluates, and investigates public administration practices, reported that the commission received an enormous number of cases relating to fraud and corruption in the financial year 2012/2013 and that the number continues to increase over the period 2017/18 to 2019/20. 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 the reportage of cases. Indeed, this has yielded the desired results. There was an increase in the alleged corruption reported to the NACH quarterly 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 reporting complaints regarding 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 alleged 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 confronting for decades are sustained through 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. During the CRM deliberations and information gleaned from the Background documents on the issues of corruption, it was revealed that while corruption was evident and endemic in the country, a particular emphasis was placed on procurement as to the bane of corruption. Again, as in the general context, the Government institutionalised a series of initiatives to address what was determined to be flaws 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 system 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 unaccountability has exacerbated corruption and widened the fault line of the triple challenge of unemployment, poverty, and inequality.

### iii. Recommendations

305. The African Peer Review (APR) Panel recommends:

- 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 [proposed *National Anti-Corruption Commission*]

**OBJECTIVE  
FIVE:**

**Accelerate and deepen regional integration in the monetary, trade and investment domain**

**i. Evolution of the Issue**

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

306. The acceleration and deepening of regional integration, particularly as it pertains to monetary, trade, and investment, is considered critical to regional development. Regional Economic Communities (RECs) role is, in general, to pursue, support and nurture the integration of its member states in those domains and others. The Southern Africa Development Community (SADC) is one of the RECs and is considered pivotal to the regional integration process in southern Africa. The Republic of South Africa is a highly influential member state of SADC.
307. Background papers utilising information culled from the South African Government policy documents and international development-oriented studies about South Africa by the World Bank Group, attest to South Africa's importance to regional integration. The base Country Review Report of South Africa, 2007 also stressed this importance in its narrative, confirming that regional integration issues were a prominent feature of the deliberation during the Country Review Mission (CRM). One of these issues was accelerating and deepening regional integration regarding harmonising monetary, trade, and investment policies.
308. The issue evolved with recognising the importance of regional integration and its potential dynamism in contributing to economic growth and development. Many African governments generally believe that a regional integration pathway to growth and development would be facilitated through policies and mechanisms that would promote trade and investment. This pathway would ultimately lead to the development of a monetary arrangement that would be beneficial to all member states as a means of addressing critical factors that constrain growth and development. Thus, regional integration has been reflected as a strategic component of most national development plans in pursuit of which they have participated in the planning, organising, and operation of entities generally called regional integration arrangements (RIA).
309. With this background, it is noteworthy that South Africa, having the status of being the largest and more sophisticated economy in the region, played a leading role in establishing several regional entities. 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 democratically embraced South Africa joined SADC in 1994. Later, SADC underwent a reform process that culminated in 2001 and gave rise to the formulation of the Regional Indicative Strategic Development Plan (RISDP) in 2003. The RISDP embodied the agenda of 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 the introduction of a single currency in 2018. Most of these timelines have been missed, but the potency of the RIA cannot be questioned. While RISDP was not legally binding, it had political support from the member states.

310. Unfortunately, while imbued with ambitious goals, objectives, and targets, implementation has been less than impressive. This situation is especially true in the monetary, trade, and investment domains. While South Africa is one of the most influential member states of SADC and has a profound interest in regional integration, the issue of ineffective collaborative implementation of relevant plans and strategies constitute a lingering constraint that needs to be subdued. Noteworthy, however, such regional development dimensions that contribute to national development cannot be the exclusive prerogative of South Africa.
311. Scrutiny of the progress reports and related documents suggests that achieving the objective of accelerating and deepening regional integration in monetary, trade, and investment is, at best, a work in progress. These reports, however, took note of the COVID-19 pandemic and considered the measures taken to mitigate the current and emerging challenges without moving too far away from the goal of accelerating and deepening regional integration in the monetary, trade and investment domain.
312. In furtherance of South Africa's desire to demonstrate its commitment to the objective, it fully supports 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 also led to productivity and infrastructure development. South Africa is SADC's most diversified country with an export basket of more than 100 products. Besides 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 in SADC.
314. As the leader of the SACU grouping, South Africa commands policy direction and fiscal and monetary decisions on behalf of 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.

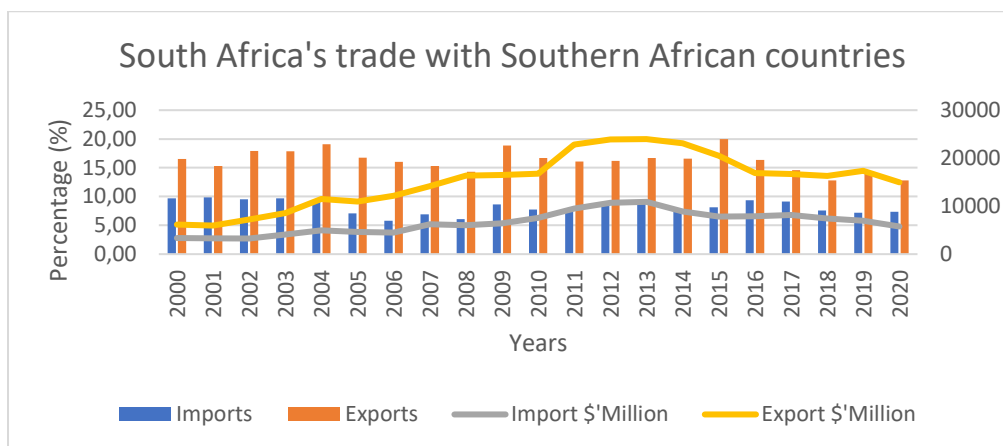
#### **ii. Findings of the CRM**

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. From the available evidence, the CRM finds that, in general, plans, programs, and activities relevant to the acceleration and deepening of regional integration that pertains to the monetary, trade, and investment domains are considered as work in progress, but the work is hampered

by poor implementation. Also, many stakeholders noted that within South Africa, the July riots and COVID-19 restrictions may have contributed to implementation delays at the national level, albeit temporal in nature.

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. It is further noteworthy that the SADC Trade Protocol is intended to contribute to attaining sustainable economic growth through various industrialisation schemes.
319. It is further reported that progress was observed in macroeconomic convergence, which among other things, calls for deeper monetary policy cooperation. The expected outcome of this cooperation was achieving a single-digit inflation rate, decreased budget deficit, and a gradual interconnection of payments 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 SADC Industrialisation Strategy and Roadmap (2015 – 2063). According to reports, this strategy, approved in April 2015, is intended to promote industrial-oriented investment, strengthen competitiveness, and deepen regional integration that includes structural transformation with a significant impact on the monetary, trade, and investment domains. 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 attract South Africa and other member states' investment.
321. In terms of trade facilitation, a simplified trade regime (STR) was finalised over the period under consideration following the 2007 base report. This trade regime is intended to reduce barriers to trade by simplifying customs procedures and processes.
322. The CRM notes that having a robust monitoring system to substantiate outputs from the multiple interventions, if any, would be helpful to determine the possible 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 includes a particular focus on economic governance and management. By this development, one may justify the earlier expressed view that achieving 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 the level of intra-regional trade of South Africa within the Southern African region from 2000 to 2020. It is observed that South Africa's intra-regional trade has not increased tremendously in the last two decades. South Africa's imports from countries within the region have always been less than 10% of the total South Africa exports (to the world), while her exports have been less than 20% of her total exports to the world. As the regional import of South Africa peaked at 9.84% of total imports in 2001, the export was maximum at 19.99 percent in 2015. The trend shows that intra-regional exports as a ratio of total exports have declined considerably after 2015, while intra-regional imports as a ratio of total imports have fallen after 2016. This decline was corroborated 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 the intra-regional trade of South Africa with 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 recorded significant success. The lack of success implies that the South African economy is still heavily dependent on commodities. Also, diversification to manufactured exports is still limited, as higher production of manufactured goods can be expected to cause an increase in South Africa's intra-regional trade.

#### High informal cross-border trade resulting in under-estimation of South Africa's trade and revenue values

326. There is a lack of accurate, up-to-date information on cross-border trade into and out of South Africa. One of the main characteristics of informal cross-border trade (ICBT) is that it is not mandatory to submit tax returns at the end of each financial year. Thus, these incomes received are not entered into 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 across the countries. 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:

- 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. Despite South Africa having one of the largest economies in Africa and being the most industrialised on the continent, the need for accelerated trade and investment cannot be overemphasised. The country currently faces challenges emerging from unemployment, inequality, and poverty. To confront these challenges requires, among other things, robust quality economic growth and sustainable development. Productive trade and investment are vital to the process of growth and development. However, trade and investment necessitate an enabling environment. Recent destabilising events in the country, notably the July 2021 riots, increasing crime rates, and COVID-19 restriction, tend to create an uncondusive business environment.
330. Many visitors to South Africa often proclaim it as the gateway to the African continent. The country has great potential for investment with world-class infrastructure, an efficient financial system, an independent judiciary, a free press, and accessibility that facilitate economic interconnection with the rest of the continent. Over time, the country has received increased foreign capital and revenues through exports.
331. South Africa ranks amongst the most open jurisdictions for foreign direct investment (FDI) globally. An important indicator of openness is reflected 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 was over 50%, whereas intra-African trade was 17% in 2017 – increasing from 9% in 2000. This expansion of intra-African trade has been supported by increased mineral commodity exports, notably platinum, metals, coal, metallic ores, and aluminum, 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 Africa 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 ever more compelling. Accordingly, the aim is to diversify South Africa's trade and investment relations to benefit from 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 translate into new economic infrastructure, which facilitates 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 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 in 2007 and the accompanying Industrial Policy Action Plan (IPAP), the impact has not been progressively sustainable. The CRM recalls that the objectives of the IPAP included measures to facilitate diversification and the building of productive capabilities. These measures led to an upward trend in exports expansion, but subsequently, the country's export growth reduced significantly. Also, exports have grown at a much slower pace than 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 remains dominated by commodity products.

336. The Trade, Development and Cooperation Agreement (TDCA) with the EU has contributed positively to bilateral economic relations, supported by the 2007 deal on automotive. As South Africa's largest trade and investment partner, relations with the EU remain important.

#### **Deteriorating Trade and Investment Space**

337. South Africa ranks amongst the most open jurisdictions for foreign direct investment (FDI) globally. An important indicator of openness is reflected in the continuous, long-term growth of inward FDI. It has been estimated that the stock of FDI to GDP in South Africa is approximately between 38% and 42%. Foreign companies have invested in most formal sectors, being the most prominent players in these sectors, e.g., mining, automotive industry, and information technology. There is no clarity on the steps taken to promote investment in the country.
338. Continuous structural challenges South Africa faces imply the need for more industries to provide necessary employment and economic opportunities to larger segments of the population. To bring in new capabilities, foreign direct investment is required. After apartheid, there was an optimistic belief that the end of sanctions against South Africa would bring about a boom of foreign investment, but that has yet to materialise. Some argue this is due to a lack of skilled labour. Apart from a few anomalies where there have been 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 have peddled convoluted and entangled 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, falling into recession, being downgraded to junk status by international credit rating agencies, and the low ability to attract FDI.
340. The decline in FDI can be attributed to low reinvested earnings and reduced borrowing by FDI. However, the CRM noted that other possible drivers of the recent declining trend in FDI inflows could include blockages in the country's investment, requiring 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 in the revised Foreign Investment Act include making admission procedures for FDI smoother and 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 give the protection measure or step taken to protect the domestic investors and how effective the domestic investor's contribution is to the development of the economy. The CSAR further failed to indicate how accessible is the financial institution for the growth of local private sector in the economy.
342. It is noted that the 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 over several years following the transition to democratic rule, the South African economy's performance was laudable and resulted in substantial growth and development, so much so that it was classified as an emerging market economy. Over time, however, the situation retrogressed as unemployment and poverty became significant

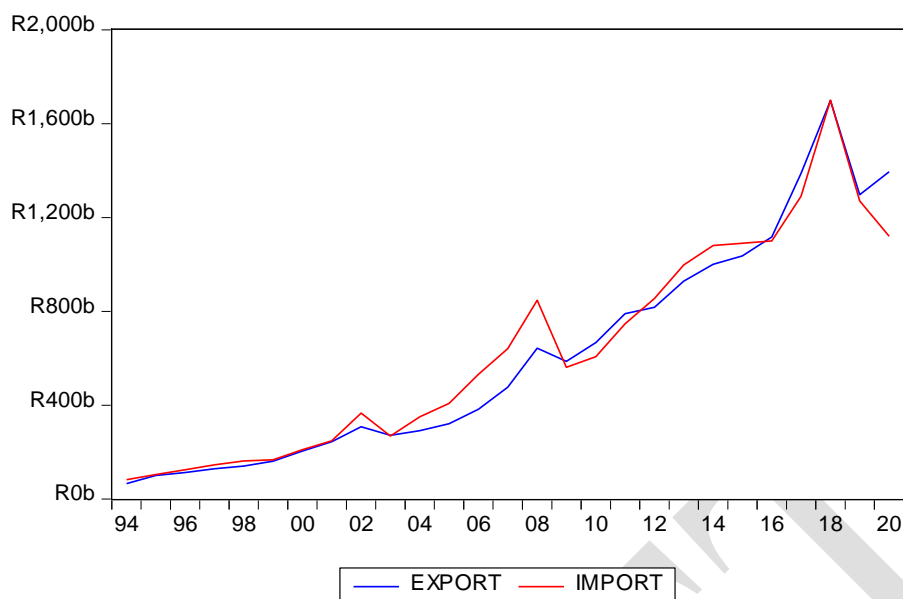
challenges. Nevertheless, despite these challenges, South Africa was still rated economically and industrially higher than most African countries.

343. Despite this rating, the current exogenous and endogenous shocks, the economic environment necessary for accelerating its momentum has dwindled. These shocks include adverse conditions on the international markets that engendered high inflation at the national level. Also, there was a recent downturn in agriculture production that also 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 unfavorable space to increase investment and trade.

## ii. Findings of the CRM

345. South Africa is a member of several regional and multilateral trade agreements. There is the Southern African Customs Union (SACU), duty-free trade between South Africa and the other four countries (Botswana, Lesotho, Namibia, and eSwatini). Another regional arrangement is the Southern African Development Community (SADC) Free Trade Agreement, which as of 2012, allows duty-free trade among 12 of the 15 members. There is also the European Union-South African Trade and Development Cooperation Agreement that came into effect in 2000, 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 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 welcomes the 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, principally 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, but most goods may 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 develop, as well as more competitive domestic industries. The CRM observed that despite the significant depreciation of the Rand, weaker global demand, low commodity prices, and adverse climatic conditions, imports and exports of goods continue to increase, as illustrated in Figure 3.9, recording a total peak trade of R3.4trillion in 2018, except for periods of external shocks in 2008-2009 and 2020 when they declined. The trajectory shows a quick rebound in exports affected by 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 trading profile with the rest of the world has indeed been impressive. South Africa has a diversified export basket, including natural resources, exporting to countries such as China, Germany, the United States, and the United Kingdom. In addition, the country exports more 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 a 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, that 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. Trade mis-invoicing has been noted in the literature (Ndikumana et al., 2015)<sup>25</sup> as a substantial share of capital flight from developing and emerging countries. The role of transnational corporations in fueling the outflow of unrecorded capital from these countries in the form of tax evasion and profit shifting by extractive industries has received some 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 those recorded in its trading partner's record. The total mis-invoicing of gold exports to South Africa's leading trading partners was estimated to be \$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 important demography; 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 electricity supply and logistics. Investors are also worried about the lack of

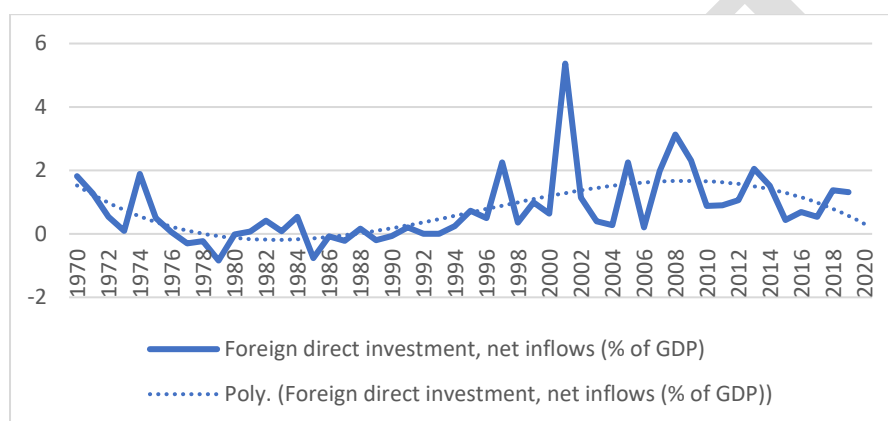
<sup>24</sup> Misinvoicing is a "form of customs and/or tax fraud involving exporters and importers deliberately misreporting the value, quantity, or nature of goods or services in a commercial transaction" ( Maya Forstater, *Illicit Financial Flows, Trade Misinvoicing and Multinational Tax Avoidance: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

<sup>25</sup> 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

clarity concerning policy consistency, 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 currently rolling out several single-window mechanisms to coordinate and support deals by assisting with permit approvals, licensing and registration processes – across South Africa to make the country more investor-friendly. The CRM observes 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 was recovering from a decline and continued to increase, peaking at 5.4% in 2001. Subsequently, FDI inflows dwindled markedly from 2008. The inflows into South Africa 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 investment climate.

Box 3.2 – Key Global Metrics affecting Investment Climate			
Measure	Year	Index/Rank	Sourced Website
<a href="#">TI Corruption Perception Index</a>	2020	69 of 175	<a href="http://www.transparency.org/research/cpi/overview">http://www.transparency.org/research/cpi/overview</a>
<a href="#">World Bank’s Doing Business Report</a>	2019	84 of 190	<a href="http://www.doingbusiness.org/en/rankings">http://www.doingbusiness.org/en/rankings</a>
<a href="#">Global Innovation Index</a>	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.D">http://data.worldbank.org/indicator/NY.GNP.PCAP.D</a>

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

356. The enabling legislative framework is the Investment Promotion Act 2015 and the Competition Amendment Act of 2018. South Africa provides active support for investors by providing 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, includes fighting rampant unemployment, creating inclusive growth, and accelerating progress.

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. 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. This tends to turn out as policy uncertainty with such discretion.

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Source: The South African Institute of International Affairs (SAIIA) 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:

- Sign-on the Extractive Industries Transparency Initiative [*Government of South Africa*].
- Clarity concerning policy consistency, land expropriation without compensations, and other structural reforms. [*Department of Trade, Industry and Competition*].
- Appropriate regulatory policy in dealing with trade misinvoicing, profit shifting, smuggling, and tax evasion [*Department of Trade, Industry and Competition*].
- Reinvigorate the Government's efforts in identifying and accessing diverse alternative ways and means to develop a robust manufacturing capacity to build a supply chain strong enough to withstand internationally induced slippages, blockages, and other impediments. [*Department of Trade, Industry and Competition*].

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## CHAPTER FOUR

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### 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 facilitate holding the 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 across 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 defines Corporate Governance as 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 in all sectors, 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 2<sup>nd</sup> Generation Country Review Mission (CRM) for South Africa coincides with a very challenging time in human history, given socio-economic decline, driven mainly by exogenous factors, including the impact of COVID 19 pandemic. Therefore, the CRM 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 a shared vision of a free, non-racial and equal society with aspirations to build a people-system that sought to expand the frontiers of human freedom and fulfilment, focused 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 provides leadership in Africa. Since then, democratic South Africa has increasingly been influential internationally, strengthening the Southern Africa Development Community (SADC) and the African Union (AU).<sup>26</sup>
363. Also worthy of note in this regard, is that South Africa joined the BRICS nations [Brazil, Russia, India, China, South Africa], an important bloc of emerging economies in December 2010. In a similar perspective, 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 1st CRR (base review), which 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 2<sup>nd</sup> 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 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. Thus, demonstrating South Africa's concerted efforts at promoting good governance and addressing 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 the environment, adopting as foundation stones: ethical leadership, the

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



organisation in society, corporate citizenship, sustainable development, stakeholder inclusivity, integrated thinking and integrated reporting.

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 the four concepts of ethical culture; good performance; effective control; and legitimacy as 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, with many listed and public organisations having consistently produced integrated reports for several 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> In addition to the Companies Act No. 71 of 2008 (amendment 3 of 2011) as well as the Act's on-going 2021 amendment process, South Africa has made huge investments in creating specialised institutions, ensuring their independence and positioning, as supported by applicable laws. These provisions include the Financial Sector Conduct Authority (FSCA), the National Conduct Regulator (NCR) and the Financial Sector Regulation Act N.9 of 2017, Securities Services Act 36 of 2004, as well as Financial Markets Act 19 of 2012, amongst 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, although limited competition is allowed in some sectors (i.e., telecommunications and air). There are approximately 700 SOEs that exist at the national, provincial, and local levels. The IMF estimates that the debt of the SOEs adds 13.5% to 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 private-sector investment into some of the sectors in which more than 700 state-owned enterprises dominates. 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, State Owned Enterprises 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 1<sup>st</sup> to 2<sup>nd</sup> Generation Country Review Mission*

369. The Base Review of 2007 led to National Plan of Action (NPOA), which sought to address issues including the facts that (a) company legislation is not transformative

<sup>27</sup> Republic of South Africa [October 2021]. Country Review Report – Thematic Area: Corporate Governance [CRR] for the APRM Country Review Mission.

<sup>28</sup> 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>.

<sup>29</sup> Department of Public Enterprises (2017)

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 seek 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) the need to build capacity to implement the programs of the developmental state;<sup>30</sup>

370. South Africa has made large scale improvements in terms of Corporate Governance and this continues to positively impact both the public and private sector, 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 2<sup>nd</sup> 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.

371. According to the Country Self-Assessment Report (CSAR, 2021) the evolution of issues from the 1<sup>st</sup> Generation Review to the Country Review Report (2007), flagged that

- South Africa has made concerted progress towards entrenching good corporate governance in line with King IV, since the 1<sup>st</sup> Country Review;
- Improvements are however, required to adopt new approaches that are capable of adding value in addressing the triple challenges of poverty, inequality, and unemployment;
- a renewed focus on corporate governance and support for NPOs, SMMEs, and the informal sector;
- the need to address non-compliance with the vast array of corporate governance mechanisms that have been established, with little to no consequence management;
- lower capacity and competence within the accountable entities in the public and private sector; and
- it is apparent that a concerted effort is still required to expand and empower corporate governance principles with 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 extremely precarious financial situations.

<sup>30</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.

<sup>31</sup> 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

<sup>32</sup> 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

- 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>

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. Several 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 identifies 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 South Africa Base Review listed all the eight (8) Standards and Codes. Nevertheless, the report did not provide specific information on the date of their ratification or adoption. Table 4.1 provides the detail of all the relevant standards and codes and their level of implementation, based on the CSAR of 2021.

### i. Evolution of the Issue

#### **Implementation, Monitoring & 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

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

an audit report on an entity applying the new South African standard, the audit report will identify the accounting framework as the International Financial Reporting Standard for Small and Medium-sized Entities. 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 also CRM 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 Labour Inspection Convention, 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 explicitly 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		
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	

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)	
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 has become 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 (5) 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 & 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:

- Maintains its current exemplary compliance with international standards and codes.
- Ensures 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, registering property, protecting investors, enforcement of contracts, as well as closing businesses. In specific, the objective addresses [1] the effectiveness of both government authorities and self-regulatory authorities in implementation, delivery of services, regulation, monitoring and supervision, [2] the independence, capacity and efficiency of the judiciary in enforcement of laws and regulations relating to organisations, and [3] 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 law, including the common law regulating companies, derives its force from the Constitution and is subject to constitutional control. Companies Act 71 of 2008 is the primary source of company law in South Africa. The Companies Act 71 of 2008 aims to provide 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. The Companies 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, i.e., larger public companies, and companies that do contain restrictions on the transferability of their shares and that prohibit offers to the public, [i.e., 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), state-owned company, personal liability company or public company. A wide variety of commercial and non-commercial State-Owned Enterprises (SoEs) and derivatives of such entities that exist. 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

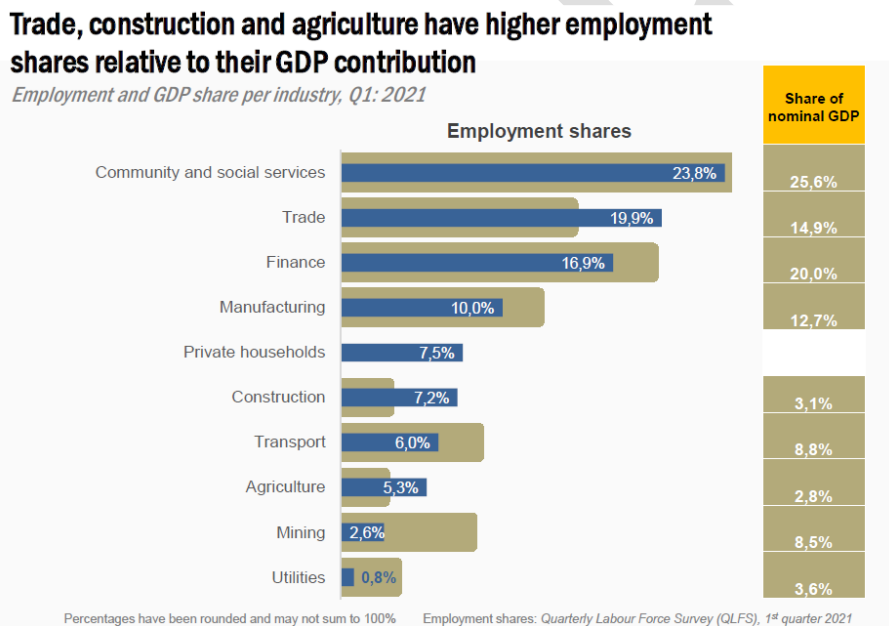
and its constitutional document, the memorandum of incorporation (MOI), which establishes the company's capacity, legal powers and governance. Listed companies in South Africa operate within a robust and flexible governance framework comprising statutes, regulations, common law, and both international 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 the 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).

*The Private Sector*

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



Source: Adopted from Stats 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

<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.

<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.

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 (electricity generation), Transnet (railway transport and pipelines) South African Express, South African Forestry 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 the 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 1<sup>st</sup> CRR (2007) flagged 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 are 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>

#### *The Informal Sector*

392. The enterprise-based definition of the informal sector as described by the International Conference of Labour Statisticians (ICLS) refers to the 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 mentioned ICLS norms, and defines the South African informal sector according to two elements namely establishments with fewer than five employees and employers who 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.

<sup>36</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.

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

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 were 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), National Informal Business Upliftment Strategy (NIBUS) and 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, 2008. Co-operatives are subject to the conditions set out in the 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 an extensive 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), the 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 of Southern 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 capital market, in 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 it includes own savings, member contributions, donations and in some instances, funding.
399. The CRM's review of objective one, will assess of 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 nuances 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 shackles of COVID-19 pandemic, but also reassures a sound pathway to redirect the economic trajectory in a way that ensures 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 enduring challenges, as epitomised by the imbroglio of COVID-19 pandemic, which has 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 a mixed fortunes as regards global competitiveness ranking, recent experiences have motivated optimism for impressive performance and capability to attract inflow of FDI. However, the country's ranking on global competitiveness ranking require improvement in order for the country to bolster its attractiveness to foreign capital and to also develop domestic entrepreneurial capabilities. Leveraging the corporate

<sup>38</sup> 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>

governance instruments and frameworks would help galvanise a better appeal for business prospects and ultimately, sustainable prosperity.

#### *South Africa in AfCFTA*

401. The African Continental Free Trade Area (AfCFTA) is a free trade area founded in 2018, with trade commencing as of 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 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 China and India. The AfCFTA provides South Africa with an opportunity to realise improved growth through exports to the continental market as the most diversified and most industrialised economy in Africa. The FTA provides South Africa the iconic 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 was of the view that the NDP did not spell out an implementation plan with sufficient rigour and detail, beyond the broad approach it outlined and flagged that although the NDP had broad stakeholder and societal support after its adoption, this did not translate into 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 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.
  - State-Owned Enterprises (SOEs) exert regressive pressure on the economy, instead of contributing to driving growth and transformation.
  - Corruption has become systemic and pervades state and the private sector.<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

<sup>39</sup> 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)

<sup>40</sup> 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>

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

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 2<sup>nd</sup> Generation Review of South Africa regarding Objective One, sought to identify the turnaround strategies required in the private, public and non-profit sectors, leveraging corporate governance codes and standards in existence.

## 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. The Companies Act No. 73 of 2008 as amended 2011 also provides for a Financial Reporting Standards Council to advise on requirements for financial record keeping and reporting by companies. This extensive Act even addresses the shortcomings in the Close Corporations Act, 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 Companies Amendment Bill, 2021, which was published for public comment on Friday 01 October 2021. This follows the publication of the earlier version of the Bill on 21 September 2018. The 2021 revision was aimed at addressing administrative bottlenecks identified during the implementation of the Act since May 2011. The 2021 version is also a redrafted Bill with significant amendments. The series of 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. Addressing the triple challenges of poverty, inequality, and unemployment.

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

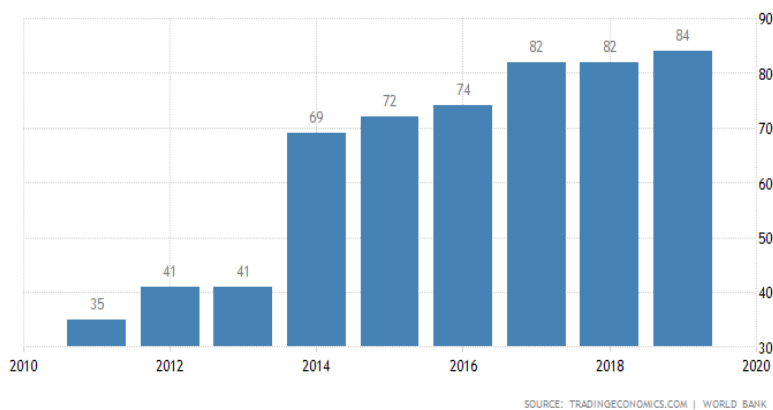


- c. A renewed focus on corporate governance and support for NPOs, as well as instilling such aspects within the SMME and informal sectors.
- d. Lack of a drive to address non-compliance to the vast array of corporate governance enablers, and impotence of regulatory mechanism to stimulate compliance and consequence management.
- e. Lower than expected or accepted levels of governance skills and knowledge within the accountable entities as well as in general within public and private entities.
- f. It is apparent that a concerted effort is still required to expand and empower corporate governance principles in South Africa.<sup>43</sup>
- g. The CRR proposed that the revised Programme of Action (NPoA) for South Africa should include dedicated monitoring of progress in implementing Codes of Good Practice and track its impact on economic development and transformation.<sup>44</sup>
- h. Concerns were raised about the level of adherence to the King Reports by some South African companies operating in the rest of Africa as, Multinational Enterprises [MNEs].

*South Africa' 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 deteriorated to 84 in 2019 from 82 in 2018. Historically, Ease of Doing Business in South Africa has averaged 56.83, from 2008 until 2019, reaching an all-time low of 32 in 2019 and a record high of 32 in 2008, just before the global financial crises.

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

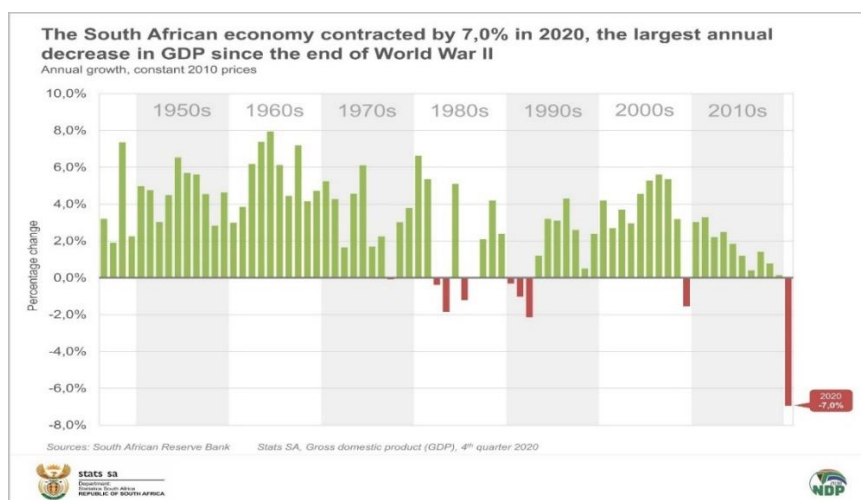


Source: World Bank Database

<sup>43</sup> 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

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

<sup>45</sup> 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 GDP Per Capita – 1946 to 2020 [Seventy-Four Years]<sup>46</sup>**

Source: Adopted from Stats South Africa (2021)

410. Figure 4.3 shows a fifty years' 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 4.3 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
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>	-3.2	3.3	-0.8	-1.4	0.2	-1.8	-51.7	67.3	6.3	-7.0

\*Percent change over one year

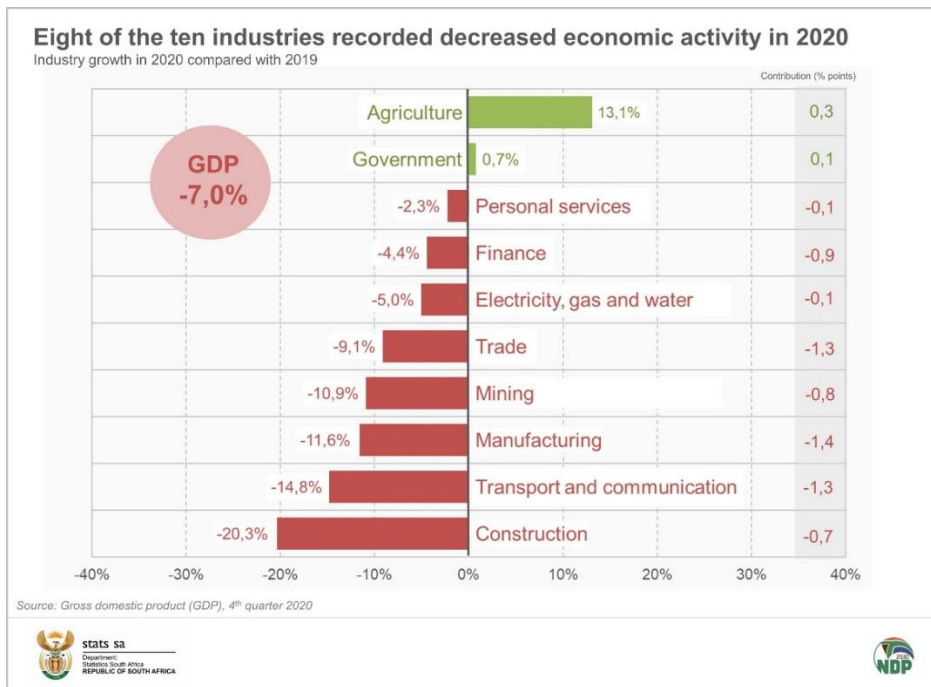
\*\*The non-primary sector represents total GVA excluding agriculture and mining

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

Source: Adopted from Stats South Africa (2021)

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

<sup>46</sup> 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>



Source: Adopted from Stats 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 in the year, up by 0,7%. All other industries pummelled. 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 pools 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, dated back to 1856. It operates and exists as a Non-Profit Company under the 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 potentials 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 profound. 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

<sup>47</sup> 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>

and panel beaters, hair salons, stylists, barbers, and many more. Informal economic activities are also not physically restricted to townships and rural areas.

*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 thereunder (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 BBEE 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:
- Completes the Companies Act 2008 amendment of 2021 and passes the Act into Law. [Ministry for Justice, Parliament].
  - Notes that the King IV Report (2016) is not sufficient to take RSA out of the present state of challenges Therefore, RSA should consider the possibility of improving the inherent weaknesses in King IV reporting guidelines in the proposed new edition.
  - Possible recommendations to improve King 4 reporting standard. Requirements of a King V - [a] incorporate the full provisions of Companies Act 2008 (amendment 2021) in formation, [b] extend from Principles and Practice Guidance to a Case Based and Outcome Based Framework in a simpler and more easily understandable format, [b] create a supplement for Non Profit Organisations, [c] 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 [2] use moral suasion, peer mentoring and professional networking to deepen application of the

new commendations and deploy case-based principles for broad based emergence of good practices.

- Noted the potential spin-off contributions of the SACCI and its component chambers, as self-regulating network of businesses that can in addition adopt current mandates, support & 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 ensure improvement in 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 management team to the elected board and the accountability of the elected board to the shareholders and regulatory agencies of the state, is central to 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 by when. It is also important to improve knowledge of stakeholders on the relationship that exist 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 upon elected directors and custodians of public/corporate assets. It is incumbent upon company directors to guarantee stakeholder confidence regarding the decision-making processes.<sup>48</sup>
419. The 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 the Close Corporations Act, 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 recommended that the audit committee be responsible for recommending the appointment of the external auditor and overseeing the external audit process. King IV

<sup>48</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].

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 oversees 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; Guideline for Legislative Oversight through Annual Reports in 2005; among others, prominently feature in South Africa's Governance System. Figure 4.6 represents 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 stipulates the principles of good governance to which they must all abide.

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

422. For the sake of effective leadership, the business of the board of SoE or SoC, 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 according to the specifics of the organisation:
- SoEs and public companies are characterised by distinct features of accountability.
  - The boards of SoEs are held accountable by 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 depth 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 RSA's 2<sup>nd</sup> 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, improved strategic resource allocation mechanism and reduced departmental and functional siloing. This corporate reporting mechanism propelled South Africa to be ranked 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, 2008 seeks to complement the PDA and it provides safeguards to company stakeholders, including shareholders, directors, and employees, who make good faith disclosures of specific wrongful or unlawful acts of 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 1<sup>st</sup> Generation CRM suggested that, in order to enhance accountability and intensify the fight against corruption on all levels, the municipalities need support in the development of fraud prevention mechanisms and anti-corruption strategies. These plans 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 2<sup>nd</sup> Generation CRM indicate that SoEs have an important role to play in the South African economy. Unfortunately, over the past 3 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 has culminated in bailouts that have exceeded R187 billion. This incidence of dishonesty has created instability of boards/executive management, and has also resulted in court cases. The worst development has been 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 target 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 commenced 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 recommending the appointment of external auditor and overseeing the external audit process. Globally, there have been developments regarding the assessment of the auditor's independence as well as the implementation of audit firm rotation

<sup>49</sup> 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.

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, which focusses 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 (CA(SA)) by being a member of the South African Institute of Chartered Accountants (SAICA) in accordance with the 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 in Southern Africa (IoDSA) plays a very 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 have been 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 from South African Airways (SAA), Eskom Holdings and Transnet have come under scrutiny as a result of aspersions casted on their maladministration by the Zondo Commission. Every director and the Board of an SoE is 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 facing 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 2008 and provisions of section 21 applies 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 2<sup>nd</sup> generation CRR, and the primary

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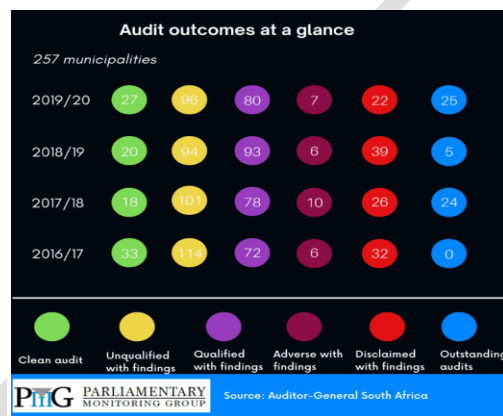
<sup>50</sup> Republic of South Africa [November 30, 2021]. Report of the APRM 2nd Generation Country Review Process for the Period 01, April 2014 to 30, November 2021.



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 terms of 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 gives the Parliament the right to evaluate the performance of a public institution in accordance with the requirements of section 92(3)(b) of the Constitution, 1996. However, given that 22 Municipalities received disclaimed audit outcomes, while 25 have outstanding audits, the supervisory role of the Parliament may be hindered by the enormity of this 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>



### iii. Recommendations

438. The African Peer Review (APR) Panel recommends that the Government of South Africa:
- Ensure stringent compliance with Companies Act 2008 and subsequent amendments that make provision for the appointment of Directors, Annual Audits, Board Evaluation, and Governance Standards and Codes.
  - Reviews 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 having all SoEs reporting to a single Regulator, rather than the present arrangement of reporting. The Department of Public Enterprises can be upgraded to such independence, in order to effectively play this role in a more apolitical manner. [Parliament]

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

- In the interim, upgrade Regulatory Oversight and Enforcement of existing fiduciary frameworks to invoke the powers of Chapter 9 Institutions as applicable.

**OBJECTIVE THREE:****Ensuring Ethical Conduct Within Organisations****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 focus 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 by when; knowledge and relationships that exist between stakeholders and those entrusted to manage 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. Some of the issues as applicable to ethical conduct within organisations included corruption, which was said to undermine national integrity, as well as blockages in the efforts to enhance service delivery. The MTSF 2019 – 2024, which is said to serve as the reference point for the implementation of the NPoA with its seven priority points, had Priority 1 - Capable, Ethical and Developmental State. All levels of The State report their performances along these seven priority areas, over the course of the MTSF 2019 – 2023.

*Integrated thinking and the Integrated Report*

442. Besides the adoption of King IV on integrated reporting, the RSA has in furtherance to promotion of ethics, ensured independence of its Chapter 9 Institutions, which is enshrined 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 function also includethe 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 controlling that part of the accountancy profession involved with public accountancy in South Africa.

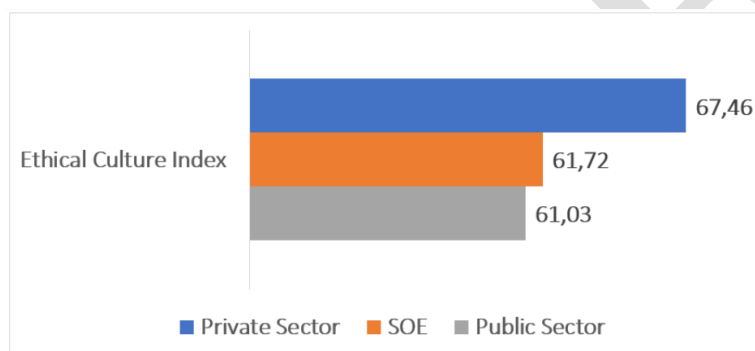
<sup>52</sup> Manzila, H. [October, 2021]. Background Paper on Corporate Governance – Republic of South Africa. Being a Background Paper by the African Peer Review Mechanism [APRM].

443. King III introduced the concept of the 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 operated. 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 (i.e. the board) of any organisation to ensure effective leadership that is based on 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. In a study conducted by the Ethics Institute (TEI) South Africa, It was evident that there is a strong correlation between the operational, strategic and financial failures of organisations and their ethical failures (figure 4.2)

**Figure 4.7: Comparison of 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 States-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 incompetence, 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 emerging findings, the KPMG South Africa creative-accounting and Digital Vibes cases among others, also brought to limelight the importance of ethics and corporate governance in South Africa.
447. The requirement for a Social and Ethics Committee was first introduced in the 2008 Companies Act of South Africa. The detail about the mandate, membership and powers of the committee

<sup>53</sup> 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)

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

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

<sup>56</sup> Example, accounting malpractice by the local unit of KPMG ; Digital Vibes scandal ;

were provided in the Companies Regulations (2011), and 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. Whereas the statutory mandate is compliance-focused, the King IV recommendations on the mandate of SEC is 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 should 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 on a worldwide scale.
449. Sadly, although the SEC was introduced approximately 8 years ago, there is scant information about the nature, effectiveness, and perceived impact of the SEC. In 2019, the Institute of Directors in 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 trends with regards to the SEC 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 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.

### *Whistleblowing, Political Party Funding and Parliamentary Independence*

451. The CRM confirms that under the Protected Disclosures Act, 26 of 2000 (PDA), employees who make certain 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, 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 of a company, director or prescribed officers. Whistle-blowers are immunised from civil, criminal, or administrative liability and have qualified privilege in relation to the disclosure.
452. The danger of private individuals or companies funding political parties with the primary aim to unduly influence policies have been debated in the Parliament of South Africa on various occasions. This has culminated in the adoption of the Political Party Funding Act, 6 of 2018,

<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)

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 is circumscribed in section 44 of the Constitution, 1996 by assigning it legislative authority concerning matters affecting national, provincial and local government matters subject to specific conditions as identified in section 44(2). To ensure that Parliament can 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 legislation governing SoEs include: 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 suggests 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 in any way prescribed in terms of 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 (the Bill) that was intended to be presented to Parliament in 2021 for consideration. The purpose of the Bill is to construct 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, CRM perception of the Council is that its effectiveness is yet to be seen. This also brought up broad based concerns over inappropriate criteria for appointments, assessment and non-removal of poorly performing directors and the need for stricter adherence to 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:
- Develops 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) convening of annual meetings within stipulated deadlines in law and (c) implementation of 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. [*The National Assembly, Provincial Legislatures, Independent Regulatory Board for Auditors (IRBA), the Regulatory Agencies and Shareholder Associations*]
  - The remedial actions available to the Auditor General, as a result of the amended Public Audit Amendment Act, 5 of 2018, should be supported by the relevant judicial authorities to facilitate prosecutions in confirmed cases of mistrust and embezzlement of public funds via registered entities.

- The Institute of Directors South Africa, The Ethics Institute of South Africa and the South African Chamber of Commerce and Industry should collaborate with 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.

<b>OBJECTIVE FOUR:</b>	<b>Ensuring that Organisations Treat Stakeholders Fairly and Equitably</b>
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### 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 on the other hand deals with activities that exceeds 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; namely, the shareholder model and the stakeholder model. For instance, the shareholders' model describes the corporate government approach through the formal system of accountability of senior management to shareholders. Consequently 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 Dmytriiev (2017)<sup>58</sup>, in the stakeholder model, the firm is not responsible to its shareholders only; however, it is 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 and poor economic performance. In addition and in this context, corporate governance proffers a sustainable solution that prompts firm level investments as well as encourage active co-operation amongst stakeholders in socio economic development

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

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 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 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, 2008 or the company's MOI provides otherwise. Under this arrangement, shareholders still retain ultimate authority with regards to specific and reserved matters including the right to reconstitute the board. The Companies Act therefore vests the board with absolute statutory authority without waiting for the shareholders to delegate it in matters that pertain to 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 pertinent to ensuring that stakeholders are treated fairly and equally as (a) inadequate public consultation, education and feedback in policy making and (b) consumers and shareholders fail to 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 2<sup>nd</sup> Generation Review Process in South Africa. 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 2<sup>nd</sup> 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 to this, the TRI having considered evolution of issues from the 1<sup>st</sup> Generation Review to just preceding the 2<sup>nd</sup> Generation Review, then reported that as at October 2021 that South Africa has made concerted progress towards entrenching good corporate governance in line with King IV, since the 1<sup>st</sup> 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 empower corporate governance principles across all sectors within South Africa.<sup>62</sup>

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

465. In terms of the 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

<sup>59</sup> OECD, O., 2019. The OECD principles of corporate governance. *Contaduría y Administración*, (216).

<sup>60</sup> 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.

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

<sup>62</sup> 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.

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> in terms of the Companies Act. King IV recommends the establishments of the SEC as best practice for all companies even if the SEC is not required as per the Companies Act to do so. Quite notably, the composition requirement is somewhat stricter than the requirement of the Companies Act; in that King IV<sup>64</sup> requires that a majority of the members should be nonexecutive 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 responsibilities 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 the 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 corporates should treat stakeholders fairly and equitably.
468. The Constitution of RSA (1996)<sup>65</sup>, Section 195, stipulates that there must be promotion of an efficient, economic system as well as an effective use of resources and in order to generate value in a sustainable manner. It requires that services be provided impartially, fairly, equitably and without favour, while 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. The Companies Act, 71 of 2008<sup>66</sup>; which relates to 'The object of the Companies Act, 2008 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 preventing consumer from any harm, opportunistic behaviour of suppliers/sales agents, and promoting consumer rights.
470. For example, consumer education campaigns were launched countrywide in 2009 in the aftermath of the 1<sup>st</sup> 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 2<sup>nd</sup> Review Mission, based on an intention to broaden stakeholder engagement in the review processes, as well as 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 obliged to continue

<sup>63</sup> Social Ethics Committee in South Africa

<sup>64</sup> King IV Report

<sup>65</sup> South African Constitution

<sup>66</sup> The Companies Act

<sup>67</sup> Department of Trade and Industry



with communication exercise to dedicated consumers through hotlines where consumers can 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 as applicable to stakeholder engagement and activism. The adoption of King IV by various organs in South Africa, including the JSE, constitutes a form of 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 various 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 (i.e., telecommunications and air). The government's interest 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 recently released a report of a presidential review commission on SOE, which called for nationalization of SOEs, no concrete action has been taken on the topic yet<sup>68</sup>
475. The CRM observes that given the milestone relevance of this 2<sup>nd</sup> Generation Peer Review, South Africa may need to redefine the Stakeholders of SoEs, in order to place accountability for performance of SoEs in the hands of South African Citizens. South Africa needs to have a serious national dialogue on mandate alignment, structure and oversight relationships of SoEs, to derive optimal service, national pride and revenue benefits.
476. For reasons of benchmarking global practices, the APR Panel will like South Africa to note the Malaysian example of best practices on restructuring and managing Government-Linked Companies (GLCs), otherwise known as State Owned Enterprises. These are companies, where the Malaysian government has a controlling stake. They all underwent major transformations from 2004, in order to turn weak operational and financial performances into high performing entities, which may be 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 share its successful development experience globally.<sup>69</sup>

## iii. Recommendations

<sup>68</sup> Department of Public Enterprises

<sup>69</sup> 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>

477. The African Peer Review (APR) Panel recommends that the Government of South Africa:
- 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 doubles as owners and supervisors of the enterprises. {The parliament; the presidency}

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

478. An organisation, in addition to being an economic entity, also a citizen of a country. As such, it has a moral and social standing within the society with all the responsibilities attached to that status. Consequently, when making decisions, an organisation should consider the impact of its decisions on its internal and external stakeholders as well as the environment and society in which it operates. 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 for an organisation, entails 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 and always considering the environmental impact of business operations. Thus, in this instance, corporates ensure that they 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 community or society at large. In particular, corporate social investment involves strategic and sustainable initiative that targets societal development through knowledge, technological and economic spillover effects in host societies. Thus, Corporate Social Investment is conduit of delivering economic development in host societies. Corporate Social Responsibility (CSR) strategy includes implementation of strategies by firms that are intended to have positive influence on specific society that a business operates in. 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>.
481. Furthermore, King IV report<sup>72</sup>, observes that good citizenship of corporates 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 takes ultimate responsibility

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

<sup>71</sup> 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.

<sup>72</sup> King IV Report on Corporate Governance

for this duty and has to encapsulate this ethical feature and aspect in all the strategy, plans, processes and performance of the company. It is vital that the Board comprehends its obligation in respect of ethical nature and features of the Code that specifically stipulates that this obligation cannot be delegated or outsourced.

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

482. In the 2007 1<sup>st</sup> CRR, the APR Panel recommended the development of compliance monitoring systems and mechanisms that enhance and ensure that corporates act as good citizens in South Africa. Like many other states in the developing countries, South African government has identified the efficiency and effectiveness of the collaboration between the public sector and other sectors such as private, and not-for-profit organisations, among others. 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 Public–Private Partnerships (PPPs) as a strategy to deal with the persistent socio-economic, political, fiscal and societal problems. PPPs in South Africa played 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. It has been continentally acknowledged that South Africa's adoption of Public–Private Partnerships (PPPs) as a way of dealing with the persistent socio-economic, political, fiscal and societal challenges, implies that PPPs in South Africa occupy a central role as service delivery mechanisms. This is essentially so because this approach enables efficient infrastructure delivery process as set out under the <sup>73</sup>(Asgi-SA) policy formation.
484. The legal approach used in South Africa to ensure that corporates act as good citizens, is rolled out through 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 assessed are:
- Ownership – the shareholding percentage in the business, owned by black people.
  - Management Control – number of black directors, top management and the 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) – company's contribution to charitable organisations or social enterprises.
485. Non-Governmental Organisations (NGOs) in South Africa, continue to play an important developmental role. 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 socio-economic development of South Africa.

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

<sup>73</sup> Accelerated and Shared Growth Initiative for South Africa

486. It may be recalled that the Baseline 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 seek increased opportunities to contribute and participate in the delivery and monitoring of public services. The TRI review on the other hand, 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, (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 1<sup>st</sup> Generation CRR placed 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 raised on economic investment and social corporate responsibility sectors, the Department of Trade and Industry (DTI)<sup>75</sup> launched 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 in building partnerships for improved service delivery in support of enterprise development and identifying 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 Tourism Support Programme. Therefore, 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 suggests a significant increase of CSR initiatives that includes 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. Some of the focus of the funding include increase in Economic Social Responsibility; Increased Ecological Responsibility; 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 cost. Therefore, such competencies enhance firm

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

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

<sup>76</sup> Enterprise Investment Programme

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

## ii. Findings of the CRM

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

488. In 1<sup>st</sup> Generation CRR, a recommendation was advanced to enhance “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 corporates act as good citizens in South Africa. Thus, this mechanism model is informed by the theoretical underpinnings of the King IV report and legal instruments, which include:
- Section 195 of the Constitution of RSA 1996
  - 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 2<sup>nd</sup> and 3<sup>rd</sup> progress reports, suggest that other regulatory instruments should be amended to provide institutional coordination in order to enhance monitoring and evaluation of corporate social investment initiatives in local communities.
490. Over the course of the 2<sup>nd</sup> Review Mission, there was a marked observation suggesting that corporates are increasingly aligning with the statutes of good citizenship through enhanced CSI strategies such as economic responsibility, environmental responsibility, social and philanthropic responsibility. These reviews also indicate that the foundation for good corporate governance in the private and public sector in South Africa, does exist. What is required is to optimise it in a manner that delivers socio-economic benefits to host communities at home and abroad, in communities that host South African entities.

#### *Expanding the Corporate Citizenship Stakeholder Base*

491. The CRM observed that South Africa illustrates various best practises examples including the commendable practice of alignment of PPP to NDP, tax incentives to encourage good corporate citizenship practices by registered entities, its adoption of the King IV Principles which have high content on good corporate citizenship, JSE's adoption of the International Integrated Reporting Standard as a Listing Requirement, among others. It is evident that the country should be proud of laudable achievements recorded on this challenging targets. This observation was further reinforced in the CRMs' engagement with the University of Stellenbosch Business School (USB) from which the CRM gained insights into innovative approaches that subsists, especially through such platforms as the USB's Small Business Academy, African Centre for Development Finance and the Centre for Corporate Governance. From this observation, it became obvious that the Business Schools in major South African Universities can partner with the Government via the Departments of Ministry of Trade, Industry

<sup>77</sup> Country Review Mission

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

and Competition, 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 includes 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 levels of governance, which should be formally and conclusively addressed, because the country is now in a very challenging situation and the need to meet unceasing needs of the people is becoming ostensibly urgent. While there have been observable commitments to good corporate citizenship by many participants in the private sector, others appear to have bad reputation, in terms of good corporate citizenship, thus a source of concern. The entire 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 underpinned the concepts of Integrated Reporting and thinking, the Code does not seem to guide companies in the Integrated Reporting disclosure requirements. The introductory sections of the Code makes 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. In furtherance to this, the CRM 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 socioeconomic development in South Africa, as well as exporting such partnership thinking to their international subsidiaries in other African countries, in furtherance of RSA'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 on 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 of listed entities and the requirements for the establishment of Social and Ethics Committees. The enforcement of the law is a vital 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, applicable NGOs, and regulator 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 boast competitive advantage to address issues of unemployment, skill gap, and inequality by increasing commitment for SCI initiatives. 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 may also be addressed through this initiative.

### iii. Recommendations

497. The African Peer Review (APR) Panel recommends that the Government of South Africa:
- Requests the JSE and JSE Listed Entities to extend the combined requirements of International Integrated Reporting (IIR), King IV and related requirements for establishment of Social and Ethics Committees to extend the benefits of PPP into enhancing Listed Entities' Partnership in Socio-Economic Development with host communities (Department of Cooperative Governance)
  - Requests the JSE to closely monitor compliance of All JSE Listed Entities to 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).

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

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## CHAPTER FIVE

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### 5. SOCIO-ECONOMIC DEVELOPMENT

#### 5.1 Overview

498. Sustainable Socio-Economic Development (SED) is considered as the ultimate goal that underpins 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 one or another 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, attainment of gender equality, and full and effective integration of women in political and socioeconomic 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’s country review report completed in 2007 (CRR 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 (NPoA). South Africa reported actions it has 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 have been considered comprehensively. When the Country Review Mission (CRM) was deployed in December 2021, it was clear that South Africa had made significant strides in this thematic area since the previous review, the most notable being: the government’s capacity and political initiative to develop and implement innovative national public

policy through the National Development Plan (NDP), The Medium Term Strategic Framework (MTSF) 2019-2024) among others; access to basic education has also improved. The number of Grade R learners aged 5 and 6 increased from 87.2% and 95.9% respectively in 2014 to 88% and 96.6% in 2018. Near universal coverage has been achieved, with school attendance by children aged 7 to 15 at about 99%. The implementation of the National School Nutrition Programme is now benefiting 9 million learners. The Funza Lushaka Programme for teacher development has supported 120 511 beneficiary teachers at a cost of R7.2 billion. Health status indicators have improved across the demographic. Maternal, infant and under-5 mortality rates have decreased significantly: The maternal mortality ratio decreased from 176 per 100 000 between 2008 and 2010 to 138 per 100 000 between 2014–2016. Overall, the total life expectancy of South Africans increased from 54 years in 2005 to 64.2 years in 2018 – a net gain of 10 years. Access to primary healthcare services has expanded. The number of people receiving primary healthcare services (headcount) has 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 grew 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 has contributed to the increased longevity of people living with AIDS. Over the last 25 years, 3.2 million houses were delivered through government's subsidy programme and 1.1 million serviced sites to those who did not qualify for the subsidy. Over 14 million individuals have been aided by the state housing programme and provided with better quality accommodation and an asset. Government has expanded access to the social wage in poor communities, including free electricity, water, 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 have been 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, has been 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. Over the past three years, between 2016/17 and 2018/19, the programme reached more than 127 000 young people. The government has implemented several employment programmes primarily targeting youths and these include: Community Works Programme (CWP); Expanded Public Works Programme (EPWP); National Rural Youth Service Corps; youth cooperatives and youth entrepreneurs (e.g. NYDA funded); skills training e.g. learnerships funded by Sector Education and Training Authority (SETAs); Jobs Fund; Employment Tax Incentive (ETI); Youth Employment Service (YES).
502. In terms of land redistribution, between April 1994 and March 2018, 4 903 030 hectares were redistributed, benefiting 306 610 beneficiaries (less than 10 percent), of which 35 615 are youth and 775 are people with disabilities. Multidimensional poverty, measured in terms of composite indicators for health, education, standard of living and economic activity has declined significantly from 17.9% of the population in 2001 to 7% in 2016 (StatsSA, 2017).

503. At the same time, CSAR 2021 as well as consultations with the members of public reveal that South Africa still faces a number of challenges in this area, both old and new. The Country Review Mission (CRM) has identified and prioritised these challenges and put them under the four main objectives of the SED thematic area: The promotion of broad-based socio-economic development; encourage broad-based participation in the 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 are then further developed in the evolution of the issue, the findings from this review mission and recommendations are made for incorporation into the NPoA.
504. Under objective one: the promotion of broad-based socio-economic development; The issues identified are: (1) the need for multi-dimensional capacity to implement socio-economic development programmes, and (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 issues identified are:; reduction of poverty, unemployment and inequality through socio-economic emancipation; and under Objective 4: progress towards gender equality, in particular equal access to education for girls at all levels - The issues identified are:. Mainstream gender and issues of disability into all government programmes at all levels.
505. These issues are both critical to the state of socio-economic development in South Africa today but also cut across the objectives of the thematic area as articulated in the APRM Objectives, Standards, Criteria and Indicators document, which remains a useful guide 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. It was evident from the APRM CRR, 2007 that South Africa had ratified almost all of the standards and codes related to SED. The (CRR, 2007) recommended that SA adopts 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 needs to then implement a system of reporting on the progress in the domestication of this convention. There are ILO conventions and protocols that are added to standards and codes provided in the CSAR questionnaire. South Africa has ratified 27 ILO conventions, of which 24 are in force, no conventions have been denounced, but 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, in terms of the Sirte Declaration of 9 September 1999. South Africa ratified this Act on 23 April 2001 with the OAU General Secretariat, becoming the 35th member state to do so. South Africa has participated in the development of the Rules of Procedure for the Assembly, and the same process has taken place at Southern African Development Community (SADC) level. 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 affected them and that children were not treated with respect and dignity. South Africa also ratified the Convention on the Rights of the Child on 16 June 1995. The first report was submitted on 4 December 1997.
509. Further evidence of compliance lies in the provision of free healthcare for children under 6 years of age and the establishment of a child support grant. Children with disabilities, teenage pregnancies and STD/HIV infection among adolescents have been identified as priorities in child health. However, the challenges remain substantial. Proximity to healthcare facilities, especially in the rural areas and inadequate transport present enormous obstacles. The CRR, 2007 identified that though 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 CSAR, 2021 South Africa 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 to 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) arises from a mandate given by the OAU to the five initiating heads of state (Algeria, Egypt, Nigeria, Senegal and South Africa) to develop an integrated socio-economic development framework for Africa. The strategic framework document was formally adopted at the 37th Summit of the OAU in July 2001. As one of the five

initiators of NEPAD, 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 infrastructural projects, South Africa is one of 11 countries implementing the submarine cable project, known as the Eastern Africa Submarine Cable System (EASSy). The country is also represented on the Information Society Partnership for Africa's Development and, among other things, is 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 across all nine provinces to promote participation across 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 27-year imprisonment. It has made popular grassroots participation in policy making and programme implementation as the foundation for true democracy. The Charter also 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 tries to ensure 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 need to be strengthened.

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

515. In September 2000, South Africa was one of a total of 189 countries that signed the Millennium Declaration, thereby accepting the targets of the Millennium Development Goals (MDGs) for eradicating poverty and other sources of human deprivation, as well as for promoting sustainable development. In South Africa, the Department of Foreign Affairs is the official overseer of the MDG process, while Statistics South Africa (StatsSA) is the lead agency responsible for managing the process. Later, South Africa has also been supporting 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 have 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 of 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 of age, and primary healthcare has been extended to all South African residents. Nonetheless, there are still obstacles to women's ability to access healthcare facilities. South Africa has recognised that a key feature of poverty among rural women is lack of access to land. This is compounded by discriminatory social and cultural practices. The Land Reform Programme is the government's solution to the problem but has so far been slow and ineffective where rural women are concerned. 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 socioeconomic maladies, but 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 needs to move away from welfare system towards inclusive empowerment.

**Management Act (NEMA) of 1998**

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

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

524. The CRR, 2007 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, who do not have access to some of the most basic human rights. It was thus critical that South African Civil Society advanced 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 populace be well informed about existing instruments that South Africa has acceded to. Moreover, people are more likely to comprehend and appreciate

the usefulness of these conventions if they are translated into a language they can understand. When international and regional standards and codes are adopted and/or ratified, it is therefore important that they be translated into the 11 official languages and further explained to communities through mass/grassroots communication exercise.

526. It was underscored in meetings with stakeholders that there is poor interpretation of the law at times, even among those in the legal profession. It was noted that, in some cases, women are not educated about their rights. The provincial legislature would do well to follow through to make sure that women have the Bill of Rights in a language that they understand. Efforts are made in schools to educate students about their rights, but this has limited impact when their mothers are uninformed about their rights.
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 protocols that are enablers of sustainable socio-economic development C102, C183, C180, C159 and P089.
529. The African Peer Review (APR) Panel recommends:
- 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]
  - Passing of 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

<b>OBJECTIVE ONE:</b>	<b>Promote and accelerate broad-based sustainable socio-economic development</b>
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#### 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 different facades and aspects of Africa's development. Capacity is still the missing link for the continent to successfully meet its socioeconomic 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 argued that while financial resources are vital, they alone cannot sustain human development. Strong capacity, locally generated and sustained, 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 were spent to end poverty, disease and underdevelopment with very little success due to lack of capacity.<sup>82</sup> Therefore, in order 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 realise its MTSF, NDP, AU Agenda 2063 and the SDGs.
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. The CRR 2007 (Para, 748) identifies skills development as one of the key requirements to enable South Africa meet the socioeconomic 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; para 748). Another

<sup>80</sup> 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>

<sup>81</sup> 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)

<sup>82</sup> 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)

dimension of lack of 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 recommended 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. 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 by the CRR with various interventions. The national school of government is responsible for creating a capable and ethical state through various courses and skills programmes. Also, since the 2007 CRR, 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; (5) Back-to-Basics is a programme devised to build and strengthen the capability and accountability of municipalities.
533. However, and despite this show of 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 CRR (2007, pages 241 and 242) further identifies “deficiency in state organisation capacity and leadership” as one of the constraints to socioeconomic development. The first progress report (2009, page 22) buttresses skills inadequacies as a major shortcoming to advance service delivery at various spheres of public offices: “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”. CSAR (2021) as well as CRM consultations at regions, suggest that the current capacity gaps are similar to those in the period prior to the base country review (2007) persist in South Africa's socio-economic efforts and are still salient. 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 premised on “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 similar effect on the delivery of sustainable socio-economic services to all South Africans, Especially the vulnerable. This has left 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 and the target has not been met. Increase calls for land reform from all sectors resulted in the call and debate to amend s25 of the constitution (1996) to allow for land repossession without

compensation. The proposed bill failed to gain support in parliament in 2021 and all stakeholders have gone back to rethink the 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 farms and agricultural holdings by individual landowners; 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 device rejuvenated commitment towards addressing the land reform challenges in South Africa as a redress to the injustices of the past and to promote peace and security in the land.
536. As elaborated in CRR 2007 (paras. 853), the issue of land reform remains a major challenge and a source of concern to most stakeholders. All stakeholders across South Africa are calling for accelerated land reform. The CRM of 2007, 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 Act created imbalances in land ownership that are still visible in modern day South Africa*”. The report further document efforts made by the government to redress inequality created by the 1913 Land Act 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 had 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 (2<sup>nd</sup> Progress Report, 2019; Para, 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<sup>th</sup> December 2017, the ANC-led government announced at the 54<sup>th</sup> national Conference that it 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

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

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 s25 of the constitution failed to get the required number of votes. Opposition parties have indicated that this is not the end, essentially given that 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 the transition to democracy in 1994, South Africa has been confronted with unprecedented 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 independence in 1994, South Africa set to task, formulating comprehensive socio-economic policies that aimed to address the disparities of the past while taking-up the momentous task that lay ahead-one of sustainable socio-economic development for all South Africans. The Constitution of South Africa (1996)<sup>84</sup>, makes provisions for guaranteeing that socio-economic rights are observed. This includes rights to have access to housing, healthcare, water, and social security (the status of which is explored further in this section).

#### **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 produced 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.”*

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

The World Bank further observes that 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 precarity 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 and preventing citizens from socio-economic risks that could immerse someone or a family into poverty trap. The system intends to liberate people out of generational poverty cycles by dealing with issues of poverty and inequality. However, the CRR 2007 (para. 747) noted that South African communities need to be empowered to avoid the risks of a social dependence syndrome. The

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

second generation CSAR (2021) just like the other progress reports, identified that social protection in SA is now unsustainable and inequalities persist.

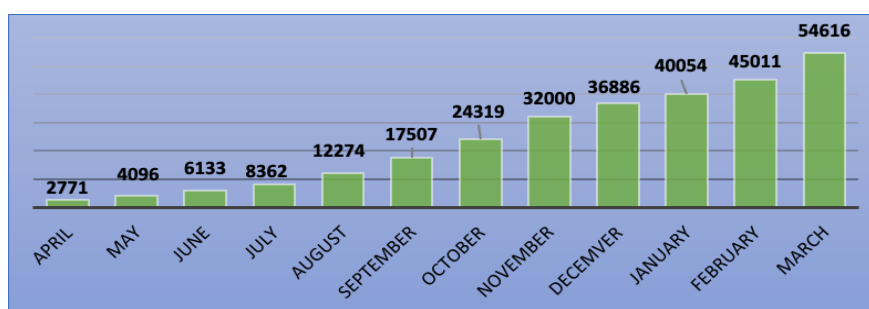
543. The second progress report notes that 'social wage' has been used as a redistributive mechanism of the government budget deliberately; and it is aimed at improving the lives of the poor and reducing their cost of living. This has been achieved through, among others, free primary health care; no-fee 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 notes 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), has committed to capacity development to improve sustainable socio-economic development. This is further elaborated 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

<sup>86</sup> [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)

implementation of institutional and technical capacities across all levels of the South African government to deal with the 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 COVID-19 pandemic, there has been an increased uptake in online courses from 2771 in April 2020 to 54,616 in March 2021 over a 12-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 impact negatively on service delivery. For example, in the North West Province, it was pointed out at the stakeholder engagement meeting that the process of local government participation in integrated planning is ineffective and inefficient due to lack of capacity in IDPs where most members are incompetent. Furthermore, lack of coordination, monitoring and evaluation are also identified as posing serious challenges. It was further highlighted that many municipalities don't comply with the NDP and that there is a high chance 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 requisite political will, the determination and regulatory capacity to address the land issue in a sustainable manner. Among the most remarkable practical steps taken by the Government of South Africa is its two consecutive land audits in 2014 and in 2017 respectively to assess who owns South Africa's land. An understanding of the current land ownership pattern will assist the government in renewal of 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 has spent more than R60 billion on land reform projects. In terms of land redistribution, between April 1994 and March 2018, total of 4 903 030 hectares were redistributed, benefiting 306 610 beneficiaries (less than 10 percent), of which 35 615 are youth and 775 are people with disabilities. Despite this huge investment and commitment to land reform by the SA government, challenges remain.
551. However, both CSAR 2021 and CRM consultations on the ground show that the land issue remains a major source of community strife and uncertainty; and there are calls for bold land reform approaches, especially among many marginalised communities. The CSAR also notes that the slow pace of land reform and 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 CSAR 2007 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 a majority of the poor get 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

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

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 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 CSAR 2021, and also the review by the NPC 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 a few.
554. CRM consultations with a range of stakeholders have led to corroboration with CSAR 2021 conclusion that one of the main challenges for South Africa is the inability of the land policy to effectively address the land question, the injustices of the past, 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 is on a path of unsustain 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. 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 5000 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 various 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:

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

- Consider to 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

#### **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

#### **A Sustainable model for social-assistance.**

- Review the current social protection model to incorporate empowerment components into it 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 socioeconomic 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 stakeholders' participation in the 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 have 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 guarantees requirements for broad-based participation in socio-economic development. Following these legislative frameworks, the government of South Africa have 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 improving the role of the media, among other initiatives. Despite the legislative frameworks and initiatives by the SA government to promote broad-based participation in Socio-economic development, 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 relation with non-state actors is influenced by the legacy of apartheid regime as a post- colonial and apartheid planning country. The Apartheid regime imposed a spatial segregation system underpinned by racial discrimination in favour of the white minority and oppression of the Black majority. With the fall of apartheid regime in 1992, the coalition government and the new constitution was adopted by 1996 sought to tackle the impact of these institutional and human segregation on the co-existence amongst South African public.
562. Public participation in municipal government is guided by the Constitution of the Republic of South Africa (RSA, 1996), together with 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 functions of municipalities. They were set up to ensure that municipalities create channels for citizens and interest groups to communicate on subjects of concern and utilise framework-like ward meetings, consultative gatherings and Izimbizo<sup>88</sup> (open hearings).

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

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 CRR of 2007, and the other progress reports acknowledged further progress regarding 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>, to enhance the effective of national and local social dialogue forums, the adoption of the 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 one of the most vibrant SCOs on the continent and they are highly provocative 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.

## ii. Findings of the CRM

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

566. The CRM noted advanced progress regarding the adoption of various mechanisms and platforms to encourage broad-based participation on the national government level. Various provinces have functional IPD forums, and mayoral forums. The premier and presidential imbizo are forums to enhance broad-based participation in socio-economic development. However, there remains challenges with the effectiveness of these forums. There was agreement among stakeholders that many IPD forums are dysfunctional because the constitution of these forums in many municipalities are not representative of the relevant key stakeholders. In The North West Province for instance, stakeholders gave the example of nepotism in the constitution 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

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

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

institutional mechanism set to follow-up on the governance self-assessment process is the establishment of the APRM National Governance Council (NGC). The NGC formation was officially approved by the Cabinet on 1<sup>st</sup> February 2021. 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 Minister for Cooperative Governance and Traditional Affairs; Minister in the Presidency; Minister of International Relations and Cooperation; Minister of Finance; and Minister for the Public Service and Administration.

568. The NGC is seen to play 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 voice on governance challenges. For instance, in 2021, SAIIA conducted national exercise in which over 150 young people came together to compile a report that reflects the views of South African youth on the state and future of governance<sup>92</sup>.
569. The CRM noted the foundation 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 (SADC) Regional Indicative Strategic Development Plan (RISDP), in alignment with the NDP (VNR, 2019). Five groups of key stakeholders are included in the national coordination mechanism: (i) 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 private sector, UN organs and academic<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, i.e., 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 set their Integrated Development plans in harmony with the seven pillars of the 2030 National Development Plan, SDGs, as well as Agenda 2063. Having said that, the majority of municipalities are dysfunctional and need further financial and institutional training to implement these plans.

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

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

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

<sup>93</sup> 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).

South Africa has some notable broad-based participation mechanisms, among which are the Imbizo, which was highlighted as a best practice in the 2007 CRR, as well as 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 National Planning Commission at the Presidency and dedicated to encouraging 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.

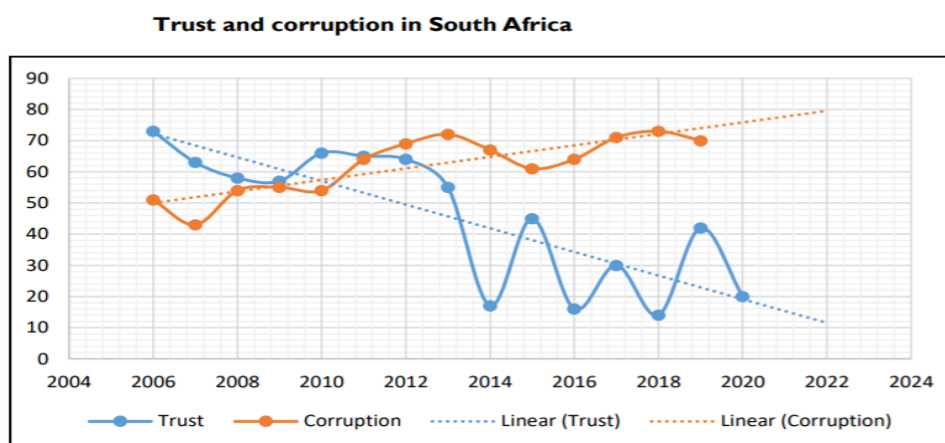
The SDGs tracker e-platform was initiated by Statistics SA in December 2019 to track performance and raise awareness among citizens and policymakers on the sustainable development goals (SDGs). The e-platform helps to identify gaps in SDG attainment, and with the ultimate goal of detecting areas where 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 struggle with institutional fragilities, including weak structures, corruption, trust deficit in the society, mismanagement of resources and lack of proper communication with citizens alongside failure of services delivery. According to the results of the 7<sup>th</sup> 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 strengthening social cohesion amongst communities. The demographic trend is quite alarming as most youth migrate to other provinces especially with the current challenges of COVID-19 crisis and lack of jobs.

573. The CRM noted that, while the *‘Imbizo initiative’* encourages 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 a municipality to another. 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 have also been noted and require 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 in Cape Town, Mafikeng and Buffalo city-. Further, innovative digital facilities are 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 response to COVID-19 and further insights to raise citizens’ awareness<sup>94</sup>. That said, efforts are 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 as regards Internet connectivity and penetration rate.
575. The CRM noted that SA Presidency has consistently organised, since December 2015, the Speakers’ Forum, as the representative body of the South African legislative sector. This 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 has been to review legislation, assess implementation, identify gaps, and propose possible revision.

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



576. The CRM noted the proliferation of skills gap challenge in different 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, e.g., housing, water and sanitation; 2) Poor communication and accountability relationships with communities;

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

<sup>95</sup> 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)

3) Challenges with the political-administrative interface; 4) Corruption, mismanagement and fraud; 6) Poor municipal financial management, e.g. 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 plan to boost transformation in different sectors, including spatial planning, water, infrastructure, digitalisation, and human settlements; while developing youth employment program. In Kwazulu-Natal, the province in partnership with the civil society, are 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 4<sup>th</sup> industrial revolution skills, able to drive skills required for green and ocean economy; respond to comparative advantages of each district, and promote entrepreneurship.
578. The CRM noted that South Africa provides access to information according to the ATI Act of 2000. Access to information law (ATI) provides free access to citizens on official records. The law has been amended various times to be aligned with various global and continental agendas. The purpose of this Act are: i) to give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights; and ii) To provide for matters connected. The latest amendment of this Act was in 2019, which was aimed at providing for information on the private funding of political parties and independent candidates to 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 an imperative challenge for South Africa's sustainable socio-economic development. The private sector has a significant role to play, especially that 70% of the economy is dominated by private sector and corporates. 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 corporates and companies, such as The Anglo-American SA, Sishen and Voorspoed are trying to play a community role alongside business activities. For example, Anglo-American SA seeks to align its Sustainable Mining Plan with SDGs as it defined milestones, 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 corporates are beginning to incorporate SDGs KPIs into their plan. As many citizens in South Africa revealed, they can't see the benefit of such a sector, but Anglo-American has evidently began accountability-based dialogues to address this issue.

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

581. **Sishen company** aims to ensure that its non-mining land is utilised optimally to benefit the mine and surrounding communities. In implementing the land management plan, Sishen sets key objectives in collaboration with the municipality to i) collaborating with local farmers and neighbours on farming practices; ii) incorporating socio-economic development initiatives onto existing land; iii) rehabilitating mine-affected land and using it to generate increased biodiversity and/or economic value; iv) educating and raising awareness around conservation; vi) Developing 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 suggest significant contribution to healthcare and well-being of the community they operate in (SDG 3). For instance, it is suggested that Anglo-American support HIV broad testing on its staff in coordination with UN specialised organs, while Voorspoed aimed 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 corroborative efforts, Investec and other financial companies (shareholders of Invictus Education Group) suggests implementation of strategies aimed at creating opportunities, through education and learnerships that could equip and enable young people within communities to become active economic participants.
583. The adoption of Agenda 2030 and SDGs also was 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 alongside challenges and opportunities.
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 strongly devotes to the awareness of business groups of SDGs and its significance for the private sector to play active role in the social and economic plans<sup>97</sup>. Although many companies recognised SDGs and its integration into strategic planning, only 10% of companies surveyed strongly agreed that they had integrated action on the SDGs into performance management (UNGCN, 2019).
585. The CRM noted that civil society is likewise involved strongly in the 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 has been supported 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 in a democratic state. Ten years on, the NDA remains committed to execute the mandate that is clearly articulated in the National Development Agency Act (Act No. of 1998)<sup>98</sup>. However, challenges of capacity and skills has been identified as major hindrance to realising the set objectives.

<sup>97</sup> Source: *Global Compact Network South Africa Insights Survey 2019*

<sup>98</sup> 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>.



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

Leading private sector companies in South Africa including Anglo-American, Sishen and Investec are observed to 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 issues.

An example of such programmes is in Kwa-Zulu Natal, where working through NEDLAC, the private sector supports community efforts to address skills gap challenges. NEDLAC is leading efforts with different stakeholders in civil society to address the mismatch in skills produced at the academic institutions as compared to those required by the labour market. In Durban, the city is developing training programs in three districts which focus on the ability to foster skills necessary to drive the 4th industrial revolution and the blue and green economies. The programmes respond to the comparative advantages present in 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 strongly 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 implementing critical socio-economic rights, such as the right to housing, healthcare, food, and social welfare, which have not fully been 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.
587. Local civil society organisations have also been holding mining companies to account for failure to implement promises to build low-cost housing, 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 lack of implementation of its promised building of low-cost housing, local economic development, and environmental rehabilitation.
588. South Africa's civil society has also provided public services in most instances to address the challenges of public service delivery failures across the country. The Johannesburg\_Child Welfare, the National Institute for Crime Prevention and the

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

Reintegration of Offenders (NICRO) and Cotlands, for instance, provide essential basic services, where the state is often 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, partnerships, children, and gender balance alongside youth empowerment.

589. During the presentation of SA first voluntary National Reporting (VNR) at the High Level Political Forum in New York (2019), a slot was given to CSOs representative to express opinions on the state of violence and other pertinent issues derailing the acceleration of SA's national development plan and SDGs. This is a landmark recognition of the importance of CSOs in the country in specific, and globally in general.
590. Private companies have a significant influence on investments, boosting economy and creating jobs. Investec, for instance, has adopted a framework for creating sustained long-term wealth, while contributing to society, macro-economic stability, and the environment. This approach focuses on three dimensions, people, planet, and profit. The Investec model is focused on how the financial services sector can advance the SDGs to build a more resilient and inclusive world. Investec in partnership with various stakeholders appear to strive towards preserving the 'Wild Economy' by focusing especially 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 also aimed to support youth employment. As one of the first signatories to the Youth Employment Service (YES) initiative in South Africa, the organisation opined to have placed over 1200 youth with 11 partners during the 2021 financial year.
591. Some private companies including Old Mutual, financial assets management, proposes to assist with various social programs especially education, with outcomes intended 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 to invest R350 million over seven years into under-resourced schools in key provinces. The overarching goal of the programme was to increase the number of bachelors passes (university entrance) of Grade 12 learners who enrolled for mathematics and science in their subject choice. By doing so, the number of students who access university education and expected to increase, resulting in enhancement of professional skills in the economy.
592. The CRM observed powerful presence of business groups in some provinces, but with limited socioeconomic 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 anger is brewing 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 recommends that South Africa:
- 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 socioeconomic issues with the support of African Union, and other partners
- Encourage peer-learning with other African countries on critical issues on public service delivery, fighting corruption, code of conduct, integrity, transparency, and Sound Policy
- Address the challenges of 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 and strategic planning and financial forecasting assessment.
- Enhance Official registration of CSOs and Non-profit organs to guarantee 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. This objective strives to uncover specific policy interventions and strides made by the government to reduce incidence and depth of poverty through job creation and redressing the inequalities of the past through balancing acts of equal access to opportunities and resources especially for the previously disadvantaged South Africans. In this regard, the multi-directional correlation between equal opportunities to employment and productive assets, and depth/prevalence of poverty, are deemed conspicuous enough to warrant investigation. Main issues from the previous review, progress reports and close out reports centres around socioeconomic emancipation of the historically disadvantaged people, as well as capacity to drive implementation of strategies adopted to address inequality, create job opportunities, 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 incidences are prevalent in South Africa. For instance, South Africa has experienced structural unemployment because of mismatch between available skills and job requirements. This form of unemployment has been furthered by technological shifts within the economy. In addition, 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 both poverty and inequality in South Africa. Inequality was institutionalised through differential policies for different races during apartheid and dealing with this legacy is still an uphill battle for South Africa. To that extent, it becomes important to understand efforts that have been made by the government to address unemployment since the transition to democracy in 1994.

597. The Close-Out Report is calibrated in a manner that ensures progressive appraisal of development made since the first country review in 2007, through to a series of 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 2<sup>nd</sup> Generation Country Review Report, page 9 – henceforth referred to as the second-generation report). In this regard, the report emphasised the importance of socioeconomic emancipation of the people.
598. Socioeconomic emancipation assumes varying dimensions. This hydra-headed concept is a composite of various measurable indicators of human livelihood, standard of living, source of income and economic status. It also touches on human development initiatives, such as capacity building and skills development that drives sustainable employment, access to decent income, affordability of decent livelihood and eradication of poverty in all its forms and depth. It is also important to note that socioeconomic emancipation includes equal and equitable access to opportunities 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 Report of APRM on 2<sup>nd</sup> Generation review 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"*. The above statement thus suggests that political emancipation alone will not be an adequate measure of liberation without socioeconomic emancipation. This said, we now look at each of the composite groups of socioeconomic emancipation in the paragraphs below, namely eradication of poverty through equal access to employment opportunity, which would ultimately help to eliminate ameliorate inequality.

*Access to employment opportunities*

600. Inability of government and private sector to create sustainable jobs and employment opportunities remain a challenge for the country since the base countries review in 2007. The country review report (CRR, 2007:273) 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 is clearly documented in the country review report, the incidence and prevalence of unemployment in the country continued unabatedly. 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; page. 274).*

602. The first progress report (2009, page 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, page 55) also buttresses the unrelenting need to create employment,” while the Close out report of 2020 (page 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 country self-assessment report (2021, page 52) also acknowledged that unemployment has been worsened by COVID-19 pandemic. According to the report, unemployment had increased tremendously 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 age bracket of 15 to 24 years – who accounted for 64.4 percent of total unemployed people.

#### *Poverty eradication*

606. The creation of sustainable employment opportunity, especially for the youth and women, is a catalyst to eradicate poverty. The same sentiment was echoed in the first CRR (2007, page 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 identifies policy initiatives that are meant 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 were 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 focusses on job creation through growth and expanded industrialisation.

607. The first progress report (2009, page xi) focussed on the expansion and strengthening social safety net, such as cash transfers in the form of Old Age Pensions, Disability, Child Support and Foster Care Grants and Grants in Aid, as guided approach to stem poverty and advance socioeconomic development. More importantly, the report indicates that a consensus was reached at the Policy Dialogue on the Poverty Line consultative forum held 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 decisive war against poverty were documented on pages 15 and 21 of the report.
608. The second progress report (2010, page 18) builds on the work done in finalising the definitions and measurements of poverty. The report also indicated that another line of safety net in the form of *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, page 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 acknowledges that the triple and cyclical challenge of poverty, unemployment and inequality remain stubbornly conspicuous.
609. The Close out Report (2016), with a deep documentation of other previous interventions, clearly indicate the need to arrest lingering lack of socioeconomic emancipation of the hitherto disadvantaged groups, especially through job creation, poverty alleviation, and amelioration of inequality. The report contained specific interventions and strides made by the government to alleviate (and ultimately eradicate) poverty, especially ‘intergenerational transmission’ of poverty (page 64). Some of the specific intervention deployed by the government include: *“...providing employment, housing, water, 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 Child Support Grant (CSG) as the dominant anti-poverty initiative of government in the body of social grant system in support of the poor people is notable and highly commendable.

*Amelioration of inequality*

610. Inequality continues to dominate policy interventions of 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 CRR 2007 identifies 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 promote equitable empowerment of the black majority as some of the drivers of socioeconomic challenges.
611. The report points to the fact that access to productive assets, such as land is critical to addressing inequality, by pointing out 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 (2009, page 21) acknowledges the continued need and urgency to address inequality, especially along racial lines. The report acknowledges 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 observes a correlation between educational qualification and income level, which tilts in favour of the white racial group. The report further suggests that promotion of access to quality education, especially among the historically disadvantaged racial group, would catapult a lot of Black people out of poverty as their income level improves and the support base is widened. Various measures to fund education and promote equal access to quality education are 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, page 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, page 103) begins 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 that accrue from economic growth to address inequality in a sustainable and notable way, especially by speeding up growth, improving health profile and skills base, eradicating racism and reducing crime and corruption. Although, 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 (page 105).
614. The close-out report acknowledges that problem of inequality in the country goes far beyond poverty and unemployment, by suggesting that the problem is structural, therefore, systemic. As a baseline approach to address inequality, the report identifies the need to reduce the number of households that earns a basic income lower than R419 per person from 39% to zero by 2030, and by also increasing employment from 13 million to 24 million by the same targeted year. The architect of inequality in the country was encapsulated in the report (page 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 state’s incapability to tame the greed of the capitalist few, guided approaches towards stemming the intractably widening “wealth gap” between the minority whites and majority blacks, as well as between minority elite blacks and the multitude blacks are identified, such as rebalancing the power relationship between government and corporate. The report referred to the “Fees Must Fall” protest as revolt against inequality.
616. The country self-assessment report (2021) 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 is the fact that the report (page 42) 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 suggests that inequality remains one of the gruesome reminders of the apartheid regime, which must be tackled with concerted regulatory and legislative reforms.

617. The APRM 2<sup>nd</sup> 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-nets redistributive approaches. The report identified various skills-driven divides at Provincial and other phases 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"* (APRM 2<sup>nd</sup> Generation Report, page 39). Although, government efforts towards reduction of level and depth of inequality through income retribution and poverty alleviation has 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 state to deliver sustainable socio-economic development. In this section the focus is on the progress made by the state to develop 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 various 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; to employ persons who find it difficult to be employed; to encourage workers to participate in learning programmes; to improve the employment prospects of persons previously disadvantaged (HDSA) by unfair discrimination and to redress those disadvantages through training and education. The Act further focusses 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 15–24 years old (ILO, 2019). South Africa is, moreover, subject to a severe qualifications mismatch: in 2018, just 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 sets ambitious goals for all levels of education, from early childhood to tertiary education. For instance, its aim is to increase the participation rate at universities by 70 per cent, boosting enrolment from 950,000 learners 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) 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, learnerships 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 managerial and financial skills are also documented in the progress reports as well as the CSAR of 2021.
622. Similar weaknesses on lack of critical skills were contained in the 2<sup>nd</sup> progress report (page 31), as well as the third progress report (page 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 (2016, page 24) and various other sections of the CSAR (2021, page 29), as well as page 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 engineered by inability of the state to take a bold step in driving national specialised skills development agenda in a decisive manner, in areas that are critical to economic development.

## ii. Findings of the CRM

### Socioeconomic emancipation

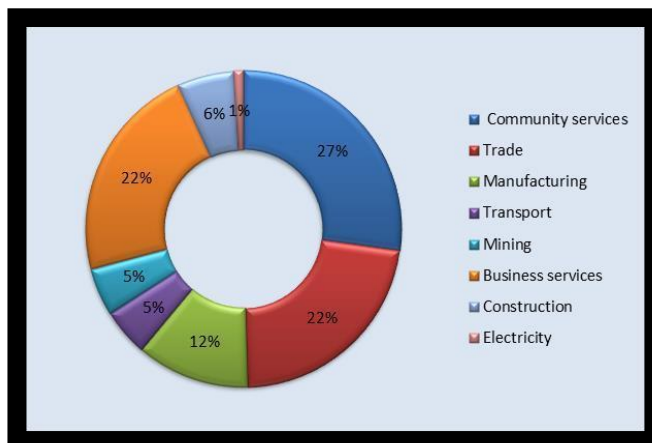
623. Socioeconomic emancipation, especially access to employment opportunities, is a central point of discord among participants during the consultations. There was evidence among participants to suggest that more effort is required by the government to advance socioeconomic emancipation of the people, especially by creating decent and sustainable jobs for the historically disadvantaged people.

#### *Access to employment opportunity*

624. In South Africa, the provision of job opportunities, especially through 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.

**Figure 5. 3. Contribution of different sectors of the South African Economy to Employment, 2017. (Stats SA, 2018)**

<sup>100</sup> [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)



625. Generically, the importance of an economic sector is 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, 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 source of serious concern, especially because the population of South Africa is dominated by youths. According to StatSA (2021), young people aged between 18 and 34 constitute about a third of South African population. However, this group of people have been particularly hit harder than any other age group in terms of unemployment. Although, youth unemployment has 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 rates 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 be a source of potential uprising against the state. It is particularly concerning because unemployment of enlightened youth may further cast aspersion state's legitimacy and this may result into various kinds of socioeconomic destabilisation.
628. Another important consideration on why youth unemployment must be tackled seriously is because dependent age in the country (0-15 years and those older than 60 years) constitute about 38% of the population. Combine with youth unemployment, the teeming percentage of South Africans barely depends on less than 36% of the total population that is employed. The implication of gradual erosion of employed people, especially as emigration continues to gain traction among skillful active population, would not only reduce the tax revenue, but also exacerbate clamour for social safety net, which is not sustainable.
629. It must be acknowledged that the economy has not grown substantially over the past years to meet the demand 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 COVID-19 pandemic (World Bank, 2021). However, allegations emanated from the consultations that few job opportunities that are available are allocated to party cronies, their families and friends even in the oblivion of qualification or capability deficiencies. 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 domination of specific group of people, recent trend has been a repeated of pre-independence experience whereby employment into public administration is now determined by race rather than competence and capability.

630. It must be admitted that unemployment is a critical socioeconomic challenge for the government. However, incidence of structural unemployment is a cause of concern. While 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 suggests 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 spectrum that is driven by knowledge and specialised skills.
631. It also emerges from consultations that there is limited access to productive assets, such as land and capital, to galvanise socioeconomic emancipation of the less privileged members of the society. Lack of access to productive land is one of the major challenges that have confronted the democratic dispensation. This challenge has been execrated by unwillingness of the minority whites to relinquish the land they forcefully expropriated from the historical owners through displacement, as expressed at the consultations. Opinion was also expressed that the “willing seller, willing buyer” government policy, which is meant to pacify the occupiers of the land to relinquish portions of the productive land, has faltered because of unwillingness of land occupiers to relinquish the lands. Although, forceful re-expropriation may not be advisable, a more robust and targeted approach that is measurable, guarded and strategic has to be calibrated. The adoption of asset convertibility, price control and nuanced tenure system may be considered, but this requires spirited dedication that is underpinned by decisiveness.

#### *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 promulgated 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, the recorded 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 expanse of policies that have been initiated and 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 has been questionable. For instance, the Reconstruction and

Development Programme (RDP) implemented in 1994 was meant to accelerate South Africa's rejuvenation into sustainable economic trajectory that prioritises social wellbeing of the previously disadvantaged portion of the population. The policy failed to rebalance economic opportunities and socioeconomic 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 accentuates 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 through anaemic policy implementation, has been criticised as a major political weakness during the democratic rules. In essence, there is notable level of inequitable access to basic fundamental necessities of life, such as access and affordability of basic education, primary healthcare, reasonable standard of living that is affordable, as well as equitable job and economic opportunities – all that helps to catapult 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 at schools. However, access to education remains uneven between the urban rich and the rural poor. In fact, some educational facilities in excluded urban poor communities are as bad as those in the rural areas with overcrowded classrooms, poor learning facilities and dilapidated infrastructure. Further observations were made at the consultative forums that basic schools do not benefit from free supply of books and stationaries in the country, irrespective 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). Evidence from the consultation indicates that so many public schools operate in informal structures, while a few other walk to school under horrendous situations. In KwaZulu-Natal, it was reported that a number of pupils have been swept away by storm waters, while a number continue to learn in classrooms that expose them to thunderstorms.
635. *Healthcare* – access and affordability of primary healthcare are becoming increasingly challenging, as suggested at the consultative forums. Although, considerable efforts that are backed by strong developmental policies have been made by the government to improve access, affordability and resourcefulness of primary healthcare facilities, these efforts are facing serious challenges as frustration grows on 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 affluent groups are discomfited with seamless access to healthcare because of stringent rules deployed by medical aid 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 expedient manner. The management of the NHI intervention may signal an acid test that breaks, mar or rejuvenate public trusts in the ruling party and its most criticised cadre deployment tactics.

#### *Water and sanitation*

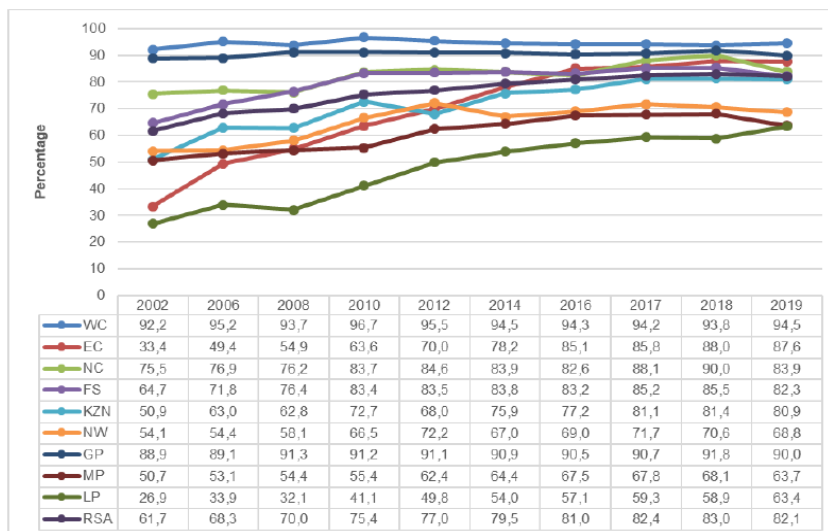
636. Potable water is an important component of human existence. The quality of water, as well as its accessibility are major determinants of quality of life and human dignity. More importantly, “water is life and important to our health, hygiene and sanitation” (Development Bank of Southern Africa, 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 realities over decades. This reality therefore corroborates the observation of DBSA that urgent interventions are required to avoid 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, page 137). Based on this constitutional provision: “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 this shared essential amenities, both access and administration of water and provision of decent sanitation have suffered extensively over many decades.
638. Provision of water and sanitation is considered central to socioeconomic emancipation of the people at large, and the most vulnerable groups of people, especially those in the rural areas. The strategic importance of this resource possibly prompted 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”. Although, 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. For instance, various non-for-profit organisations, such as the Gift of the Givers, have been called to action by desperate communities, such as the Makhanda in Eastern Cape, Hammanskraal and Helen Joseph Hospital in Gauteng, among other places.
639. Although, access to potable water for household is crucial, the importance of water supply to farmlands is also central to crop production and food security in the country. Furthermore and 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 temporal reprieve, but a more strategic approach, such as seawater distillation systems in the form of reverse osmosis and distillation should be considered as a matter of utmost urgency.
640. Sanitation, on the other hand, plays a crucial role in reducing exposure, prevalence and spread of communicable diseases. The ability of state to provide 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 of the general populace. Access to decent 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 sometime 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 top 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 prioritise the elimination of pit toilets in schools in order to eradicate avoidable sanitation-related children’s 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 6.1 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 made considerable improvement, the same cannot be said about Limpopo Province. The National Household Survey (2019, page 42) suggests that less than 27% of people in Limpopo Province have access to “any type of flush toilet”, thereby prompting more than 70% of people in Limpopo to use pit latrines of which almost 38% doesn’t have ventilation pipes. The contagion effects 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 as time progresses.
643. *Mitigation of inequality* – There are consultative evidence to suggest a polarisation of integrative approach in which the historically favoured groups are now subjugated to the same treatment experienced by the historically disadvantaged people. For instance, the Bill of Rights (Chapter 2 of the Constitution), as well as 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 racial discrimination in all its entirety.
644. However, some racial groups continue to feel highly marginalised and sometime “unwanted” in the development trajectory of 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 socioeconomic emancipation is weak appetite for progressive capacity building. Targeted approach towards capacity building, reprioritisation of skills through redirection of academic curriculums, and funding strategies are proposed at the consultative forums as possible antidote to address structural unemployment.
645. The skewness of economic opportunities also cascades down to limited access to basic livelihood. In most rural and some excluded communities within urban areas, a teeming number of people do not have access to decent 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% lived in informal dwellings and 5.1% lived in traditional dwellings. In specific, 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 lived in informal dwellings (called shacks). This is a particularly disturbing statistics 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. Quite a substantial number of the informal dwellings are derelict constructions characterised by overcrowded dwellers that have access to limited basic services. This possibly explains why Gauteng alone have 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 the fluidity of 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 less-skilful workers. Although, these industrial zones/clusters provide synergistic advantages to firms that locate there, they create a series of problems, both socioeconomic and environmental, to the communities where they are located. In most cases, industries are clustered in specific urban locations, which causes various congestions and worsens urban sprawls. Urban sprawls normally trigger massive influxes of new residents who would 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, attraction of investments into rural areas would have the following benefits:
649. Reduce rural urban migration – people will have productive 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 dislodge or atone the stigma of “ruralness” from communities that were hitherto considered underdeveloped.
651. This approach would help reduce pressure on transportation system if housing facilities are provided close to the industries. i.e. by providing suitable housing schemes for people that work in the factories that are located in the rural areas.

### **iii. Recommendations**

652. The African Peer Review (APR) Panel recommends:
- Invest urgently in seawater distillation systems in the form of reverse osmosis and distillation to avert possible draught.

- Reduce costs of doing business to attract investment, such as power, water and road network and 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 degrees to national needs. Aggressive implementation of related policies to facilitate knowledge production, skills development and capacity building in order to augment efficiency of service delivery at Municipal and local authorities – the presidency, department of higher education and training
- Reduce knowledge gap in the economy through the establishment of specialised bodies, such as training institute for civil servants; Management Development Institute etc. – National government; department of public service and administration, department of higher education and training, NEDLAC.
- Embark on aggressive skills production through relevant-on-the-job trainings and create incentives for doing so – Municipal and Local authorities
- Specialised jobs, such as engineering, architectural, accounting, auditing, financial management and tax administration should be in-sourced to improve internal capacity and to augment accountability at Provincial and Local authorities – Provincial and Local authorities.
- Revise industrial cluster policy and embrace even distribution of industries, especially to the rural areas – National, provincial and local authorities.
- Speedy development of 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 ultimately 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 to 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**

**Address Mainstream Gender and Issues of Disability into all Socio-Economic Development Programmes and Projects**

<sup>101</sup> For the South Africa Second Generation Review, issues of disability have been added to Objective Four.



653. This issue on gender has been considered extensively in Chapter 2 on democracy and political governance; this chapter discusses the same issue 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 further 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 of RSA of 1996, Act 108:7). South Africa continues to experience challenges with the management of gender and disability. The culture of masculine dominance, misogyny and lack of awareness on various forms of disabilities have resulted in communities where women and the disabled are marginalised.

#### *Gender Inequality*

654. One of the important issues the world continues to grapple with is gender equality, and related gender economic empowerment. Various countries have undertaken different initiatives to try and achieve gender parity and empower both women and girls in their respective countries.
655. The South African government have over the years taken steps to redress gender inequality by adopting various national and international protocols and legislations. The 1954 Women's Charter adopted by the Federation of South African Women is one of the earliest proponents of gender equality and non-racialism 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 is closely aligned to the UN 2030 Agenda for Sustainable Development; as well as The Public Sector 8-Principle Plan for Heads of Department on Women's Empowerment and Gender Equality, among others.
656. African Union Agenda 2063, founded 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 caters for varying areas of empowerment for women, such as equality in relation to the role of women in the economy through equitable access to resources, and access to and control of resource ownership.
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 epicentre of transformation. It advocates for a paradigm shift in terms of resource allocation and the treatment of people, especially women. This is a diversion 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 over time, 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, there remains a persistent under representation of women at local level and the private sector. The CSAR (2021) identified deeply-rooted cultural discrimination against women as one of the major causes of continuous 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 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<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 a report by Statistics South Africa<sup>103</sup>, there is now a balance in gender parity ratios (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 the unemployment figures from the QLFS Q1: 2021 released by Stats SA, unemployment rates for males and females were 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 females 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 both Q1: 2020 and Q1: 2021, more than four in every ten young females 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 females compared to males (8,3% and 6,5% respectively). Persons with disabilities increase with age. More than half (53,2%) of persons aged 85+ reported having a disability.
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

<sup>102</sup>[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)

<sup>103</sup> <http://www.statssa.gov.za/?p=14559>.

<sup>104</sup> <http://www.statssa.gov.za/?p=3180>

(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 opportunities.

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 bring into operation the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000 (PEPUDA).
666. The South African government, through its various policies including Employment Equity Act, BBBEE, PEPUDA among others, continue to commit to ensuring that the rights of people with disability are protected. However, the CRR points out that the progress 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 service needs of women and redress social injustices towards them. The Commission for Gender Equality - a Chapter 9 institution, has recently developed a Gender Responsive Budgeting Framework<sup>106</sup> to ensure that gender issues are mainstreamed at all levels of planning, implementing, monitoring and evaluation of government programmes across all departments.
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; Child- ren'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 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 sector. For example, women MPs have increased from 33% in 2004 to 46% in 2019. However, women participation in top management in the private sector remains at only 24% in 2020.

<sup>105</sup><https://www.sahrc.org.za/home/21/files/RESEARCH%20BRIEF%20ON%20DISABILITY%20AND%20EQUALITY%20IN%20SOUTH%20AFRICA%202013%20to%202017.pdf>

<sup>106</sup> <https://cge.org.za/wp-content/uploads/2021/07/CGE-Gender-Responsive-Budgeting-Framework.pdf>

670. The CRM noted that gender inequality and discrimination against women is on the rise, and this was also the consensus view among stakeholders in various provinces. In the North West for example, community members told the CRM that many women continue with 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 across the provinces that the targets for empowering people with disabilities according to the NDP are not being met. It was also a consensus position across provinces that issues of disability are not being mainstreamed across 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:
- Develop and implement of a Gender Culture Transformation Framework across 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, across government
  - 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.

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## CHAPTER SIX

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### 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 hallmark of change underpinning modernity and postmodern society today. The global risk report (2021) lists extreme weather events, failure of climate action, anthropogenic environmental damage, digital divides, cybersecurity risk, infectious diseases, and weapons of mass destruction, as the most dominant high impact risks the planet would witness over the next decade<sup>107</sup>. This does not only threaten the ability of a state to function but its very existence. Yet, responses to the risk by states seem to be deeply engrained in early century's assumptions that are inconsistent with the realities of crises and risks characterising modern-day societies<sup>108</sup>.
674. Today societies are witnessing what Beck (1992) calls the 'risk society/industrial society or reflexive modernity'. The risk society or industrial society is concern of generating wealth and in process of generating wealth, it creates risk instead. Consequently, the risk subconsciously overtakes wealth and threatens the modernity itself<sup>109</sup>.
675. Noteworthy, the modernity process has both positive and negative consequences. Advancement in science and technology has witnessed improved standard of living, as fewer people are now living in poverty than it was several decades ago. Contemporary world has also experienced sustained improved life expectancy and economic development. However, as people develop and as technology advances, societies are becoming interdependent and interconnected, which has created novel 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 left far-reaching impact across sectors and communities. Even the notion that one state must be capable to respond to disaster risk and uncertainties has been challenged by recent disasters, including COVID-19 pandemic that has addled the entire world.
677. Recent years have witnessed increased frequency and intensity of hazards, of which weather-related hazards have topped the list. Infectious diseases and pests have also increased exponentially. COVID-19 pandemic has brought to the fore that state must put in place robust national, supranational and multi-dimensional approaches to managing current and future trends of risks and disasters. However, it must be admitted that existing policies and institutional arrangements are important 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 achieving 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) 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 that have potential to not only undermine achieving the attainment

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<sup>107</sup> World Economic Forum (2021): Global Risk Report

<sup>108</sup> Beck (1992). Risk Society: Towards a modernity.

<sup>109</sup> Beck (1992). Risk Society: Towards a modernity

of a capable state but the viability of the state itself. In a globalising world, building resilience within broader context of “better Africa and the world” is key to achieving 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. Whereas its efforts to global and regional issues are commendable, the country still needs to strengthen its capabilities to the rising disaster risks. South Africa is susceptible 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 KwaZulu-Natal, Mpumalanga and Limpopo provinces. In the same year, flooding was reported in May and November in several regions across 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; not to mention the fire that gutted the Parliament buildings in Cape Town in January 2022. These hazards are becoming a regular occurrence, and the frequency are posing serious challenges for the country to contend with.
681. Certain hazards have a domino and/or cascading effect with each other, compounding loss and damage. In South Africa, this is particularly important when it comes to drought conditions and wildfire. The 2017 Knysna wildfire disaster demonstrated the country’s vulnerability to fires associated with periods of 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 is 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 food security of the country and the regions that 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. Grassland and savanna areas, 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 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. The poor and vulnerable in society tend to live in informal settlements and are at high risk of fire outbreak that may not only devastate their economic misfortune but may also result in loss of lives.
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 the animal husbandry.
686. Geological hazards pose greater danger to certain areas in South Africa. Some areas underlain by dolomite rock are susceptible to sinkholes, which is 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 in Lebanon, oil spills in Mauritius Lagoon and Gulf of Mexico. As witnessed in Lebanon, that single disaster threatens the very existence of the state as it grapples with loans to finance its reconstructions.
688. In order to address the challenges captioned above, South Africa has made commendable strides, particularly in 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 heightens 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), 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 community 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 fragmented and mostly lack currency. Many existing NDMC risk information management platforms are not operational. Remarkably, there is no central repository to store information on natural hazard events and risk.
691. **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, infrastructural, and capacity development in order 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 the implementation of 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 a spiral of repeat disasters affecting the same communities (e.g., repeat fires or floods affecting communities living in informal settlements). 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, is a major constraint. 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 the available 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 spanning, national to local levels. Whereas 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 e.g., 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 timely issued, 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 would need to consider reviewing institutional setting for the Disaster Management Centre/Agency; further review the National Disaster Management Act, 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. A point of departure is that the most recent update of the APRM Base Questionnaire, with State Resilience to Shocks and Disasters (SRSD) as the fifth thematic area, dates back to 2020 and was approved by the APR Forum of Heads of State and Government at their 30<sup>th</sup> virtual Meeting held on 25 March 2021. As a result, South Africa's 2007 CRR 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 unprecedented commitment to address 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's framework Convention on Climate Change (April 2016), are the country's demonstration of commitment at the highest level of leadership.
696. According to the Country Self-Assessment (CSAR, 2021), 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	
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				
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**ii. Findings of the CRM**

- 697. The issue of disaster management is critical to the development state as enshrined in South Africa’s Medium Term Strategic Framework (MTSF) 2019-2024. In the implementation of the country’s disaster management agenda, consistent efforts were made by the Government to ensure that relevant laws are passed to translate international commitments into national laws. South Africa took the lead in the development and implementation of the Disaster Management Act prior to the adoption of the Hyogo Framework for Action (HFA) with the view 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 provided leadership to 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 recorded minimum efforts in supporting and appropriate funding to the victims of recurrent disasters through appropriately 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**

<b>OBJECTIVE ONE:</b>	<b>Enhancing disaster risk knowledge for resilience to shocks and disasters</b>
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**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 encompasses that the major hazards and threats are identified, characterised and analysed by 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, when 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 (e.g., hospitals); and critical infrastructure (e.g., electricity and water works 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, is an important component of 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 for preparedness, response, recovery, rehabilitation and mitigation.
704. The SFDRR further emphasises the understanding of vulnerability and strengthening of coping 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"; and 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. To this extent, resilience places a stronger focus on the whole 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 disturbance without collapsing into a qualitatively different state, or to withstand a shock and to rebuild when necessary. 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 with planning, meaning that vulnerabilities are 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 state resilience determination.
706. Although South Africa has made progress in the area of disaster risk management in practice, 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 have contributed to the understanding of disaster risk, vulnerability and exposure in South Africa. Various geospatial data, maps and atlases have presented visualisations of climate risks and natural hazards that constitute important resource for project planning to ensure 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, presented risks and vulnerabilities in different sectors.
708. Scientific institutions in South Africa are at the forefront of generating geospatial data, maps and atlases that show, for example, mapping of 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 several 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), whose official inception was 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. 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 it can be confirmed 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 reduce their exposure to hazards. In addition, significant progress was made during 2016/17 regarding the development of the first African-based Earth System Model, the Variable-resolution Earth System Model (VRESM) at CSIR, and its application to study climate change over 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, and the institution plays a central role in early warning for meteorological and natural hazards. 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), and 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 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) at North-West University, which produces research on disaster risk reduction within Southern Africa while offering training at the masters and PhD levels in the area of disaster risk reduction. Furthermore, and to further their contribution, the North-West University signed a five-year Memorandum of Understanding with COGTA for the publication of the Jámhá where twenty-six articles were published between 01 April 2020 to 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

<sup>110</sup> <https://letsrespondtoolkit.org/municipalities/eastern-cape/>

<sup>111</sup> <https://cordex.org/about/what-is-regional-downscaling/>

Capacity (ARC) conducts research and development to generate knowledge and scientific solutions that could 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, 1996 (Act 29 of 1996) to improve safety of workers in South African mines. The Department of Mineral Resources and Energy (DMRE) collects mining statistics on a monthly basis, which includes data on overall fatalities per month, mining accident fatalities by region, analysis of fatalities by commodity (i.e., 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 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, generates and disseminates the data to relevant stakeholders on a daily basis. NICD plays a vital role in the early detection, containment and response to threats of infectious disease across 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. They continue 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 fragmented, not up to date 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) with the view to be a repository for various 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 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 centers' annual reports that show the number of affected people by a provincial disaster. 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 across 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 be operational.

The Disaster Management Act (2002) compels 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; (c) develop and maintain an electronic database envisaged; and take steps to disseminate such information, especially 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.

<sup>112</sup> StatsSA. 2019. Sustainable Development Goals (SDGs) Country Report - 2019 South Africa.

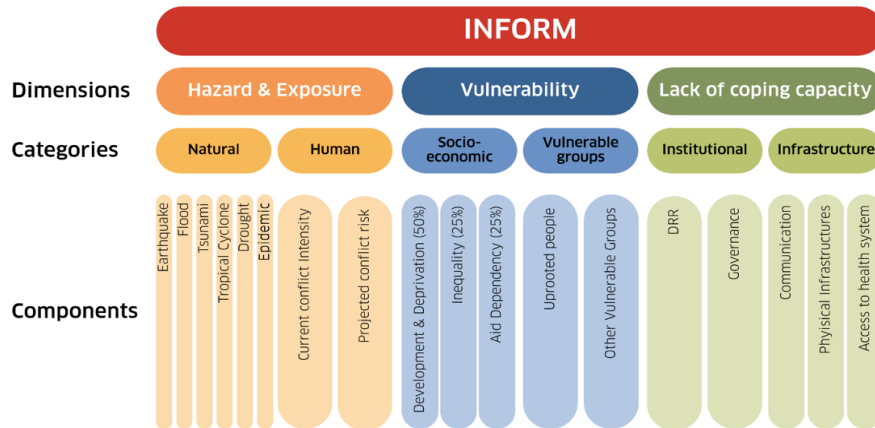
[http://www.statssa.gov.za/MDG/SDGs\\_Country\\_Report\\_2019\\_South\\_Africa.pdf](http://www.statssa.gov.za/MDG/SDGs_Country_Report_2019_South_Africa.pdf)

<sup>113</sup> <https://gis-portal.ndmc.gov.za/portal/home/%20index.html>

*Understanding disaster risk in South Africa*

717. Using data for the period spanning from 2015 to 2021, the INFORM country risk profile classifies South Africa as a country with medium risk, with vulnerability classified between medium to low, and hazard and exposure from medium to high. The vulnerability score, which is a composite of socio-economic indicators such as malnutrition rates, food availability and utilisation, and food access, amongst others. Figure 5.1 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.

**Figure 5.1: South Africa’s disaster risk profile**



**Table 5.1: 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

Data compiled from INFORM Risk Index, DRMKC - INFORM

Source: Inform Risk Index, DRMKC-INFORM

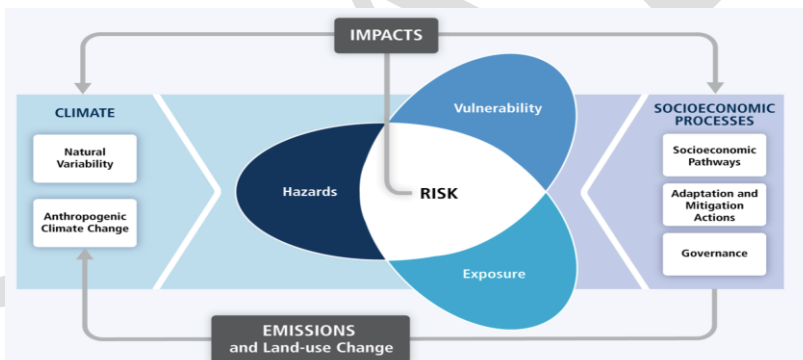
*Risk assessment*

718. Disaster risk assessment is usually the first step in planning an effective disaster risk management program. There are various national frameworks, 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>, provides pivotal information through which provincial and municipal governments understand and analyse risk in their respective areas.

719. 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 tend to be 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 have developed sector specific vulnerability assessments. The Western Cape is a province that has a comprehensive and documented reporting on vulnerability in different sectors. The agriculture sector was the first sector 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 the area of product storage; and vulnerable farmers.
720. 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 IPCC — Intergovernmental Panel on Climate Change (IPCC) Framework as depicted in Figure 5.2.

**Figure 5.2: 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.

721. 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. 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 that it proposes a range of planning and design actions 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.

<sup>114</sup> [https://www.gov.za/sites/default/files/gcis\\_document/201611/40393gon1363.pdf](https://www.gov.za/sites/default/files/gcis_document/201611/40393gon1363.pdf)

### 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

722. Remarkably, Gauteng's Overarching Climate Change Response Strategy and Action Plan (2020) assesses vulnerability in its eleven Response Programmes: (1) Natural Resources; (2) Agriculture & Agro-Processing; (3) Disaster Risk Reduction and Management; (4) Water Security; (5) Commercial and Institutional Buildings; (6) Human Settlements; (7) Energy Supply; (8) Industry & 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, and it 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.
723. 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 improved 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 does not only sets forth institutional arrangements for disaster prevention, but also has a comprehensive disaster risk and vulnerability assessment that is broken down by hazard type (storm, drought, wildfire etc.), category (hydro-meteorological, geological etc.). It further gives a vulnerability rating and highlights the regions/areas where the hazard takes place.
724. 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, are the natural hazard that is most frequently declared as a disaster in the country by the NDMC. In specific, the assessment covers a national drought risk profile that integrates hazard, exposure and vulnerability with risk for irrigated and rainfed agriculture separately, are lacking at the sub-national scale. Furthermore, comprehensive drought risk assessment that also considers socio-ecological vulnerability is missing.



### iii. Recommendations

725. The African Peer Review (APR) Panel recommends:

- Maintain and update the 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].

<b>OBJECTIVE TWO:</b>	<b>Governing disaster risk and resilience to shocks and disasters</b>
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### i. Evolution of the Issue

#### State of South Africa's risk governance and resilience to shocks and disasters

726. The transition from the Hyogo Framework for Action (HFA) 2005-2015 to the Sendai Framework for Disaster Risk Reduction (SFDRR) 2015-2030 witnessed notable improvements in the global agenda for disaster management. Despite the progress, disaster risk governance was found to be largely reactive during the HFA era. 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, as well as incorporate 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.
727. Disaster risk governance refers to the way in which the public authorities, civil servants, media, private sector, and civil society coordinate at community, regional and national levels in order to manage and reduce disaster and climate related risks.
728. South Africa's frequent and increasing levels of disaster risk due to the country's exposure to several hazards, including drought, cyclones and severe storms, extensive coastline and proximity to shipping routes as well as its shared borders with six southern African neighbours, create conditions for vulnerability, both in the poor settlements in urban and rural areas, but with potential of cross-boundary risks and humanitarian assistance obligations in times of emergency<sup>115</sup>. The realisation of these challenges has further led to growing political, public and industry concerns about the need for action while placing a particular emphasis on Government and local governments' planning.
729. In its consistent efforts to accommodate the international disaster risk reduction imperative, South Africa developed the 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.

730. 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.
731. 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*

732. 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 both the Disaster Management Act No. 57 of 2002 (DMA) on 30 December 2002; and subsequently the National Disaster Management Policy Framework (NDMF), 2005, as the main policy frameworks for disaster management in South Africa. These set of policies played a role in the decision of the country to overhaul its approach to disaster management over the past 20 years.
733. The main thrust of the Act and the National Disaster Management Framework, 2005 (NDMF), revolves around the creation of appropriate institutional arrangements for disaster management that is based on sound understanding that the ideals of disaster management cannot be achieved without the establishment of enabling structures to support its myriad of actions.
734. The Intergovernmental Committee on Disaster Management (ICDM) is the highest organ of the DMA. This committee comprises of 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.
735. In addition to the ICDM, the DMA establishes disaster management centres within each sphere of governance .i.e., the National Disaster Management Centre (NDMC) at the national and provincial levels. The NDMC, which is tasked with the main responsibility of 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).
736. 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 include 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.

737. The participation of various government departments in the ICDM attests to the practical institutional endeavour 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*

738. There are some pieces of legislations that deal explicitly with specific types of 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 duty of care and remediation in the event of environmental damage.
- **The National Veld and Forest Fire Act, 1998 & Fire Brigade Services Act, (1987):** The objective of the Act, which is 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:** The development of this piece of legislation, 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 initiated after the Ellis Park tragedy in which 43 people lost their lives as a result of a stampede at a sporting event.
- **The Environmental management & environmental impact assessment:** The National Environmental Management Act 107 of 1998 (NEMA) provides a framework for environmental management in South Africa. In pursuant 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:** Regulation of the use of water in South Africa is split between two primary pieces of legislation: the 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 the 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 land use legislation dating from the mid-1980s, especially the Development Facilitation Act 67 of 1995 (DFA) and the National Building Regulations and Building Standards Act 103 of 1977.

*Decentralisation of disaster risk in South Africa*

739. The passing of the South African 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 5.2 depicts the structure of disaster management within the three spheres of government in South Africa.

**Table 5.2 : Establishment of Disaster Management within the three spheres of government**

National sphere	<p><b>Inter-governmental Committee on Disaster Management (ICDM)</b> A political forum appointed by the President comprising –</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)
	<p><b>National Disaster Management Advisory Forum (NDMAF)</b> 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.</p>	(Section 5)
	<p><b>National Disaster Management Centre (NDMC)</b> Comprising the Head of the Centre, appointed by the Minister and officials employed in the Department.</p>	(Section 8(1)) (Sections 10 and 13)
Provincial sphere	<p><b>Provincial Disaster Management Centres (PDMC)</b> Controlled by the Head of the Centre who is appointed by the MEC</p>	(Section 29)
	<p><b>Provincial Disaster Management Advisory Forum (PDMAF)</b> 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.</p>	(Section 37(1))
Municipal sphere	<p><b>Municipal Disaster Management Centres (MDMC)</b> 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> 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.</p>	(Section 51)

Source: Adapted from UNISDR (2005).

740. As described above, besides 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*

741. 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.
742. 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.
743. Notably, during nationwide consultations, stakeholders informed the CRM that the key structures described in Figure 2 are not always operational or do not function adequately. Furthermore, not all relevant national departments have implemented the required disaster risk management activities.
744. 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.
745. The CRM further noted with dissatisfaction that the focus of the DMA rests mostly on natural disasters with little regard on other disasters such as pandemics and those happening most frequently in the mining sector. Such narrow scope is a major weakness that necessitates the need to broaden the scope of the current Act.
746. 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 multisectoral and multi-layered in nature, efforts should be undertaken 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*

747. The presence and frequency of multiple hazards and their associated vulnerabilities in South Africa creates the perfect ground for reforming/ improving the functioning of the Disaster Management Centre. The CRM found that the administrative location of 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 the Office of the President or Deputy President as is the case in other countries on the continent.
748. 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 mostly in many advanced economies, the issue of terrorism has become a major governance and development challenge that an advanced economy such as South Africa could not 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*

749. South Africa is a water scarce country, due to its low average annual precipitation, and the unevenness of surface and groundwater distribution as a result of climate and geography. More importantly, 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 precarious disadvantage possibly explains why South Africa is ranked the 30th driest country in the world<sup>117</sup>.
750. There is unequal access to and control over water, in which poor people are typically deprived of the benefits of unhindered access to water. The lack of efficient access to available water resources 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 incidence of the past have threatened crop production and death of animals. This kind of incidence has resulted in suicide among commercial farmers, especially in Northern Cape as well as in Western Cape in 2017.
751. Furthermore, it is worthy of note that a significant number of people suffer from life-threatening water-related diseases. The lack of efficient access to available water resources have led them to drink water of low quality, especially because of the exorbitant costs of treated or packaged water, especially during periods of drought. The same holds true for productive water use, for example for cropping as explained in the previous paragraph.
752. The persistence of the issue of water resources poses the fundamental question of the relevance of water policies and effective implementation. A review of existing policies with an emphasis on water coordination, especially a tool to empower communities on conservation management, can aid in lessening mismanagement or misuse of natural resources (water) as a needed intervention.

*Monitoring and evaluation*

753. 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-event reviews following disasters and significant events. What is certainly required is the enforcement of existing legislations and stringent compliance with policies and procedures.
754. 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**

<sup>116</sup> Helen and Suzman Foundation. 2020. <https://hsf.org.za/publications/hsf-briefs/water-scarcity-in-south-africa-a-result-of-physical-or-economic-factors>.

<sup>117</sup> Department of Communication and Information System (2020), URL: <https://www.gov.za/about-government/government-programmes/national-water-security-2015>.

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)*

755. 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.
756. At the regional level, South Africa participated in processes aimed at strengthening partnership 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 disaster, which was somewhat spearheaded by South Africa. Commendable Practice 6.3, which 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 was 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 further provided technical support through the South African National Defence Force (SANDF), South African

NGOs such as 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

757. On the 6th of April 2020, the Council of Ministers of the Southern African Development Community (SADC) adopted the regional guidelines for the harmonisation and facilitation of movement of critical goods and services across SADC during the COVID-19 pandemic.
758. 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 commendable party.

### iii. Recommendations

759. The African Peer Review (APR) Panel recommends:
- Review the National Disaster Management Act, 2002 in light of lessons learnt from Covid-19 pandemic with stronger powers to the NDMC and location 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

760. South Africa is party to global and continental disaster risk reduction frameworks that provide the common understanding 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 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”.

761. A key feature of disaster financing is mainstreaming disaster management into the development planning process. It does not only focuses on allocating resources for implementation of disaster risk reduction policies, programmes, laws and regulations, but also encourages the proactive approach of ensuring that each planned programme, activity and project, reduces the existing risks disaster and minimises its potential contribution to creating new risks of disasters.
762. 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 antidotes to the realism of 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.
763. South Africa’s membership to the ARC, which would provide many small farm holders and commercial farmers with access to funding, deserves careful consideration in the report. Data from Statistics South Africa (StatSA, 2020) shows that agriculture had 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 a leverage in the form of subsidies, especially to farmers during adverse circumstances, is of particular interest to this review.
764. In South Africa, most of the exclusion settlements built during the Apartheid regime, were in disaster-prone areas. In these areas and in megacities, the existing infrastructure<sup>118</sup> have aged, and urgent needs for rehabilitation and upgrading is compelling. Such undertaking would provide the opportunity for a national Urban Renewal Programme (URP) encompassing comprehensive risk assessments of vulnerability to technological hazards, as well as environmental and meteorological hazards. Ultimately, the success of the URP implementation largely depends on mobilisation and improved coordination of public investment as well as successful leveraging of private and parastatal investment<sup>119</sup>.
765. Finally, like all countries in the world, South Africa continues to suffer from socioeconomic maladies precipitated by 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 to only stimulate immediate effects is concerning. It would be expedient to broaden the response patterns to incorporate human and system renewal and rejuvenation into the planning. Ability of the system as a whole, and the human agents to rebalance and recuperate from the devastations of the pandemic will depend heavily not only on adequate and accurate planning, but adequacy of resources channelled towards recovery. The need for community mobilisation will also be critical as social capital is largely indispensable to “build back better” hypothesis after major disasters like the pandemic.
766. The Country Review Report (2007 CRR) provides an overview of the socioeconomic vulnerability of the population a decade after the country’s political dispensation. The report underscores 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 are discussed at length in the report and imply huge investments in order to reduce the vulnerability of the country, communities, and citizens.

<sup>118</sup> National Disaster Management Centre. Annual Report 2019 – 2020. Available at <https://www.ndmc.gov.za/AnnualReports/NDMC%20Annual%20Report%202019-2020.pdf>

<sup>119</sup> University of Stellenbosch. National Urban Renewal Programme: Implementation framework. Available at <http://www.stellenboschheritage.co.za/wp-content/uploads/National-Urban-Renewal-Programme.pdf>.

767. As highlighted in the CSAR 2021, South Africa’s current National Development Planning Agenda intends to address most of those vulnerabilities under the 6 priority areas outlined in the Medium-term Strategic Framework (2019-2024).
768. 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 COVID-19 pandemic. In 2020, International Monetary Fund (IMF) approved a R70 billion loan (US\$4.3 billion) for South Africa to help the country manage the immediate consequences of the fallout from the pandemic. Although, this funding was essential in the response approach of the government to the disaster, but 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 key source of concern in South Africa.

**ii. Findings of the CRM**

**Investment in resilience to shocks and disasters**

*South Africa’s current disaster management funding structure*

769. 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 the 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.
770. Table 5.3 shows that funding for disaster management is channelled to the district municipalities. Analysis of Annual reports published by the National Disaster Management Centre (NDMC) shows that South Africa has traditionally adopted a reactive approach, which focusses extensively on provision of funding for post-disaster recovery and rehabilitation as directed by the Disaster Management Act, 2002.

**Table 5.3: 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
		Access to central contingency fund once threshold is exceeded

<b>Response, recovery, rehabilitation and reconstruction</b>	Local government	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, NGO's and donor funding
Notes: <sup>1</sup> . 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 National Treasury.		

771. A lack of financial resources for development and the poor socio-economic conditions affecting disaster-prone communities often leads to a spiral of same disasters affecting the same communities (e.g., 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, in terms of the Disaster Management Act, 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.
772. Analysis of the current funding structure highlights lack of funding for disaster risk reduction as a major constraint while underscoring the urgency to move from disaster response to risk reduction. This current funding model for disaster risk reduction within 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.
773. 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 atone disaster-related issues. A paradigm shift from reactive to the proactive investment approach to financing and resilience becomes imperative.
774. As opposed to the prescription of the DMA, available reports and consultations confirm the lack of effective monitoring and supervision to ensure that funds were used for their intended purposes. There were also complaints about the long process of releasing funds intended for disaster relief.

*The Disaster Management capacity divide*

775. It was understood through consultations in Gauteng and in all other provinces that funding allocated to Disaster Management in South Africa is skewed towards three major provinces of Gauteng, Western Cape and KwaZulu-Natal -Natal, and this finds expression in the number and quality of human resources, equipment as well as their response capacity in these provinces.
776. As a result, local governments and municipalities are constrained 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.

777. Critical analysis of the country's risk profile shows that disasters disproportionately affect segments of society. Consultations further buttress the need for further 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 dispensation. With the proportion of South Africans living in towns or cities projected to house at least 68% of national inhabitants over the next decade, many urban-based municipalities are set to experience serious challenges in promoting economic development and addressing poverty.
778. 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 urgent public and private interventions are required. Consultations further confirm that some disaster interventions were made impossible due to inaccessibility of those areas by Disaster Management teams as a result of open sewages, surface water drainage, and entangled electricity cables that dangles across the access roads.

*Urban renewal efforts in South Africa: Achievements and challenges*

779. Worldwide, Urban renewal is used as a key component of urban policy, planning, and practice. Since the country's political dispensation in 1994, cities have actively been pursuing urban renewal projects as a response to 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 efforts, a lot more is still required to safeguard heavy losses through disaster risk management laxities.
780. 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 is 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 a seriously decaying infrastructure that urgently needs rehabilitation and upgrading.
781. 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 largely depends on improved coordination of public investment, as well as successful leveraging of private and parastatal investment<sup>120</sup>.

*Access to innovative and sustainable disaster risk financing mechanisms*

782. Besides the 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 notes the unavailability of such financing mechanism in South Africa. As a common practice, funding is released only after the occurrence of the disaster.
783. 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, DRFI

<sup>120</sup> University of Stellenbosch. National Urban Renewal Programme: Implementation framework. Available at <http://www.stellenboschheritage.co.za/wp-content/uploads/National-Urban-Renewal-Programme.pdf>

<sup>121</sup> International Federation of the Red Cross (IFRC). 2021. Early warning, early action. Available at <https://www.ifrc.org/early-warning-early-action>

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.

784. Although, South Africa has a very strong insurance culture from a private sector, there are lot of 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 various funding mechanisms. South Africa is yet to accede to the continental-wide disaster management instrument - ARC. The non-membership of 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 susceptible to various risks and disasters.

*Investment in higher (tertiary) education for disaster knowledge*

785. 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 few universities. South Africa hosts the African Centre for Disaster Studies (ACDS) at the Northwest University, a centre that aims to address the 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 they strengthen public education in shocks, infectious diseases and disasters.
786. South Africa is to be commended for hosting the Periperi U<sup>122</sup> the Secretariat, 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 they strengthen public education in shocks, infectious diseases and disasters.

*Mainstreaming disaster management into the development planning process*

787. Mainstreaming disaster management into development agenda of the country, generally builds on experience of the developed world that improved design, construction, and regulatory compliance can significantly reduce loss of life that may result 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) in terms of the National Building Regulations and Building Standards Act<sup>123</sup> 103 of 1977. This Act is promulgated to provide for the promotion of uniformity in the law relating to the erection of buildings in the areas of jurisdiction of local authorities, by prescribing building standards; and for matters connected therewith.
788. Infrastructural 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.
789. Owing to the regular collapse of buildings in the country, which are not necessarily related to disaster, but do however cause disasters, special attention need to be paid to the enforcement processes by the statutory building institutions.

*Climate change and biodiversity loss in South Africa*

<sup>122</sup> 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)

<sup>123</sup> <https://www.gov.za/documents/national-building-regulations-and-building-standards-act-16-apr-2015-1302>

790. South Africa is a water scarce country, with a highly variable climate and has one of the lowest run-offs in the world<sup>124</sup> due to its low average annual precipitation, and the unevenness of surface and groundwater distribution (Demand-driven water scarcity, Climate-driven water scarcity, and Pollution-driven water scarcity). Some of the areas of acute water shortage are the Western Cape, Eastern Cape and the Northern Cape provinces.
791. The country's vulnerability to drought due to excessive reliance on traditional surface water resources may culminate in 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 may obstruct economic activities in manufacturing, retail, wholesale and every nerve centers of the economy.
- Invasive alien plants (IAPs)*
792. 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 causing environmental pollution), human livelihoods and economic development.
793. 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 pressurises scarce resources that are channelled towards environmental risk management.
794. 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 compels 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.
795. 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), 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>.
796. 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.
797. In order to enhance energy security, South Africa should ensure it drives the low emission financing agenda, including the development of a green investment plan of as much as \$500

<sup>124</sup> National Climate Change Response White Paper, 2012.

<sup>125</sup> 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)

million (R7.3 billion) annually, representing 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 the private sector 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 exceeds 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

798. 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

799. The African Peer Review (APR) Panel recommends:
- Implement innovative, sustainable and efficient disaster funding mechanisms such as Forecast-based Financing (FbF) with investments focused more on preparedness than 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**

800. Preparedness against potential hazards and early warning systems are intertwined and the concepts are highly interdependent. Early warning systems ensure that people are prepared and ready to act in the event of a disaster. Early warning systems and preparedness are indispensable measures that governments have to undertake to achieve substantial reduction of disaster losses. Combined with anticipatory actions, preparedness can significantly contribute to successful response and building back better in recovery, rehabilitation and reconstruction. When devoid of early warning systems, adequate preparedness and timeous response are bound to fail. However, the existence of an early warning system does not necessary guarantee successful preparedness and organised response. Early warning systems may also 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 as indispensable as each one of the components in the continuum: failure of one may result in failure of all.
801. 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, the advancement in Disaster Risk Management discipline, introduces plethora of jargons that may be, inadvertently, creating more misunderstanding than understanding the problem and the actions that ought to be taken, if not well explained and put into perspectives. These concepts, by way of introduction, are clarified to aid understanding of this report.
802. **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 dominance 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, socio-technical hazards, epidemics, pests and diseases, among others. MHEWS represent a significant innovation in towards ensuring better coordination of early warning and early actions by different sectors in a centralised or interoperable institutional arrangements; in a way that increases efficiency and consistency of warnings<sup>127</sup>. Cumulative experiences in early warning systems over the years breed new concepts such as impact-based early warning and end-to-end and people centered 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 (iv), and preparedness. These four interrelated components need to be coordinated within and across sectors and multiple levels for the system to work effectively and to include 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.
803. **Preparedness:** Early concept of preparedness was characterized by 'being ready to respond' to a disaster. In being ready to respond, training of responders and prepositioning of supplies and equipment to the areas that may be potentially affected were some of the important actions. Whereas these actions form part of contemporary 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 no

<sup>126</sup> AU (2021): Africa Institutional Framework for Multi-Hazard Early Warning System and Early Action

<sup>127</sup> UNDRR (2017). Disaster Risk Reduction Terminologies.



or little 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 swift and organised, further reducing loss of life, livelihood and environment, including protecting development gains.

804. **Response:** Typical response phase starts when the hazard strikes and results in a disaster. Experts describe activities at this stage as being of desperate phenomenon, thereby requiring urgent supports. These are situations in which no human being would wish to find themselves. Rescue operations, finding and burring victims of fatalities, providing shelter and other basic services to alleviate human suffering, amongst other, characterise this phase. Depending on the magnitude of a disaster, response may last days for, weeks or months or even years, especially in case of protracted and complex humanitarian emergencies. This phase precedes the recovery and reconstruction phase.
805. **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>.
806. Overall, South Africa constitutional provisions on disaster management are explicit. Section 37 (a) and (b) of the Constitution of the Republic of South Africa 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, 2002 places early warning systems as a component of 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.

## 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*

807. 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

<sup>128</sup> IFRC (2021): World Disaster Report 2020.

<sup>129</sup> UNDRR (2017): Disaster Risk Reduction Terminologies.

<sup>130</sup> 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.

<sup>131</sup> Republic of South Africa (2002): Disaster Management Act 2002.

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.

808. The Country 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 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.
809. There is a quarterly forum in place to discuss seasonal forecasts and actions to be taken. While this is important, it would not be sufficient to replace a 24/7 multi-hazard early warning system, which is highly recommended for the country.
810. 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 inter-operational with the national disaster management situation room and South Africa Weather Services, among others.
811. Even where warning is timely issued, 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.
812. SAWS could leverage its experience in aviation meteorology in which the forecast is specific and contextual e.g., informing pilots of the weather conditions on the routes and advising them on what actions to undertake i.e., providing alternative routes for the flight.
813. The insurance sector is largely seen as a leader in translating early warning information into action. Where the SAWS issue warning, insurance companies informed 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 also would advise farmers on specific actions to take to avoid losses.
814. Whereas 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*

815. South Africa has advanced policies and guidelines on emergency preparedness spanning national to local levels. Whereas 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.
816. 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 firefighting equipment with millions of Rands in their coffers. This does not only expose the challenges in equitable resources allocation but an important indicator in inequalities in South Africa.
817. 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 is not operating 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*

818. Response plans are well developed in South Africa. However, the key challenge remains the timing of actual responses to disasters, which is 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 timely in order to save life and mitigate losses that would arise from disaster impacts.
819. Response to disasters in South Africa, is to large extent, dependent on police and this owes its definition as militaristic in nature. While the role of 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.
820. South Africa took the lead in categorising COVID-19 pandemic as 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 COVID-19 pandemic, which took days or weeks to declare an emergency.
821. Following declaration of state of national disaster as per the South Africa Disaster Management Act, 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, yet 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, COVID-19 pandemic exposed major institutional weakness in the platform. This approach clearly indicates that existing capability is deficient of 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.
822. The establishment of a new “right forum and decisive leadership” for a new disaster as in 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 could have been no harm if the existing National Platform was restructured and armed with the right mandate and decisive leadership. In doing so, such a platform would then continue to learn from every disaster to improve and prepare for future disasters, which will be better than ad hoc committees that are dissolved after a disaster is over.
823. Whereas the country’s response to COVID-19 disaster was swift, the response was marred 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, ongoing investigation is the right step in the right direction.
824. In-depth review of impacts of the COVID-19 pandemic highlighted how societies are susceptible to systemic risks and domino effects of disaster risks across sectors. The pandemic was interspersed with other social disruptions and further created hybrid crises. To respond to the protests and vandalism in July 2021 that was triggered by underlying socioeconomic 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 deeply ingrained in poverty, hunger, and possibly, anger with the state. Notably, the link between COVID-19, looting spree, aggravated violence under the guise of protests, all created worrisome conditions for unchequered spread of the pandemic. It could thus be suggested that poverty is a clear driver of how disasters could trigger existing vulnerabilities, and thereby, compounding crises.
825. More importantly, the pandemic brought to 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, COVID-19 pandemic could be regarded as a multi-dimensional disasters that required a more guided and robust strategy. The pandemic brought

to fore 10 key governance challenges facing Africa: 1: No 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; Challenge 3: Most African countries are unprepared for future pandemics; Challenge 4: In sub-Saharan Africa, being out of school means being out of learning; Challenge 5: Women and girls bear the greater brunt of COVID-19; Challenge 6: COVID-19 pandemic has further shrunk the civic space and media freedom; Challenge 7: No social recovery without wider social safety nets; Challenge 8: No economic transformation without access to energy, sanitation and basic necessities of life; Challenge 9: No digital economy without fixing the digital divide; Challenge 10: No integrated economy without adequate intercontinental transport networks<sup>132</sup>.

826. 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 does show lack of implementation of disaster risk management continuum, from prevention and mitigation, preparedness, response, to recovery.

*Build Back Better in Response, Recovery and Rehabilitation*

827. Lack of up-to-date national databases for disaster losses pose 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 was not updated since 2014. The country relies heavily on international databases such as EM-DAT. This has to change in order to develop local capacity.
828. 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 (about 3.75 million people affected) and over USD\$3.68 billion economic losses. Despite being grossly underreported, the economic losses from disasters would have contributed meaningfully to catapult a notable 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>.
829. There are significant gaps in the EM-DAT database. The criteria adopted in determining what constitutes a disaster does not align with national requirements. The database also only recorded limited disaster events and the related impacts are usually underestimated. However, in absence of a comprehensive national disaster database, EM-DAT became the most relevant database available.

**Table 2: 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	

<sup>132</sup> Mo Ibrahim Foundation.

<sup>133</sup> The Independent (2021): This is how South Africa can eliminate poverty in three years.

<b>2012</b>	Storm		1,350	
	Flood	13	125,000	225,451
<b>2013</b>	Storm	3	2,870	
<b>2014</b>	Flood	32	7,185	92,926
	Earthquake	1	2,002	
<b>2015</b>	Drought		2,700,000	272,988
<b>2016</b>	Extreme temperature	11	20	
	Flood	6	600	107,835
	Flood	7	6,900	194,103
<b>2017</b>	Storm	9	6,918	298,807
	Storm	11	518	337,874
	Drought			1,267,028
	Flood	3	200	
	Wildfire	9	5,500	443,460
<b>2019</b>	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	

830. In a CEIC international database, the number of South Africans displaced by disasters since 2008 is estimated at 9000 internally displaced persons per annum. There is no statistics on how many of these phenomenal numbers have returned to rebuild their lives and how many might have migrated to other towns and cities – permanent displacement.
831. Further compounding tracing recovery efforts from disasters is the lack of a national database for tracking recovery programmes. Even the international databases are silent on answering questions around “where did the millions of people displaced by disasters go”? If they have returned to their homes or assisted to rebuild their lives, how many of those had built back better?
832. 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 for marginal livelihoods. This may further predispose them to future shocks and disasters. Such populations could live in perpetual poverty, get involved in crimes and other desperate measures to earn any form of desperate livelihood.
833. 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 – in a more resilient manner.

### iii. Recommendations

834. The African Peer Review (APR) Panel recommends:
- As a matter of urgency, centralise the Disaster Management function with the view to expediting responses and develop long-term recovery and reconstruction programmes [*Presidency, Parliament, CoGTA*];
  - Review the National Disaster Management Act, 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 Systems Programme with interconnected situation rooms across 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 given to financing coping capacities, addressing vulnerabilities financially, as well as capacitating the Disaster Management Agency [Presidency, CoGTA, Department of Finance]; and
- Increasing budget allocation for establishing a disaster recovery facility to rebuild resilience of affected communities by disasters, including their capacities to withstand future shocks and disasters [Department of Finance, Parliament and CoGTA].

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## CHAPTER SEVEN

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### 7. CROSS-CUTTING ISSUES AND GENERAL CONCLUSION

#### 7.1 Overview

835. This chapter itemises the challenges of a cross-cutting nature, that are of a persistent and recurring nature, often relevant to some or all the five APRM thematic areas discussed in the previous five thematic chapters.

#### 7.2 Cross-cutting Issues

836. Three Cross-cutting Issues have been identified:

- Gender-Based Violence;
- Corruption; and
- Implementation of Policies

##### 7.2.1 Gender-Based Violence

837. 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 say they've 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 this 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.

838. 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 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**

839. The South African government has committed, 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.

840. 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 strive towards expediting 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.

841. The limited socio-economic opportunities available to women also has a significant effect on their susceptibility 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 less economic opportunities are often grossly violated. Further, the unemployment rate among women that are eligible for employment was higher among black African women at 41,0% 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 likely to experience gender-based violence because of peculiar exclusion from main stay economic opportunities that commingles a compromise of their fundamental human rights.
842. The APR Panel recommends that the Government of South Africa:
- 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

843. 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. Incidence of grafts generally undermines the functionality of democratic institutions, erodes the stability of macroeconomic fundamentals, corrode social capital between the government and the people, and may therefore precipitate socioeconomic and political instabilities. Documented evidence from Corruption Watch (2020) suggests that corruption may take a series of forms, including abuse of political leverage, bribery, embezzlement of funds, malicious interference with the regulatory and judicial systems, and subversion of professional ethics and norms.
844. A study South Africa 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%), closely followed by KwaZulu-Natal (10%), while Western Cape accounts for 9%. In addition, Limpopo, Mpumalanga, and North West each recorded 8%. The aggregated data suggests that 28% of the reported cases related to bribery, while procurement irregularities was 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 incidence of graft has aggravated over the past years, the horrid 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.
845. The CRM found, through the consultative forums, that corrupt practices are perceived 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 notable manner. The deep involvement of top party leaders, especially at Provincial and Local authority levels in graft,

especially in the form of infamous procurement anomalies, therefore 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 casts aspersion on the sincerity of the current administration to eradicate corruption.

846. The APR Panel therefore recommends that the state should improve its institutional capability and competence, through reformation of the State Investigation Unit (SIU), which is the main organ charged with the responsibility of collecting hard evidence needed for prosecution. In addition, the Panel recommends that the notable vacancies at the National Prosecution Authority (NPA) should be addressed in order to strengthen the institution with competent and desirous members in order to effectively prosecute suspects without delay. Although, the country is deemed appropriately positioned to protect whistle-blowers, recent attacks and assassination of whistle-blowers is an ugly reality 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 should be implemented with utmost urgency; and with all the seriousness that anti-graft interventions require.

### 7.2.3 Implementation of Policies

847. 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, 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.
848. This manifests in a myriad of ways, such as poor performance by SoE's poor 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 identified 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**

849. 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 members of the society. But acute challenges remain in host of other areas, namely stubbornly high unemployment rate, abrading public security and safety, growing informal settlements and persisting spatial inequalities, unequal public education and health systems these are in larger part, arrogated to the historical unconscionableness of the apartheid rule. Although, the post-apartheid democracy has initiated a series of policy frameworks to respond to these challenges; however, there seems to be systemic obstacles to the potency of these interventions to achieve the desired objectives. The CRM identified weak capacity as a contributing factor to poor policy and program implementation; and found this to be especially pronounced at local government levels. The local municipalities generally lack requisite skills, especially in critical areas, such as procurement and supply chain management, engineering, urban planning, and financial management. Many service delivery challenges are technically difficult to resolve without skilled management teams, and the lack of these skills at local levels makes it almost impossible to

strategically address service delivery challenges. Various national policies are underpinned by the presupposition that municipalities will play a central role in driving social and economic development at the local government level. However, it appears that weak capacity at this critical tier of government is hindering the realism of those laudable objectives.

850. 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. AGSA painted a particularly worrying increase in the appointment of unqualified technical staff members at the municipality level: "156 municipalities (78%) appointed financial reporting consultants; an increase from 124 municipalities (62%)"<sup>134</sup>. Key technical positions are also left unfilled for extended periods of time because the specific kind of preferred candidates cannot be found. Some of the critical areas that lack capacity are procurement and supply chain management, which has been the source of major incidence of graft and impropriety "high occurrence of irregular expenditure". In addition to this, weak 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 out loudly and 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.
851. It is however, noteworthy that a number of initiatives have been launched over the years to address issues of capacity to improve efficiencies in 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 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 upskilling 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 establishment of these strategic mechanisms and tools, municipalities and local authorities simply find it difficult to deliver the required outcomes, simply because of supposed disregard for professionalism and the tendency to place the interest of political parties above the common good.

### **Better Regulation and Oversight of Compliance and Remedial Management**

852. Another observed challenge for policy implementation is sub-optimal institutional compliance to regulations, which seems to be systemic across sectors. There are several examples for illustrative purposes. Overall, results from the Department of Planning, Monitoring and Evaluation's (DPME) State of Management Practices in Municipalities for the financial year 2016/17 indicated that there is continued non-compliance of municipalities to regulatory frameworks. Related to this, 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 attainment of socioeconomic 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.

<sup>134</sup> 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-%2020%20MFMA%20Consolidated%20GR.pdf>

<sup>135</sup> 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>

853. 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>. 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 healthcare, which is problematic for a country with a quadruple 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

854. 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, 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) and the Department of Public Service Administration (DPSA), and the Department of Cooperative Governance and Traditional Affairs (COGTA), and all the Chapter 9 institutions. Although, these institutions investigate incidence of grafts 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.

855. The CRM appreciates the scale and complexity of the challenges that the country faces, and also notes the challenges on the horizon of a growing population, increased urbanisation, and the threat of climate change and increasing natural hazard risks. The country is operating in a difficult macro-economic environment with continued socioeconomic 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 at all spheres of government. It though recognised that it would be a herculean task to somount? these challenges, but spirited political will and strengthened state capacity would help to ease the tasks.

856. The APR Panel recommends:

- That the Department of Planning, Monitoring and Evaluation (DPME) 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 Municipalities levels to determine baseline skills in collaboration with South African Management Development Institute

<sup>136</sup> The Office of Health Standards Compliance (OHSC). 2018/19. Annual Report [https://static.pmg.org.za/OHSC\\_Annual\\_Report\\_201819.pdf](https://static.pmg.org.za/OHSC_Annual_Report_201819.pdf)

<sup>137</sup> 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>

<sup>138</sup> Office of the Public Protector 2020/2021 [http://www.ppprotect.org/sites/default/files/legislation\\_report/KZN%20Health%20-Systemic%20Investigation%20Final.pdf](http://www.ppprotect.org/sites/default/files/legislation_report/KZN%20Health%20-Systemic%20Investigation%20Final.pdf)

<sup>139</sup> Department of Water and Sanitation. <http://ws.dwa.gov.za/IRIS/myriver.aspx?c2VvcD0xJnNob3dfYWxsPTE=>

(SAMDI), 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-assignments 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**

857. The APR Panel is confident that South Africa has all the tools, capacities and political support necessary for implementation of the NPoA in order to improve governance and contribute to the attainment of the National Development Plan as well as the AU Agenda 2063, Africa's long term plan for socio-economic development.

858. 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 South Africa for their warm welcome and hospitality, and for the facilities and resources put at the disposal of the review mission. The country is also applauded for continuing its leadership role as only the fifth AU Member State to complete two APRM governance reviews.

**Annexe 1****STATEMENT OF ACKNOWLEDGEMENT BY THE GOVERNMENT OF SOUTH AFRICA**

1. The endorsement by the Cabinet of the Country's Self-Assessment Report (CSAR) on 08 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 indicates 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 ambit 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 the 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: 1. The APRM Forum Heads of State and Government for their support; 2. The APR Panel of Eminent Persons for the professional manner in which they have discharged their duties; 3. Bishop Dinis Sengulane for the exemplary manner in which he led the CRM in South Africa; and 4. 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.