

**SOUTH AFRICAN APRM TECHNICAL
REPORT FOR THEMATIC AREA 2:**

**ECONOMIC GOVERNANCE
AND MANAGEMENT**

DRAFT

The South African Institute of International Affairs

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SELECTED ACRONYMS

This report has used the convention of initial capitals only for acronyms that can be pronounced as a word (such as Sangoco, Busa and Odac) but all capital letters for acronyms that are pronounced by spelling out the letters (such as MTEF, APRM and MFMA).

ACP	African-Caribbean-Pacific
ACU	Anti-Corruption Unit
AFU	Asset Forfeiture Unit
AGSA	Auditor-General of South Africa
AICC	African Institute of Corporate Citizenship
AIDC	Alternative Information and Development Centre
Aids	Acquired Immune Deficiency Syndrome
AML/CFT	Anti-Money-laundering/Combating the Financing of Terrorism
ANC	African National Congress
APR	African Peer Review
APRM	African Peer Review Mechanism
ARV	Anti Retrovirals
Asgisa	Accelerated and Shared Growth Initiative for South Africa
AU	African Union
BBBEE	Broad-Based Black Economic Empowerment
BEE	Black Economic Empowerment
BER	Bureau for Economic Research
BIT	Bilateral Investment Treaty
BLNS	Botswana, Lesotho, Namibia and Swaziland
Busa	Business Unity South Africa
CBO	Community-Based Organisation
CCAR	Country Corruption Assessment Report
CCU	Commercial Crimes Unit
CDW	Community Development Workers
CEO	Chief Executive Officer
Chamsa	Chambers of Commerce and Industry of South Africa
Comesa	Common Market for Eastern and Southern Africa
Cosatu	Congress of South African Trade Unions
CPI	Center for Public Integrity (sic)
CSAR	Country Self-Assessment Report
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
CSSDCA	Conference on Security, Stability, Development and Co-operation in Africa
DA	Democratic Alliance
DEAT	Department of Environmental Affairs and Tourism
DFA	Department of Foreign Affairs
DME	Department of Minerals and Energy
DOD	Department of Defence
DOJCD	Department of Justice and Constitutional Development
Dora	Division of Revenue Act
DP	Democratic Party
DPLG	Department of Provincial and Local Government
DPSA	Department of Public Service and Administration
DSO	Directorate of Special Operations (the “Scorpions”)
DTT	Double Taxation Treaty
ENE	Estimates of National Expenditure

Selected Acronyms

EPA	Economic Partnership Agreement
EPWP	Expanded Public Works Programme
ESA	East and Southern Africa
EU	European Union
FDI	Foreign Direct Investment
FF+	Freedom Front Plus
FIC	Financial Intelligence Centre
Fica	Financial Intelligence Centre Act
FTA	Free Trade Area
GDP	Gross Domestic Product
Gear	Growth, Employment and Redistribution (Strategy)
GFCF	Gross Fixed Capital Formation
HIV	Human Immunodeficiency Virus
HOD	Head of Department
HSRC	Human Sciences Research Council
ICD	Independent Complaints Directorate
ID	Independent Democrats
Idasa	Institute for Democracy in South Africa
IDC	Industrial Development Corporation
IDP	Integrated Development Plan
IEC	Independent Electoral Commission
IERI	Institute for Economic Research on Innovation
IFP	Inkatha Freedom Party
IMF	International Monetary Fund
IOR-ARC	Indian Ocean Rim-Association for Regional Development
ISS	Institute for Security Studies
JACTT	Joint Anti-Corruption Task Team
JIT	Joint Investigation Team
MDG	Millennium Development Goal
MEC	Member of Executive Council
MFMA	Municipal Finance Management Act
Misa	Media Institute of South Africa
MP	Member of Parliament
MTBPS	Medium-Term Budget Policy Statement
MTEF	Medium Term Expenditure Framework
NA	National Assembly
NACF	National Anti-Corruption Forum
NCOP	National Council of Provinces
NDPP	National Director of Public Prosecutions
Nedlac	National Economic Development and Labour Council
Nepad	New Partnership for Africa's Development
NGC	National Governing Council
NGO	Non-Governmental Organisation
NIP	National Industrial Participation
NNP	New National Party
NPA	National Prosecuting Authority
Odac	Open Democracy Advice Centre
PAC	Pan Africanist Congress
PAIA	Promotion of Access to Information Act
PAJA	Promotion of Administrative Justice Act
PBC	People's Budget Campaign
PDA	Protected Disclosures Act
PFMA	Public Finance Management Act
PGC	Provincial Governing Council
POA	Programme of Action
PPC	Parliamentary Portfolio Committee

Selected Acronyms

PSC	Public Service Commission
RAF	Road Accident Fund
RDP	Reconstruction and Development Programme
REC	Regional Economic Community
RISDP	Regional Indicative Strategic Development Plan
RSA	Republic of South Africa
Sacu	Southern African Customs Union
SADC	Southern African Development Community
SAHA	South African History Archive
SAHRC	South African Human Rights Commission
SAIIA	South African Institute of International Affairs
Sanco	South African National Civic Organisation
SANDF	South African National Defence Force
Sanef	South African National Editors Forum
Sangoco	South African National Non-Governmental Organisation Coalition
SAPS	South African Police Service
SAQ	Self-Assessment Questionnaire
SARB	South African Reserve Bank
SARS	South African Revenue Service
SCCU	Special Commercial Crimes Unit
SCMF	Supply Chain Management Framework
Scopa	Standing Committee on Public Accounts
Seda	Small Enterprise Development Agency
SIU	Special Investigations Unit
SMME	Small, Medium, and Micro Enterprises
SOE	State-Owned Enterprise
StatsSA	Statistics South Africa
TI	Transparency International
T-SA	Transparency South Africa
UIF	Unemployment Insurance Fund
Uneca	United Nations Economic Commission for Africa
USA	United States of America
WTO	World Trade Organisation
Unisa	University of South Africa

ABOUT THIS REPORT

Introduction

The South African Institute of International Affairs (SAIIA) applied to become one of four Technical Support Agencies (TSAs) to the African Peer Review (APR) process in South Africa in February 2006. SAIIA was appointed by the Research Sub-Committee of the African Peer Review Mechanism (APRM) National Governing Council (NGC) as the TSA in the thematic area of Economic Governance and Management on 16 February 2006. This report was compiled in the five-week period between 17 February and 24 March 2006.

Brief from the APRM Secretariat¹

The Revised Terms of Reference (TORs) for the TSAs (15 March 2006) stated:

The aim ... is to ensure successful preparation of South Africa's APRM Country Self Assessment Report complete with a detailed, budgeted programme of action. The objective is to ensure that the report is accurate, comprehensive and detailed and reflects the opinions held amongst most sectors of society.²

The TORs explain the procedure after the preparation of this Technical Report:

- The Technical Reports will be the basis of discussion at the Country Self Assessment Seminars at which the country report and programme of action will be developed.
- The drafts formulated at the seminars will be reviewed by a quality assurance focus group and revisions will be made to the draft based on their comments.
- The final draft will then be presented to the second Consultative Conference where it will be discussed and revised according to feedback from participants. The focus group will again review the report.³

In the preparation of the Technical Report on each thematic area, the TSA was required to:

- Review and summarise all relevant material received by the Secretariat;
- Prepare an overview bibliography that lists all current material on the issue and summarises the argument;
- Prepare a Technical Report Table of Contents⁴ for approval by the Research Sub Committee; and
- Assemble the Technical Report and submit to the Secretariat for printing.⁵

SAIIA's Methodology

TSAs were required to read and examine all the documentation (submissions, inputs and reports) received by the APRM Secretariat, and compile answers to each objective and question in the particular thematic area, grouping similar material from all documentation together. SAIIA

¹ All references in this document to the APRM Secretariat refer to the administrative unit housed within the Department of Public Service and Administration, and not the continental body administering the APRM in Midrand, unless indicated otherwise.

² APRM Secretariat, Terms of Reference: Technical Support Agencies, 15 March 2006, p. 2.

³ *Ibid.*, p. 1.

⁴ The TORs stated that these should follow the APRM questionnaire and list all materials to be included in the Technical Report.

⁵ TORs, p. 2.

therefore had to ensure that this report adequately addressed the five objectives related to economic governance and management (macroeconomic policies; sound and transparent economic policies; public finance management; fighting corruption and money-laundering; and trade, investment and regional integration) and the 16 subsidiary questions (see page 13).

The APRM Self-Assessment Questionnaire (SAQ) encourages countries to go beyond these questions and suggested indicators when compiling their Country Self-Assessment Reports (CSAR), and SAIIA has adopted this flexible approach. While ensuring that each question is answered, the report has kept the intention of the objectives in mind at all times. The report has gathered and grouped the recommendations made in submissions at the end of each objective, as the first step to developing the required Programme of Action (POA).

In March 2006, members of the Auditor-General's office were tasked with overseeing SAIIA's research process, in their capacity as a Quality Assurance Agency for the APRM. The aim was to ensure the quality of SAIIA's report, and whether it fairly and accurately reflected the range of submissions received, but also to evaluate the TSA process and make inputs on improving the process. Working from SAIIA's offices, the auditors reviewed SAIIA's process in compiling the Economic Governance and Management Technical Report. They reviewed all submissions received, as well as paperwork detailing SAIIA's research methodology.

Identifying Key Issues

While acknowledging the considerable challenges that the country's first democratic government faced in 1994, and the significant progress made and successes achieved since the demise of apartheid, APRM is not meant to be a scorecard to show how one country is better or worse than others. Rather it is meant to be part of a constructive, broad public dialogue about where the gaps in governance are and how they can best be addressed.

The submissions aimed to provide a picture of South Africa as it is, or as it is seen by the organisations involved in the process. Many of them made their points through comparisons. Two broad comparative frameworks were used. The first, often emphasising the legislative and policy framework, compared contemporary South Africa to South Africa prior to 1994. The second, stressing empirical evidence to a greater degree, measured legislation and policy after 1994 in light of its implementation and the extent to which it has proven to be successful or a failure.

Both frameworks are entirely valid. South Africa's democracy was born with a legacy of severe social, economic, and political difficulties: understanding the context is important to understanding the scope of change and the challenges involved. In some ways it contextualises the difficulties which have been encountered. On the other hand, since 1994, South Africa has committed itself to a particular set of goals and standards. It has passed laws and initiated policies to achieve particular sets of outcomes. The efficacy of contemporary South African laws, policy and programmes must necessarily be measured by the extent to which they have been realised in practice.

The focus of the report is not on individuals, but constitutional and legal systems. Where possible, arguments are grounded in actual requirements imposed by the international standards and codes that APRM expects member states to abide by. The report also brings to bear experience from other countries that have undergone peer review, lessons from recent African

governance crises and acknowledged examples of global best practices. Where appropriate, the report tries to offer practical recommendations to address these big issues within the text.

The report attempted to group similar contributions, but did not seek to force consensus when views were polarised.

Report Structure

The report has five major sections, corresponding to the five objectives examined under Economic Governance and Management:

- Macroeconomic policies;
- Sound and transparent economic policies;
- Public finance management;
- Fighting corruption and money-laundering; and
- Trade, investment and regional integration.

Under each question within these objectives a brief summary of the major issues raised is presented, highlighting areas of consensus and divergence. Thereafter the issues are discussed in detail, integrating quotations, extracts and paraphrases from the submissions. Each section is ordered broadly according to the indicators in the SAQ, and the positive case is presented before discussing criticisms and governance gaps. The headings introducing points try to frame the issue accurately and crisply, and allude to possible solutions.

Issues of particular relevance to South Africa are included even though they are not directly mentioned in the APRM documents. For example, the media's role in society, particularly as an oversight institution in particular is not mentioned in the SAQ, but is important in the local context.

Key governance issues that do not slot neatly under any particular APRM question are grouped at the end of each objective, and use has been made of text boxes to highlight particular material.

The major laws, codes and standards to which South Africa complies are presented in the report's annexes.

By mutual agreement between the TSAs, black economic empowerment will be discussed in detail in the Corporate Governance section.

Limitations

- The deadline for submissions of 31 December 2005 (announced by Minister Fraser-Moleketi at Fancourt, 8 December 2005) deterred many would-be contributors from making submissions, given the short notice and traditional end-of-year slowdown in South Africa.
- There was confusion among institutions about the parliamentary APRM process and the NGC process. Parliament was successful in creating awareness about the process, publicising events, calling for submissions and holding public hearings, thereby receiving a more representative spread of inputs. Institutions approached by the NGC to make submissions stated that they had already done so to parliament. However, these inputs were never

forwarded to the APRM Secretariat, and TSAs were required to approach the parliamentary committees directly to procure these inputs.

- It took several weeks for the APRM Secretariat to supply the TSAs with electronic and hard copies of all submissions, inputs and reports. A final and definitive list of all APRM-related documentation had not been supplied at the time of writing. Given the short timelines, this hampered the process of incorporating a fuller range of views in the TSA reports.
- The NGC had hoped that the CSAR would reflect the voices of ordinary citizens, and embarked on an ambitious process to capture these voices, primarily through the establishment of Provincial Governing Councils (PGCs). These councils undertook provincial and local level consultations around the issues, as well as made use of Community Development Workers (CDWs). CDWs were mobilised around the country to conduct consultations in rural and urban areas, ward committees and other community forums such as ward committees. However, the TSAs have struggled to receive material reflecting these grassroots opinions and ideas.
- At the time of writing, only six of the nine PGCs had submitted their reports (Eastern Cape, Free State, Gauteng, Northern Cape, North West and Western Cape). Several of these reports are marked as drafts, and four arrived less than one week prior to the TSA deadline.
- The incorporation of CDW material has proved especially problematic. Of the hundreds of thousands of simplified APRM questionnaires distributed, the APRM Secretariat had received questionnaires from only two provinces – Free State and Northern Cape – at the time of writing. When passed on to the TSAs, the bulk of the approximately 7,000 questionnaires were in a variety of languages and had to be sorted, catalogued and translated before they could be analysed. Summaries of the CDW reports were also not received by TSAs. It was therefore impossible to draw conclusions for the whole country based on this incomplete sample. An attempt was nevertheless made to ascertain trends and extract quotations from the questionnaires. These have been presented in a separate section. SAIIA was assisted in this regard by analysis of over 10,000 questionnaires in the Free State done by the Centre for Development Support at the University of the Free State. (See also **Community Development Worker Questionnaires, pp. 18-24**).
- Several submissions – including the latest draft of the consolidated government report, and submissions from the arts and culture, women and religious sectors – arrived after the final closing date of 17 March 2006 for incorporation of material (issued by the APRM Secretariat on 15 March 2006). These submissions have been noted but not incorporated into the report.

Contributors and Acknowledgements

The bulk of the work on this report was carried out by the researchers on SAIIA's Nepad and Governance Programme: Steven Gruzdz, who led the research team drafting the report and compiled Objectives 1 and 2; Ross Herbert, Africa Research Fellow, who heads the programme and worked on Objectives 3 and 4; Peroshni Govender, who compiled Objective 5 and edited Objectives 3 and 4; and Helen Papaconstantinos, who undertook supplementary and background research and managed the internal process of sorting, translating and analysing the CDW questionnaires. Laura Lopez Gonzalez and Terrence Corrigan (SAIIA junior research assistants) conducted much of the background research. Thanks go to SAIIA's National Director Elizabeth

Sidiropoulos, Director of Studies Neuma Grobbelaar and Development Through Trade Programme researchers Phil Alves and Nkululeko Khumalo for their valued inputs. SAIIA also thanks Bongekile Mbuli, Lusanda Johannes, Relebohile Miya and Dineo Sithe for their assistance in sorting, cataloguing, translating and transcribing the CDW submissions from the Free State and Northern Cape.

Special thanks go to SAIIA's Chief Operating Officer Ambassador Tom Wheeler for his sterling proofreading and editing efforts.

Additionally, SAIIA thanks Raymond Louw of the Media Institute of Southern Africa for his contribution to the media and freedom of information section, and Katy Alexander at the APRM Secretariat for her unfailing assistance in the research process.

Finally, SAIIA thanks the APRM Research Sub-Committee, Secretariat and Department of Public Service and Administration for the confidence shown in the Institute to undertake this work.

Please note that both the footnotes and bibliography were not fully checked before submitting the report, due to time constraints. They will be verified and corrected for the final report.

APRM OBJECTIVES AND QUESTIONS: ECONOMIC GOVERNANCE AND MANAGEMENT

Objective 1: Promote macroeconomic policies that support sustainable development

- Q1. What has your country done to make its macroeconomic policy framework sound and supportive of sustainable development?
- Q2. What sector or microeconomic policies has your country developed and implemented to promote economic growth and sustainable development?
- Q3. What has your country done to increase domestic resource mobilisation including public and private savings and capital formation?
- Q4. What have been the major sources of internal and external shocks to your economy?
- Q5. On what basis does the government formulate macroeconomic projects?

Objective 2: Implement sound, transparent and predictable government economic policies

- Q1. What has your country done to make the public administration, parliamentary system and fiscal authorities work effectively and in a transparent manner?
- Q2. What measures has your country taken to make economic policies predictable?
- Q3. What are the main challenges that the country faces with respect to co-ordinating the efforts of various departments in implementing sound, transparent and predictable economic policies?

Objective 3: Promote sound public finance management

- Q1. What has your country done to promote sound public finance management?
- Q2. What measures have your country taken to develop an effective system of fiscal decentralisation?

Objective 4: Fight corruption and money-laundering

- Q1. What is the prevalence of corruption in the public administration in your country?
- Q2. What measures have your country taken to combat corruption?
- Q3. What is the prevalence of money-laundering in your country?

Objective 5: Accelerate regional integration by participating in the harmonisation of monetary, trade and investment policies

- Q1. Is your country a member of any regional economic integration arrangement?
- Q2. What measures has your country taken to ensure that national policies, including in respect of intra-African trade and investment promotion, are consistent with and supportive of regional economic integration objectives?
- Q3. What measures have your country taken to ensure effective implementation of decisions and agreements made within regional economic integration arrangements?
- Q4. Has your country adopted measures to promote regional monetary harmonisation, co-operation and co-ordination?

Note that a country is expected to concentrate more on the broad objectives than the narrower questions, and should endeavour to include other issues where relevant to these objectives.

SUBMISSIONS

This technical report on economic governance and management is based on documents produced or submitted in the course of the South African APRM process. Not all material received dealt with every objective and question. Some contributors chose to focus narrowly on a few questions, while others attempted to answer the entire questionnaire. Civil society organisations tended to concentrate on the contentious issues where they felt their input would make an impact, and the bulk of them tended to focus more on democracy and political governance and socio-economic development rather than economic governance and management.

Material falls into four different categories:

1. Submission and Inputs

Submissions are documents prepared and officially submitted as part of the APRM process in South Africa. They could be from sectors of society (such as the youth, older persons, and the faith community), or from institutions (such as the Centre for Policy Studies, the Public Service Accountability Monitor, and Business Unity South Africa). It also includes papers commissioned by the APRM Secretariat for the first national consultative conference held in September 2005.

Inputs are documents intended to be part of a larger final submission. For example, several government departments produced inputs for the consolidated government submission. Where this base document is used, it is referred to as an input. Inputs also include presentations made to the Joint Ad Hoc Parliamentary Committee on Economic Governance and Management. The inputs and submissions used in this thematic area are:

- Alternative Information and Development Centre (AIDC)
- Black Sash
- Bureau for Economic Research (BER, 3 inputs made to parliament)
- Business Unity South Africa (Busa)
- Chambers of Commerce and Industry of South Africa (Chamsa)
- Congress of South African Trade Unions (Cosatu)
- Department of Foreign (DFA)
- Department of Justice and Constitutional Development (DOJCD)
- Department of Public Service and Administration (DPSA)
- Department of Trade and Industry (the dti)
- Disabled People of South Africa (DPSA)
- Financial and Fiscal Commission (FCC)
- Government submission (draft as at 27 February)
- Human Sciences Research Council (HSRC)
- Industrial Development Corporation (IDC) (Lumkile Monde)
- Institute for Democracy in South Africa (Idasa)
- Joint Working Group (JWG, a working alliance of Behind the Mask, the Gay and Lesbian Archives of South Africa, the Durban Gay and Lesbian Community Centre, Forum for the

Empowerment of Women, OUT, and Triangle Project, as well as the Unisa Centre for Applied Psychology)

- Media Institute of Southern Africa, South African chapter (Misa-SA)
- Metropolitan Asset Management (Rejane Woodruff)
- National Treasury
- Open Democracy Advice Centre (Odac)
- Pan-African Advisory Services (Iraj Abedian)
- Parliament's Report of the Joint Ad Hoc Committee on Economic Governance and Management
- Presidency
- Public Service Accountability Monitor (PSAM)
- Public Service Commission
- South African Institute of International Affairs-Institute for Security Studies-African Institute of Corporate Citizenship (SAIIA-ISS-AICC)
- South African National Civic Organisation (Sanco)
- South African National Editors' Forum (Sanef)
- South African Non-Governmental Organisation Coalition (Sangoco)
- South African Police Service (SAPS)
- Treatment Action Campaign (TAC)
- University of the Western Cape, Department of Development Studies (Prof Pieter le Roux)
- Youth Sector

Submissions read but deemed not relevant to Economic Governance and Management thematic area

- Auditor-General submission to parliament on corporate governance
- Chris Landsberg's paper on democracy and political governance
- Department of Correctional Services
- Department of Environmental Affairs and Tourism
- Department of Home Affairs
- Institute for Economic Research on Innovation (IERI) (concentrates on socio-economic development)
- Nomini Rapoo's paper on corporate governance
- Pansy Tlakula's paper on corporate governance
- Professor Shadrack Gutto (speech dealing with general political governance)
- South African Institute of Chartered Accountants (SAICA) on corporate governance

Submissions received after final cut-off date of 17 March 2006 and not included:

- Women Sector (received 20 March)
- Culture Sector (received 20 March)
- Cosatu submission on Gender (received 22 March)
- Cosatu submission on Economic Governance and Management (received 22 March from APRM Secretariat, but previously sourced directly from parliament)
- Religious Sector (received 22 March)
- Idasa submission on public sector ethics regulations and post-employment restrictions (correct version received 22 March)
- Final Gauteng Provincial Report and supplementary documentation (received 23 March)

2. Reports

These are based on consultation and research processes carried out within each province, as well as the Joint Ad Hoc Parliamentary Committee on Economic Governance and Management. At the time of writing, six of the nine provinces had submitted either interim or final provincial reports: Eastern Cape, Free State, Gauteng, Northern Cape, North West and Western Cape.

3. Supplementary Research

In cases where a particular question had insufficient material dealing with the key issues, the TSAs supplemented with additional research. Some major examples are:

- Cosatu documents on trade and integration
- HSRC's *State of the Nation* reports
- South African Institute of International Affairs publications on trade and integration

Additional material – including newspaper and journal articles and various government reports – are mentioned in the bibliography at the end of this report.

4. “Voices of the People” – Questionnaires Facilitated by Community Development Worker

South Africa embarked on a country-wide exercise in an attempt to give ordinary citizens an opportunity to comment on governance issues and raise concerns. This initiative was also intended as a way to gauge public sentiment a dozen years into democracy in South Africa. However, at the time of compiling this report, TSAs had not received the full complement of inputs from the provinces. Please see **Community Development Worker Questionnaires, pp. 18-24** for more detail.

RELEVANT CODES AND STANDARDS

According to Parliament's Report of the Joint Ad Hoc Committee on Economic Governance and Management: A Response to the African Peer Review Mechanism Questionnaire (hereafter referred to as "Parliament's report" in this document), "South Africa is internationally compliant as it has both signed and ratified most of the relevant international instruments."¹ Parliament lists the legislation passed in South Africa to ensure implementation of and compliance with international codes and standards (**See Appendix A**).

According to Annex B of the National Treasury's input to the APRM,

South Africa has subjected itself to external reviews under [several] standards and codes of relevance to the National Treasury ... There is also evidence that relevant Standards and Codes have been used as guidelines in the formulation of national policy frameworks and are consistently and continuously informing further improvements to the South African legislative environment and efforts to enhance the efficiency of policy implementation. With few exceptions, South Africa is compliant with most of the core principles established by these codes and standards, and has in some cases, as for Public Debt Management, been adopted by the standard setting agencies as a case study.²

In addition, Parliament's report supplied a five-page list of authorities responsible for financial regulation and supervision in South Africa (**See Appendix B**). *It does not, however, evaluate the effectiveness of these bodies.* Parliament noted that "South Africa has created a good legislative and policy environment. However, capacity problem, among other challenges, hinder the implementation of these policies."³

The Department of Foreign Affairs (DFA) also lists the codes, standards and treaties related to economic governance and management to which the country has subscribed.

No other submissions covered the codes and standards to which South Africa has subscribed.

¹ Parliament's Report of the Joint Ad Hoc Committee on Economic Governance and Management: A Response to the African Peer Review Mechanism Questionnaire, pp. 6-7.

² An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, Annex B, p. 27.

³ Parliament Report, pp. 10-14.

COMMUNITY DEVELOPMENT WORKER QUESTIONNAIRES

CDWs and APRM

At the launch of South Africa's APRM in September 2005, Minister of Public Service and Administration and chairperson of the National Governing Council Geraldine Fraser-Moleketi outlined her vision for the process. In the spirit of the 1955 Freedom Charter, the voices of the people would form the core of the country's self-evaluation.

This would be achieved through Community Development Workers (CDWs), who would work at grassroots level gathering comments and concerns from South Africans across the country. APRM presented a unique opportunity for people to reflect on 12 years of democracy.

CDWs are public servants, trained to go into communities and households, engage with citizens, determine their needs and assist with service delivery. At local level, they are supposed to be the interface between government and communities.

Using a simplified version of the 88-page APRM Self-Assessment Questionnaire, they held workshops, public meetings and personal interviews, and recorded the views of hundreds of thousands of ordinary South Africans.

When the TSAs were appointed in mid-February 2006, CDW material was requested from the secretariat. SAIIA and AICC collected four large boxes of questionnaires from the secretariat's offices in March 2006. Three boxes contained questionnaires from the Free State, and one had Northern Cape material. The questionnaires were neither sorted nor catalogued. Provincial summaries were not provided, but a few ward committees did supply their own summary documents. At the time of writing this report, the status and whereabouts of material from the other seven provinces were unclear.

SAIIA's methodology

Four temporary workers counted and sorted the 6,573 individual questionnaires received from the two provinces.¹ Questionnaires were sorted by language – English, isiZulu, seSotho, seTswana and Afrikaans – and encoded. Two spreadsheets were created to capture the long and short questionnaire responses. In total, by 23 March 2006, 860 questionnaires were examined, translated into English, and electronically captured. SAIIA distributed the spreadsheets to the other TSAs and Secretariat.

Observations

- The ward committee responses came from simplified versions of the APRM objectives and questions that the APRM Secretariat supplied for group discussion. It was felt that these questions did not adequately represent the long questions of the APR questionnaire.

¹ From the Free State, 273 questionnaires were in isiZulu, 4,967 in Sesotho, 1,315 in English, and 18 in Afrikaans. From the Northern Cape, 53 were in English, 5 were in Afrikaans, and 1 was in seTswana.

- In most cases, the replies from the Free State were short on detail due to the small writing space supplied on the form itself.
- In the case of the Free State, attendance registers were supplied, but they were not attached to the questionnaires in many cases.
- Often, respondents ignored the questions for discussion altogether, and simply wrote at the very end that they wanted jobs, housing and free electricity.
- Much more detailed responses came from the separate ward summary documents that a few of the wards supplied.
- The questionnaires from each of the Northern Cape's five districts appeared to be better organised than those of the Free State.² Cover sheets to differentiate responses from the various districts were provided. A short written explanation on how the data was captured was supplied. The province explained that people answered questions which were relevant to them and left certain sections blank.
- The Northern Cape's questionnaire differed slightly. As respondents were required to indicate location and date of where questionnaires were completed as well as requested to suggest solutions, this material was more detailed.
- Given the lack of direction from the APRM Secretariat on how to proceed regarding inclusion of the CDW results or on how to select a sample for analysis, SAIIA is concerned that the views reflected below are not fully representative of all areas of the country. There is still no clarity on the whereabouts of the questionnaires from the remaining seven provinces, nor how these inputs will be incorporated into the final Country Self-Assessment Report.

CDW Questions in the Free State Analysed

SAIIA and the APRM Secretariat were not informed that the Free State questionnaires had been sent to the Centre for Development Support (CDS) at the University of the Free State for analysis, and work was therefore somewhat duplicated.

The Free State was the only province to attempt a systematic analysis of the results, and their main conclusions in the areas of economic governance and management are presented below.

According to CDS, the Free State report to the APRM is based on responses gathered at a grassroots level via questionnaires distributed in Sesotho (340,000), seTswana (60,000), Afrikaans (55,000), English (220,000), and isiZulu (50,000). The report noted that almost 85% (9,086 of 10,720) of the questionnaires were not completed in English. However, the report also noted that at the time of its writing – and subsequently, the writing of this report – the Free State submission is based largely on its English submissions as 80% of the Sesotho, IsiZulu and Afrikaans questionnaires were still being processed. Because of similar time constraints, all of the long answered questions were also not included. Hence, the authors stress the report should be regarded more as a qualitative than quantitative input.³

² Inputs from the community meetings in the Northern Cape were co-ordinated by each of the five districts: Frances Baard; Kgalagadi; Namaqua; Pixley ka Seme; and Siyanda. In the Frances Baard district, the municipalities covered were: Magareng (Warrenton area), Digathlong (Barkly West, Delporthoop, Mataleng, DeBeershoogte, and Windsorton), and Sol Plaatjie (Ritchie, Kimberley, Galeshewe).

³ Free State APRM Report, p. 13.

The majority of respondents in the Free State gave satisfactory marks for South Africa's economic performance over the last 12 years: almost 60% of respondents in the Free State indicated the South African economy is managed well; about 50% were of the opinion that government structures co-ordinated economic activities well; and 55% said the government managed the country's finances well.

However, concerns were noted as to the seemingly exorbitant amount of time and resources devoted to planning policies that were either slow to be implemented or not implemented at all. This concern over implementation was voiced especially in reference to local government.

Alongside implementation, corruption or a lack of transparency was also a theme among the Free State's respondents:

- 82% of respondents indicated corruption was a “very high/serious” problem in the political system.⁴
- The vast majority, about 73%, said they had felt the adverse effects of corruption in government – mainly through increased unemployment and poor service delivery.⁵
- About 71% of the population felt no means were being applied to combat corruption especially when it comes to money and employment favouritism (1.4%).⁶
- However, about 24% of respondents felt corruption had been reduced since the creation of the Scorpions and National Prosecuting Authority.⁷

A selection of CDW responses from the Free State and Northern Cape

A reflection on some submissions showed that, overall; most people in the Free State and Northern Cape had positive comments on Economic Governance and Management in South Africa. However, corruption drew strong views as respondents in both provinces said it was a serious problem affecting service delivery. There have been calls for greater synergy between the various spheres of government as national policies and initiatives were not materialising at local level. Co-ordination of economic activities across government departments should be improved. Although the questions on regional integration and trade were often overlooked, the general perception was that South Africa as the regional leader could do more to help its neighbours. Xenophobic sentiments also arose in this section as some people felt foreigners were stealing jobs from South Africans.

Objective 1: “How well is the economy managed overall?”⁸

⁴ Free State APRM Report, p. 18. The report notes this figure is probably too high as respondents may have confused financial corruption with political.

⁵ Free State APRM Report, p. 24.

⁶ Free State APRM Report, p. 24.

⁷ Free State APRM Report, p. 24.

Free State:

- “Excellently.”⁹
- “More whites [have] a job and earn more than the blacks ... the economy is still in the hands of a few people.”¹⁰
- Offering business advice for sustainable development: “Many aspiring entrepreneurs make the mistake of thinking that they cannot be successful in business unless they launch a brand new invention. 80% of all business opportunities reside in the improvement of existing products.”¹¹

Northern Cape:

- “Everybody receives preference from the system. This country aligns itself to the principle that says ‘all shall share in the country’s wealth.’”¹²
- “Our economy is well-managed and [that] is good for a developing country. Our country is rich in natural resources and also in agriculture so our economy is well managed. We are advanced in technology, which is good for our country. Let youth study economics so that in future they should manage our economy.”¹³

Objective 2: “How well do government structures co-ordinate their responses?”

Free State:

- “The past year saw many protests in various townships in our country. Even then our highest office, the president was quite unaware of this ... [but] I was encouraged by his words that the people who are at the helm of our local government lack skills to deliver.” It was suggested that councillors should be trained in efficient service delivery and that ward committees should play a more effective watchdog role. “I think this should be speeded up before time runs out.”¹⁴
- “Communities are not interested in politics ... they need speedy delivery of services. They resort to violence, because they are unhappy. Services like water, shelter are priority one by government, and most people are happy about it except in rural areas.”¹⁵
- “There’s no co-ordination between local authorities and provincial government.”¹⁶

⁸ This discussion point corresponds with Objective one: Promote macroeconomic policies that support one sustainable development.

⁹ Free State questionnaire FS74, Bongakile.

¹⁰ Free State questionnaire FS66, Bongakile.

¹¹ Free State questionnaire FS68 Bongakile wanted to share business advice for sustainable development:

¹² Northern Cape submission NC2, Lebo.

¹³ Northern Cape submission, NC7, Lebo, Frances Baard district, Barkly West, 2 December 2005.

¹⁴ Free State questionnaire FS97 Bongakile.

¹⁵ Free State Submission FS87 Bongakile.

¹⁶ Free State questionnaire FS78, Bongakile.

The Northern Cape asked: “How well does Government co-ordinate its activities?”

- “They like to fight [on] occasion. Police must look after us.”¹⁷
- “It co-ordinates well. Keep it up.”¹⁸

Objective 3: “How well does government manage its finances?”¹⁹

Free State

- “Black economic empowerment must [face] the fact that all people must get finance.”²⁰
- “Nationally [finances are] well managed but wasted locally.”²¹
- “We are very satisfied by the way Trevor Manuel is managing finance.”²²

Northern Cape asked: “How well does the government manage its money?”

- “Government has an open door policy when dealing with finance. The PFMA allows everyone to see how public funds are [spent].”²³
- “Not so well, because they neglect rural areas.”²⁴

Objective 4: “Are you affected in any way by corruption in government?”

Free State:

- “Yes, corruption is taking place in this country, especially by members of parliament.”²⁵
- “Corruption won’t stop because those who are [responsible] are being protected by our government.”²⁶
- One respondent felt corruption in government was widespread. She substantiated by citing “Mr Moeketso’s flight ticket scandal, Mr Jacob Zuma’s relationship with Mr Shaik, Mr Papi Mokoena’s R150 million scandal and the arms deal scandal”. She felt: “The government needs to be more transparent.”²⁷

¹⁷ Northern Cape submission NC 11, Lebo, Frances Baard district, town of Barkly West, 2 December 2005.

¹⁸ Northern Cape submission NC4, Lebo, Frances Baard district, town of Barkly West, 2 December 2005.

¹⁹ This discussion point corresponds with Objective 3: Promote sound public financial management.

²⁰ Free State questionnaire FS102 Bongakile.

²¹ Free State questionnaire FS78, Bongakile.

²² Free State questionnaire FS 74, Bongakile.

²³ Northern Cape submission NC 10 Lebo, Frances Baard district, town of Barkly West, 2 December 2005.

²⁴ Northern Cape submission NC3, Lebo, 29, Frances Baard district, Barkly West, November 2005.

²⁵ Free State questionnaire FS80, Bongakile.

²⁶ Free State questionnaire, FS74, Bongakile.

²⁷ See attached ward committee summary documents from Free State.

The Northern Cape asked: “How are you affected by corruption?”

- “Corruption ... is not yet clearly dominant. Government is very vigorous when it comes to corruption.”²⁸
- “Corruption is [rife] in politics. Political leaders misuse government funds for their own benefits, [people on the ground] are affected because there is no delivery. All those who are corrupt should be brought to justice and expelled from their duties. If leaders understand that they represent the people, they have to deliver the needs of the people.”²⁹
- “Government must brace up, otherwise we’ll have to consider other parties to govern the country if it carries on like this.”³⁰
- “Very Badly. Increase good administration.”³¹

Objective 5: “How well are we working with our neighbouring states?”

Free State

- “We need more investments from outside [the] country and neighbouring countries [must also] invest money in South Africa.”³²
- “There is a close relationship ... Trade needs to be regulated. It should be easy to sell our products to neighbouring countries and resolve conflict. South Africa should have its own money and must not depend on other countries.”³³
- “Government takes good care of neighbouring countries and gives support to suffering countries.”³⁴
- “Our government tends to [give more] attention to neighbouring states than it does to our country’s problems ... focus less on activities outside our borders and more at home.”³⁵

The Northern Cape asked: “Are we doing the right thing to trade and work more with African countries?”

- “Yes, because they trade with us.” A television show showcasing [business] opportunities in Africa were suggested.³⁶
- “Absolutely, yes, we are Africans so we have to work together to make our continent a better one. South Africa is leading in development in Africa because it is rich in minerals, so we

²⁸ Northern Cape submission NC2, Lebo, Frances Baard district, town of Barkly West, 29 November 2005.

²⁹ Northern Cape submission NC7 Lebo, Frances Baard district, town of Delporthshoop, 2 December 2005.

³⁰ Northern Cape submission NC9 Lebo, Frances Baard district, town of Barkly West, 29 December 2005.

³¹ Northern Cape submission NC 14, Lebo, Frances Baard district, town of Barkly West, 2 December 2005.

³² Free State questionnaire FS102, Bongakile.

³³ Free State questionnaire 94, Bongakile.

³⁴ Free State questionnaire 90, Bongakile.

³⁵ Free State questionnaire FS61, Bongakile.

³⁶ Northern Cape submission NC6, Lebo, Frances Baard district, town of Barkly West, 2 December 2005.

have to develop poorer countries. Let our country continue doing the good thing to trade with African countries.”³⁷

³⁷ Northern Cape submission NC7, Lebo, Frances Baard district, Barkly West, 2 December 2005.

Objective 1: Promote macroeconomic policies supporting sustainable development

Question 1: To what extent is your country's macro economic policy framework sound and supportive of sustainable economic development?

Summary of responses to Objective 1, Question 1

- The APRM submissions reflect broad agreement that the South African Government (and in particular the National Treasury) has done an excellent job to stabilise the precarious economy inherited in 1994. Submissions from parliament, the National Treasury, the youth, Disability sector, business institutions, labour, economists and many other civil society organisations (CSOs) support this.
- Submissions across the board admire government's formidable achievements in turning the South African economy around from its stagnant position in the post-sanctions era of the 1990s, to one of sustained (if relatively) low growth.
- The reports from parliament, government, business and civil society converge on the key challenges facing the economy: high unemployment, and the unevenly distributed benefits of growth, which is steady but not at the 6-8% level needed to significantly erode poverty.
- Despite rocketing global oil prices, inflation has been kept in check for the last four years by the inflation targeting policy. Most analysts see it remaining in the target 3-6% band over the coming years. Some have questioned the logic of inflation targeting in a developing economy, others have criticised the narrow range and the sharp focus on inflation as opposed to other economic variables, most notably the exchange rate.
- The Presidency outlined the concept of the "two economies" – the first developed, formal and prosperous, the second underdeveloped, informal and survivalist. The Congress of South African Trade Unions (Cosatu) welcomed this notion as a way to focus on the plight of the poor, the Disability sector noted that many physically challenged people are forced to operate in the second economy, but the South African Non-Governmental Organisation Coalition (Sangoco) also emphasised the poverty and difficulties within the *first* economy.
- Government's newly unveiled strategy, the Accelerated Shared Growth Initiative for South Africa (Asgisa) is outlined in submissions from government. Stakeholders appear universally supportive of this plan to remove obstacles to enhanced growth and spread its benefits more widely, but some offer cautions. The Industrial Development Corporation (IDC) points to challenges such as skills shortage and mismatch; backlogs in infrastructure development; high levels of concentration in key input sectors (telecoms, steel and chemicals); weak capacity of several key areas of public administration and the strength of the currency. Busa urges greater and sustained consultation with civil society on this initiative, a call echoed by Cosatu and the Black Sash. The union federation also awaited further detail on Asgisa, particularly on the shared growth aspects, while the Black Sash argued for greater harmonisation in the country's social grants institutions and policies.
- In terms of South Africa's conservative fiscal and monetary policy, there is debate, particularly from the left and the business sector, about the optimal size of the deficit, the

amounts dedicated to spending on social services, and the extent to which the Reconstruction and Development Programme (RDP) has been supported or abandoned since 1994. Submissions praised the efficiency of the South African Revenue Service (SARS) in collecting taxes, which consistently exceed expectations by millions of rands annually. Cosatu is particularly strident in calling for rapidly accelerated social spending, financed through taxes and deficit spending.

- The debate also centres on the best way to build on the country's stable macroeconomic platform. Although few submissions offer a definition of "sustainable development," most agree that macroeconomic policy in South Africa is conducive to promoting it.

The macroeconomic indicators requested in the box below were supplied by the Reserve Bank and appeared in the North West Province's Provincial Consultative Report. (See **Appendix C**).

Country Successfully Reverses Economic Decline and Builds Solid Foundation for Growth

The APRM input by the Presidency noted the progress made since 1994 and the contrast in economic outcomes: "Prior to 1994 the South African economy endured several macroeconomic imbalances, manifested in a combination of high inflation, large fiscal deficits, declining investment and negative GDP growth. Since 1994, through tighter monetary and more prudent fiscal policies, the South African economy has achieved macroeconomic stability in many areas."¹

Indicators for Objective 1, Question 1

Assess macroeconomic developments in your country with respect to the following indicators:

- Average trend in inflation over the past five years;
- Real GDP growth per capita over the past five years;
- Debt servicing ratio to revenue, share of domestic debt to total debt;
- Total debt to exports, total debt to GDP;
- Fiscal deficit to GDP;
- Share of fiscal deficit financed by the Central Bank over the past five years;
- Share of total budget allocated to social sectors; and
- Credit to both private and public sectors over the past five years.

Describe steps taken by the country to make the macroeconomic framework sound and supportive of sustainable development including measures to monitor and make impact assessments.

List the key challenges to the country's macroeconomic framework, the reasons for thereof (sic) and the steps taken to address these challenges.

Additional indicators may be used so long as they are relevant in assessing macroeconomic developments of your country.

¹ Submission to the South African APRM by the Presidency, p. 36.

The stark contrast between the situation in 1993 and 2005 is shown in the table below, based on the Presidency's input:

In 1993 ...	But by 2005 ...
South Africa was in its twenty-first year of double-digit inflation.	Inflation is down to 4%, using the CPIX measure, and comfortably within an inflation target range of between 3 to 6%.
The country had had three years of negative growth—the economy and the wealth of the nation was shrinking.	The country is experiencing the longest period of consistent positive growth since the GDP was first properly recorded in the 1940s.
South Africa had experienced more than a decade of declining growth per capita—the average income of South Africans had been falling since the early 1980s and the overall wealth of the country declined by nearly one-third.	South Africa has had a steady growth in real per capita income—on average 1% per year since 1994.
Government had run up a budget deficit equal to 9.5% of GDP, including the debt of the erstwhile independent homelands.	
The net open forward position of the South African Reserve Bank was US\$ 25 billion in deficit.	South African net foreign reserves are over \$18 billion.
Public sector debt was equal to 64% of GDP.	Public sector debt has come down to less than 50% of GDP.

It is important to note the impact of the lifting of sanctions that made these improvements possible.

The Presidency summed up the impressive economic strides made in the last decade:

As a result of budget reforms and reprioritisation, South Africa enjoys conditions to accelerate growth, foster social development and advance equity that have never been better. Following 10 years of deep institutional reform and sound economic management, the economy is stronger than it has been since the early 1980s, and the capacity of government to improve the lives of all is steadily being built. Strong economic growth, rising employment, a buoyant investment environment and accelerated delivery of social and municipal services would further raise living standards and reduce poverty and inequality over the decade ahead. The South African economy is experiencing one of the longest periods of economic expansion since World War II. As indicated above, following a difficult period of corporate restructuring, formal sector employment has been increasing for about two years; inflation has moderated and interest rates have fallen to historic levels. Investment in both public and private sectors has accelerated, bringing a steady expansion in productive capacity. The economy grew by 4.5 % in 2004 and is set to continue to grow rapidly, reaching 6% p.a. by 2010. Inflation is projected to remain

well within the target range while capital investment is projected to reach 18% of GDP by 2007, up from 15% in 2002.²

Parliament's report summarised the salient features of South Africa's economy and economic policy:

South Africa presently ranks as a middle-income, emerging market with an abundant supply of natural resources; well-developed financial, legal, communications, energy, and transport sectors; a stock exchange that ranks among the 10 largest in the world; and a modern infrastructure supporting an efficient distribution of goods to major urban centres throughout the region³. However, growth has not been strong enough to lower South Africa's high unemployment rate. Furthermore, daunting economic problems remain from the apartheid era, especially poverty and the lack of economic empowerment among the disadvantaged groups, resulting in South Africa having one of the highest levels of inequality in the world. South African economic policy is fiscally conservative, but pragmatic, focusing on targeting inflation and liberalising trade as a means to increase job growth and household income.⁴

The National Treasury cited the government's recent ten-year review of South Africa:

Since 1994, South Africa has achieved a level of macroeconomic stability not seen in the country for 40 years.⁵ The budget deficit has come down from 9.5% of GDP in 1993 to fractionally over 1% in 2002/03 and total public-sector debt has fallen from over 60% of GDP in 1994 to 36% of GDP in 2004.⁶

The National Treasury noted that the stagnant economy in the pre-1994 period had averaged 3% GDP growth in the late 1990s, reaching over 5% in the first three quarters of 2005. Sustained reductions in inflation and good economic growth have permitted expanded expenditure on social services and infrastructure.

The consolidated government submission claims that "poverty has also declined significantly as a result of the expansion of the social grant system and the introduction of free and more accessible basic services like water, electricity, education and health services."⁷

Business Unity South Africa (Busa) noted in its submission that South Africa's young democracy is being built on an appropriate institutional framework, including: a world-class constitution, an independent central bank and robust tripartite discussions in the National Economic Development and Labour Council (Nedlac).⁸

Busa summed up the country's macroeconomic policy successes, and their promotion of sustainable development:

South Africa's macroeconomic policies have emerged as a model for what can be achieved when prudent fiscal and monetary policies are adopted and applied. The adoption of inflation targeting, a multi-year budgeting framework, sound prudential and financial regulation policies, the liberalisation of exchange controls, the opening up of trade, etc., have all played a key role in helping to reduce inflation and promote price stability, lower debt (now 33% of GDP), lower debt servicing costs (now 12% of total expenditures), promote financial stability, lower the risks of systemic banking crises, expand the country's trade opportunities and raise the investment and growth rate. In particular, the reprioritisation of state expenditures away from debt servicing costs and military expenditures towards more social and human capital expenditures was a key issue in the first decade of democracy. Over 10 million people are now on some form of social security and tremendous strides have been

² Submission to the South African APRM by the Presidency, p. 38-39.

³ Handbook for Members of the NCOP (Ch6); Parliamentary Research Unit; 2003.

⁴ Parliament Report, pp. 16-17.

⁵ Ten Year Review, p. 33.

⁶ National Treasury input, p. 2.

⁷ Government submission to APRM, draft received 27 February 2006, p. 30.

⁸ Busa submission, p. 13.

made in addressing backlogs to housing, water, sanitation, electricity, clinics, education, skills development and so on. More recently the government realigned fiscal expenditures towards capital investment and service delivery with some R372 billion allocated to [capital expenditure programmes] in water, roads, rail, ports, etc., with the specific focus of increasing the capacity of the country to grow at more than 6% per annum. The government has also developed positive policies to promote black economic empowerment and transformation in the economy to ensure a vibrant and inclusive economy going forward. All these factors and policies contribute to the ends of sustainable development.⁹

Challenges Facing the Economy

Parliament's report summarised its views of key challenges facing the economy:

The committee resolved that South Africa's macroeconomic policy is sound and supportive of sustainable development. However, key challenges remain to be addressed, including poverty, inequality and unemployment. Furthermore, government should investigate the feasibility of increasing the deficit to address some of the service delivery backlogs. For several years, the fiscal deficit has been projected lower than originally intended by government due to unanticipated overflows of revenue. Government should therefore improve its methods for projecting revenue flows so that the projected deficit is attained. This should be backed by a comprehensive strategy to ensure that there is substantial capacity to spend the allocated funds. This is a particularly important consideration, given the implementation challenges of the financial management framework (particularly the Public Finance Management Act No. 1 of 1999 (PFMA), as amended, and Municipal Finance Management Act No.56 of 2003 (MFMA) at sub-national levels, particularly at Local Government level. Finally, government should clarify South Africa's industrial policy.¹⁰

Of the six provincial APRM reports received at the time of writing (Eastern Cape, Free State, Gauteng, Northern Cape, North West and Western Cape), only Gauteng and the Western Cape went into detail about macroeconomic policy and strategy at the provincial level.

Gauteng said it has consistently pursued a two-pronged growth strategy since 1994: creating a conducive economic environment, and using government leverage to redress apartheid-era imbalances and equity challenges.¹¹

Gauteng's macroeconomic policy is informed by a firm commitment to, *inter alia*: infrastructure investment; the strengthening of the SMME sector; promoting broad-based black economic empowerment; building public/private partnerships; and ensuring environmental sustainability. These policy principles are infused throughout the Gauteng Growth and Development Strategy.¹²

The Gauteng report reflects the province's economic importance to the country and the continent, but also that equity challenges persist:

Today the province is recognised as a continental giant and its impressive growth over the past decade is indisputable:

- Gauteng accounts for 33% of South Africa's GDP, and is Africa's fourth largest economy;
- It is the economic hub of the subcontinent, responsible for 52% of all turnover of institutions in the country;
- Gauteng accounts for 47.7% of employees' remuneration in the country;
- Gauteng's 2.8 million households were in 2005 responsible for 35% of the country's household expenditure, spending R302 billion;
- Gauteng has South Africa's finest skills-development infrastructure and higher education institutions;
- Gauteng attracts over 52% of the seven million international tourists who come to South Africa; and

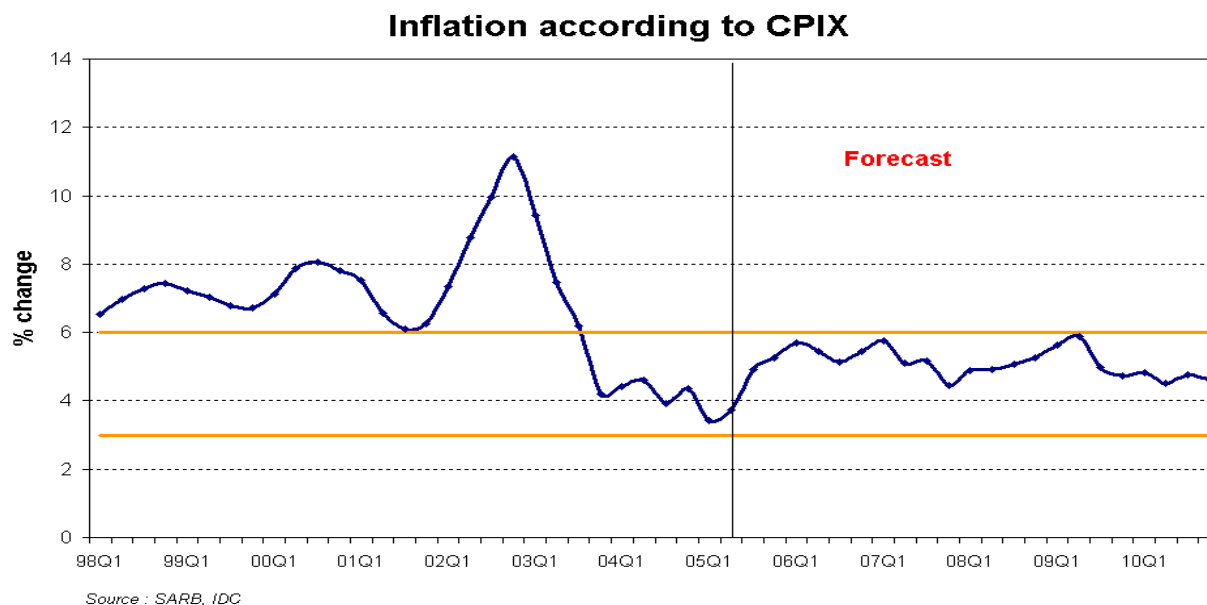
⁹ Busa submission, pp. 16-17.

¹⁰ Parliament Report, p. 15.

¹¹ Gauteng Assessment Report, p. 40.

¹² Gauteng Assessment Report, p. 40.

- Gauteng is home to over 40% of all creative enterprises.



Despite these strengths, Gauteng continues to bear the legacy of an unequal distribution of income, poverty and underdevelopment.¹³

Inflation Targeting

The government first adopted formal inflation targeting in February 2000. The Minister of Finance publicly announces a numerical target for the inflation rate, within a set time frame. Inflation has stayed within the official 3-6% target band since September 2003 (see graph). The National Treasury attributes the low inflation to continued rand strength, which softened global oil price increases.

The National Treasury predicts that inflation will remain within the target range during 2005-2006. The Bureau for Economic Research (BER) at the University of Stellenbosch and the Industrial Development Corporation (IDC) concur that inflation remains under control, although IDC predicted that CPIX inflation could test the upper boundary of the target band by early 2006.¹⁴

The National Treasury said, “The biggest success of the inflation targeting framework has been lower volatility in interest rates, leading to more predictability and certainty for all participants in the economy.”¹⁵

Busa agreed that “At the monetary policy level, the significant declines in inflation, the adoption of inflation targeting and the robustness of monetary policy bode well for maintaining price stability and certainty.”¹⁶

¹³ Gauteng Assessment Report, p. 41.

¹⁴ L Monde, “Economic Governance and Management of South Africa”, Presentation at the Annual South African Public Service Management Conversation, Fancourt, George, 8 December 2005.

¹⁵ The National Treasury, p. 4.

The government submission said “The adoption of a formal inflation-targeting framework has been extremely successful ... [and] has reduced volatility in interest rates, which has protected the income of the poor and also reduced risk and increased certainty for investors.”¹⁷

Some argue inflation targeting too strict, or inappropriate: In their submission to parliament, the Institute of Social Development stated:

The 3% inflation target is too strict and there is room for exploration. There has been a good balance in monetary policy since the new [Reserve Bank] Governor has taken over, even though interest rates are arguably marginally too high. The main concern in this regard is the strength of the Rand, which impacts on the export industry.¹⁸

However, there has been considerable debate about the policy of inflation targeting, and its appropriateness for a middle-income developing country like South Africa. Economist Iraj Abedian reflects these views in his paper commissioned for South Africa’s first National Consultative Conference on APRM in September 2005:

Government’s adoption of the policy framework has been heavily criticised by the left and the right alike, albeit for different reasons. One group has held the view that fighting inflation per se should not be the objective of a macroeconomic policy to begin with. Others have maintained that inflation targeting imposes heavy constraints for a developing country like South Africa and costs growth opportunities and jobs, and that the overall outcomes are unfavourable to the interest of the broad masses ... To a large extent these controversies reflected the global concerns over the desirability of inflation targeting in developing countries. These are still early days, yet all indications are that the adoption of inflation targeting back in 2000 was appropriate for the political economy context of the country.¹⁹

GDP Per Capita Growth and Poverty

According to the National Treasury:

The economy has grown at a rate of 3.3% per annum, on average, since 1994, compared to negative per capita growth in the decade before. National accounts data suggest that since 2000, income per capita has been rising by about 2.2% a year. Though growth has been steady, it has been below the average of other developing countries during the same period. There are signs that economic growth rates are accelerating. Real GDP grew by 3.7 % in 2004, and 5.1 % in the first three quarters of 2005, driven by strong domestic demand. Growth in household consumption was supported by rising disposable income, a large reduction in interest rates (the main central bank interest rate has been lowered by 6½ percentage points since mid-2003) and by wealth effects from rising housing and stock prices.²⁰

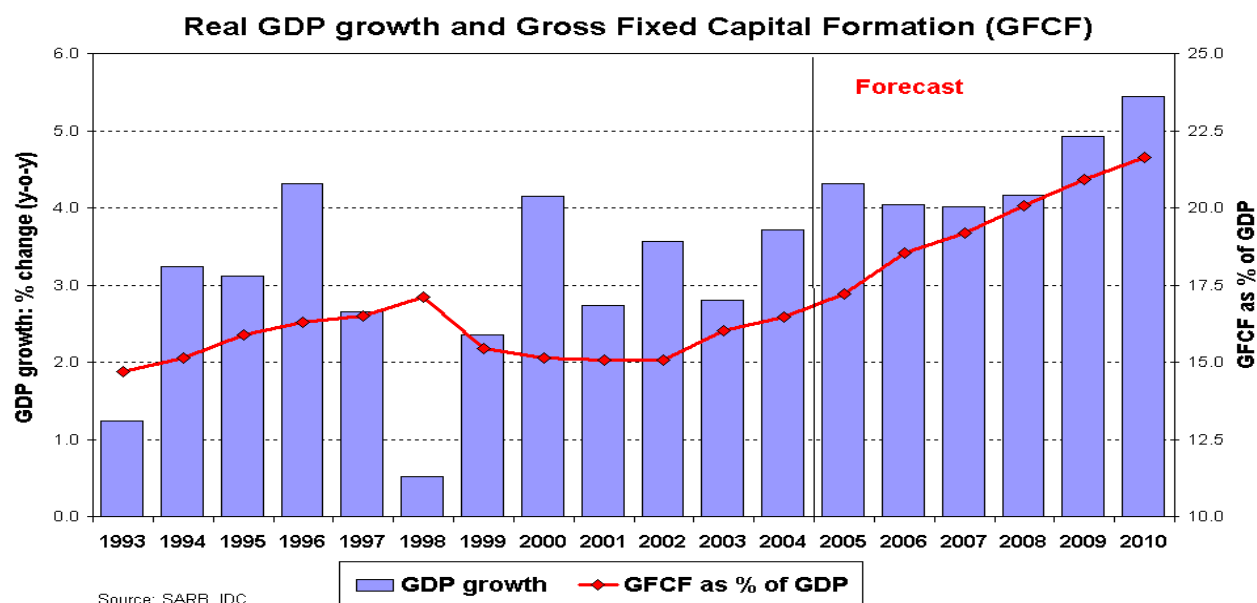
¹⁶ Busa submission, p. 13.

¹⁷ Government submission to APRM, draft received 27 February 2006, p. 30.

¹⁸ Report on the Joint Ad Hoc Committee on Economic Governance, Summary of the Institute for Social Development p. 53.

¹⁹ Abedian submission, pp. 12-13.

²⁰ The National Treasury, p. 3.



Domestic Demand Drives Growth: IDC Economist Lumkile Monde in his APRM presentation at Fancourt in December 2005 attributed recent GDP growth principally to strong domestic demand. He observed that consumer spending was at 62% of GDP, boosted by the lowest interest rates for 24 years and inflation at levels last seen in the 1960s. The stronger rand means cheaper imports, and he noted relatively high wage increases. Rising house prices, shares and bond prices have increased household wealth, as well as credit extension to the private sector. Additionally, growth has been spurred by increased levels of fixed investment (average growth of 9% per annum in 2003 & 2004) and sluggish exports showing some signs of recovery.²¹

The BER said:

The outlook for the South African economy remains quite upbeat even though some moderation in the exceptionally strong domestic demand is expected. This would imply that the current upswing in the business cycle, which at 72 months is already much longer than any previous upswing in the post-war period, is likely to continue for the foreseeable future.²²

But the BER noted in a separate paper by Professor Ben Smit:

At 3% per annum, South Africa's growth rate over the past ten years is not only relatively low by our own longer-term historical experience, it is also generally regarded as insufficient to generate enough job opportunities and poverty relief to sustain the political transformation. Consequently an urgent need exists for a further improvement in South Africa's economic growth rate in the years ahead.²³

²¹ L Monde, "Economic Governance and Management of South Africa", Presentation at the Annual South African Public Service Management Conversation, Fancourt, George, 8 December 2005.

²² Bureau for Economic Research, University of Stellenbosch, "Economic activity expected during 2005-2007" p. 31.

²³ "The Macroeconomic Outlook for South Africa," a conference paper by Ben Smit, director, Bureau for Economic Research, delivered at the BER conference "Growing the South African Economy," which was also a submission to the SA APRM process.

Smit noted that the economy in 2005 appears to have moved above the 3% growth rate but it will need to be sustained in the 5-6% range for a significant period to make a dent in unemployment.²⁴

One Country, Two Economies

Parliament's report explained the concept of the "two economies" often used by President Thabo Mbeki:

South Africa has the most sophisticated free-market economy on the African continent. However, South Africa's economic system has a marked duality. A sophisticated industrial economy has developed alongside an underdeveloped 'informal' economy. The industrial economy has an established infrastructure and economic base with great potential for further growth and development whereas the second economy presents both untapped potential and a developmental challenge for South Africa. Rural development and job creation programmes for the unskilled population, as well as social security grants and skills development, are important in trying to bridge the gap between the two economies, thereby reducing inequality. The government is, therefore, implementing policy to decrease the gap between the two economies.²⁵

According to Cosatu, the notion of the "two economies" has allowed for focus on the second, informal and less developed economy:

Programmes such as public works and establishing multipurpose community centres have received policy priority and budget allocations, the latter being far less than what is necessary to address the backlogs rapidly. This is different from the Gear approach, which focused on growing the formal economy, and did not extensively support the informal sector.²⁶

Cosatu also noted the growing importance that the National Spatial Development Perspective has had in selected geographic locations:

At the same time there is growing recognition that previous planning has reinforced apartheid geography, and settlement patterns. A new approach is emerging on the need for sustainable settlements that integrate working people into the core centres of economic activity.²⁷

The South African Non-Governmental Organisation Coalition (Sangoco) said:

However, even in the 'first' economy, the majority of workers are poor – with many formal sector workers earning under R1,000 a month. Even for union members, half have wages of less than R2,500 a month. This conceptualisation appears to accept – if not legitimise – the bifurcation of the economy and, by extension, society. This helps to insulate resources in the first economy against demands that might be made by those in the second economy. Furthermore it discourages people from thinking of a single, more egalitarian society.²⁸

According to research cited in an article in the HSRC's *State of the Nation: South Africa 2005-2006*, documentation from various departments showed:

The approach of most departments is to showcase some or other programme aimed at the poor and marginalised, however small that initiative might be in absolute terms. Further, the support often intersects with informal work

²⁴ "The Macroeconomic Outlook for South Africa," a conference paper by Ben Smit, director, Bureau for Economic Research, delivered at the BER conference "Growing the South African Economy," which was also a submission to the SA APRM process.

²⁵ Parliament Report, p.17.

²⁶ Cosatu submission, p. 3.

²⁷ Cosatu submission, p. 4.

²⁸ Sangoco submission, p. 23.

through specific poverty relief funding. National government lacks a coherent programmatic approach to dealing with developments, and supporting economic activity in the informal economy.²⁹

The authors urge that policies should be developed which recognise the linkages between the formal and informal economies, and ensure that such policies assist those on the “lower rungs” of the economy, irrespective of whether they are in the formal or informal sector.³⁰

The Disability sector noted that most people with disabilities in South Africa are active in the second economy.

Accelerated Shared Growth Initiative for South Africa (Asgisa)

Several submissions referred to the Accelerated Shared Growth Initiative for South Africa (Asgisa), officially launched in February 2006, that aims to lift GDP growth to a sustained 6%-8% per annum by 2014 by reducing obstacles, share this growth more equitably, and allow South Africa to achieve its Millennium Development Goals (MDGs). While all submissions that mentioned Asgisa were broadly supportive of the policy, several raised cautions.

The Presidency outlined Asgisa this way:

The main focus of Asgisa is to deal with a set of binding constraints that inhibit faster growth and development. The constraints identified in consultation with social partners are currency volatility and macroeconomic stability, cost and efficiency of the national logistics system, shortage of suitably skilled labour, disjointed spatial settlement patterns and high levels of inequality, barriers to entry and competition in sectors of the economy, the regulatory environment and the burden of this on small and medium enterprises and deficiencies in state organisation, capacity and strategic leadership. Some of the proposals included in the initiative is to increase infrastructure spending by over R370 billion over the medium term expenditure period, develop the business process outsourcing, biofuels and tourism industries, fast track skills development, reducing the regulatory burden on small enterprises and improve capacity at local and provincial government.³¹

Busa saw Asgisa as a shift in focus from the macroeconomic stabilisation of the Growth, Equity and Redistribution (Gear) strategy to microeconomic policy making.³²

The Western Cape provincial report said:

This economic framework [Asgisa] is seen as a sign that demonstrates government commitment to eradicate poverty and to fight unemployment. The perception of provincial growth as “jobless growth” is buttressed through allusion to the unevenness of the benefits.³³

Lumkile Monde noted that Asgisa would face challenges, including skills shortage and mismatch; backlogs in infrastructure development; high levels of concentration in key input sectors (telecoms, steel and chemicals); weak capacity of several key areas of public administration and the strength of the currency.³⁴

Busa noted in its submission the need for consultation in order to make good policy:

²⁹ Devey, R, C Skinner and I Valodia, “The state of the informal economy”, *The State of the Nation: South Africa 2005-2005*, 2005, p. 237.

³⁰ Devey, R, C Skinner and I Valodia, pp. 242-243.

³¹ Submission to the South African APRM by the Presidency, p. 37.

³² Busa submission, p. 13.

³³ Western Cape Province African Peer Review Mechanism: Final Report, p. 55.

³⁴ L Monde, “Economic Governance and Management of South Africa”, Presentation at the Annual South African Public Service Management Conversation, Fancourt, George, 8 December 2005.

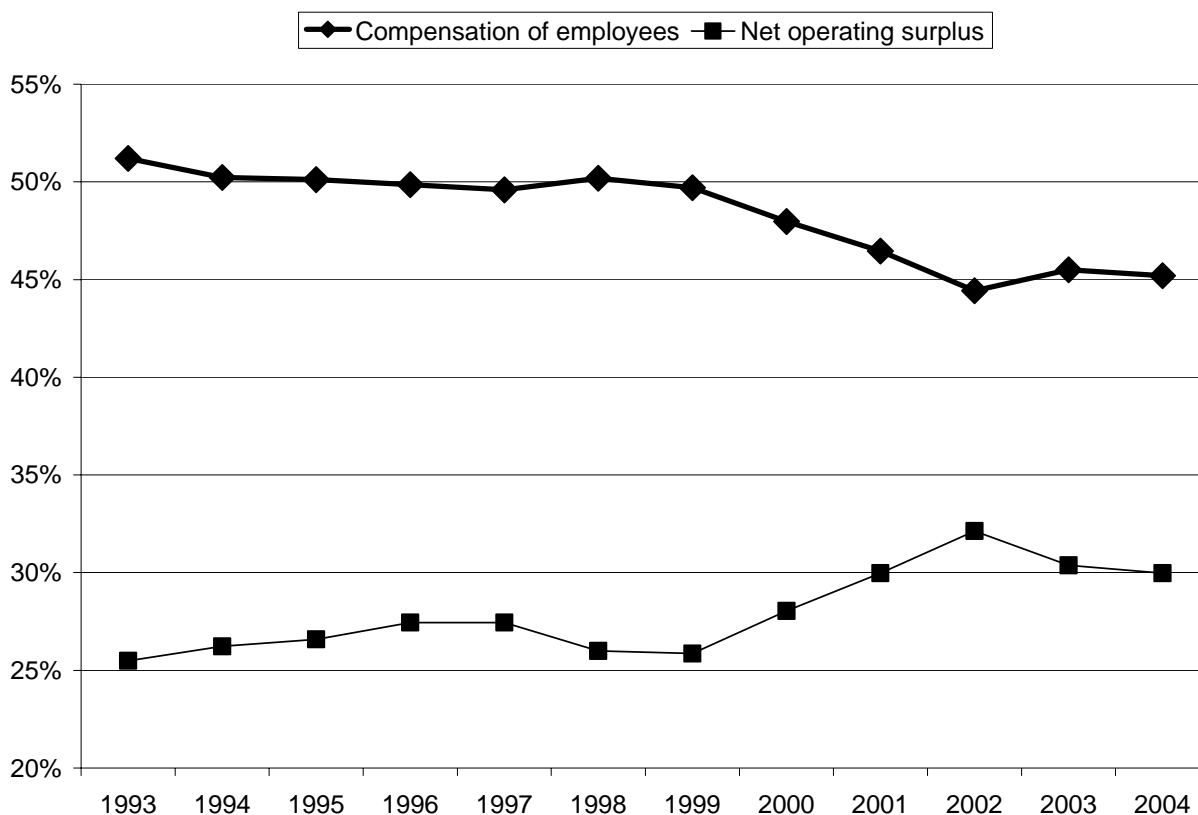
One of the key issues for the ultimate success of the [Asgisa] programme is the co-operation between organised business and government, both at a national level and at the sectoral/local level. This co-operation will need to take the form of institutionalising the engagement to the extent that regular meetings and reviews are undertaken to find solutions to identified problems.³⁵

Cosatu said:

During the 2005 MTBPS speech, Minister Manuel called for a development partnership, which we fully support. We are willing to engage government around achieving accelerated and shared growth. At the centre of such a partnership must be the recognition that improving equity and accelerating growth are complimentary, not competing objectives.³⁶

Cosatu argued that Asgisa must consider factors that contribute to economic growth that creates jobs and shares the benefits of growth in an equitable manner. It produced the following graph in its submission to show how economic growth has negatively impacted on the compensation of workers, the antithesis of shared growth.

Increasing surplus with falling compensation of employees



Business rather than the poor has had most of the benefits of growth. The share of wages and salaries in the national income has generally declined as profits have risen.

³⁵ Busa submission, p. 2.

³⁶ Cosatu submission on Economic Governance and Management as a Review Mechanism for the African Peer Review Mechanism for South Africa, p. 9.

Cosatu said:

We await details of the Accelerated Shared Growth Initiative [Asgisa] to see the extent to which increased economic spending will translate into benefits for the majority of South Africans.³⁷

The Black Sash said of Asgisa: “We support efforts to build our economy in the long term, to develop skills and create jobs, and will carefully monitor the developing economic context.”³⁸

The Black Sash urged that the economic growth strategy should include an effective social protection policy framework that encompassed:

The full range of poverty alleviation strategies – social assistance, social insurance ... private insurance, social services and subsidies (housing, health, education etc), the Presidential Projects (such as school feeding), the Extended Public Works Programme and so on. Following the recommendation of a National Treasury Task Team,³⁹ we believe serious consideration should be given to the integrated administration of these programmes and believe this would facilitate more effective budgeting, spending and implementation practices. In this light it seems retrogressive, for example, for the South African Social Security Agency (SASSA) to be responsible only for social grants administration in isolation from other poverty alleviation programmes.⁴⁰

The Black Sash commented:

This would enable the sector to analyse how effectively these government initiatives impact on poverty, how they articulate with or contradict each other, whether they lead to unintended negative consequences and exclude certain groups of people. It is intolerable for the growing number of child-headed households to be excluded from social assistance provisions. It is clearly counter-productive, indeed deeply ironic, that indigent Aids patients terminate their ARV programmes, as the disability grant is contingent on their remaining ill. In this light we welcome the study commissioned by the Department of Social Development and involving the World Bank, Oxford University and associated South African universities to investigate these ‘perverse incentives.’⁴¹

Fiscal and Monetary Policy

South Africa’s fiscal policy is cited as a major success by many, with declining public debt, which has led to lower interest rates and a more sustainable, expansionary fiscal stance. Democratic South Africa has not been a significant international borrower, drawing mainly on domestic financing sources. However, there is significant debate, particularly from the political left, about the fiscal and monetary path that government has pursued.

The Presidency input noted:

Over the past five years (2000-2005) the emphasis of fiscal policy shifted from deficit reduction to growth and social development, but without compromising the principles of fiscal sustainability. During that period economic growth has been more robust, averaging around 3,5% p.a. Government has further introduced various programmes such as the Microeconomic Reform Strategy (MERS) in order to further increase the growth of the economy. Government has committed itself to half (sic) unemployment and poverty by 2014.⁴²

³⁷ Cosatu submission, p. 14.

³⁸ Black Sash, p. 6.

³⁹ Nesbitt, G, ‘Social Insurance 1994 – 2005: An Overview of Legislative Developments and Reforms’ commissioned by the Black Sash, 2005.

⁴⁰ Black Sash submission, p. 6.

⁴¹ Black Sash submission, pp. 6-7.

⁴² Submission to the South African APRM by the Presidency, p. 37.

Economist Iraj Abedian said in his submission:

All components of macroeconomic policy (i.e. labour, trade, fiscal and monetary policies) have undergone fundamental reforms. In general, macroeconomic policy management has played a critical role in creating a credible and sustainable platform for growth and development. Structural changes to fiscal and monetary policies have played the lead role in the process of modernisation and dynamic harmonisation of economic governance in the country.⁴³

Abedian added:

To financial market analysts and policy commentators, it was evident that the prevailing policy framework [before 1994] was ad hoc and without any medium term anchor. In the absence of a credible macroeconomic strategy, fiscal policy is shown over and over again to respond to the exigencies of political pressure or being driven by financial market imperatives. Besides, it was a widely held view that the democratic government would be unable to withstand the temptation and political pressures for popular spending.⁴⁴

Yet he noted:

South Africa is one of the very few countries that in the course of its macroeconomic stabilisation, not only reduced its deficit ratios, but also at the same time increased its government spending, provided tax relief for companies and individuals, and improved its revenue collections consistently. It may well be the only country to have accomplished this in a sustained and sustainable manner.⁴⁵

Busa agreed that South Africa has solid fiscal policy, and notable “achievements in stabilising government finances, reducing deficits and debt servicing costs, introducing greater certainty in terms of medium-term budget planning, changing expenditure patterns to address skills, health and social issues and providing the room for fiscal flexibility.”⁴⁶

The North West Province report said, “Gear impacts positively on socio-economic development, including ... job creation in both formal and informal sectors.”⁴⁷

However, Northern Cape dissented from the majority view that the South Africa’s economy was well managed, with most respondents citing factors such as lack of capacity, skills retention in rural areas and the fact that economic growth has not translated into the alleviation of poverty.⁴⁸

Furthermore, the submission noted that most people had confidence in the co-ordination and implementation of economic policies at the national level, but felt these policies faltered at the provincial and local levels.⁴⁹ In line with concerns cited regarding capacity, some respondents did say government funds were well used but there was a troubling “tendency of under-spending by some departments especially those who are supposed to make a difference in peoples’ lives.”⁵⁰

According to Idasa, high levels of poverty and unemployment mean that people’s socio-economic rights are not yet fulfilled. At the same time, they said tight monetary policy and:

The macroeconomic environment has not produced enough jobs to cover the labour market, strict fiscal discipline and various other logistical factors have made it difficult for government to meet its housing, welfare and health

⁴³ Dr Iraj Abedian submission, Fiscal and Monetary Policy Management in South Africa 1994-2005, Johannesburg; October 2005, p. 1.

⁴⁴ Abedian submission, p. 1.

⁴⁵ Abedian submission, p. 8.

⁴⁶ Busa submission, p. 13.

⁴⁷ APRM North West Province Provincial Consultative Report, p. 36.

⁴⁸ Northern Cape, African Peer Review Mechanism Content Report, p. 8.

⁴⁹ Northern Cape, African Peer Review Mechanism Content Report, p. 8.

⁵⁰ Northern Cape, African Peer Review Mechanism Content Report, p. 9.

targets. With out the fulfilment of socio-economic rights, (the) South African government still faces a difficult challenge.⁵¹

Cosatu's submission noted:

Gear as a strategy formally ran between 1996 and 2000. There has been no major economic policy statement abandoning Gear, but what has occurred was a moderately expansionary budget (in real terms), a realisation and shift in approach by government regarding the role for state owned enterprises in the economy, and a frank admission of the challenges facing government in the 'Towards a 10-Year Review'.⁵²

The Growth, Employment and Redistribution Strategy (Gear)

The National Treasury submission charts the government's strategy from the initial Reconstruction of Development Programme (RDP), through the Growth, Employment and Redistribution (Gear) strategy adopted in 1996 to provide an economic framework which could deliver the RDP goals, to the generally more expansionary fiscal policy since 2001.

Parliament's report concurred and argued:

Gear views South Africa as pursuing a set of integrated, coherent and technically sound policies that culminate in a consistent and investor-friendly framework. It constitutes South Africa's main economic policy framework, and combines the goals of deficit reduction; reprioritisation of government expenditure; rapid tariff reductions; exchange control liberalisation; and the reform of the labour market to enhance poverty reduction. It also aims to embark on micro-economic reforms to enhance job creation. Labour-intensive growth is a central tenet of Gear. In this regard, wage agreements must be sensitive to regional labour market conditions, the diversity of skills levels in firms of varying size, location or capital intensity, and the need to foster training opportunities for new entrants to the labour market.⁵³

Abedian added:

Most importantly, deficit and debt had to be managed down so as to reallocate public resources to unavoidable social expenditures. This was the most critical and the inescapable precondition for balancing the fiscal accounts over the medium term. Nowadays it is commonly agreed in local and international financial market circles that very few, if any, countries in transition have managed their economic and financial affairs as well as South Africa.⁵⁴

However, in its submission, Cosatu was highly critical of Gear, and contended that it failed to achieve many of its stated objectives:

The overall picture shows the impact of Gear policies in relation to a series of key indicators identified in Gear itself. Contrary to the notion of successful 'stabilisation', these indicators show the volatility, and chronic underperformance, of key macroeconomic indicators. Significantly, the only targets that Gear consistently met, or 'improved' on, were core fiscal and monetary policy targets: i.e. the budget deficit and inflation. All the other critical targets- growth, investment, employment, and interest rates were consistently missed.⁵⁵

⁵¹ Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 86.

⁵² Cosatu submission, p. 3.

⁵³ Parliament Report, pp. 15-16.

⁵⁴ Abedian submission, p. 2.

⁵⁵ Cosatu submission on Economic Governance and Management as a Review Mechanism for the African Peer Review Mechanism for South Africa, p. 5.

Cosatu, however, is highly critical of the conservative fiscal and monetary policies followed by government, given South Africa's developmental needs:

Fiscal and monetary policy has a profound impact on virtually every area of policy ... A developmental and interventionist state is not consistent with a conservative fiscal and monetary policy, most obviously because such a policy denies the state access to resources to drive its agenda. Given, too, that the state is a key actor in the economy, such a conservative stance acts as a brake on economic development. These observations are doubly applicable in the South African context, where the fiscus has been historically used to drive a skewed path of development (aimed at benefiting the minority); and excluded the majority from equitable access to public resources.⁵⁶

The union federation argued that the democratic transition necessitated a fundamentally new fiscal and monetary policy stance, and "could not be confined to incremental, or gradualist, improvements, on fiscal allocations in the previous era. Put more simply, the yardstick couldn't be the apartheid budget."

They argued for deep-rooted changes in:

Taxation (redistributive and progressive); expenditure (geared towards redressing historical backlogs, and therefore both expansionary and redistributive); and the deficit (dictated by the imperative of reconstruction, obviously within sustainable parameters).⁵⁷

Cosatu contended that monetary policy had to support and actively facilitate the overall development strategy. They called for:

A shift in the mandate, functioning and culture of the Reserve Bank; and the pursuit of monetary policies which ensured access by the poor to affordable credit, as well as policies which actively promoted the objectives of economic development and employment, and aligned regulation of money supply, inflation etc. to these objectives. It also required measures to support a state-led development path, help protect the economy from the vagaries of the market, discipline SA capital, and regulated its movement, and protect the economy from international speculators.⁵⁸

Cosatu raised the following issues in relation to fiscal and monetary policy:

A major re-conceptualisation of Gear crystallised at a 2000 ANC policy conference, which resolved that Gear was necessary but not sufficient for development.

Gear thus was no longer seen as a strategy that could lead to rapid growth and job creation, but rather a platform on which future development strategies would be built."⁵⁹

The more expansionary stance seen since 2002 is attributed to better tax collection, growth in certain sectors of the economy and increased government spending. It added:

This may signal a shift from the fiscal conservatism that characterised Gear. It should also be noted that growth in the economy and employment remained far below Gear's expectations."⁶⁰

They concluded:

It is common cause that in general, the fiscal and monetary policies pursued by government and the Reserve Bank, particularly from 1996 until 2000, and in many respects until 2003, have not followed [Gear's] trajectory. The Gear trajectory, with monetary, fiscal, and industrial policy at its core, have played a decisive and

⁵⁶ Cosatu submission, p. 4.

⁵⁷ Cosatu submission, p. 4.

⁵⁸ Cosatu submission, p. 4.

⁵⁹ Cosatu submission, p. 3.

⁶⁰ Cosatu submission, p. 3.

determining role in all other areas of policy, whether in relation to the public sector, social policies etc. Probably the only area which was to a large extent protected from the logic of the Gear framework was the issue of labour market policies, and this was largely as a result of labour's struggle.⁶¹

The South African Non-Governmental Organisation Coalition (Sangoco) agreed with Cosatu's disappointment with Gear's achievements:

Twelve years down the line, we note that the promises of both foreign direct investment (FDI) and jobs have not materialised even after the whole structural adjustment package has been implemented in particular, outsourcing and privatisation which caused severe job losses and cuts in social services resulting in many people denied access to services and thousands more suffering poorer quality of social services.⁶²

By all accounts Gear managed to ensure greater financial discipline, financial accountability (Medium-Term Expenditure Framework and the Public Finance Management Act) and stability but exacerbated the 'job loss bloodbath' as Cosatu's General Secretary Zwelinzima Vavi called it. Whilst jobs were not created, the middle classes appear to have been the major gainers. The much needed and desperately sought after foreign direct investment, as well as local investment failed to materialise to the anticipated levels to sustain a 6% growth rate. Trade liberalisation and privatisation of state-owned enterprises resulted in serious job losses and cuts in social services ... Gear has had devastating effect on jobs losses and undermined solidarity.⁶³

Parliament's report noted these strong debates around fiscal policy in its summary:

During the Committee's hearings, different organisations indicated that fiscal policy was too strict. South Africa has achieved macroeconomic stability and has been able to reduce the deficit from a very high level to a very low level, but some commentators felt that there was room to increase the deficit to address some of the social backlogs. South Africa still has extremely high levels of unemployment that needed to be addressed. Certain policies, such as tariff liberalisation, may have lead to an increase in unemployment. Directing resources to the right channels is important in reducing poverty and inequality. While the low fiscal deficit is a concern (particularly when considering the social needs of South Africa), it is also important to consider whether there is enough capacity to spend available funds if it is increased.⁶⁴

Budget Deficit

The National Treasury supplied figures of significantly declining public debt, from 49.2% in 1994 to 34.4% of GDP at present, and noted that debt service costs have declined from 4.7% to 3.5%:

Freeing up resources to be spent on social and economic infrastructure. A sound fiscal stance has helped to bring interest rates down, lower debt service costs and provide a platform for an expansionary fiscal stance that is sustainable, predictable and growth enhancing."⁶⁵

The Government submission said, "Fiscal policy will continue to support economic growth through increased public spending, especially on infrastructure, moderate tax relief, a sustainable deficit and a stable tax burden."⁶⁶

Iraj Abedian, Lumkile Monde, the BER and Cosatu all noted that the key reason for the reduction of the deficit has been more efficient revenue collection since 1997. Monde said that for the

⁶¹ Cosatu submission, p. 5.

⁶² Sangoco submission, p. 23.

⁶³ Sangoco, p. 23-34.

⁶⁴ Parliament Report, p. 22.

⁶⁵ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 10.

⁶⁶ Government submission to APRM, draft received 27 February 2006, p. 32.

2005/06 fiscal year, government revenue is likely to exceed initial budget estimates by R30 billion, resulting in a deficit of 1% of GDP, compared to initial estimates of 3.1%.⁶⁷

The government budget deficit is expected to remain well below 3% of GDP over the period 2005-07, according to the Bureau for Economic Research at the University of Stellenbosch.⁶⁸

However, Cosatu argued that the levels of deficit, tax policy and expenditures should be more flexible. It said that there is a need to make “further aggressive investments” to reduce poverty and inequality. Economic growth over the past few years has not reduced unemployment very much.⁶⁹ Their submission stated:

Whilst we fully support SARS’ efforts at tax compliance and tax morality, we believe that a more accurate system of estimating tax revenues is needed. Better estimates mean better planning within the National Treasury and other government departments. We believe that through increasing capacity as well as better estimates the possibilities, of effective deficit spending would increase.⁷⁰

Cosatu deplored the downward revision of the 2004/5 deficit from an estimated 3.1% of GDP to 1.5%, and said:

For government to claim that downward revision of the deficit is a feasible strategy to accelerate transformation within the current context of backlogs and inequalities is completely unacceptable ... Government has to invest resources in the public sector to address the capacity bottlenecks.⁷¹

Cosatu felt that government projections do not make clear how the country will realise the Millennium Development Goals (MDGs).

The measurement of real social and economic progress, must take into account social and development indicators, not merely the pursuit of economic targets. *The development agenda should drive fiscal, economic and trade policy, not the other way around* [emphasis in original].⁷²

(See also discussion of **Taxation** under **Objective 3**, below).

Government Debt

Prior to 1994 South Africa’s economy had been isolated from the world economy, and had suffered from stagnant or negative growth. The society was fractured by deeply afflicted by poverty. In 1994, the incoming government had both to uplift people living in poverty and reduce inequality, and to set the economy on a sound footing to finance the improvement in people’s lives.⁷³

Abedian calls the fiscal situation prior to 1994 a system of “*unco-ordinated fiscal irresponsibility*.” A large number of state owned operations, agencies, enterprises and corporations, were creating liabilities without any effective control, co-ordination or cost-benefit

⁶⁷ L Monde, “Economic Governance and Management of South Africa”, Presentation at the Annual South African Public Service Management Conversation, Fancourt, George, 8 December 2005.

⁶⁸ Bureau for Economic Research, University of Stellenbosch, “Economic activity expected during 2005-2007,” p. 22.

⁶⁹ Cosatu submission on Economic Governance and Management as a Review Mechanism for the African Peer Review Mechanism for South Africa, p. 7.

⁷⁰ Cosatu submission, p. 7.

⁷¹ Cosatu submission, p. 13.

⁷² Cosatu submission, p. 14.

⁷³ National Treasury input, p. 7.

analysis. An arrangement with the SA Reserve Bank in terms of its sole mandate to provide forward foreign exchange contracts for the entire economy was the greatest generator of public liability (the private banking sector was not allowed to write such contracts). Assets were also poorly managed, and government departments often had no proper register of their assets; assets were thus neither properly used nor maintained.⁷⁴ Cash management was also not done well. Departments received their full budget allocations in April each year although their cash flow requirements would only emerge during the following twelve months. The national coffers were thus depleted for the first quarter of the year, and the National Treasury would have to borrow from the capital market. This debt was incurred at market rates. Government departments that had received their full allocations but did not need the full amount deposited their excess with the SA Reserve Bank under the custodianship of the Department of State Expenditure, receiving substantially less in interest earnings. These practices caused a loss to the fiscus.⁷⁵

Abedian outlined the magnitude of government debt in the mid-1990s its effect on other government policies, and why debt had to be managed:

South Africa's government debt had reached 50% of the GDP in 1996. Annual interest payment on this debt was consuming nearly one fifth of government revenue by 1996, nearly as much as the annual total national education budget. The opportunity cost of inappropriate debt management, measured against money not spent on social sectors, was rising every year ... Technically, nearly all of Government debt was domestic, partly due to the poor management of the fiscus, and partly because the country could not borrow in the global capital market during the later apartheid years. In addition to fiscal concerns, this debt configuration also had macroeconomic implications. The local capital market was dominated by the government's financial needs, the private sector was crowded out, and interest rates were pushed up accordingly.⁷⁶

Overall debt to GDP ratio declined and in the process, the share of domestic capital used to finance it was reduced. In large part due to the rising creditworthiness of South Africa, the cost of borrowing abroad declined too. Debt servicing cost are currently around 15.3% of the total annual budget, down from 21.2% in 1998/99. The savings generated in this way are made available for other public service requirements.⁷⁷

Abedian said that the consequence of these reforms was a sustained reduction in budget deficits, from its high of 9.2% in 1994 declining to an actual deficit of 1.4% in 2002.

Whilst the deficit/GDP ratio continued to fall, the overall trend in government expenditure maintained its upward path. In other words, government spending on major social expenditure such as health, education, housing and social welfare was neither interrupted nor curtailed.⁷⁸

Interest Rates

Monde noted that South Africa is currently experiencing the lowest nominal interest rates in over two decades, with forecasts predicting a stable and low interest rate environment over the

⁷⁴ Abedian submission, pp. 5-6.

⁷⁵ Abedian submission, pp. 6-7.

⁷⁶ Abedian submission, p. 3.

⁷⁷ Abedian submission, p. 3.

⁷⁸ Abedian submission, p. 7.

medium term. The real interest rate gap between South Africa and the US narrowed from 10% in May 2004 to 3.6% by September 2005.⁷⁹

The Western Cape provincial report noted:

The adoption of inflation targeting as a monetary instrument to curb inflation resulted in the lowering of inflation; the low interest rates have further opened room for capital investments (interest on capital borrowed is cheaper). An environment with low interest rates is viewed as a stimulus for direct investment and thus encourages domestic investment.⁸⁰

Exchange Rate

The National Treasury acknowledges the high degree of volatility in the rand since 1994, and highlights three phases of rapid depreciation, in 1996, 1998 and 2001. It also noted the rand's recovery since. The graph (taken from Monde) shows the recent strength in the rand after the currency's collapse in late 2001, although he noted that in 2005, the rand depreciated by about 17% to the US dollar and by 6% to the euro. He predicts continued moderate depreciation as the current account deficit widens due to sharply increasing import demand.⁸¹

Monde attributes the rand's strength to South Africa's sound macroeconomic stability and management; improving fiscal balance (budget deficit); real interest rate differentials (with American interest rates at a 40-year low); a real repo rate of 4.2% compared to 0.75% in the USA (June 2005); strong influx of portfolio money (R45 billion in 2004); positive investor sentiment (citing the Barclays–Absa deal); stronger commodity prices (particularly gold and platinum); South Africa's apparent ability to withstand emerging market contagion and recent upgrades of the national sovereign credit rating.⁸²

The South African Reserve Bank (SARB) does not intervene in currency markets, but has bought foreign exchange at times of rand strength to improve its international reserves position. According to the National Treasury input, "Gross international reserves increased from the equivalent of 70% of short-term external debt at end-2003 to an estimated 178% as of end-June 2005. Including gold, total gold and foreign exchange reserves reached US\$20 billion by the end of 2005."⁸³ The higher level of reserves was an important factor in the upgrading of South Africa's foreign currency rating by Moody's in early 2005 and Standard and Poor's upgrading of the country's long-term sovereign credit rating in August 2005.

The Disability sector submission noted that a strong rand benefits people with disabilities, who have to import expensive assistive devices.⁸⁴

⁷⁹ Monde, "Economic Governance and Management of South Africa", Presentation at the Annual South African Public Service Management Conversation, Fancourt, George, 8 December 2005.

⁸⁰ Western Cape Province African Peer Review Mechanism: Final Report, p. 57.

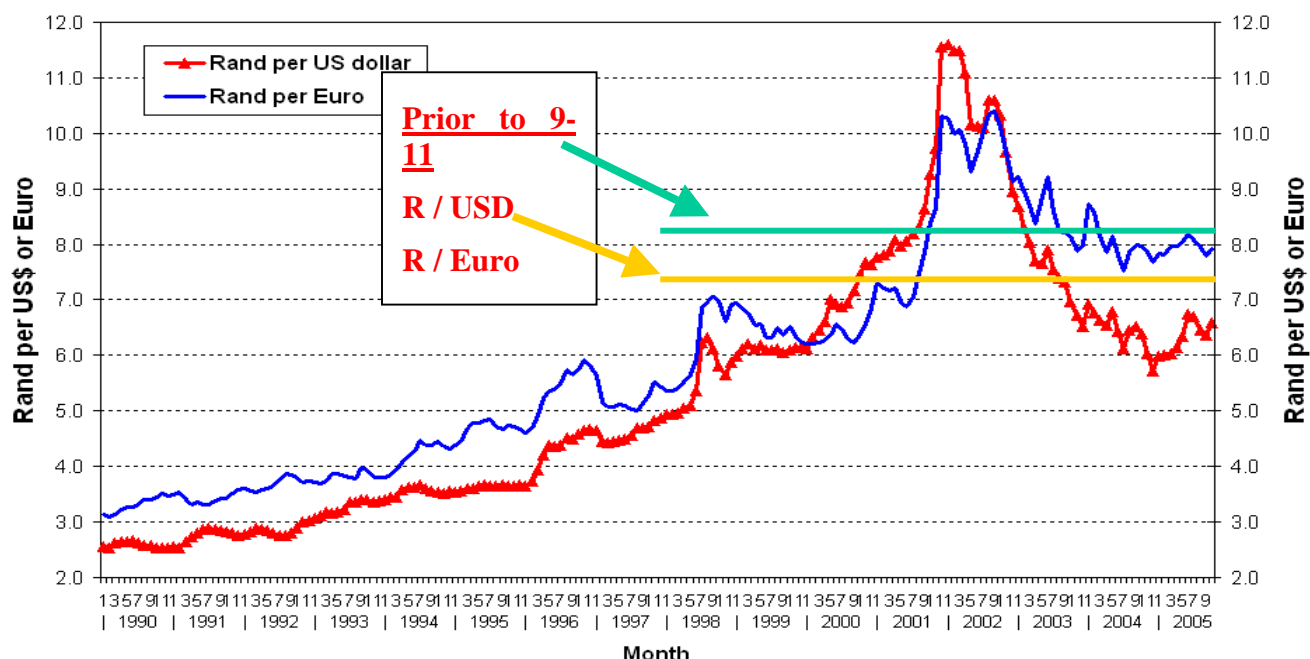
⁸¹ Monde, *op. cit.*

⁸² *Ibid.*

⁸³ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 4.

⁸⁴ Disability submission, p. 15.

The Rand versus the US dollar and the Euro



Credit Extension

South Africa has seen recent growing private credit extension, a housing boom and rising business confidence, and increasing income and expenditure levels.

The National Treasury noted:

Banking institutions' loans and advances extended to the private sector have been particularly robust over the past year (a twelve-month growth rate of some 23% was recorded in July 2005), supported by rising levels of income and expenditure, strong business and consumer confidence, the buoyancy of the fixed property and securities markets, and lower interest rates. Mortgage advances in particular displayed rapid growth on the back of a housing boom. The greater part of banks' credit extension flows to the household sector.⁸⁵

Very few submissions commented on credit; this must be supplemented in the final report.

Efforts to Make the Economy Sustainable

The National Treasury said:

While economic growth rates have remained modest, it masks the large structural changes that the South African economy has undergone since the political transition. Once an exporter of predominantly primary goods, South Africa is increasingly moving towards exporting higher value added goods and thus diversifying its aggregate export base.⁸⁶

While acknowledging the significant impact of social grants on livelihoods of the poor, the National Treasury sees increased employment and entrepreneurialism as key elements of their long-term poverty reduction strategy. The National Treasury said:

⁸⁵ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 5.

⁸⁶ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 7.

The government's main objectives in the period ahead are to accelerate growth, lower unemployment, improve social conditions, and address wealth disparities, within a low inflation environment.⁸⁷

Government's submission said:

Attention is being paid to reducing poverty by expanding the social grant system and efforts to increase labour market prospects and promote an entrepreneurial culture. Efforts to ensure suitability include maintaining macroeconomic stability, increasing savings through increased access to financial services, improving the regulatory environment, improving the performance of state owned enterprises and reducing unemployment. Broad-Based Black Economic Empowerment and land reform are also part of this strategy.⁸⁸

The Eastern Cape submission noted that national government has developed programmes to alter the composition of the South African economy "from being white and minority based to black and broad based." It mentions the Broad-Based Black Economic Empowerment Commission, sectoral charters and preferential procurement by government for PDI (previously disadvantaged individual) companies. The submission said, "These are serious attempts by government to effect meaningful changes in the economy and its management."⁸⁹

The government submission stated:

Public finances have been reconfigured to allow the budget to become more pro-poor and better able to build human and physical capital. The overarching social development strategy is based on the provision of social grants and basic services, education and health care, improving housing and reducing crime.⁹⁰

NOTE: SAIIA HAS AGREED WITH AICC THAT BLACK ECONOMIC EMPOWERMENT (BEE) WILL BE COVERED IN-DEPTH IN THE CORPORATE GOVERNANCE SECTION.

⁸⁷ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 7.

⁸⁸ Government submission to APRM, draft received 27 February 2006, p. 31.

⁸⁹ Eastern Cape Province: African Peer Review Mechanism Provincial Report, p. 20.

⁹⁰ Government submission to APRM, draft received 27 February 2006, p. 31.

Question 2: On what basis does the government formulate macroeconomic projections?

Summary of responses to Objective 1, Question 2

- Under this question, there is broad agreement that government follows rational, sensible and fairly transparent procedures in formulating the country's macroeconomic projections. The opinions of experts such as economists and economic researchers are regularly solicited and utilised, and the projections themselves are in the main accurate. Some stakeholders, including some provinces such as North West, believe that broader civil society and citizens in rural areas should play a greater role in economic policy-making, highlighting a strong urban elitist bias in the current process.
- Generally, the quality of data collected and analyses by Statistics South Africa (StatsSA) is good, but several inputs – including parliament's report – comment on areas that could be improved as well as debate the degree of independence that the national statistics body does or should have from government. They point out slight under-reporting of growth figures and past inaccuracies in calculating inflation, for example. Sangoco drew attention to the tendency in government to disbelieve statistics that contradict expected policy outcomes.
- StatsSA in its submission to parliament highlighted the difficulties of maintaining accuracy over "the two economies," noted that data collection in the health and education sectors is weak due to poor information management systems, and pointed out that it collects and collates neither corruption nor crime figures.

Economic Projections

According to the National Treasury submission, macroeconomic projections are undertaken quarterly and published twice a year in the Medium Term Budget Policy Statement (October) and in the annual Budget Review and Fiscal Framework (February). They are based on a complex National Treasury Macroeconomic Model developed over the past five years with around 20 equations and 200 variables. The model has been fairly accurate in forecasting accurately compared to actual results (See tables below from the National Treasury).

Indicators for Objective 1, Question 2

Describe (briefly) the processes and methods used to make macroeconomic projections.

Give evidence of the effectiveness of these processes with reference to the following:

- Variance in projections of key macroeconomic variables for the past five years;
- Degree to which macroeconomic projections have been achieved for the past five years; and
- Adequacy and reliability of macroeconomic statistics.

If current projections for real GDP growth and government revenue for the next year are higher than what was realised for the past five-10 years, give reasons thereof (sic).

Describe the extent to which the Government takes account of independent advice/analysis in assessing the macroeconomic outlook and provide any independent reports of macroeconomic outlook.

Please give detailed explanation with supporting material where applicable.

Growth Projections (Budget Forecast v Actual)

	2001 BR		2002 BR		2003 BR		2004 BR		2005 BR	
	Forecast	Actual	Forecast	Actual	Forecast	Actual	Forecast	Actual	Forecast	Actual
2000	3.0	4.2								
2001	3.5	2.7	2.2	2.7						
2002	3.7	3.6	2.3	3.6	3.0	3.7				
2003	3.3	2.8	3.3	2.8	3.3	2.8	1.9	3.0		
2004			3.6	3.7	3.7	3.7	2.9	4.5	3.7	4.5
3 qs of 2005									4.3	5.1

Inflation Projections (Budget Forecast v Actual)

	2001 BR		2002 BR		2003 BR		2004 BR		2005 BR	
	Forecast	Actual	Forecast	Actual	Forecast	Actual	Forecast	Actual	Forecast	Actual
2001	6.6	6.6								
2002	5.3	9.3	6.9	9.3	10.0	9.3				
2003	4.7	6.8	5.8	6.8	7.7	6.8	6.8	6.8		
2004			4.7	4.3	4.8	4.3	4.8	4.3	4.3	4.3
3 qs of 2005									4.0	3.9

The government submission noted that “government makes use of the views and opinions of analysts, independent and private institutions and a number of technical institutions”⁹¹ in preparing their forecasts. The National Treasury cites economic forecasts from independent agencies such as the South African Reserve Bank, the Bureau of Economic Research at the University of Stellenbosch, the International Monetary Fund, the Organisation for Economic Co-operation and Development and the Economist Intelligence Unit.

The North West provincial report said:

A general perception exists that the country complies with the modern standards in the formulation of macroeconomic projections and that this reflects in targets set and met, statistics reported and international ratings by organisations such as Fitch, Standard and Poor, Moodies (sic), etc.⁹²

Busa confirmed that the National Treasury’s macroeconomic policy unit liaises extensively with the private sector in its forecasting, both with research institutes and particular economic sectors.

North West’s report reiterated the need to include rural people in national planning projections and said:

Projections should be monitored on an ongoing basis, to prevent masking actual performance with model compliance and statistics. Success measurement by the people is simple – visible, meaningful growth in local employment opportunities.⁹³

⁹¹ Government submission to APRM, draft received 27 February 2006, p. 3.

⁹² APRM North West Province Provincial Consultative Report, p. 37.

⁹³ APRM North West Province Provincial Consultative Report, p. 38.

Accuracy and Independence of Statistics

Busa noted: “over the past few years the National Treasury has slightly understated GDP growth, but this is due to readjustments to the GDP numbers by Statistics South Africa.”⁹⁴

Government seems to agree (although stated very mildly) that StatsSA could improve its data: Although the accuracy and reliability of South Africa’s macroeconomic statistics are adequate, Statistics South Africa is improving its capacity to produce quality statistics on a regular basis.⁹⁵

The North West report noted that on the whole the country’s macroeconomic statistics have been reliable, except in a few cases where inflation rates were miscalculated, and it asserted that “Although national statistics are used in economic projections, implementation is a challenge e.g. officials may lack capacity in the interpretation of policies.”⁹⁶

Parliament said, “The credibility and reliability of statistics used for policy development and planning should be improved. Furthermore, the feasibility of StatsSA being independent of Government should be considered.”⁹⁷

Parliament noted that statistics should in principle be independent of Government and should not be controlled by a department whose policies, more than any other department, impact on the statistics being monitored. There is specific concern regarding the lack of poverty statistics. In this regard, the *October Household Survey* should have been improved, not discontinued.⁹⁸

In responding to parliament’s questions, StatsSA said that it did not have to be completely independent but should maintain a “certain level of independence.”⁹⁹ StatsSA said the dual economy made accurate statistical collection and analysis difficult. Although social statistics are at an acceptable level, health and education are cause for concern because the information management systems in these two sectors are weak and need to be capacitated. In addition, neither crime nor corruption statistics are collected by StatsSA.

Sangoco noted the pattern of government using data to portray the effects of its policies in the best possible light. It cited the government’s Draft MDG report, which indicated that in 2000 the Gini coefficient was 0.59, but would fall to 0.35 if social transfers were included, a claim refuted by many economists.

Sangoco asserted:

South Africa remains one of the most unequal societies in the world. There needs to be broader agreement on the measurement of inequality if we are to take the indicator seriously, as well as the appropriate use of social expenditure in calculating income inequality.¹⁰⁰

According to David Hemson of the HSRC, the assessment of targets and benchmarks, as set out by government, does not always take credible statistical trends or findings into account if they do not reflect progress in the last decade. He pointed out:

⁹⁴ Busa submission, p. 17.

⁹⁵ Government submission to APRM, draft received 27 February 2006, p. 31.

⁹⁶ APRM North West Province Provincial Consultative Report, p. 38.

⁹⁷ Parliament Report, p. 23.

⁹⁸ Report on the Joint Ad Hoc Committee on Economic Governance, Summary of the Institute for Social Development, p. 54.

⁹⁹ Report on the Joint Ad Hoc Committee on Economic Governance, Summary of the Institute for Social Development, p. 54.

¹⁰⁰ Sangoco, p. 22.

A rational model of public administration is also undermined by the growing tendency for government to evince an attitude of scepticism, doubt or rejection of statistical trends which do not reflect progress in the past decade. Defensiveness and scepticism are particularly marked, not only in relation to HIV/Aids but also to other aspects of government policy and evaluation. Statistics South Africa (StatsSA) is formally independent yet reports to the Minister of Finance. Nonetheless, the government tends to disregard or ridicule statistical conclusions from this body which show different trends than those anticipated by public policy ... In short, the current mood in government is to strongly criticise studies which show growing or continued impoverishment or [service delivery] backlogs, even if they make reasoned use of statistics. Hence, the United Nations Development Plan (UNDP) national Human Development Report (2004), which relied on such a method, was construed as out of sympathy with the attempt to achieve transformation in South Africa, and as making “little acknowledgement of progress” (Government Communication Information Service 2004).¹⁰¹

The doubts about statistics expressed by ministers make it difficult to assess social progress against basic indicators ... Nationally, there is pressure to show achievements, but often locally, municipal officials are not unhappy to disclose a poor record of delivery as, ironically, a larger backlog would attract increased funding.¹⁰²

(See also **Employment** discussion in **Question 3**, below)

¹⁰¹ Hemson, D and M. O'Donovan, “Part I: Politics”, in *HSRC, State of the Nation 2005-2006*, 2005, p. 18.

¹⁰² Hemson's points out that a high-ranking official from the Eastern Cape recently rejected statistics derived from the 2001 Census and presented by one of the authors [in Part I of the HSRC's *State of the Nation Report 2005-2006*] for being “wrong, completely wrong” as they showed some progress in service delivery. See Hemson, D and M. O'Donovan, “Part I: Politics”, in *HSRC, State of the Nation 2005-2006*, 2005, p. 40.

Question 3: What sectoral and micro economic policies has your country developed and implemented to promote economic growth and sustainable development?

Summary of responses to Objective 1, Question 3

- National sectoral and microeconomic policies are well articulated and publicised by government. Annual and medium term budget documentation outlines these policies and allocates resources accordingly. Government inputs to this report identified the major economic policies geared towards promoting growth and sustainable development as increased infrastructure investment, reducing the cost of doing business, boosting education and skills, land reform, broad-based black economic empowerment and improving public service delivery levels.
- The level and efficacy of the various social grant delivery programmes is debated, and is discussed more fully in the **Socio-Economic Development** thematic area of this CSAR. Civil society stakeholders such as Cosatu, the Black Sash and Sangoco are vocal about the harsh day-to-day conditions the poor continue to experience, in spite of the grants they receive.
- While the National Treasury states that unemployment is falling slowly from high levels, and the Presidency outlines the progress of the Expanded Public Works Programme, the same civil society groups and others strongly attack these assertions. They are highly critical of the decision to abandon the “expanded” definition of unemployment in national figures. Business sources highlighted the “over-regulation” of the labour market and inflexible labour laws as disincentives to investment and growth.
- Submissions universally agreed that the growth that South Africa has experienced has not benefited all citizens. The Disability, youth and gay and lesbian sector submissions noted economic problems with direct bearing on their constituencies.
- The Human Sciences Research Council (HSRC) presents its latest research on the link between education and employment, and the persistent racial patterns in the labour market.
- There are marked differences in the approach to taxation by business and organised labour, with the former arguing that taxes are too high to stimulate the economy sufficiently, and the latter arguing they are too low given the service delivery backlogs and social needs.
- Business and government concur that the regulatory cost burden on companies is too high, and particularly onerous on small and medium-sized firms. They both recommend the introduction of regulatory impact assessments, but business is more assertive in wanting this instrument applied retroactively to existing laws and policies.
- Labour is supportive of government’s decision to halt full privatisation of state-owned enterprises and utilise them for massive infrastructure developments, while business feels these quasi-corporate giants remain inefficient due to lack of competition.
- Lack of capacity to implement sound policy is a common theme in this objective (and indeed in the entire thematic area).

Key Sectoral and Microeconomic Policies Laid out in Budget Process

Government's sectoral and microeconomic policies are stated in the annual Budget Review, the Medium Term Budget Policy Statement and the relevant departments' annual strategic plans and the Estimate of National Expenditure.

The government submission stated that to promote economic growth and sustainable development, economic policy prioritises:

- Increased investment in infrastructure, especially transport, water and energy (the Infrastructure Improvement Delivery Programme co-ordinated by National Treasury aims to improve the capacity to delivery of infrastructure in provinces);
- Lowering the cost of doing business, including addressing regulatory concerns and simplifying tax arrangements for small businesses;
- Ensuring a supply of skilled personnel through increased investment in education and training, investing in research and development and easing the process to import skilled labour. (Further education and training colleges are being revitalised specifically to provide the skills needed for a growing economy);
- Land restitution and redistribution and Broad based Black Economic Empowerment; and
- Improving the quality of public services, especially in terms of safety and security, education, health and basic service provision.¹⁰³

Indicators for Objective 1, Question 3

Provide an outline of the sectoral or microeconomic policies and programmes adopted and implemented in support of sustainable development.

Describe measures taken to target gender equality, environmental sustainability and employment creation in sectoral and microeconomic policies and programmes.

Give evidence of progress made towards sustainable development with respect to the following indicators:

- Growth in employment per sector for the past five years;
- Out put of key economic sectors for the past five years; and
- Socio-economic development indicators including but not limited to health, education, HIV/Aids and housing.

Additional indicators may be used so long as they are relevant in assessing macroeconomic developments of your country.

Social Spending

According to the National Treasury APRM input, an analysis by the University of Stellenbosch in 2004 showed:

The proportion of spending on social services that goes to the poorest 40% of the households has risen from 53.6% to 59.3% between 1995 and 2000. The areas where most progress has been made in directing resources towards the poorest are in social security, education, land restitution and housing.¹⁰⁴

The National Treasury said the number of people receiving social grants rose from 7.9 million in 2003 to about 10 million in 2005, with about 12 million people expected to receive direct income support by the time the child support grant is fully extended. The National Treasury said:

These means-tested grants are a critical part of government's effort to alleviate poverty and develop communities, providing children with higher levels of nutrition and the resources necessary to attend school.¹⁰⁵

¹⁰³ Government submission to APRM, draft received 27 February 2006, p. 32.

¹⁰⁴ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 5.

¹⁰⁵ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 5.

The National Treasury further states that at the beginning of 2003, 67% of the income of the poorest 20% of the population came from social grants. In the absence of such grants, 38% of the elderly would be classified as extremely poor and 56% as poor, while the old age grant reduces these numbers to 2.5% and 23% respectively. In 2003, the child support grant reduced the number of children in households classified as extremely poor from 13% to 4%. The National Treasury believes this poverty decline to be significantly higher, given the dramatic increase in children receiving grants from 2 million in 2003 to above 6 million in 2005.

The National Treasury noted:

As a country, South Africa has done well to increase access to education and healthcare for the poor. However, while spending is far more equitably distributed, quality is often lacking. Allocations to fund social policy objectives must focus on improving the quality of these services.¹⁰⁶

Racial Patterns of Poverty

The Black Sash submission said:

We acknowledge that 'South Africa's extensive public funded social assistance system is exceptional in the developing world.'¹⁰⁷ In fact, government's spending on social assistance is growing each year. In this regard, we welcomed the recent expansion of the Child Support Grant to children up to the age of 14.

However, they expressed deep concern about those not covered by grants to designated vulnerable people, especially women.

Cosatu commented on the realities faced by working-class families:

Two thirds of young people are unemployed, and most have never had a job since they left school. Older people who have relatively decent jobs in manufacturing and services feel perpetually threatened by retrenchment. In these circumstances, government's roll out of services and grants in poor communities improves the quality of life, but cannot fully offset rising numbers living off a few incomes. In this light, the targets of halving poverty and unemployment within the next decade should inform the attempts at accelerated and shared growth. Yet, there are few details contained in the 2005 MTBPS on attaining broader social targets.¹⁰⁸

¹⁰⁶ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 6.

¹⁰⁷ Seekings, J (2002) 'The broader importance of welfare reform in South Africa' in 28(2) *Social Dynamics*

¹⁰⁸ Cosatu submission on Economic Governance and Management as a Review Mechanism for the African Peer Review Mechanism for South Africa, p. 7.

Table 1: Economic status and incomes by race, gender and region, September 2003¹

	African women		African men		Coloureds/ Asians	Whites
	Former homeland ²	Other areas	Former homeland ²	Other areas		
% of adults:						
Not economically active	51%	33%	43%	26%	35%	36%
Unemployed	30%	34%	27%	29%	18%	5%
Employed	19%	33%	30%	45%	47%	59%
– Formal sector	7%	18%	18%	36%	41%	55%
– Informal sector	8%	6%	11%	9%	3%	4%
– Domestic work	4%	9%	0%	1%	2%	0%
% of employed earning under R1 000/month ³	53%	81%	30%	60%	11%	2%
% of working-age adults	20%	21%	16%	20%	12%	10%

Notes: 1. The former homeland areas are here represented by the rural areas of KwaZulu-Natal, Mpumalanga, North West, Limpopo and the Eastern Cape. This area also includes some commercial farming areas. Virtually no Coloureds, Asians or Whites live in the former homeland areas. Gender is not shown for these groups due to lack of space, but the gender differences are much lower than for Africans. 'Not economically active' means neither earning an income nor trying to. 2. As noted, the data refer to an area largely but not perfectly contiguous with the former homeland areas. 3. In US dollar terms, R1 000 fluctuated between \$76 and \$166 between 2002 and 2004, depending on the exchange rate.

Source: Statistics South Africa, 2003. *Labour Force Survey*, September 2003. Database on CD-ROM. Pretoria.

The Black Sash submission highlighted that the Eastern Cape and KwaZulu-Natal have up to 400 social grant application cases on the court rolls each month that were delayed pending a simple administrative decision by an official.

The high cost of defence and settlement in the consequent litigation is an inexcusable waste of taxpayers' money (far better spent on direct social protection) and paralyzes the efficient operation of the courts.¹⁰⁹

The Institute on Social Development: told parliament, "South Africa's anti-poverty policies are too ad hoc, with no delivery capacity."¹¹⁰

Unemployment and Jobless Growth

Government upbeat on employment trends: The National Treasury submission claimed:

Indications are that the labour absorbing capacity of the economy is improving. Employment growth over the past five years (of just under 3%) has been broadly in line with GDP growth of about 3%. The current upward trend in GDP growth (of around 4%) should be sufficient to prevent further increases in the unemployment rate or the number of people in poverty.¹¹¹

The Presidency outlined the successes of the Expanded Public Works Programme (EPWP):

One of the key programmes recently launched by government is the Expanded Public Works Programme (EPWP), which is operational in all the nine provinces. EPWP is intended to provide opportunities for skills development for employment and self-employment. In the first nine months of the programme, R2.4 billion was spent on 1,890 projects to create 144,056 gross job opportunities. This exceeds the target of 130,000

¹⁰⁹ Black Sash submission, p. 7.

¹¹⁰ Report on the Joint Ad Hoc Committee on Economic Governance, Summary of the Institute for Social Development p. 54.

¹¹¹ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 2.

opportunities for the first year of the programme. The EPWP is on course to reach its target of 1 million job opportunities in five years. By September 2005, some 223,400 gross work opportunities have been created from 3,400 EPWP projects nationwide in the first year of the EPWP, yielding at least R823 million in total wages paid. Of those who benefited from these projects in the first year of the programme, 38% were women, 41% youth, and 0.5% disabled. The EPWP focuses on ensuring that labour-intensive methods are used in government service delivery programmes in the infrastructure, environmental and culture, social and economic sectors.¹¹²

Civil Society Groups Critical of Employment Figures: The Black Sash submission noted the opposite:

According to the South African Institute of Race Relations,¹¹³ there has been an increase in the proportion of people living in poverty in South Africa over the past ten years. While poverty peaked in 2002, decreases in the poverty levels since then have been relatively small. Idasa¹¹⁴ has commented that trends in poverty and inequality indicate a decrease in inequality between racially defined groups while inequality within groups has increased, leading to the net effect that has not reduced inequality for the population as a whole.¹¹⁵

Cosatu, too, strongly disagreed with government over employment figures and projections. They contend that the government's claims of a significant drop in the official unemployment rate between 2001 and 2005 "understates the extent of the unemployment crisis in South Africa."¹¹⁶ Cosatu said:

The main reason [unemployment figures dropped] was that workers stopped looking for jobs. Thus, there been no significant drop in the broad rate of unemployment [which includes any adult who would immediately take a job]. But the narrow unemployment rate [which counts as unemployed only those actively seeking work] dropped from two thirds of all the unemployed in 2000 to half in 2004.¹¹⁷

Cosatu also criticised the decision by StatsSA to drop the expanded definition of unemployment, saying it shifts emphasis away from the unique structural unemployment challenges, particularly of youth, and must establish why people are too "discouraged" to find work. They suggest that previous estimates of job creation were probably exaggerated.

Over-regulation stifles foreign investment and job creation: According to Idasa, the inflexibility and over-regulation of the South African labour market has been identified as one of the key obstacles in attracting foreign and domestic investment. Local business leaders also feel that this has hampered employment creation.

Standard Bank, cited in Idasa 2002, also pointed out "Labour legislation as well as the strength and militancy of trade unions contribute to the inflexibility of the labour market."¹¹⁸

¹¹² Submission to the South African APRM by the Presidency, p. 40.

¹¹³ South African Institute of Race Relations, *Fast Facts*, No 9/ 2005.

¹¹⁴ Idasa 'MTBPS 2005: More spending? Different Spending? Better Spending?' [Http://www.idasa.org.za](http://www.idasa.org.za)

¹¹⁵ The Black Sash submission to the Joint Ad-hoc Committees on Socio-Economic Development and Economic Governance of the African Peer Review Mechanism, November 2005, p. 5.

¹¹⁶ Cosatu submission, p. 18.

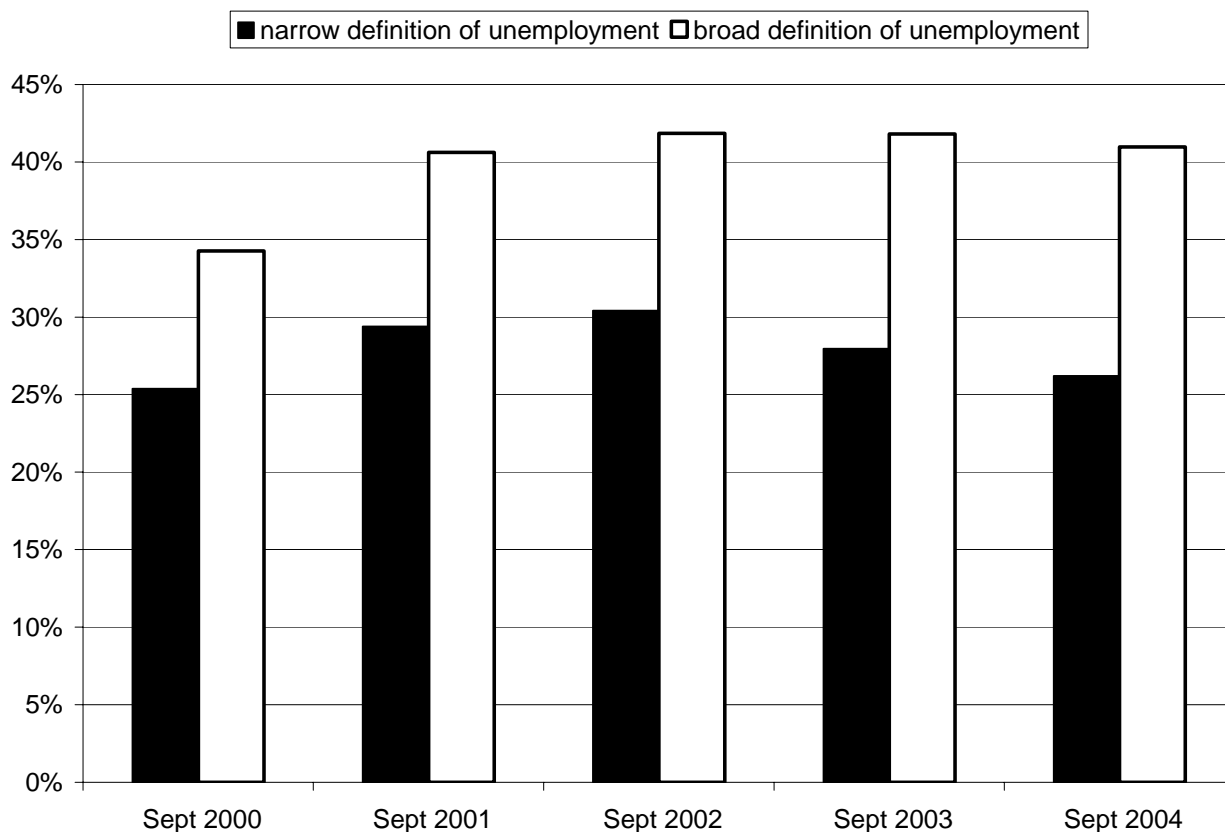
¹¹⁷ Cosatu submission, p. 18.

¹¹⁸ Standard Bank, 2001, p. 46, cited in Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report*, National Country Report for South Africa', Produced by Public Opinion Service, Institute for Democracy in South Africa, for Uneca, Development Management Division, July 2002, p. 65.

Parliament's report said:

The official statistics must be viewed on the basis that statistics for the informal sector of the economy are generally not readily available. South Africa's informal sector is one of the smallest in the developing world. Whereas the informal sector of developing countries would generally be much more diversified and constitute 40% to 70% of the labour force, the South African figure is much lower at 16%.¹¹⁹

Unemployment rates, 2000 to 2004 (from Cosatu submission)



Source: Calculated from, Statistics South Africa, *Labour Force Survey September 2000 to March 2005, Historical Series of Revised Estimates*. Pretoria. September 2005. Downloaded from www.StatsSA.gov.za in October 2005.

Cosatu said that the growth South Africa has experienced over the past five years has not led to improvements in the quality of life for poorer communities, and that South Africa's economic growth has not been shared by all.¹²⁰ The Black Sash echoes this concern, calling the growth of poverty and inequality in South Africa "a crisis by any standard." The organisation cites comments from Idasa as well as examples of activism by Cosatu and the South African Communist Party as evidence of the concerns felt by people about these issues.¹²¹

¹¹⁹ Parliament report, p. 18.

¹²⁰ Cosatu submission, p. 18.

¹²¹ Black Sash submission, p. 16.

Sectors Outline Particular Economic Impacts

The Disability sector submission noted that legislation supporting people with disabilities in business has not been properly implemented, and that those in charge of budgets for implementation do not understand disability issues. The submission was also concerned that although social spending has increased in recent years, budgeted amounts are not being spent. The employment of people with disabilities is very low.¹²²

The Youth sector submission mentioned the widening gap between rich and poor, the phenomenon of jobless economic growth, the casualisation of jobs, poor quality jobs, and unsustainable livelihoods for South Africans, for example, due to poor housing. They also criticised the lack of a coherent industrial policy in the country.¹²³

The submission by the organised Gay and Lesbian sector does not examine economic governance and management in detail, but noted that the majority of lesbian, gay, bisexual, transsexual and intersexual (LGBTI) people in South Africa are poor and black, and that their sexual orientation impacts on their economic status, making it harder to find work due to discrimination. The submission concluded that “the majority of LGBTI people would benefit from greater job creation and addressing of discriminatory societal beliefs and behaviours.”¹²⁴

The HSRC on the Labour Market¹²⁵

The Human Sciences Research Council (HSRC) contended that the South African labour market was and is characterised by race and gender inequalities in the different economic sectors and occupational structures; education and training systems that perpetuate and reinforce the occupational inequities; huge income inequalities; a shortage of skills in critical areas and an abundance of unproductive skills; and very large unemployment and under-employment rates among black Africans. Progress in addressing these issues has been small in relation to the size of the problems. Discrimination is the most important factor.

The HSRC’s key arguments:

- The quality and standard of education to which most black Africans have access continues to be inadequate to enable them to find a challenging and productive place in the economy. Few Africans obtain matriculation results that enable them to proceed to higher education, and those who do frequently do not qualify for registration in fields that would prepare them for a profession.
- Although African participation in education (particularly higher education) is increasing, problems remain. Field of study (most critically), as well as the type and quality of qualifications are important. The majority of Africans hold qualifications with a low potential for employability.
- The Employment Equity Act (EEA) and the Skills Development Act (SDA) were enacted to address issues relating to equity and skill shortage in the labour market. The EEA aims to eliminate discrimination and establish specific measures to accelerate the advancement of

¹²² Disability Sector submission, p. 15.

¹²³ Youth Sector submission, p. 15.

¹²⁴ Joint Working Group LGBTI submission, p. 12.

¹²⁵ HSRC submission, 27 January, pp. 9-14.

designated groups – women, black people and people with disabilities – through affirmative action. Affirmative action measures are aimed at ensuring that suitably qualified people from designated groups have equal employment opportunities and are equitably represented at all levels in all occupational categories. The SDA aims to develop the skills of the workforce (especially the previously disadvantaged) principally through increased investment in training, and the use of the workplace for training.

The HSRC believed that while Africans and women have made progress in the labour market, there are concerns.

- Firstly, Africans remain concentrated in low-skilled and semi-skilled occupations, while whites are dominant in high-level occupations.
- Secondly, racial and gender profiles of occupations have not changed much. Whites dominate high-level occupations. White women are advancing more rapidly than black women or black men at management level.
- Thirdly, on-the-job training, promotions and recruitment reflect limited commitment to redress. These are still skewed towards whites and are concentrated at higher levels.
- Fourthly, beneficiaries of training reflect the demographic profile of sectors and occupations, i.e. it is still mostly whites that receive training at higher occupational levels because they form the majority within those groups.

The HSRC contended that the imbalances in the labour market are not only the fault of education, but reflect an attachment to informal discrimination in the private sector. Government, as an employer, accounts for most of the progress that has taken place, particularly at management level, although whites remain over-represented in skilled occupations. Progress in the private sector is uneven.

Structurally, people in short-term or part-time employment, or in small and medium-sized firms tend to be the least well educated, have few skills, and are least likely to receive work-related training. Their prospects for advancement are limited. By contrast, technological pressures lead to firms prioritising further training of those who are already technologically skilled. Inequalities are perpetuated, as most of the latter group are white.

The HSRC believed that these problems need to be tackled both within the labour market and outside it. High unemployment rates and marginalisation of Africans and women need to be tackled through active labour market policies such as basic literacy and numeracy training and job-search assistance. Active labour market policies would improve the employability of the unemployed, increase the efficiency of job searching, secure job outcomes and improve equity. These are a responsibility of government. Equity legislation remains important: the approaches are complementary.

For those outside the labour market, numeracy and literacy affects access to good jobs and training. But education and training are still supply-led. There is little if any labour market information on demand for skills. Therefore people pursue qualifications that the labour market may not be able to accommodate. The question then is: on what basis is the recorded training taking place?

HIV/Aids may lead to the frequent need to replace and retrain workers; although it may also become a disincentive to training, thus leading to a general skills loss in the working population.

Various policies recognise the importance of integrating efforts to transform the labour market. Human resource development requires a holistic approach with commitment and action from various complementary stakeholders: that is, from government (including efforts to improve education and training by the departments of education and labour); from employers (in changing their human-resource management practices); and from individual employees (in addressing informal discrimination). Initiatives by any one of these groupings will not be effective without complementary commitments from the others.

Investment

Busa's submission noted:

Busa fully subscribes to the view that higher levels of investment (say 25% gross fixed capital formation (GFCF) to GDP level) are necessary to drive a higher growth rate. However, the quality of investment is just as important as the quantity.¹²⁶

There were few submissions that mentioned investment. This section will need to be enhanced in the final report.

Taxation

The Busa submission assessed the entire range of taxes and their impact on entrepreneurial activity, and noted the recent expanding trend towards "user charges" and levies. The analysis below is taken from their APRM submission:

- Because the tax regime is residence based, South African resident individuals and companies are taxed on their worldwide income, irrespective of the source of their income. This includes the income of controlled foreign companies, unless an exemption applies.
- Resident individuals and companies are subject to Capital Gains Tax on 25% and 50% of capital gains, respectively.
- Non-resident individuals and companies are taxed in South Africa on all income received by or accrued to them from a South African source and on capital gains on disposal of immovable property situated in South Africa or assets associated with a business permanently established in South Africa.
- Company taxes currently (2005/06) stand at 29% (though a considerably reduced tax regime applies for small and micro-businesses).
- A Secondary Tax on Companies (STC) of 12.5% is paid on company dividends.
- In addition, excise and customs duties, fuel taxes, non-recoverable VAT on certain inputs, donations tax, stamp duties, transfer duties, and other indirect taxes (marketable securities) are part of the tax burden.
- Of greater significance is the administrative burden imposed on business, particularly small business, by the collection on behalf of the tax agency itself of employees tax, value added tax, and a number of levies that support various social and developmental objectives (skills development, unemployment insurance, workman's compensation, and regional service councils).

¹²⁶ Busa submission, p. 2.

To the extent that there is an attempt by government to ensure that the proportion of taxes to GDP is kept at 25%, the current ratio (+28%) exceeds that by a considerable margin. It is a figure that supports the argument by business that the tax regime has a negative effect on the economy.¹²⁷

The current corporate tax rate plus secondary tax on companies is high by international standards and is only contributing to a 4% economic growth rate. The country's strong fiscal situation plus the objective of encouraging greater levels of private sector investment and growth require further cuts in the corporate tax rate. In the context where many other countries are competing far more aggressively for FDI, South Africa cannot afford to fall further behind.¹²⁸

The Chamsa submission concurred:

Business is also of the view that the South African tax regime forces income earners into the maximum marginal rate of personal tax at a very low-income level, and since the abolition of deductions for children, spouses and other dependents, skilled human capital is being penalised in comparison with other countries with which we are competing for investments.¹²⁹

Cosatu indicated that over the MTEF period ending 2008/9, the contribution by the business sector, paying company and secondary company tax, averages around 22% of total revenue, yet this sector has been the biggest beneficiary from economic growth, recording large profits. The 2006/7 People's Budget Campaign (PBC) proposals suggested increased taxation to raise resources, while lessening the tax burden on the poor.¹³⁰

The PBC 2006/7 proposals show how the structure of taxation has changed significantly since 1981. The past decade has seen significant and repeated personal income tax rate cuts, with companies' share of the total tax burden halving from about 40% in the apartheid era to around 20% now. Personal income tax and taxes on goods and services (GST/VAT) have now become increasingly important sources of revenue (from about 30% in 1981 to around 60% today). Cosatu argues that the unemployed realised no direct benefit from income tax cuts – and could suffer if tax cuts reduce government's capacity to deliver basic services, while top earners have seen their tax rate slashed from 45% to 40% recently.

Simultaneously, corporate taxes were reduced. Cosatu contended that companies' tax contribution is:

Relatively small and the effective rate of taxation on companies remains relatively low, despite attempts to increase the *effective* rate of tax for large corporations (which is currently between 4-14%, despite the nominal rate being 29%).¹³¹

Cosatu said:

The response of government to these proposals has been disappointing. Whilst there have been some limited shifts in this regard [such as zero VAT rating illuminating paraffin in 2001, representing an effective R400 million tax cut for the poor], the tax regime continues to disproportionately favour higher income earners. We therefore continue to motivate for the above demands. This is based on the principle that economic growth cannot be redistributive, let alone equitable, unless these interventions are implemented.¹³²

¹²⁷ Busa submission, pp. 13-14.

¹²⁸ Busa submission, p. 3.

¹²⁹ Chamsa submission, p. 5.

¹³⁰ Cosatu submission, p. 10.

¹³¹ Cosatu submission, p. 12.

¹³² Cosatu submission, p. 12.

Cosatu further added that recent tax provisions largely benefit formally employed workers and business, and that the MTBPS does not tackle VAT reform:

We find this unacceptable and demand that more progressive tax policy mechanism be introduced, including those of the PBC, in order to contribute significantly to the narrowing of income gaps, maximisation of using disposable income and much-needed relief for lower income households.¹³³

Cosatu said the PBC welcomes the increased tax to GDP ratio and deficit over the MTEF period, but claims it is too moderate. It commends the projected overall increase in expenditure (financed through both taxes and deficit), which it said would stimulate shared growth if properly utilised.

Cosatu believed:

A quicker, but prudent increase in the deficit is possible, responsible and consistent with our goals of accelerated growth and poverty eradication. Instead of cutting taxes when revenues go up, the government should use the money to stimulate the economy, fund new investment thereby crowding in private investment, and increase human capital investment through improving services and social grants for the poor. A 1% increase in taxes relative to the GDP would provide an additional R30 billion to improve services for the poor over the MTBPS period.¹³⁴

Regulatory Costs

Busa cited South Africa's first regulatory cost study undertaken by SBP in 2004/05,¹³⁵ based on surveys covering some 1,800 businesses of all sizes. The study looked in detail at regulatory compliance costs – the costs that firms bear in understanding regulatory requirements, filling in forms, etc. These “pure red tape” costs should not be confused with costs incurred in actually implementing regulations.

- While large firms face the highest absolute regulatory compliance costs, they weigh much more heavily on smaller enterprises. Compliance costs represent 8.3% of turnover for firms with sales of under R1-million a year, and 0.2% of turnover for corporations that turnover R1-billion or more annually.
- Compliance costs per head for firms with fewer than five employees are ten times higher than for firms with 200 employees.
- The burden is most regressive for labour and employment equity regulations and least for tax regulations.
- Small firms in four important sectors – the automotive industry, clothing and textiles, pharmaceuticals, and tourism – all face significantly higher than average regulatory cost in comparison to the average South African company.
- Significantly, informal entrepreneurs do not escape red tape costs. It is estimated that they face regulatory costs of around 4.5% of their estimated gross annual income.

Busa said:

These findings make an overwhelmingly strong case that South Africa's regulatory system is not as efficient as it could be in its interactions with SMEs. It is to some extent inevitable that smaller firms will face proportionately higher regulatory compliance costs than large firms because the costs of some essential regulatory compliances

¹³³ Cosatu submission, p. 12.

¹³⁴ Cosatu submission, pp. 12-13.

¹³⁵ SBP is a policy-making think tank and was formerly known as the “Small Business Project.” It is now called “Strategic Partnerships for Business.”

will be ‘spread’ over more turnover in larger firms. Equally, however, much of the unfairness arises because regulatory systems have not been designed with the special circumstances of SMEs in mind.¹³⁶

Busa commended government for now prioritising the reduction of regulatory compliance costs, citing the welcome steps of simplified VAT and asset depreciation systems for small businesses announced in the 2005 budget.

- Busa urged further, bolder steps, which should include “making required forms shorter and clearer, eliminating multiple requests for the same information and, wherever possible, reducing the number of times in a year the returns have to be made.”¹³⁷
- It further recommended “the introduction of a Regulatory Impact Analysis system for South Africa with a mandate to look closely at the costs and benefits of proposed regulations for SMEs in particular.”¹³⁸ It noted that currently “many new government policies are established by different government departments in isolation from the central objectives of investment, transformation and growth.”¹³⁹ The Chamsa submission also supports this proposal.
- It noted that government is investigating such a strategy to assess the costs and benefits of future legislation and policy in terms of impact on investment, employment, transformation and economic growth. Busa said, “Business believes that this will make a significant contribution to improving the robustness and transparency of new legislation.”¹⁴⁰

Some submissions believe that the provision of services and optimal use of resources has been retarded by a lack of capacity. Busa said that there is a need for the government to make investments in areas where it has the dominant role, but that a lack of capacity in some parastatals and in local government, as well as a low priority given to public-private partnerships, are hindering the government efforts. It believes that such partnerships could be of great assistance in the provision of services and infrastructure.¹⁴¹

In contrast, according to Cosatu, there has been a substantial shift in government’s position on state-owned enterprises (SOEs), having abandoned a large-scale privatisation programme while retaining “elements of commercialisation and corporatisation.” Policy now argues that SOEs as public entities “must play a strategic role in investment and ensuring overall competitiveness in the economy.”¹⁴²

Cosatu felt concerned about the previous Medium Term Budget Policy Statement from the finance minister:

Health care, education, retirement provision and welfare services are not exclusively the responsibility of the state – we will continue to encourage private sector development and to seek partnerships that contribute to improved service delivery and more efficient management and use of resources. Changes in the tax environment and regulatory reform also play their part in promoting fairness, transparency, equity and long-term development.¹⁴³

¹³⁶ Busa submission, pp. 14-15.

¹³⁷ Busa submission, pp. 14-15.

¹³⁸ Busa submission, pp. 14-15.

¹³⁹ Busa submission, p.18.

¹⁴⁰ Busa submission, p.18.

¹⁴¹ Busa submission, p. 2.

¹⁴² Cosatu submission, p. 3.

¹⁴³ MTBPS 2005 Budget Speech, Minister of Finance, p. 8.

It clearly pointed to “partnerships” with an emphasis on the public-private type. However, several countries have shown that public-public partnerships and public-CBO/NGO partnerships, particularly in the arena of social services are choice options, rather than relying exclusively on the private sector, which would exclude the unemployed and indigent from their services.¹⁴⁴

Parliament confirmed that government is generally not in favour of full privatisation but is pursuing partial privatisation or restructuring. It outlines the main objectives of these initiatives:

- To facilitate economic growth, promote the development of historically disadvantaged communities and Black Economic Empowerment;
- To extend private ownership of government-controlled assets to employees (for example by way of employees share ownership plans) and to previously disadvantaged persons (by way of the National Empowerment Fund); and
- To reduce the national borrowing requirement, promote skills transfer and promote fair competition.¹⁴⁵

Busa was also concerned about the dominance of the state and the lack of competition in large parts of the economy. This has led to opportunity costs, such as inflated prices for consumers, and forfeiture of new investment. It estimated that this likely to subtract an extra 1 to 1.5 percentage points from the country’s annual economic growth rate.¹⁴⁶

Impact of HIV/Aids

Companies in South Africa could lose around 15% of annual profits to HIV/Aids by 2008, a recent impact study showed. Researchers at Boston University, in collaboration with Wits University’s Health Consortium, have found that South Africa is already losing more than 5% of its labour force each year – enough to raise concern among buyers of local products.¹⁴⁷ The findings show that the total cost to the South African economy could translate into an annual reduction in growth of between 0.3% and 0.5% - at a cost of R157 billion to the economy. This loss of skilled labour makes South Africa less competitive internationally. Local turnover declines, revenue suffers, and this leads to a shrinking government tax base.¹⁴⁸

According to the Treatment Action Campaign (TAC) “South Africa possibly has more people living with HIV than any other country.”¹⁴⁹ Various estimates on the number of people range from 4.5 to 6.3 million people, however TAC cautions that they cannot be certain which estimate is the most accurate as modeling and survey-based approaches have been used.¹⁵⁰ Life expectancy in South Africa has dropped from over 60 in 1996 to just over 50 in 2005. According to the Actuarial Society of South Africa, over 300,000 people died of Aids in 2005. Of particular

¹⁴⁴ Cosatu submission, p. 17.

¹⁴⁵ Parliament Report, p. 19.

¹⁴⁶ Busa submission, p. 3.

¹⁴⁷ Jordan, B, “Aids, It’s not lives we want to save, but business”, Health Systems Trust, <http://new.hst.org.za/news/index.php/20020511/>, 15 July, 2005.

¹⁴⁸ Crew, M, “A grim prognosis as paralysis grips education chiefs: Effects of pandemic underestimated or ignores”, *Financial Mail*, 28 January 2000, p. 6.

¹⁴⁹ TAC mentions that if not, then South Africa is second only to India. See TAC, *Submission to African Peer Review Mechanism: The HIV Epidemic: A discussion of the response of the South African Government*, February 2006, p. 4.

¹⁵⁰ Various estimates have been made by the Department of Health, the Actuarial Society of South Africa, the Human Sciences Research Council and Statistics South Africa. See TAC, *Submission to African Peer Review Mechanism: The HIV Epidemic: A discussion of the response of the South African Government*, February 2006, p. 4.

concern, however, is the large number of new HIV infections, and the impact of the pandemic on the South African economy. A recently released Statistics South Africa report showed a 57% increase in mortality between 1997 and 2002.¹⁵¹

Furthermore:

The HIV epidemic challenges the socio-economic development of [this] country”, and “much research has been done demonstrating the effect of HIV on the increasing number of orphans, its effect on households and its contribution to poverty. A successful response to it requires leadership and good governance. It is therefore appropriate that the African Peer Review Mechanism is considering the HIV epidemic in its deliberations.¹⁵²

Several concerns connected to economic governance and management and the impact of the pandemic on the South African economy:

The National Health Act provides no legal or policy framework for ... the Patent Act which provides patent protection (at the expense of access) in excess of what South Africa is obliged to provide under international trade law.¹⁵³

South Africa invests a large amount of money in alleviating the HIV epidemic. The Treasury’s health HIV/Aids budget is R1.5 billion for 2005/06. The HIV/Aids conditional grant grew 38% in 2005/06 and is predicted to grow a further 31% in 2006/7.¹⁵⁴

Government has in place an extensive social assistance system that contributes to poverty alleviation. This system includes a disability grant for poor people with Aids who are unable to work.¹⁵⁵

Substantial work is being done to alleviate the HIV epidemic. However, many of these interventions are beset with problems [of] poor governance characterised by lack of leadership from President Mbeki and [Health] Minister Tshabalala-Msimang.¹⁵⁶

In addition to these problems, “government spending on HIV has been beset with problems and mismanagement.”¹⁵⁷

For example:

There was misappropriation of funds in Mpumalanga in 2003 by the Provincial Health Department under the MEC Manana, including diversion of HIV funds to soccer events. This mismanagement of funds was confirmed by subsequent dealings between the Auditor-General and the Mpumalanga Health Department. Ms Manana is now a member of Parliament and a member of the Health Committee. Following a complaint from TAC, the Auditor-General issues a qualified audit of the Department of Health in 2004, owing to a range of issues, and

¹⁵¹ TAC, *Submission to African Peer Review Mechanism: The HIV Epidemic: A discussion of the response of the South African Government*, February 2006, p.5.

¹⁵² TAC, *Submission to African Peer Review Mechanism: The HIV Epidemic: A discussion of the response of the South African Government*, February 2006, p.5.

¹⁵³ TAC, *Submission to African Peer Review Mechanism: The HIV Epidemic: A discussion of the response of the South African Government*, February 2006, p. 9.

¹⁵⁴ National Treasury Estimated of National Expenditure 2005, pp. 346-347, cited in TAC, *Submission to African Peer Review Mechanism: The HIV Epidemic: A discussion of the response of the South African Government*, February 2006, p. 8.

¹⁵⁵ National Treasury Estimated of National Expenditure 2005, pp. 346-347, cited in TAC, *Submission to African Peer Review Mechanism: The HIV Epidemic: A discussion of the response of the South African Government*, February 2006, p. 8.

¹⁵⁶ National Treasury Estimated of National Expenditure 2005, pp. 346-347, cited in TAC, *Submission to African Peer Review Mechanism: The HIV Epidemic: A discussion of the response of the South African Government*, February 2006, p. 8.

¹⁵⁷ National Treasury Estimated of National Expenditure 2005, pp. 346-347, cited in TAC, *Submission to African Peer Review Mechanism: The HIV Epidemic: A discussion of the response of the South African Government*, February 2006, p. 21.

particularly because NGOs had failed to account for their expenditure in terms of the Public Finance Management Act. Specifically cited was the National Association of People With Aids (Napwa), about whom TAC had complained. Napwa had been operating, funded in large part by the government, for years amidst reports of corruption. The organisation appeared to have no substantive programme other than to contradict the actions of TAC and its allies.¹⁵⁸

The TAC submission ended: “The above record is partial; there are many other instances of poor governance on HIV.”¹⁵⁹

¹⁵⁸ National Treasury Estimated of National Expenditure 2005, pp. 346-347, cited in TAC, *Submission to African Peer Review Mechanism: The HIV Epidemic: A discussion of the response of the South African Government*, February 2006, p. 21.

¹⁵⁹ National Treasury Estimated of National Expenditure 2005, pp. 346-347, cited in TAC, *Submission to African Peer Review Mechanism: The HIV Epidemic: A discussion of the response of the South African Government*, February 2006, p. 24.

Question 4: What has been done to increase domestic resource mobilisation including public and private savings and capital formation and to reduce capital flight?

Summary of responses to Objective 1, Question 4

- The submissions outline a number of key steps that government has taking to boost savings, stimulate capital formation and control capital flight form South Africa. These include retirement funding reforms, changes in banking legislation, the spectacularly popular low-cost banking Msanzi accounts, the financial sector charter that have attracted 2 million previously un-banked people in a single year, increased government capital expenditure, and increased business confidence and hence higher investment levels.
- Few submissions outside of government addressed this question, indicating the subject matter it is not considered controversial.
- Government's slow but steady policy of relaxing exchange controls was described, and supported by both business and labour, although there are differences about the pace and rate of the changes.
- Remaining challenges include increasing levels of domestic savings, increasing gross fixed capital formation as a ratio of GDP and ensuring continued expansion of access to financial services. As economic activity increases, increased income should lead to higher domestic savings.
- The North West submission frankly listed some key problems around capital formation and access to finance – drawn largely from consultations across the province. These included blacklisted individuals, unemployment, insufficient information on training provision at local level, inefficient credit bureau policies, institutions like Khula and Seda are not user-friendly, effects of corruption on welfare and savings, high indebtedness, high rates charged by micro-lenders, low interest rates discourage savings and harm pensioners, and general access to finance is limited at the lower levels of economic activity and requires serious attention at national level.

Efforts to Boost Savings

Government's submission stated:

Efforts to improve domestic resource mobilisation have included retirement fund reforms that encourage individuals to provide for their own retirement, encouraging the inclusion of retirement funding in remuneration contracts, retaining the purchasing power of pensions and improving the standard of governance in funds. Draft legislation to create second and third tier banking has been published for public comment. It aims to expand the provision of services and encourage competition. Work on a deposit insurance scheme is progressing well and government has also launched its first retail bond for individual investors, in line with its policy of increasing access to variety of instruments.¹⁶⁰

¹⁶⁰ Government submission to APRM, draft received 27 February 2006, p. 32.

Using figures supplied by the Reserve Bank, the North West Province's Provincial Consultative Report provided the numeric indicators requested in the APRM Questionnaire:¹⁶¹

M2/GDP: (M2: amount of loans taken in banks)	1999/2000 = 52.4% 2000/2001 = 51.6% 2001/2002 = 55.8% 2002/2003 = 54.5% 2003/2004 = 58.6% 2004/2005 = 59.5%
Fiscal Revenue/GDP: Credit (loans) form 16% of the GDP.	1999/2000 = 23.7% 2000/2001 = 22.7% 2001/2002 = 23.7% 2002/2003 = 23.4% 2003/2004 = 23.4% 2004/2005 = 24.7%
Average private and public savings GDP ratio over the past five years:	Targeted at 25%
Capital formation GDP ratio for the past 5 years:	1999/2000 = 15.1% 2000/2001 = 15.1% 2001/2002 = 15.1% 2002/2003 = 16.0% 2003/2004 = 16.5%
Share of population with access to finance, including micro-finance, and to saving facilities:	About half of the population has no access to finance facilities.

The Government submission said:

- The Financial Sector Charter aims to transform the sector includes a commitment to increase access to financial services by low-income earners and SMEs.
- The remarkably successful Msanzi initiative – providing banking accounts for poor people – has drawn more than two million people into the formal banking system in one year.
- Government's capital expenditure has increased significantly since 1997, with further increases planned over the next few years.
- Government is also committed to increasing the productive capacity of the economy and is making use of public-private partnerships to do so.
- Private investment is also robust, reflecting high levels of business confidence.¹⁶²

¹⁶¹ APRM North West Province Provincial Consultative Report, pp. 33-35.

¹⁶² Government submission to APRM, draft received 27 February 2006, p. 32.

Exchange Controls

Government efforts to address the risk of capital flight have included improving overall economic management and the implementation of policies to manage and stabilise cyclical capital flows. These include the sterilisation of capital flows through the accumulation of reserves, making use of debt management instruments to promote financial stability and maintaining confidence in the inflation-targeting framework. A gradual approach to lifting exchange controls has also been part of the overall strategy.

Parliament's report noted that exchange controls were first implemented in 1961 to stem large currency outflows and give some stability to the currency market. The regulations are administered by the Reserve Bank, assisted by commercial banks appointed as authorised foreign exchange dealers. Whereas before 1994 exchange controls became increasingly harsh to stem capital flight and shore up a declining rand, after 1994 government has gradually relaxed them.¹⁶³

Abedian said:

In June 1996, the Minister of Finance reiterated the government's commitment to such a gradual relaxation. This was received with a great deal of scepticism by the financial market analysts. The objective of the policy, however, was to achieve two concurrent objectives; maximum stability with ongoing relaxations, however small or big, along the path of market reforms ... By 2002 the strategy of gradual relaxation had passed a number of severe tests ... Gradually, but surely, nearly all the foreign exchange controls were being lifted ... Budget 2003, the Minister announced a major package of foreign exchange normalisation. It included,

- (a) a globally benchmarked set of prudential measures for the South African institutional investors who aim at the international diversification of their assets;
- (b) the unblocking of the blocked rands;
- (c) the introduction of an amnesty for those South African who have illegally held assets overseas; and
- (d) the removal of tax on foreign dividends.¹⁶⁴

Remaining challenges include increasing levels of domestic savings, increasing gross fixed capital formation as a ratio of GDP and ensuring continued expansion of access to financial services. As economic activity increases, increased income should lead to higher domestic savings.

Indicators for Objective 1, Question 4

Outline key measures taken in terms of legislation, policies, programmes and institutional development to promote domestic resources mobilisation, and deepen financial intermediation.

Assess the effectiveness of these measures with respect to:

- M2/GDP;
- Fiscal Revenue/GDP;
- Average private and public savings GDP ratio over the past five years;
- Capital formation GDP ratio for the past five years; and
- Share of population with access to finance, including micro-finance, and to saving facilities.

Outline the key challenges in this regard and the steps taken to address any shortfalls.

Please give detailed explanation with supporting material where applicable.

¹⁶³ Parliament Report, p. 20.

¹⁶⁴ Abedian submission, p. 13.

Busa noted:

South Africa's fairly small domestic savings pool, the already large reliance on foreign savings (-4.7 current account deficit) and the growing demands for financial capital to fund higher levels of investment, requires an urgent look at how the country can generate greater domestic savings to fund the investment and growth objectives.¹⁶⁵

Lumkile Monde said that projected capital expenditure of R134 billion by Eskom and Transnet over the next five years would have a significant economic impact across the economy. He contended that cap-ex by state-owned enterprises (SOEs) will account for 35% of overall additional GDP over the next five years, accounting for a quarter of all new formal sector jobs. He predicts that increased investment spending will result in the investment/GDP ratio improving substantially from 16.5% in 2004 to 21.6% by 2010.¹⁶⁶

The North West report lists several challenges to increasing domestic resource mobilisation:

- Blacklisted individuals;
- Unemployment;
- Insufficient information on training provision at local level;
- The need for a review of credit bureau policies and supply of information through media.
- Conditions for access to funds still a problem;
- Institutions like Khula and Seda (the Small Enterprise Development Agency) should be made more user-friendly;
- Corruption undermines national welfare and savings;
- Individual debt- ratio of families is at an unacceptably high level;
- Family savings potential is limited by unemployment and high micro-lender interest rates;
- High taxation levels prevent saving;
- An attitude of "must-have-all" prevalent in society promotes debt and precludes saving;
- Inflation is regarded as a threat to savings;
- Interest rates at the lowest level discourages savings and is a threat to pensioners;
- A depressed economy with low economic activity is a threat to savings;
- The ability of people to form capital to contribute to the GDP is limited;
- Policy on leasing state land discourages competitive farming (high tariffs/exchanges); and
- General access to finance is limited at the lower levels of economic activity and requires serious attention at national level.¹⁶⁷

¹⁶⁵ Busa submission, p. 17.

¹⁶⁶ L Monde, "Economic Governance and Management of South Africa", Presentation at the Annual South African Public Service Management Conversation, Fancourt, George, 8 December 2005.

¹⁶⁷ North West submission, pp. 44-45.

Question 5: To what extent is South Africa vulnerable to internal and external shocks?

Summary of responses to Objective 1, Question 5

- Again, one of the least contentious questions, with the major differences in what contributors considered to be “shocks.”
- North West, for example cited a long list of internal shocks (including crime and corruption, HIV/Aids, unemployment and poverty, the trade balance, disease and labour strikes) and external ones (high oil prices, cheap and illegal imports, unfair global terms of trade, exchange rate fluctuations and regional instability).
- Submissions in the main tended to focus on the stability or volatility of the rand, and the role of the South African Reserve Bank in this regard. While the SARB has not actively intervened to strengthen (or weaken) the currency, it has accumulated foreign currency at times of rand strength, placing the current reserves in a healthy position.

The North West Provincial Report listed the following as internal shocks:

- High rate of selected crimes.
- Corruption.
- HIV and Aids.
- High levels of unemployment and poverty.
- Skewed import and export balance due to limited local beneficiation reduced local production and over concentration of selected imports such as textiles.
- The global market concept currently reflects in South Africa’s mineral export programmes, vehicle manufacturing, fruit exports, etc. Africa as a market provides diversification opportunities.
- The country is not adequately prepared to deal with natural disasters such as veld fires and periodical droughts.
- Communicable diseases such as Foot-and-Mouth in animals.
- Labour strikes.
- Rigid labour legislation.
- High mortality rates affect GDP negatively.

Indicators for Objective 1, Question 5

Describe the prevalence and magnitude of shocks experienced to the economy over the past five years with reference being made to the following indicators:

- Level and variation in the current account balance;
- Export and import diversification measures;
- Terms of trade for the past five years;
- Changes in net foreign assets;

Outline steps taken to reduce your country’s vulnerability to internal and external shocks.

Additional indicators may be included to better reflect country-specific circumstances and experiences.

North West listed the following as external shocks:

- Uncontrollable oil prices;

- Cheap goods entering the country illegally;
- [Intellectual property] piracy;
- African agricultural products are unjustly treated in world markets;
- International economic fluctuations affect the stock market and savings;
- International currency exchange rates;
- Import/export imbalances in textile industry has a destructive effect on national production capability as well as on intra-African trade and production; and
- Political problems in Zimbabwe.¹⁶⁸

Government noted the inherent relative volatility of the rand, a fate shared by many other commodity exporting economies. This constant exposure to risk causes uncertainty and hinders growth. South Africa employs policies to reduce currency volatility, including reserve accumulation, inflation targeting, reducing growth volatility, export promotion and diversification. Through the SARB practice of buying foreign currency at times of rand strength, gross international reserves increased from the equivalent of 70% of short-term external debt at end-2003 to an estimated 178% as of end-June 2005.

Busa and the BER broadly agreed. Busa said:

Inherited foreign currency liabilities ... meant that the country had a negative foreign reserve position [that] left the country vulnerable to external shocks as was evidenced in 1998 and 2001. Since that time the prudent macroeconomic policy framework adopted by government has generated continued sovereign rating upgrades, and since 2001 the net negative reserve position has been replaced with a net positive reserve level of over US\$20 billion. Large capital inflows, including two large foreign direct investments in 2005, have more than covered the deficit on the current account of the balance of payments. So the risk of external shocks has diminished – but still remains a threat.¹⁶⁹

According to the BER, “The balance of payments situation indicates a high risk of rand instability.”¹⁷⁰ South Africa has balanced its negative trade balance with inflows of portfolio investments, which are largely driven by global investments in emerging markets as an investment class. Thus “a blow-out in one emerging market could easily affect the whole class” In essence global investors do not evaluate South African stocks and invest based on specific merits but seek to diversify into markets like South Africa to balance other risks. However, as happened during the Asian currency crisis, global events can trigger a rapid flight of capital that could drastically affect the value of the rand. However, the South African government has limited means to insulate the nation from external price shocks that can affect the balance of payments and thus the amount of foreign exchange on the markets.

The BER also noted that a strong dollar is hurting manufacturing and making exports more expensive but imports cheaper, which has accentuated the nation’s current account deficit since 2002.¹⁷¹ It also noted that fuel prices, while high, are being managed. The BER also noted other potential shocks to South Africa from the global economy: high current account surpluses in the US and bird flu. However, the BER noted that metal prices are up, including gold, iron, coal, cobalt, and platinum.

¹⁶⁸ North West report, pp. 45-46.

¹⁶⁹ Busa submission, p. 3.

¹⁷⁰ Bureau for Economic Research, University of Stellenbosch, “Economic activity expected during 2005-2007” p. 13.

¹⁷¹ Bureau for Economic Research, University of Stellenbosch, “Economic activity expected during 2005-2007” p. 26-27.

The BER said, “Bar any unforeseen confidence shocks, the global environment will continue to support strong capital flows to emerging markets, such as South Africa. The prospects of solid economic growth will help sustain the growth momentum in South Africa, as the South African business cycle follows the global one closely. South Africa will therefore also be adversely affected should economic growth falter in the United States and/or China, given that global growth has become overly dependent on the performance of these two countries.”¹⁷²

Other issues

North West Province:¹⁷³

- The dumping of cheap foreign goods into South Africa at the expense of local manufacturers.
- The influence of foreign nationals on the economy (cites specifically Pakistanis, Sudanese and Chinese).
- Lack of proper mechanisms to monitor credit bureaus.
- The casualisation of labour.
- The negative effects of international criminal syndicates operating in South Africa on economic projections.
- Proposes a two-tiered pricing strategy in the tourism industry, with higher tariffs for foreigners.
- Tourism facilities should meet minimum standards as prescribed for people with disabilities.
- Access for the disabled includes access to economic opportunities.
- There is a lack of Adult Basic Education and Training (Abet) institutions that catered for people with disabilities, which prevented them from participating in government programmes.
- The SAPS said they do not have enough vehicles to intervene in all situations where they are required.
- The need to provide incentives for people who are currently beneficiating local raw mineral products to locate their businesses in South Africa.
- Courses should be offered on various beneficiating processes to South African students.¹⁷⁴

¹⁷² Bureau for Economic Research, University of Stellenbosch, “Economic activity expected during 2005-2007” p. 12.

¹⁷³ APRM North West Province Provincial Consultative Report, pp. 36-37.

¹⁷⁴ North West report, pp. 48-49.

Recommendations for Objective 1

- Investigate the feasibility of increasing the deficit to address some of the service delivery backlogs. For several years, the fiscal deficit has been projected lower than originally intended by government due to unanticipated overflows of revenue. Government should therefore improve its methods for projecting revenue flows so that the projected deficit is attained. This should be backed by a comprehensive strategy to ensure that there is substantial capacity to spend the allocated funds. (Parliament also Cosatu)
- Clarify South Africa's industrial policy.¹⁷⁵ (Parliament)
- Sustain higher growth through rising investment in infrastructure, lowering the costs of doing business, and training more skilled people. (Monde)
- Improve the quality of public services, especially to the poor, such as clean water, sanitation, electricity, education, health services and community housing. (Monde)
- Provide means-tested social grants. (Monde)
- Bridge the gap between rich and poor by prioritising spending on the poor; extending a social wage to poor households; broad-based black economic empowerment; investing in small, emerging farmers; and creating transport linkages between cities and townships, and rural and urban areas. (Monde)
- Maintain spending at levels sufficient to improve spending on the poor. (Cosatu)
- Obtain better estimates of tax revenue. This would allow for better planning and open up the possibility of effective deficit spending. (Cosatu)
- Make the formal economy more inclusive, on the one hand by giving the poor greater access to resources, skills and other services, and on the other by guiding the economy toward sustainable, employment-creating activities. (Cosatu)
- Institutionalise engagement between organised business and government to find solutions to problems. (Busa)
- Ensure that resources are directed to the right areas. This is important as some economic measures (such as tariff liberalisation) might increase unemployment. However, it is also important to consider whether the capacity exists to use resources properly. (Parliament – implied)
- Develop partnerships between government and civil society to ensure that poverty is eradicated within one generation. At the centre of such a partnership must be the recognition that improving equity and accelerating growth are complimentary, not competing objectives. (Cosatu; Youth)

¹⁷⁵ Parliament Consolidated Executive Summary, p. 17.

- Provide effective and efficient support for entrepreneurship. This is especially true for disabled entrepreneurs. The state needs to play a leading role in the employment of people with disabilities. (Disability)
- Provide a ‘basket of social provisions’ for recipients of social grants such as bursaries, medical aid, transport allowance, etc instead of providing money only. (Disability)
- Make labour market policies more active by embarking upon initiatives such as basic literacy and numeracy training, job-searching assistance, and vocational guidance and counselling so as to improve the employability of the unemployed, increase the efficiency of job searching, secure the efficacy of job outcomes and enhance equity in the workplace. (HSRC)
- Achieve viable equity in the labour market by entrenching moves in this direction in the private sector, possibly by regulation. (HSRC)
- Extend current legislation to include a review of informal institutionalised discriminating practices. (HSRC)
- Adopt a holistic approach to human resource development, so that greater commitment and action from various complementary stakeholders is undertaken (such as government pursuing more efficient efforts towards improving education and training; employers changing their human resource management practices; and individual employees addressing informal discrimination). (HSRC)
- Ensure that the economy is transformed from being “white and minority-based to black and broad-based,” through such measures as BEE and preferential procurement policies. (Eastern Cape – implied)
- Address the problem of gathering accurate statistics about the “second economy,” as this provides the livelihood for many people. (StatsSA – implied)
- Reintroduce the expanded definition of employment in StatsSA’s labour surveys. (Cosatu – implied)
- Make sure that projections are monitored and corrected on an ongoing basis to ensure that actual performance is measured and not masked by “model compliance and statistics.” The North West suggests that “success measurement by the people is simple – visible, meaningful growth in local employment opportunities.” (North West)
- Reduce the regulatory-cost burdens on small and medium-sized firms. Regulatory impact assessments could be introduced to do this. (Business and government)
- Provide greater social assistance, particularly the introduction of a Basic Income Grant (R100 a month) as a mechanism to address, specifically, income poverty. (Black Sash) However, the Minister of Finance has said that this would be unaffordable. (Manuel)
- Include a social protection policy within economic growth strategies. The social protection policies include such programmes as social assistance, subsidies and presidential projects. Consideration should be given to administering them jointly so as to facilitate better budgeting and, spending and implementation.¹⁷⁶ (Black Sash)

¹⁷⁶ Black Sash submission, p. 6.

- Use additional revenue to fund social spending. Cosatu argues that rather than cutting taxes as revenue increases, the funds could be used to stimulate the economy and invest in development. In addition, “a 1% increase in taxes relative to the GDP would provide an additional R30 billion to improve services for the poor over the MTBPS period.”¹⁷⁷ (Cosatu)
- Keep basic services such as water, sanitation and electricity in the hands of government. The implementation of service delivery needs to be accelerated.¹⁷⁸ (WC) Cosatu also believes that the means for service provision and the responsibility for doing so should rest with government.¹⁷⁹ Association for Regional Co-operation
- Wage agreements must be sensitive to regional labour market conditions, the diversity of skills levels in firms of varying size, location or capital intensity, and the need to foster training opportunities for new entrants to the labour market.¹⁸⁰
- Improve the quality of social services. Allocations to fund social policy objectives must focus on improving the quality of these services. (National Treasury)
- Use social and development indicators as the yardsticks of social and economic progress, not merely the pursuit of economic targets. Cosatu said that “the development agenda should drive fiscal, economic and trade policy, not the other way around.”¹⁸¹ Cosatu believes that improving equity and accelerating growth are complementary, not competing objectives.¹⁸²
- Make the regulatory burden simpler. Business urges steps that should include “making required forms shorter and clearer, eliminating multiple requests for the same information and, wherever possible, reducing the number of times in a year the returns have to be made.”¹⁸³ Busa recommends “the introduction of a Regulatory Impact Analysis system for South Africa with a mandate to look closely at the costs and benefits of proposed regulations for SMEs in particular.”¹⁸⁴ It noted that currently “many new government policies are established by different government departments in isolation of the central objectives of investment, transformation and growth.”¹⁸⁵ The Chamsa submission also supports this proposal.
- Allow competition in some areas where the state is dominant. (Busa)

¹⁷⁷ Cosatu submission, pp. 12-13.

¹⁷⁸ Western Cape Province African Peer Review Mechanism: Final Report, p. 101.

¹⁷⁹ Cosatu p. 3.

¹⁸⁰ Parliament Report, pp. 15-16.

¹⁸¹ Cosatu submission on Economic Governance and Management as a Review Mechanism for the African Peer Review Mechanism for South Africa, p. 14.

¹⁸² Cosatu submission on Economic Governance and Management as a Review Mechanism for the African Peer Review Mechanism for South Africa, p. 9.

¹⁸³ Busa submission, pp. 14-15.

¹⁸⁴ Busa submission, pp. 14-15.

¹⁸⁵ Busa submission, p.18.

Objective 2: Implement sound transparent and predictable government economic policies

Question 1: What has been done to make the public administration, legislative system and fiscal authorities work effectively and in a transparent manner?

Summary of responses to Objective 2, Question 1

- This technical report chose to group all issues related to the public service and local government under Objective 3, to avoid breaking up related material. While parliament as an institution is thoroughly examined in the Democracy and Political Governance thematic area, parliament's role as an oversight institution is treated in greater detail in this section. The effectiveness of fiscal management is covered under Objective 3, rather than here, however.
- The National Treasury outlines the need for reform of the fiscal system, and the major steps taken in the past decade. These include a new intergovernmental fiscal relations system, multi-year budgeting through the Medium-Term Expenditure Framework (MTEF), new budgeting formats focusing on spending analysis and service delivery information, and new legislation in the form of the Public Finance Management Act (PFMA) and Municipal Finance Management Act (MFMA). Across the board, submissions lauded the excellent job done in implementing these fundamental changes to a largely dysfunctional system.
- In the area of predictability and transparency, with respect to economic policy, views were highly polarised. Parliament listed the laws promulgated to improve transparency and the key sections of the constitution in this regard.
- Several submissions – including parliament itself, Idasa, Sangoco and Cosatu – strongly urged parliament to enact the necessary legislation to allow it to change money bills, according to Section 77(1) of the constitution.
- Submissions and supplementary research – particularly from Idasa and the SAIIA-ISS-AICC submission¹ – evaluated the effectiveness of parliament's oversight of the executive. In general, they observed declining trends in oversight and accountability by parliament.
- Submissions recount the diminished role the Standing Committee on Public Accounts (Scopa) was obliged to play because of political “intervention” in the controversial investigation into the multi-billion rand arms deal, and the damage done to parliament's credibility.
- Submissions note the cursory oversight the House gives to budget votes, the poor and diminishing quality of parliamentary debate, and Questions over parliament's general efficiency and effectiveness. (Note that “Travelgate” scandal is examined under **Objective 4**).
- Civil society stakeholders across the spectrum – including AIDC, Sanco, Sangoco, Busa, Chamsa, Cosatu, youth, the disability sector, older persons and some provinces – were extremely critical of the quality and frequency of their engagement with government on

¹ The South African Institute of International Affairs, the Institute for Security Studies and the African Institute of Corporate Citizenship produced a joint submission for the South African APRM process, submitted on 8 February 2006.

policy making. They raised the point that they are often presented with a *fait accompli* with little room for substantive input. Government departments and parliament, in contrast, tended to hold the view that they were extremely consultative, and compared to apartheid-era institutions, this is indeed true. This is clearly one of the most important issues to emerge from the APRM process and should be urgently addressed.

Public Expenditure Management System Needed Reform

The National Treasury's submission outlines the reform of the South African public expenditure management system since the mid-1990s. The old system could not stabilise fiscal imbalances or manage required policy shifts, and was highly fragmented, not only in terms of a de-linking of policy, budgeting and implementation, but also institutionally, increasing budgeting uncertainty, lack of clarity and the scope for ad hoc changes. It was not transparent. Furthermore it used non-compatible computer systems with inadequate mechanisms to extract specific variables for use in the budget process, and for accountability purposes.²

Indicators for Objective 2, Question 1

Outline key measures taken in terms of legislation, policies and programmes, institutional development and resource allocation to ensure the effective and transparent functioning of the abovementioned entities.

Provide evidence of the effectiveness and transparency of these entities with respect to the following indicators:

- Timeliness, comprehensiveness and frequency in dissemination of information on the core activities of these entities;
- Existence of procedures including legislation to conduct external and internal assessments of the activities of these entities;
- Outline the main challenges relating to making these entities transparent and effective and list efforts to address capacity shortfalls and other constraints.

Please give detailed explanation with supporting material where applicable

Significant systemic reforms successfully undertaken: The National Treasury emphasises that the reform programme focused on improved resource allocation and effective service delivery. The reforms were aimed at strengthening the budget framework to allow it better to co-ordinate and integrate policy and budget processes at all three levels of government, as well as to allocate funds more efficiently, enhance accountability and strengthen policymaking decisions.³

The National Treasury cited the key elements of the reform process:

- The roll-out of a new intergovernmental fiscal relations system that requires all levels of government to formulate and approve their own budgets;
- The introduction of three-year rolling spending plans for all national and provincial departments under the MTEF;
- New formats for budget documentation that include a strong focus on spending analysis and service delivery information; and
- The enactment of new financial legislation such as the PFMA and MFMA.

² An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 16.

³ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 16.

Civil society lauds fiscal reforms: According to Idasa, “since 1994, enormous progress has been made in increasing general fiscal transparency in South Africa, with the process still continuing.”⁴ Idasa concurred with the National Treasury submission that major progress has occurred in the fiscal management system, with the key reforms being the MTEF and PFMA.⁵ For example:

Abedian pointed to the smooth merging of the departments of finance and state expenditure in 2000 into the National Treasury as “the most significant step in transforming the institutional setting ... [and] a major achievement along the path of comprehensive and systemic fiscal reform.

He contended that critical ingredients to making the MTEF work – institutional memory on cost structures, activity planning options, service delivery alternatives and a completely new set of skills – were lacking. Bureaucrats and technocrats resisted the MTEF reforms; however strong political leadership and extensive training and re-skilling across national and provincial departments after 1997 overcame these obstacles.⁶

The North West Province noted the following challenges in this area:

- Pervasive corruption;
- Low levels of accountability of politicians and officials;
- Unqualified, non-performing staff with low commitment to service delivery;
- Lack of assessment monitoring and disciplining incompetent staff;
- Selective consultation by MECs and mayors;
- Lack of transparency in most government departments because officials are not doing their work; and
- The need to develop a skills basis for the province and country around issues like project management, problem-solving and activity-planning.⁷

Government Transparency

Parliament listed the following laws that relate to increasing transparency:

- Constitution, particularly Chapter 13;
- Public Finance Management Act, No. 1 of 1999 (PFMA);
- Municipal Finance Management Act, No. 56 of 2003 (MFMA);
- Promotion of Access to Information Act, No. 2 of 2000;
- Promotion of Administrative Justice Act, No. 3 of 2000;
- Protected Disclosures Act, No. 26 of 2000; and
- Intergovernmental Fiscal Relations Act, No. 97 of 1997.⁸

⁴ Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 70.

⁵ Barberton, C, ‘South Africa, Budget Transparency and Participation: Five African case studies’, in *Budget transparency and participation*, 2002, pp. 213, 213, cited in Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 70.

⁶ Abedian submission, p. 11.

⁷ North West report, pp. 48-49.

⁸ Parliament report, p. 23.

In addition, parliament's report listed the other key sections of the constitution that deal with public participation in parliament:

- Section 41(1)(c), which states that all spheres of government and organs of state must provide effective, transparent, accountable and coherent government;
- Section 42(3), which states that the National Assembly (NA) is elected to represent the people and must provide a forum for public participation;
- Section 42(4), which highlights similar functions with regard to the National Council of Provinces;
- Sections 57 and 59 state that the NA must facilitate public involvement in the legislative and other processes of the NA and its committees, conduct its business in an open manner and hold its sitting and committee meetings in public; and
- Sections 70 and 72 highlight similar functions in terms of the NCOP.
- Section 118 confers the same duties mentioned above to the provincial legislatures. In terms of the constitution, both the National Assembly and the National Council of Provinces must facilitate public involvement in their business.⁹

Busa was largely supportive of how government formulates and communicates its policies:

The policy objectives of government at the fiscal and monetary policy levels are well publicised by government and significant interaction takes place with the central bank in the monetary policy forums and with the National Treasury at the time of the mini- and main budgets. Within Nedlac a process of consultation and engagement takes place between the major stakeholders on monetary and fiscal policy. Any money bills are extensively debated in parliament. Generally speaking macroeconomic policies have been developed and implemented in a consultative and transparent manner, which in turn has generated continued improvements in the credibility of macroeconomic policy.¹⁰

Section 77(1) of the constitution defines a money bill as any bill that appropriates money or imposes taxes, levies or duties. The section calls for an Act of Parliament to provide a procedure for the legislature to amend money bills. This would allow parliament the power to implement changes to both planned spending amounts and expenditure allocations on a given budget line item, rather than on just how money is spent. Currently, only the Minister of Finance can introduce a money bill in the National Assembly. Idasa noted that the MTEF has exacerbated an already complex procedure.

Parliament's report stated that South Africa's budget policy-making process is "fairly transparent" although it said the system needs to be decentralised to allow for the involvement of such stakeholders as parliament and civil society. The budget is presented with little room for changes. Although the executive is required to prepare the budget, parliament has a constitutional right to amend the budget, provided enabling legislation is introduced. This has not yet happened. Parliament's report said that the National Assembly should enact Section 77 (2). This Act would allow parliament to amend money bills. Idasa, Sangoco and Cosatu supported this view.

Idasa noted:

Parliament cannot propose changes to the budget as a whole, but committees can amend proposed line item expenditure within each budget allocation. The entire allocation itself cannot be altered. This means effectively that respective committees of parliament can recommend to their departments how money should be spent, rather than the overall amount that they can spend. Given the devolution of responsibility to provinces as laid out in the

⁹ Parliament report, p. 25.

¹⁰ Busa submission, p. 18.

constitution, provincial finance committees have, potentially, a vital role to play. The role of these committees will be significantly strengthened by the power to amend money bills, the most prominent of which are the budgets.¹¹

However, the Gauteng report stated that “The Constitution gives both national and provincial legislatures the power to amend money bills” without mentioning that the legislation to allow them to do so has not been enacted.¹²

The legislature exercises oversight over the provincial budget, which is based on provincial priorities derived from the provincial programme of action. The labour sector has indicated the desire to have a greater influence over the budget policy-making process. Annual Reports are a statutory obligation to the public, and include performance feedback, and public finance.¹³

Trends in Oversight and Accountability by Parliament

Both the SAIIA-ISS-AICC APRM submission¹⁴ and Idasa’s July 2002 report on governance for Uneca¹⁵ documented evidence of decreasing vigilance by parliament in its oversight role. This material is reproduced below, in full.

While oversight responsibility is vested with parliament as a whole, responsibility for review of specific departments and issues is delegated first to committees,¹⁶ some of which have been very assertive while others have been weak. For example, the Justice and Finance committees, have been extraordinarily diligent and have thoroughly interrogated and indeed re-written legislation. Others have been less distinguished. The variable performance of respective committees has in part been due to the nature of leadership shown by committee chairs, as well as by their composition and sphere of operations. The Committee on Foreign Affairs for example has had little opportunity to consider legislation since 1994 and has concerned itself with international

¹¹ Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 96.

¹² Gauteng Premier’s Office, Gauteng Assessment Report: African Peer Review Mechanism (draft 10), 8 March 2006, p. 54.

¹³ Gauteng Assessment Report: African Peer Review Mechanism (draft 10), 8 March 2006, p. 54.

¹⁴ SAIIA-ISS-AICC submission, pp. 56-60.

¹⁵ “Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa”, Produced by Public Opinion Service, Institute for Democracy in South Africa, for Uneca, Development Management Division, July 2002.

¹⁶ Much of the work of the post-1994 parliament is managed through an extensive committee system. Committees are designed to improve the efficiency of the legislative process, to deepen and enhance the deliberative function of parliament and to maximise public participation in the legislative process through hearings and submissions. Crucially, however, committees are constituted to strengthen parliament’s capacity to conduct effective oversight of the executive. In accordance with Rule 199 of the Rules of the National Assembly, the Speaker, in conjunction with the Rules Committee, established “a range of portfolio committees and assigned a portfolio of government affairs to each committee.” Currently the following types of parliamentary committee exist: National Assembly (NA) Portfolio Committees (discussed in more detail below); Ad Hoc Committees that dissolve after dealing with the specific matter for which they were constituted; constitutionally prescribed joint committees (Human Rights, Public Protector, Defence and Finance), Statutory Committees (Intelligence); Joint Committees with the NA and NCOP (Joint Committee on Members’ Interests and the Standing Committee on Public Accounts); Standing Committees; Joint Ad Hoc Committees and Joint Standing Committees.

agreements and protocols, issues of departmental transformation and department briefings on foreign policy.¹⁷

Each committee is tasked with maintaining oversight of: the exercise of national executive authority within its portfolio; the implementation of legislation pertaining to its portfolio; any executive organ of State within its portfolio; and any other body or institution in respect of which oversight was assigned to it.

A parliamentary committee may monitor, investigate or enquire into and make any recommendations concerning any constitutional organ of state within its purview. A committee is granted these powers with regard to the legislative programme, budget, rationalisation, restructuring, functioning, structure or staff and policies of such organ of state or institution. Furthermore, a committee is tasked with considering all bills and amendments to bills referred to it. Thus its powers are, theoretically, considerable. None is more important in its oversight role than the Standing Committee on Public Accounts (Scopa), which monitors all government expenditure and is thus the first line of oversight and protection for the South African taxpayer in relation to the government. (The role and effectiveness of Scopa is covered in greater detail in **Objective 4**).

Idasa noted:

On the issue of its effectiveness, parliament ... reflects a mixed record. On the one hand, it has actively driven legislation, while on the other it has failed to act decisively, in challenging the executive when necessary to assert parliamentary independence in the consideration of proposed legislation.¹⁸

The 2002 Idasa report quoted an MP:

Parliament lies at a crossroads in terms of whether it becomes a really challenging legislature, creative in terms of legislation, bold in terms of being able to tackle and identify issues, and almost revolutionary in making sure the transformation moves faster than it is now. If it does not take that direction, then it will become a stool pigeon in the next two years, and will lose the vibrancy with which it started. There is danger lurking that it will become an administrative arm of the executive.¹⁹

The Idasa report referred to Cosatu's August 2000 document entitled *Accelerating Transformation*, where the union federation said that parliament had performed best when driving progressive policy and legislation emanating from the executive, but had been far less effective when challenging problematic laws and policies tabled by government departments without consultation. Cosatu cites parliament's failure to engage with the executive after the introduction of Gear as the most notorious example. Cosatu further said that parliament has a relatively good record of passing progressive legislation in the areas of labour, justice, welfare, education, and health, but a rather poor record of initiating progressive legislative changes. Cosatu also reported instances when parliamentary committees ultimately endorsed opposite

¹⁷ It is important to note that the Department of Foreign Affairs does not administer legislation as other departments do. It is more of a policy advisory arm to the executive, and carries out South Africa's foreign policy.

¹⁸ Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 90.

¹⁹ Centre for Development and Enterprise, *Policy-making in a new democracy*, 2000, cited in Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 90.

versions of bills to those that the committee had initially supported, which the union federation ascribes to “fear of antagonising the relevant minister or department.” Departmental officials can openly dictate to non-independent and weak committees.

Cosatu said:

In this environment the ANC [MPs] intuitively rally behind government departments, particularly in instances where opposition parties reject particular pieces of legislation ... patronage and security of tenure may contribute to a fear of ‘rocking the boat’. In instances where policy or legislation is deemed controversial or sacrosanct – such as economic policy – MPs have generally processed government policy without change.²⁰

In its 2002 report, Idasa noted:

Although in theory, parliament has oversight responsibility over the executive, the executive has a strong hold on the legislative functions of the National Assembly. The ... executive opposition to the Skills Levy Bill saw a reduction of the levy from 1.5% to 1.2%. The executive was opposed to the Money Bills, whose aim was to grant parliament more say in amending appropriations, and delays were experienced gaining executive approval for the National Health Insurance Bill. While it is within the purview of the executive to voice its opposition, the sheer numerical dominance of the ANC creates limits to legislative independence. Until parliament plays a more independent, assertive and challenging role in scrutinising legislation, it will remain overshadowed by the executive. This situation poses a challenge for the development of a comprehensive democratic culture of governance.²¹

See discussion on **Scopa, Objective 4.**

Parliament’s own assessment of its oversight: To its credit, parliament commissioned an external team of legal experts in January 1999 to interpret, report on and make recommendations regarding its oversight and accountability role as provided for in the constitution. The experts’ report in July 1999 took its terms of reference as that of outlining and explaining the nature of the obligation that Section 55(2) of the constitution places on the National Assembly to hold organs of state and the national executive authority to account:

- The report questioned the practicality of parliament playing an effective oversight role over all organs of state, but strongly asserted the need for parliament to concretise and protect its role through new and specific legislation.
- The report also urged the protection of the independence of the Chapter Nine Institutions. In this regard it recommended the separation of the funding base of these institutions from the executive in order to remove potential political leverage over them and ensure credible operational independence.
- Moreover the report noted a decline in the quantum of committee briefings received from departments,²² and thus implied the marginalisation of parliament by the executive.

Some three years later, the Parliamentary Ad Hoc Sub-Committee on Oversight and Accountability produced its final report in response to the independent consultancy.²³ In

²⁰ Cosatu, *Accelerating Transformation*, August 2000, cited in Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, pp. 90-91.

²¹ Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 92.

²² Corder H, S Jagwanath and F Soltau, “Report on Parliamentary Oversight and Accountability”, Faculty of Law, University of Cape Town, July 1999.

summary the Ad Hoc Sub-Committee heavily criticised the consultancy. It concluded that parliament had already commenced strengthening its oversight and accountability roles and took issue with a number of the central contentions of the consultant's report. Finally, it recommended further examination by the Parliamentary Joint Rules Committee before coming to a decision on the modalities of future parliamentary oversight. The Ad Hoc Sub-Committee Final Report made a number of specific recommendations, the most substantive of which was the acceptance of an Accountability Standards Act to provide form and substance to parliament's role *vis-à-vis* executive oversight. To date, however, it is difficult to establish evidence of new initiatives or developments emerging in practice from the "Oversight and Accountability" consultancy, or indeed from the Ad Hoc Sub-Committee's work.

SAIIA-ISS-AICC felt that parliament's robust approach to the APRM process in South Africa, however, is evidence of a change in this respect.

Parliament's Scrutiny of Departmental Budget Votes

In the 2002 Idasa governance report, Cosatu makes the point that the parliament lacks the necessary resources to interrogate the budget and develop an alternative framework, claiming that the inability to amend money bills, including the budget, renders parliament effectively powerless to meaningfully engage on economic policy."²⁴

Additionally, parliament has been criticised recently for spending too little time considering and debating departmental budgets. In 2004 and 2005, parliament used extended public committees – where the National Assembly divides into four committees of roughly 100 MPs each – to debate the budget votes, and thereafter the House convenes to vote on the budgets. On some days, as many as three extended public committees are convened. *Business Day* parliamentary editor Wyndham Hartley commented, "Having more than one budget vote on any given day means that neither MPs nor the media are able to give them the attention they deserve."²⁵

Quality of Debate in Parliament

It is also worth noting the reduction in the quality of debate and questions in the National Assembly. The physical shape of the National Assembly does not permit government/opposition exchanges across the despatch box. Rather, ruling party members and the opposition occupy a podium and invariably read from a prepared text. While motions are common, snap debates are rare. Furthermore, since being elected to office in 1999, President Thabo Mbeki has reduced the number of presidential question times to once every three months, with only five written questions that must be submitted weeks in advance. This is far too infrequent for parliament to

²³ "Final Report of the Ad Hoc Sub-Committee on Oversight and Accountability", Parliament, Cape Town, 3 September 2002.

²⁴ Cosatu, *Accelerating Transformation*, August 2000, cited in Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 96.

²⁵ Hartley W, "Parliament faces sequel 'annus horribilis two'", *Business Day*, 6 January 2005.

hold the president to account and contrasts markedly with the British system, where the prime minister must respond to questions on a weekly basis.²⁶

Parliament's Credibility and Effectiveness

The metamorphosis of the South African parliament from a discredited edifice of repression and exclusion in the apartheid era to a central institution of democracy is profound and the efforts to transform the institution into a “people’s parliament” cannot be overstated.

Yet while programmes to transform parliament into a transparent and accessible institution have been successful, because parliament itself has come to be perceived as weak, its relevance and importance to the public are diminished. There has been a growing perception of irrelevance, disempowerment and concern regarding members’ performance, conduct and ethics.

The table above demonstrated the reduction in people’s confidence in parliament, even before the floor crossing issue or the outbreak of the recent travel voucher abuse scandals.²⁸

Trust in the South African Parliament 1995-2002 ²⁷ (percentages)					
	1995	1997	1998	2000	2002
Total	45	42	57	34	31
Black	53	50	70	39	39
White	24	13	18	11	10
Coloured	33	27	32	30	17
Indian	31	20	26	7	23

Stakeholders Views on Quality of Consultation

Parliament further noted that engagement between the government and stakeholders on budget issues typically involves government giving information to stakeholders on decisions that have effectively already having been reached. Such engagement does not necessarily “input into policy.”²⁹ However, it also said that civil society still struggles to access information and there are concerns about the transparency of how government divides revenue.

²⁶ SAIIA-ISS-AICC submission, p. 60.

²⁷ Adapted from Mattes R, C Keulder, AB Chikwanha, C Africa and YD Davids (2002) *Democratic Governance in South Africa: The People’s View*, Afrobarometer Working Paper No. 24.

²⁸ The South African parliament is not alone in this regard. Gallup International’s 2002 Voice of the People survey of 36,000 people in 47 countries (statistically representative of 1.4 billion people) revealed low levels of trust in parliaments generally. The central institution of democratic representation in each country polled (parliament, assembly or congress) was held to be the least trusted amongst 17 institutions, including corporations. Two-thirds of those polled disagree that their country is governed by “the will of the people”, with people having as much trust in the media and unions as they do in their elected governments. In Africa, some 60% of those polled expressed trust in the media, as opposed to just 43% who trusted the government. Some 69% of Africans do not believe their country is governed by the will of the people. Of further interest, non-governmental organisations (including advocacy groups) enjoyed the second highest trust rating, after the armed forces. See www.wef.org. Press release, “Trust will be the challenge of 2003”, 8 November 2002.

²⁹ Parliament report, p. 23.

The APRM Submission from the South African National Civic Organisation (Sanco) said:

As successful as South Africa has been in establishing a myriad of social dialogue structures and processes, these structures have not been effectively utilised, public participation has been uneven, and joint implementation (between community structures, private sector, and government) has been patchy.³⁰

The structures Sanco refers to include the National Economic Development and Labour Council (Nedlac),³¹ community policing forums,³² community health forums,³³ school governing bodies,³⁴ reconstruction and development forums,³⁵ ward committees³⁶ and Integrated Development Plans (IDP).³⁷

Sanco also discussed the unintended consequences of social dialogue:

Government has been criticised for not accelerating delivery on key socio-economic matters. There have been protests, at times violent, at local level, where communities, like in Rustenburg, have accused their local government of failing to deliver on basic services such as eradicating the pit latrine system ... Government is relinquishing its responsibilities by over-focussing on consultation and planning as opposed to implementation and delivery.³⁸

The Chamsa submission said:

Business feels that in the development of policy there is often 'lip service' to stakeholder consultation rather than compliance with spirit. Consultative meetings are often perceived as information sessions, where stakeholders are told what government intends doing rather than seeking input from stakeholders.³⁹

A consultative and participatory culture to match delivery to public needs is still being developed. Research undertaken for the Public Service Commission's (PSC) Public Service Monitoring & Evaluation System found that very few departments have clear, formal policies addressing public participation and that systems for managing public participation tend to be informal and ad hoc. In its research into sector policing strategies in 2004,⁴⁰ the PSC found that service delivery innovations were more successful when communities were mobilised and were actively involved. (See also **Objective 4**).

³⁰ Submission from the South African National Civic Organisation (Sanco) to the African Peer Review of the Republic of South Africa, 17 January 2006, p. 7. Sanco defines social dialogue as an activity-based process, stemming from our slogan of "people-centred and people-driven" policy development and implementation. People should not just be the centre or object of policies but also active participants in the formulation and implementation of policies.

³¹ Nedlac is made up of four equal partners from community organisations, labour (trade unions), government and the private sector and reviews legislation before it goes to parliament.

³² Forums set up to help fight crime and address local issues, made up of local police and community representatives.

³³ Comprising local health workers and elected community representatives.

³⁴ School committees are made up of pupil representatives, teachers, school principal and parents and is the decision making body at a school.

³⁵ Consisting of government and elected-community representatives who assist local government with development plans.

³⁶ Headed by local councillors, they provide a platform to raise community issues.

³⁷ IDPs compel local government to consult, brief and gain permission from communities on the overall development priorities and budgets for the locality.

³⁸ Submission from the South African National Civic Organisation (Sanco) to the African Peer Review of the Republic of South Africa, 17 January 2006, p. 9.

³⁹ Chamsa, submission to Parliament's Process and Response to its Self Assessment on the African Peer Review Mechanism, 3 November, 2005.

⁴⁰ PSC, "A Report on a review of sector policing and SAPS's role in community crime prevention initiatives (draft), 2004.

In its APRM submission, the Alternative Information and Development Centre (AIDC) once again reiterated concern about the poor level of policy consultation.

Bringing policy making closer to local communities and opening up public bodies and representatives to continuous public scrutiny and accountability is *the* most important guarantee of effective governmental performance and service delivery. However finely tuned they may be, it is extremely difficult anywhere to create fully effective and totally foolproof technical organisational means and legal entities and procedures to monitor and control abuses and failures in economic management. South Africa, with its major technical skills shortages at local level, and with many problems of municipal accountability, could and should marshal the much greater collective human resources, insights and information within local communities than it currently does.⁴¹

Parliament has powers to hold open hearings and to call officials and other experts to give evidence. During the legislative review process, committees can interact with the budget in two ways – hearings of the Portfolio Committee on Finance on the overall budget and portfolio committee hearings on individual votes. The Portfolio Committee on Finance has only seven days to hold hearings and present a report to the House. The portfolio committee hearings on individual votes are optional and must be completed in time for the debate in the House.

The National Council of Provinces (NCOP) can reject the entire budget and require the National Assembly to vote again, although this has never yet happened.⁴²

Financial System Reforms⁴³

According to the National Treasury:

- To improve transparency and predictability, reforms have focused on increasing the quality of information for decision-making to ensure commitment to decisions taken and to enable accountability. Most of this information forms part of the budget documentation.
- The Medium Term Budget Policy Statement (MTBPS) is a public document tabled approximately four months before Budget Day. It establishes and signals the government's economic assumptions, priorities and policy intentions, which have implications for fiscal and budget policy.
- The main budget documentation includes the Budget Review, the Estimates of National Expenditure (ENE), the Estimates of Revenue and the Division of Revenue Bill and according to National Treasury "imparts a comprehensive and transparent review of government's current and planned future fiscal and budget directions, and the consequences of past decisions."⁴⁴
- Each February, the National Treasury publishes about 2,000 pages of in-depth statistics, policy information and analysis on the national budget.
- The Budget Review provides information on national policy priorities and how the budget attempts to realise them. It gives a comprehensive picture of all revenue, including off-budget revenue, and expenditure of general government and the main fiscal balances, framed within information on the macroeconomic outlook and key macroeconomic assumptions. The Review also discusses fiscal policy, revenue issues, public asset and liability in details. On the expenditure side, the Budget Review provides aggregate information on the distribution of

⁴¹ Alternative Information and Development Centre (AIDC), "Economic Governance And Management" Within The African Peer Review Mechanism In South Africa, a presentation to the Ad Hoc Joint Parliamentary Committee on 'Economic Governance and Management' in South Africa for the SA APRM, p. 8.

⁴² Parliament Report, p. 26.

⁴³ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, pp. 16-17.

⁴⁴ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 17.

expenditure in the MTEF framework, between spheres and functions of government and between economic purposes of expenditures.

- Detailed financial and non-financial revenue and expenditure information is provided by vote in the Estimates of National Expenditure (ENE). The ENE provides seven years of financial and performance information together, by national vote, and is aimed at providing parliamentary committees and other stakeholders with comprehensive information on departmental performance and plans. Departments must set out their objectives, and their financing strategies. The ENE is also a co-ordinating document, as departments must account to parliament for their chapters.
- The Division of Revenue Bill details the respective shares of the three spheres of government in nationally raised revenue and, together with the Intergovernmental Fiscal Review, is the key public document in the intergovernmental system. It sets out how the provincial and municipal shares are to be divided horizontally, details conditional grants to the sub-national spheres and provides for various procedural matters regarding the management of intergovernmental finances, the responsibilities of National Treasury, accounting officers and the Auditor-General. It also legislates a number of rules of co-operative governance, including what must happen if actual revenue falls short of anticipated revenue and how funds may be reallocated from one horizontal unit of government to another.
- The annexures to the bill include a framework analysis of each conditional grant, detailing its conditions, rationale, criteria for allocation, monitoring mechanisms, past performance, allocations, projected life and payment schedule. This framework is published to provide clarity and certainty on the complex system of conditional grants to stakeholders, and for budget implementation and monitoring purposes.
- Departments are expected to report against the Division of Revenue Bill once enacted and its schedules, covering both financial and non-financial performance. The Auditor-General audits compliance with the ACT, in both the transferring national departments and the receiving provincial departments and municipalities.
- Financial management is improved through appropriate management, training and recruitment, performance-oriented reforms, as well as by overhauling information systems (rather than by passing legislation).
- Successful implementation will take time. Nevertheless, much effort is put towards developing practical guidelines, close liaison with departments, better linkages with public service management frameworks, i.e. Public Service Regulations, to address capacity shortfalls.
- Reforming the budgeting and public expenditure management system is never the full answer to economic governance challenges; however, when backed by robust political support and decision-making systems and sound human resources management, it plays a significant part in improving public sector management.⁴⁵

⁴⁵ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, pp. 19-20.

Question 2: What measures have been taken to make economic policies predictable?

Summary of responses to Objective 2, Question 2

- The National Treasury outlined the detailed process through which government publicises information relevant to the economy, and the extensiveness and thoroughness of the budget documentation that is made publicly available, in electronic and printed form. The media gives extensive coverage to the Minister of Finance's annual budget speech each February.
- There were very few submissions that addressed this Question, and no disagreement on the main issues.

According to the National Treasury's submission:

The budget policy process begins with the identification of national policy priorities by cabinet, expressed in a spending priorities memorandum, which provides a basis for departmental planning and budgeting. Ministerial letters are also exchanged between the Minister of Finance and spending ministers on major policy thrusts, signalling the direction of sectoral policy. This creates the opportunity to engage in bilateral discussions with departments at an early stage, where critical spending pressures and major policy considerations exists, in order to undertake a rigorous examination of the economic and fiscal implications over the medium term to long-term period and to evaluate and monitor existing policies.⁴⁶

Cabinet makes all the final decisions on medium-term policy priorities and spending; this includes the macro and fiscal framework, the division of revenue and changes to the medium-term allocations to national votes and provincial governments. An important event in supporting this decision-making process is cabinet's periodic strategic planning 'lekgotla' at which budget policy and planning uses are discussed. At the provincial level, discussion on provincial policy priorities and the finalisation of allocations to provincial departments takes place in the provincial executive councils. An important principle in structuring the process is the use of inter- and intra-governmental political/technical forums where competing interests are represented on an equal footing, thereby maximising the possibility of political peer pressure [to presumably fight it out as equals], discipline and sanction.⁴⁷

According to the government submission, extensive efforts are made to explain and create awareness of the budget. The Minister of Finance's Budget Vote is given media coverage, and

Indicators for Objective 2, Question 2

Outline key provisions and processes established to ensure consultation with all stakeholders in economic policy-making.

Describe the process adopted in formulating and monitoring economic policies.

Describe measures taken to ensure awareness in your country of national economic policies, their implementation and progress made.

Additional indicators may be included to better reflect country-specific circumstances and experiences.

⁴⁶ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 21.

⁴⁷ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 21.

there is a great deal of public debate. The National Treasury also releases a “People’s Budget,” which summarises policies, plans and achievements.⁴⁸

Busa said that the medium term budget planning process, public consultation and other measures have given economic policy-making “ever improving credibility and predictability.”⁴⁹

Since 2000, Cosatu has made detailed proposals to the National Treasury and Parliament, as part of the People’s Budget Campaign (PBC) (with Cosatu, Sangoco and the SACC). The PBC proposals aim to:

- Meet basic needs, especially by restoring and enhancing the public sector and social spending;
- Ensure the retention and creation of quality jobs in the context of economic growth; and
- Assist the majority of people with access to assets and skills.

Busa expressed concern about a number of issues related to predictability, however. These include:

- The slow pace of deregulation in respect of parastatals. The lack of private sector involvement in large parts of the economy could shave an extra 1 to 1.5 percentage points from South Africa’s annual economic growth rate, it argued.⁵⁰
- South Africa’s corporate tax rate and plus secondary tax on companies which, Busa maintained, is high by international standards. South Africa’s strong fiscal situation, and its objective of encouraging private sector investment require cuts in the corporate tax rate. This is particularly important given that other countries are competing “far more aggressively for FDI.”⁵¹

The Chamsa submission concurred:

Business is also of the view that the South African tax regime forces income earners into the maximum marginal rate of personal tax at a very low-income level, and since the abolition of deductions for children, spouses and other dependents, skilled human capital is being penalised in comparison with other countries with which we are competing for investments.⁵²

Some laws and regulations (such as BEE Codes as they currently exist) were raising the costs of doing business. Asgisa aims to promote investment by reducing these costs. Busa gave the example of the level proposed for CSR of 3% after tax profit. This is three times higher than the international benchmark of best practice in CSR, Busa asserted.⁵³

⁴⁸ Government submission to APRM, draft received 27 February 2006, p. 35.

⁴⁹ Busa, p. 18.

⁵⁰ Busa submission, p. 3.

⁵¹ Busa submission, p. 3.

⁵² Chamsa, p. 5.

⁵³ Busa submission, p. 3.

Question 3: What are the main challenges with respect to co-ordinating the efforts of various departments in implementing sound, predictable, and transparent economic policies?

Summary of responses to Objective 2, Question 3

- The draft government submission received by SAIIA in early March 2006 noted no challenges in this regard. The final government submission had not been received at the time of writing (17 March 2006). However, several provincial submissions, notably those by Eastern Cape and North West were highly critical about the relationship between the centre and the provinces.
- The Eastern Cape and North West, for example, mentioned that government has trouble implementing its good policies, has poor inter-governmental communication, offers unco-ordinated and duplicated assistance efforts to communities, suffers from capacity and skills deficits, has major planning and implementation problems at municipal level, and lack of confidence in provincial and local governments as a result of corruption, inefficiency, inflexibility and unresponsiveness, and lack of adherence to performance standards.
- Busa, the Disability sector, Idasa, and SAIIA-ISS-AICC observed similar difficulties.
- Idasa research showed that provinces lack adequate voice or equal treatment, and that National Council of Provinces, despite its name, does not represent provincial interests.
- These issues are covered in extensive detail under **Objective 3**.

Inter-Governmental Relations

The Eastern Cape provincial report noted several challenges related to policy co-ordination:

- Government has developed good policies but has challenges implementing them;
- There is inappropriate prioritisation of spending;
- In addition, “The different departments do not co-ordinate their programmes and functions well, and there is lack of communication amongst themselves”;
- Different government departments do not co-ordinate the assistance they render to communities;
- Government support is difficult to access; and

Indicators for Objective 2, Question 3

Describe (briefly) any provisions establishing collaboration between government departments and with sub-national authorities in implementing economic policies and programmes at national and subnational levels;

Assess the current status of co-ordination and capacity development within relevant departments in implementing sound, transparent and predictable economic policies, with reference to the following:

- The timeliness and reliability of resource transfers to spending Ministries and agencies from the central fiscal authorities;
- Frequency with which public projects and programmes are abandoned; and
- Absorptive capacity of spending Ministries and agencies.

Additional indicators may be included to better reflect country-specific circumstances and experiences.

- Municipalities suffer major problems in planning and implementation – improvement and support is urgently required here as these represent a vital sector in the national implementation strategy for service delivery and poverty alleviation.⁵⁴

The North West Provincial report agreed with many of the issues above, and mentioned, in addition,

- Duplication of provision of services by different government departments.
- Competition rather than partnership between municipalities.
- The current status of co-ordination and capacity development creates a status of no confidence in provincial and local governments as a result of corruption, inefficiency, lack of flexibility and responsiveness, and lack of adherence to performance standards.
- Withholding of information and lack of transparency.
- Lack of skilled personnel in implementing programmes.
- People and change management challenges.
- Bureaucratic structures.
- Not sharing a common vision and goal.⁵⁵

Busa intimated that there were some problems with imperfect co-ordination. It said that unco-ordinated policy could be bad for business. In respect of policy development and legislative reform, business must spend a lot of time commenting on “conflicting or duplicative initiatives.” Poorly co-ordinated implementation can mean duplicated compliance requirements. Busa cited the mining industry where both the Departments of Environmentalism and Tourism (DEAT) and Minerals and Energy (DME) both have regulatory oversight on environmental issues.⁵⁶

The Disability sector submission mentioned that a lack of co-ordination between clusters and departments was hindering service delivery for people with disabilities. It contended “there is lack of specific departmental programmatic budgeting that accommodates the needs of people with disabilities.”⁵⁷

Provinces do not get adequate voice or equal results: Idasa pointed out:

The horizontal division between provinces is generally perceived as equitable, while the process and fairness of the vertical division is being questioned. It is argued that the local and provincial governments’ equitable share of the national revenue should be determined by what is required to provide basic services and perform the functions allotted to them.⁵⁸

Barberton, cited in Idasa 2002, has also argued, “This should be the main criterion in the determination of their share, and not the national government’s policy priorities.”⁵⁹

⁵⁴ Eastern Cape Premier’s Office, Eastern Cape Province: African Peer Review Mechanism Provincial Report, p. 21.

⁵⁵ North West, p. 51.

⁵⁶ Busa, p. 18.

⁵⁷ Disability submission, p. 18.

⁵⁸ Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report*, National Country Report for South Africa’, Produced by Public Opinion Service, Institute for Democracy in South Africa, for Uneca, Development Mgt Division, July 2002. p. 69.

⁵⁹ Barberton, C, ‘South Africa’ ‘Budget Transparency and Participation: Five African case studies’, in *Budget transparency and participation*, 2002, pp. 222-224, cited in Idasa, ‘Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa’, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 69.

Idasa budget information staff cited in the Uneca National Country Report for South Africa, state that “While provinces have made major strides in reducing intra-provincial inequality, inter-provincial per capita expenditure inequalities remain a stark reality” and that “poorer provinces also lag behind in the provision and maintenance of infrastructure.”⁶⁰

NCOP does not represent provincial interests: Idasa noted that the National Council of Provinces (NCOP) is perceived as being weak and failing to represent provinces’ interests. “In the past, one of the factors contributing to this problem has been that the Division of Revenue Bill has been tabled with the national budget, leaving limited scope for comments and changes. As of 2002, this situation has been improved. National government now publishes the next year’s Division of Revenue Bill by December of the current year, thereby allowing time for local and provincial governments to comment. It has also been noted that the Financial and Fiscal Commission (FFC) has failed to provide the NCOP with proper information on the equity of the division of revenue.”⁶¹ For instance,

Parliamentary committees may initiate and prepare legislation and must ensure that all Executive organs of the state are accountable to, and maintain oversight of, the exercise of national Executive authority, including the legislative function. NCOP committees may initiate or prepare certain types of legislative affecting the provinces, but the NCOP [does not have] formal oversight over legislation introduced in the NA.⁶²

Other Issues

The effects of crime

Busa regarded crime as a major deterrent to investment and doing business in South Africa. Crime also has an adverse knock-on effect on employees, the government and the community as a whole. Two key examples it cited were crime and theft on the mines,⁶³ and crime in the automotive industry. In the latter case, Busa stated that there was a need for better co-operation between provincial and local governments and central government departments in respect of functions such as the issuing of licences and permits, and that attention needed to be paid to such issues as the staffing of border posts.⁶⁴

⁶⁰ Whelan P, *A review of provincial education budgets*, Budget Information Service, Idasa, 2002, cited in Idasa, ‘Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa’, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 69.

⁶¹ Whelan P, *A review of provincial education budgets*, Budget Information Service, Idasa, 2002, cited in Idasa, ‘Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa’, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 69.

⁶² Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 92.

⁶³ Busa submission, p. 5.

⁶⁴ Busa submission, p. 5.

Recommendations for Objective 2

- Decentralise the budget process to ensure the involvement of critical stakeholders, such as Parliament and civil society. The Government should also facilitate greater public involvement and understanding of the complex characteristics of South Africa's fiscal policy so as not to compromise on budget transparency. (Parliament)
- Effect the Constitutional provision that allows for an Act of Parliament to enable Parliament to amend money bills. (Parliament)
- Improve the credibility and reliability of statistics used for policy development and planning. (Parliament)
- Consider the feasibility of making StatsSA independent of Government.⁶⁵ (Parliament)
- Reintroduce the expanded definition of unemployment in StatsSA's research into South Africa's labour market. (Cosatu – implication)
- Hold managers responsible for the spending of the allocated budgets in a more affective manner. This should be a key performance area. There is a need to monitor why allocated budgets are not being spent on social areas. (Disability)
- Consider a mechanism to promote closer co-ordination between the different spheres of government. There is need to capacitate government officials to be sensitive to needs of people with disabilities. (Disability)
- Review the Skills Development Strategy to evaluate the extent to which the targets have been met. The disability sector believes that this is important as it has a bearing on the participation of people with disabilities in the economy. This sector also proposes developing and adopting a standard approach to budgeting and spending to ensure continuous allocations to enable participation of people with disabilities in the economy. (Disability)
- Place greater emphasis on building relationships and partnerships between the Office on the Status of Disabled People (OSDP) and other government departments, broader civil society and the disability sector in particular. A more co-ordinated approach to service delivery by government departments and clusters should occur through integrated departmental disability plans. (Disability)
- Clarify confusion about the parliamentary process. The Youth sector would like this to be done in order to facilitate better public participations in the process. (Youth - implied)
- Ensure that laws can be implemented. Good laws must be provided with the means for their implementation. (Sangoco) This concern has, in various forms been echoed by a wide range of organisations. It is felt that good legislative frameworks exist, but they may not be functioning properly owing to a lack of resources, capacity, or political will.
- Involve people, especially the poor, in the economic debate. (Sangoco)

⁶⁵ Parliament Consolidated Executive Summary, p. 18.

- Apply the kinds of techniques shown elsewhere to improve accountability, transparency and responsiveness to voter needs at local government level. This means making the Batho Pele principles work, demanding that departments report meaningfully on their problems, conducting regular candid surveys of citizens, and dedicating more staff and resources to capacity building. (SAIIA-ISS-AICC)
- Improve government relations with civil-society organisations, including the media (which must be informed of developments regularly). (WC)
- Be open to criticism as this would enable government to identify policy gaps resulting in the improvement of policy implementation.⁶⁶ (WC)

⁶⁶ Western Cape Province African Peer Review Mechanism: Final Report, p. 61.

Objective 3: Promote sound public finance management

Question 1: What has your country done to promote sound public finance management?

Summary of responses to Objective 3, Question 1

- There was overall consensus that the management of public finances has improved significantly since 1994. A sophisticated system of legislation has been established, to ensure that public finance management is well structured and co-ordinated. The Public Finance Management Act and the Municipal Finance Management Act are the two most important pieces of legislation in this regard.
- However, the submissions and inputs identified some serious problems in respect of the implementation of the legislation. These concerns dealt largely with human resource issues. There is an acute lack of capacity (especially financial expertise), particularly in the provinces and in municipalities.
- Various arms of government (departments at national and provincial level, as well as municipalities) have not been able to achieve targets. Funds allocated to projects are often not spent. The Public Service Commission said that “Departments continue to set over ambitious targets, with too many objectives, and often fail to achieve their intended outcomes.”
- Misconduct is also a problem. Misconduct is often unreported, and rules are sometimes poorly enforced. The Public Service Commission said that there is currently a lack of political will and ethical leadership, and suggested that managing discipline should be a prerequisite for managers in the public service. It also stated that it was “disturbing” that only 50% of people who committed transgressions were dismissed as punishment.
- Simultaneously there have been tensions rooted in the quasi-decentralised structure of the state and public service – this has had the effect of creating multiple systems of rules. The Department of Public Service and Administration said that the minister is “broadly accountable for human resource management in the public service, but has limited authority over the implementation of national policies and sanctions for non-compliance.”

This section will reflect answers to the questions and the relevant issues but will not break down information indicator by indicator. Each question begins with a summary of the positive steps taken by government and reflects on progress in the 12 years of democracy. It then proceeds to a list of salient issues that are still outstanding.

Major Progress Since 1994:

South Africa has taken many positive steps to transform state structures, laws and processes to improve public finance management since the advent of democracy in 1994. There was broad agreement on this among the submissions, although significant challenges remain, which are listed below.

The National Treasury, the Public Service Commission (PSC), Department of Public Service and Administration (DPSA), and the Presidency made substantial submissions for government. Cosatu, Sangoco, Busa, SAIIA-ISS-AICC, Idasa, Odac, Sanef, Misa, Black Sash, and Parliament all made substantial inputs reflecting on this question.

Indicators for Objective 3, Question 1

Outline key measures taken (in terms of legislation, policies and programmes, institutional development and resource allocation) to implement a predictable medium-term fiscal framework;

Assess the current status of public finance management with respect to the following:

- Actual expenditure and revenue out-turn to targets in national annual budgets, annually for the past 5 years;
- Extent to which Government accounts for, monitors and reports publicly on revenue and expenditures;
- Nature of public debate and national oversight functions over Government's fiscal operations;
- Legal provisions;
- Time allowed for parliamentary appraisal and approval of budgetary proposals; and
- Number of amendments adopted by the Parliament to the draft budget.

Outline the challenges encountered in adopting and implementing a predictable medium-term fiscal framework and efforts to address these constraints.

Additional indicators may be included to better reflect country-specific circumstances and experiences.

The Positive Case: Fiscal Management

The Presidency and National Treasury submissions provided overviews of the progress to date.

The Presidency noted the contrast between the past and present and how fiscal discipline has translated into stable macro-economic indicators and resulted in the availability of greater resources for social and economic development:

Prior to 1994 the South African economy endured several macroeconomic imbalances, manifested in a combination of high inflation, large fiscal deficits, declining investment and negative GDP growth. Since 1994, through tighter monetary and more prudent fiscal policies, the South African economy has achieved macroeconomic stability in many areas.¹

¹ Submission to the South African APRM by the Presidency, p. 36.

In 1993:

- South Africa was in its twenty-first year of double digit inflation;
- The country had had three years of negative growth—the economy and the wealth of the nation was shrinking;
- South Africa had experienced more than a decade of declining growth per capita—the average income of South Africans had been falling since the early 1980s and the overall wealth of the country declined by nearly one-third;
- Government had run up a budget deficit equal to 9.5 percent of GDP, including the debt of the erstwhile independent homelands;
- The net open forward position of the South African Reserve Bank was US\$ 25 billion in deficit; and
- Public sector debt was equal to 64 percent of GDP.

By 2005:

- Inflation was down to four percent, using the CPIX measure, and comfortably within an inflation target range of between 3 to 6%;
- The country was experiencing the longest period of consistent positive growth since the GDP was first properly recorded in the 1940s;
- South Africa had had a steady growth in real per capita income—on average one percent per year since 1994;
- South African net foreign reserves were over \$18 billion; and
- Public sector debt had come down to less than 50 percent of GDP.

The National Treasury:

The South African public expenditure management system has undergone substantial reform since the mid-1990s. The previous system required an overhaul as the new democratic government inherited a system which provided inadequate tools with which to stabilise fiscal imbalances and manage required policy shifts. The system was highly fragmented, not only in terms of a de-linking of policy, budgeting and implementation, but also institutionally, increasing budgeting uncertainty, lack of clarity and the scope for *ad hoc* changes. It planned and controlled for inputs and cash, with limited opportunity for allocations directly to policy. It was not transparent, with poor underlying information systems, hidden spending and inadequate mechanisms to extract good information for the use in the budget process and for accountability purposes. The budget process itself was largely incremental, offering insufficient opportunity for the new government to identify ongoing non-priority activities and create fiscal room for higher priorities.

Special attention has been given to improving efficient resource allocation and effective service delivery. The highlights of the reform programme have been:

- The roll-out of a new intergovernmental fiscal relation system that requires all levels of government to formulate and approve their own budgets;
- The introduction of 3-year rolling spending plans for all national and provincial departments under the Medium Term Expenditure Framework (MTEF);
- New formats for budget documentation that include a strong focus on spending analysis and service delivery information; and
- The enactment of new financial legislation such as the Public Financial Management Act (PFMA) and the Municipal Financial Management Act (MFMA).

These reforms sought directly to enhance the capacity of the national budget framework to co-ordinate, integrate and discipline policy and budget processes for the country at national, provincial and local level, and to improve the efficiency of allocations and use of funds, both internally and externally, to improve public policy and funding choices and to enable accountability.

To improve transparency and predictability, the reforms have focused on increasing the quality of information for

decision-making to ensure commitment to decisions taken and to enable accountability. Most of this information forms part of the budget documentation, which is a key component in external accountability and transparency.

The first public document in the budget process is the Medium Term Budget Policy Statement (MTBPS) which is tabled approximately 4 months before Budget Day. This public document serves to conclude the broad prioritisation phase of the budget process and consolidate the main budgeting ceilings. It signals government's fiscal and budget policy intentions, providing information on the macroeconomic assumptions and policy priorities driving the budget, the fiscal policy framework, the vertical and horizontal division of revenue and the expected functional and economic spending allocations.

The main budget documentation includes the Budget Review, the Estimates of National Expenditure (ENE), the Estimates of Revenue and the Division of Revenue Bill and imparts a comprehensive and transparent review of government's current and planned future fiscal and budget directions, and the consequences of past decisions. Each February, the National Treasury publishes no less than 2000 pages of in-depth statistics, policy information and analysis on the national budget.

The Budget Review provides information on national policy priorities and how they are to be realised through the budget.²

Detailed financial and non-financial revenue and expenditure information is provided by vote in the Estimates of National Expenditure.³ An important reform in 2002 was the introduction of measurable objectives for each spending programme. Departments are required to set out their main objectives and strategies to achieve them, and how they intend to finance these strategies within their budget allocations. They also review their past performance, both financially and in terms of achieving objectives. The ENE effectively serves as a co-ordinating document for coherent planning and information for departments, since they are called to account in Parliament for their chapters.

The Division of Revenue Bill details the respective shares of the three spheres of government in nationally raised revenue and, together with the Intergovernmental Fiscal Review, is the key public document in the intergovernmental system.⁴

² The Review offers a comprehensive picture of all revenue, including off-budget revenue and expenditure of general government and the main fiscal balances, framed within information on the macroeconomic outlook and key macroeconomic assumptions. Information on the broader public finances is provided with a discussion on its implications for fiscal policy. The Review also discusses revenue issues in detail and the management of public assets and liabilities, including an assessment of contingent liabilities. On the expenditure side, the Budget Review provides aggregate information on the distribution of expenditure in the MTEF framework, between spheres and functions of government and between economic purposes of expenditures.

³ The ENE provides 7 years of financial and performance information together, by national vote, and is aimed at providing parliamentary committees and other stakeholders with comprehensive information on departmental performance and plans.

⁴ It sets out how the provincial and municipal shares are to be divided horizontally, details conditional grants to the sub-national spheres and provides for various procedural matters regarding the management of intergovernmental finances, the responsibilities of Treasuries, accounting officers and the Auditor General. It also legislates a number of rules of cooperative governance, including what must happen if actual revenue falls short of anticipated revenue and how funds may be reallocated from one horizontal unit of government to another. The annexure to the bill include a framework analysis of each conditional grant, detailing its conditions, rationale, criteria for allocation, monitoring mechanisms, past performance, allocations, projected life and payment schedule. This framework is published to provide clarity and certainty on the complex system of conditional grants to stakeholders, and for budget implementation and monitoring purposes. Departments are expected to report against the Division of Revenue Bill and its schedules, covering both financial and non-financial performance. The Auditor General audits compliance with the bill, in both the transferring national departments and the receiving provincial departments and municipalities.

The PFMA put in place a legal framework for modern public financial management and has been at the centre of government's efforts to enhance public financial management and accountability.⁵ Throughout the PFMA and accompanying Treasury Guidelines, individuals are made responsible for flow of funds and/or establishing systems. In tandem, checks and balances have been instituted to ensure that individuals undertake their responsibilities. For example, the payroll is divided into pay points, where the legitimacy of payments needs to be certified monthly by an individual who is not the same person making the payments.

The PFMA designates heads of departments and constitutional institutions and boards of public entities as accounting officers or accounting authorities and gives them the responsibility for the effective, efficient, economical and transparent use of resources in accordance with the Appropriations Act. In doing so, the PFMA requires them to produce monthly and annual financial reports and ensure effective, efficient and transparent systems of financial and risk management, internal control and procurement. If accounting officers do not comply with these requirements, they are guilty of financial misconduct and can have disciplinary and criminal proceedings instituted against them, depending on the nature of the offence.

Furthermore, the PFMA compels ministers to fulfil their statutory responsibilities within the limits of their vote amount in the Appropriations Act, and requires them to consider the monthly reports submitted to them by their accounting officers. It also sets out a framework to clarify accountability when a political directive could result in unauthorised expenditure.

In addition to regulating accounting officers and executive authorities, the PFMA provides a legal framework for the role of the national and provincial Treasuries in the budget process, including co-ordinating the national and provincial budget processes, managing budget implementation and enforcing revenue, assets and liabilities management. It provides the legal framework for the National Treasury to develop the macroeconomic and fiscal framework, co-ordinate intergovernmental relations and determine the banking and cash management framework.

The Treasury Regulations require all departments to appoint chief financial officers. All departments must set up internal audit committees and formulate 3-year rolling internal audit plans that assess and address key areas of risk, as well as fraud-prevention plans.

The PFMA also sets clear sanctions: accounting officers (head of department) can be subjected to disciplinary proceedings if they permit unauthorised, irregular, fruitless or wasteful expenditure, or fail to comply with any of the requirements regarding budget implementation, setting up of financial management systems and reporting. If they are found to be grossly negligent, criminal proceedings can be instituted. In addition, any loss accruing to the state on account of negligent or wilful action by an official must be recouped from the individual.

Parliament:

South Africa has a potentially effective public finance management framework, particularly regarding the Public Finance Management Act (PFMA) and the Municipal Finance Management Act (MFMA). However, challenges regarding implementation hinder progress in socio-economic development. The implementation of policy and legislation should be monitored regularly to ensure effective service delivery, and government should also address the capacity challenges and constraints evident at all levels of government, particularly local government.

The accountability cycle needs to be further strengthened through improved co-ordination and communication between all arms of government. The legislative framework for sound public finance management, co-operative government and intergovernmental fiscal relations includes:

⁵ It shifted the onus of managing the use of resources from central control to the managers of spending departments and agencies. This mirrors the shift in budget preparation practices from central decision-making to discretion resting with spending departments for programme choices within spending ceilings. The PFMA does not prescribe specifics, for example what payment approval procedures should be. Instead, the Act specifies who is responsible for putting in place such procedures, what the procedures should achieve, what the information and reporting requirements are and how these are to be overseen, monitored and compliance assured.

- Chapter 13 of the Constitution.
- Fiscal Relations Act, 1997.
- Public Finance Management Act, No. 1 of 1999.
- Municipal Finance Management Act, No. 56 of 2003.
- Treasury Regulations
- Borrowing Powers of Provincial Governments Act, No. 48 of 1996.
- Municipal Systems Act, No. 32 of 2000.
- Provincial Tax Regulation Process Act, No. 53 of 2001.
- Annual Division of Revenue Act.

Despite the legislative framework provided above, South Africa still experiences tremendous problems in the implementation of these policies and pieces of legislation.

Gauteng Province:

The Public Finance Management Act makes each Accounting Officer accountable for activities relating to fraud prevention and anti-corruption. The provincial government is tasked with the co-ordination of a wide anti-corruption initiative enterprise, and ensuring that the various initiatives complement each other.⁶

Iraj Abedian:

The new PFMA places greater emphasis on accountability for PFMA results, i.e. outputs and outcomes. The overarching aim of PFMA is improvement in the operational efficiency of government spending. It is one of the milestones of the Government's budget and financial management reform agenda. The first wave of reforms such as Gear and deregulation of many areas of the economy were aimed at attaining macroeconomic stability and aggregate fiscal discipline. The second wave of reforms such as the Medium Term Expenditure Framework, the emerging intergovernmental fiscal relations system and realignment of sectoral policies placed greater emphasis on the allocative efficiency of public resource allocation. The third generation of reforms – of which the PFMA is part – emphasises operational efficiency (i.e., are government departments producing the maximum possible service delivery outputs with the resources available to them?).

The Municipal Finance Management Act (MFMA) is the counterpart for local government sphere. Other reforms aimed at enhancing operational efficiency include the Public Service Regulations and other public management reforms. International experience has shown that budget reforms do not succeed unless supported by complementary public management reforms.⁷

See Appendix A for a list of major economic governance laws and Appendix B for regulatory and oversight bodies.

Key Governance Issues

There was wide agreement among the submissions that government had enacted many important laws to create a stronger system for public finance management, but also agreement that the government at national and sub-national levels often did not comply with its own rules. This non-compliance often goes unpunished; systems for enforcement are weak and penalties inconsistently and infrequently invoked. In general, the submissions noted much stronger financial management systems at national level. Conformance to law and sound principles was much weaker at provincial level and significantly weaker to municipality level.

Given that the country's most dramatic problems with fiscal controls relate to sub-national government, it does not make sense strictly to follow the questionnaire's distinction between

⁶ Gauteng Assessment Report: African Peer Review Mechanism (draft 10), 8 March, 2006, p. 23.

⁷ Pan-African Investment and Research Services Dr. Iraj Abedian, "Fiscal and Monetary Policy Management in South Africa 1994-2005" pp. 10-11.

national systems and decentralised systems. National government is intimately involved in setting the rules for the decentralised systems and in making grants and secondments of personnel to localities. This section will begin with key problems of a larger, more national scope and then move into issues related to sub-national government, although there is often not a clear line distinguishing a national and sub-national problem.

Abedian in his submission noted how government has quite radically transformed the machinery of state finances making the institutions and legal frameworks far more modern and coherent than those in the pre-1994 era. However, he noted that realising the intended benefit of the PFMA and MFMA require significantly improved public sector management practices. Generally, despite the positive impact of the above-mentioned Acts, the prevailing practices within the public sector expenditure with regard to ‘value for money’ leave much to be desired.⁸

The submission from parliament contended that the creation of the PFMA and MFMA was cutting edge on the African continent but agreed there were challenges with implementation:

Most African countries are grappling with public finance and are learning from the PFMA. Both the PFMA and MFMA are extremely ambitious and potentially effective financial management structures. The challenge in the African continent broadly is the lack of public finance management framework. However, South Africa specific challenges relate to political commitment and the level of political will to comply with the existing legislative framework. Good financial management processes is the key driver to accountability.⁹

Other submissions and inputs concurred that the country has a sound theoretical management framework, but the departments, sub-national governments and civil servants do not follow the legal requirements.

The Eastern Cape Province said: “Government has developed good policies, but challenges come with implementing these ... government support is difficult to access.”¹⁰

The Department of Public Service and Administration (DPSA), the government department responsible for setting human resource policies for civil servants, noted that provincial departments are guilty of not adhering to national laws or applying some regulations. It mentioned the following:

- In many cases departments did not develop and implement new HR policies and practices due to a lack of competence and capacity;
- The level of understanding of the new approach to HR was inadequate;
- Departments by and large had insufficient capacity to develop and implement new policies and to conduct training on their new policies; and
- There was little evidence of an overarching strategic HR focus in HR administration.¹¹

Despite having the financial resources and guidelines to achieve targets, many departments were failing to do so. “Departments continue to set over-ambitious targets, with too many objectives, and often fail to achieve their intended outcomes.”¹² Furthermore, indicators chosen in their

⁸ Iraj Abedian, “Fiscal and Monetary Policy Management in South Africa” a submission to the SA APRM, October 2005, p. 10.

⁹ Report on the Joint *ad hoc* Committee on Economic Governance, Summary of the Auditor-General’s Submission, p. 41.

¹⁰ Eastern Cape Province: African Peer Review Mechanism Provincial Report, p. 20-22.

¹¹ DPSA’s “Further input for APRM on decentralisation of HR in the public service, 7 February 2006,” p. 1.

¹² PSC, *State of the Public Service Report 2005*, p. 38.

monitoring plans are according to the Public Service Commission (PSC) are “neither measurable nor easily understood.”¹³

The North West Province argued the “framework and formula used to allocate money to local and provincial government should be reviewed and based on the realities they faced.”¹⁴

And even with prescribed guidelines from the National Treasury, several departments are still not aligning annual reports to budgets.

In its 2005 *State of the Public Service Report*, the PSC noted: “While the public service is starting to overcome its difficulties in spending its funds, most departments reached are not achieving some of their strategic objectives.”¹⁵

Few departments relate their annual reports to their budgets and most need a comprehensive management information system to capture progress in achieving objectives. Most departments need to define their performance indicators in a more useful and illustrative manner with management reporting requiring attention. Key management concepts such as the difference between outputs and outcomes and the relationship between activities and objectives are still not well understood indicating that training is still required, particularly in the provinces.¹⁶

The North West Province said:

Departments should strive to ensure that budgets are spent during the prescribed timeframes. The reasons for under spending should be investigated and measures to address the problems should be implemented.¹⁷

Financial misconduct rife in civil service: Despite the government’s efforts to root out corruption within the public service, the picture remains discouraging, as the most prevalent transgressions reported to the PSC are fraud and theft.¹⁸ Not only does this impact on service delivery, it also costs the government millions. “Financial misconduct by any employee results in material and financial detriment to the State.”¹⁹

In the 2002/2003 financial year, the cost of financial misconduct was indicated in about 44% of the reported cases and amounted to R331,213,430.16. In 2003/2004 the cost of misconduct was indicated in 60% of the cases and amounted to R20,352,101.88.²⁰ The PSC noted that the former figure was “exceptionally high” and ascribed it to case reported by the Department of Public Works, Roads and Transport in Mpumalanga, and one case reported by the Department of Social Development. The amounts were recovered in both cases, according to the PSC.²¹

In order to get a comprehensive picture of the impact of financial transgressions, the PSC recommends that National Treasury should consider amending regulations to include the cost of misconduct, as well as an indication of the amount recovered in the list of information that should be reported on.²²

¹³ PSC, *State of the Public Service Report 2005*, p. 39.

¹⁴ Submission from the North West Province, p. 53.

¹⁵ Public Service Commission, “State of the Public Service Report 2005”, p. 21.

¹⁶ Public Service Commission, “State of the Public Service Report 2005”, p. 21.

¹⁷ Submission from the North West Province, p. 53.

¹⁸ PSC, *Report on Financial Misconduct, 2002/03 and 2003/04 Financial Years*, March 2005, p. vi.

¹⁹ PSC, *Report on Financial Misconduct, 2002/03 and 2003/04 Financial Years*, March 2005, p. iv.

²⁰ PSC, *Report on Financial Misconduct, 2002/03 and 2003/04 Financial Years*, March 2005, p. vi.

²¹ PSC, *Report on Financial Misconduct, 2002/03 and 2003/04 Financial Years*, March 2005, p. 31.

²² PSC, *Report on Financial Misconduct, 2002/03 and 2003/04 Financial Years*, March 2005, p. v.

Misconduct rules poorly enforced: According to the PSC, both national and provincial departments are taking too long in addressing cases of professional misconduct, and this can be interpreted as a lack of action.²³

A 2004 PSC report entitled *Measuring the Efficacy of the Code of Conduct for Public Servants* said that the Public Service Code has not been applied across the country. Some departments have not been able to perform some activities, while there has also been a failure of political will and ethical leadership in some departments. The PSC argued for a more effective ethics infrastructure in all departments.²⁴ The public service has also been very defensive when faced with criticism and adverse reporting. The PSC noted that this showed “how complex and subtle corruption is and revealing a reluctance to confront poor ethical behaviour in certain groups.”²⁵

Misconduct unreported and poorly managed: Misconduct is widespread in the public service and although it is being dealt with at local level, most cases are not reported to the PSC or reflected in annual reports. A sample of some annual reports by the PSC for 2002/2003 and 2003/2004 financial years revealed that many departments either submitted a nil report to the commission or did not report.²⁶

This is a serious offence as National Treasury regulations stipulate that the accounting officer must, as soon as the disciplinary proceedings are completed, report to the PSC on the outcome.

Not only were disciplinary measures inconsistent, but the PSC found it “disturbing” that only 50% of transgressors were dismissed as punishment.

The PSC recommended that bolstering the capacity of managers and ensuring that they are empowered to act “severely against transgressors.” They further suggest that managing discipline should become a prerequisite in the performance agreement of managers.²⁷

Other findings from this PSC report:

In all three financial years the majority of employees that charges were brought against, were found guilty of financial misconduct. During the 2001/02 financial year employees were found guilty in 95% of the cases. During the 2002/2003 and 2003/2004 financial years, employees were found guilty in 82% and 76% of the cases, respectively.²⁸

The Department of Defence reported the highest number of misconduct cases in the 2002/03 and 2003/04 financial years.²⁹

Fraud and theft increased by 1% from the 2002/03 to 2003/04 financial year and the highest number of fraud and theft cases were reported by the Eastern Cape Province. For the 2002/03 financial year, the highest number of fraud and theft cases, were reported by national departments.³⁰

Employees on salary level six committed the highest number of financial misconduct cases (25%) while the percentage of senior managers (levels 13 to 15) charged with financial misconduct increased from 1% in the 2001/2002 year to 4% in the following two financial years.³¹

²³ PSC, *State of the Public Service Report 2005*, p. 16.

²⁴ PSC, *Measuring the efficacy of the Code of Conduct for Public Servants*, July 2004, cited in PSC, *Public Service Commission, State of the Public Service Report 2005*, p. 17.

²⁵ PSC, *Public Service Commission, State of the Public Service Report 2005*, p. 17.

²⁶ PSC, *Report on Financial Misconduct, 2002/03 and 2003/04 Financial Years*, March 2005, p. v.

²⁷ PSC, *Report on Financial Misconduct, 2002/03 and 2003/04 Financial Years*, March 2005, p. vi.

²⁸ PSC, *Report on Financial Misconduct, 2002/03 and 2003/04 Financial Years*, March 2005, p. iv.

²⁹ PSC, *Report on Financial Misconduct, 2002/03 and 2003/04 Financial Years*, March 2005, p. iii.

³⁰ PSC, *Report on Financial Misconduct, 2002/03 and 2003/04 Financial Years*, March 2005, p. iii.

There was a 33% increase in the 2003/2004 financial year in respect of criminal cases instituted against employees for financial misconduct. During the two preceding financial years, the South African Police Service was the department that instituted the most criminal cases against its employees.³²

Tensions between centralisation and decentralisation policies: Government is currently trying to recentralise certain functions and to bring public sector employees under a common set of rules. The DPSA said that decentralisation has created many different systems and while the minister is “broadly accountable” for the public service, he or she has limited authority to deal with implementation of national policy and non-compliance.³³

It was also found that some national human resources policies or laws were implemented for personal gain: There are clear indications that national policies and systems are manipulated to achieve unjustified benefits for certain employees.³⁴

The Gauteng Province said:

Within the framework of the constitution, national and provincial departments are considering which of their functions are best performed in the local sphere, and could, therefore, be devolved to local government. Decentralisation of management could also be considered for functions like education (to regions), health (to districts and hospitals) and justice (to cost-centres at local court level). Within the local government sphere, legislation promulgated in 2000 lays the basis for a new division of powers and functions between district and local municipalities, and policy processes continue to assign these powers.³⁵

Financial implications:

Shifting of functions will not only involve shifts in funds, fiscal powers, assets and liabilities, but also of personnel. This challenge is all the greater as the pressure to equalise remuneration and conditions of work introduces cost pressures. The fiscal challenge is to manage these pressures, to avoid them squeezing out funding for service delivery, and non-personnel expenditure.³⁶

Recommendations for improved public sector human resource management: The DPSA in its further submission on human resource decentralisation included several tables listing problems and solutions affecting the civil service and how the situation could be improved through greater central control and the ability to audit and enforce rules on lower levels of government.

³¹ PSC, *Report on Financial Misconduct, 2002/03 and 2003/04 Financial Years*, March 2005, p. iii.

³² PSC, *Report on Financial Misconduct, 2002/03 and 2003/04 Financial Years*, March 2005, p. iv.

³³ Department of Public Service and Administration, “Further Input For APRM on Decentralisation of HR in the Public Service,” 7 Feb 2006, p. 1.

³⁴ DPSA’s “Further input for APRM on decentralisation of HR in the public service, 7 February 2006,” p. 1.

³⁵ Gauteng Assessment Report: African Peer Review Mechanism (draft 10), 8 March, 2006, pp. 54-55.

³⁶ Gauteng Assessment Report: African Peer Review Mechanism (draft 10), 8 March 2006, pp. 54-55. Also see Intergovernmental Fiscal Review, 2001, pp. 3-5.

Question 2: What measures has your country taken to develop an effective system of fiscal decentralisation?

Summary of responses to Objective 3, Question 2

- Local and provincial governments are the main delivery agent for much socio-economic policy and are the focus of increasing public anger over service delivery problems. The problems of corruption and lack of oversight are most manifest at these sub-national levels, where the challenges to sound public financial management are most acute. Although the questionnaire only asks about fiscal decentralisation, the submissions make clear that fiscal, capacity and managerial performance issues are all intertwined.
- In general, the submissions agreed that the framework of laws and systems established are sound. They also agree that the major challenges involve management, implementation, which are affected by capacity, political systems and political will.
- The Presidency, Parliament, the Public Service Commission, the Department of Public Service and Administration, and the National Treasury made substantial inputs from government. The Eastern Cape, Gauteng and North West Provinces also covered the issue. Major civil society inputs included those from Busa, Sangoco, Cosatu, SAIIA-ISS-AICC, Black Sash, and Sanco, among others.
- Issues of fiscal decentralisation were dealt with alongside capacity and managerial issues in the submissions. South Africa's system of governance, described by the presidency, involved the sharing of responsibility among the three spheres of government for service delivery. Provincial and local government have an important role to play in economic development and promoting democracy. Numerous laws, programmes and initiatives have been introduced to facilitate this.
- However, there was agreement that sub-national government, in particular, were not performing well. The South African Non-Governmental Organisation Coalition contended that "on the whole, local government has been plagued with poor governance, failure to control assets, weak financial accounting, and exorbitant pay packages for some administrators." These views were expressed – to varying degrees and with varying emphases – in the submissions made by, among others, parliament, SAIIA-ISS-AICC, and Busa.
- Across government, problems exist in respect of financial control, reporting and monitoring. Reports that are produced seem designed to show the relevant institutions in a positive light, rather than to facilitate analysis. The Public Service Commission noted that, in their reports, "many departments failed to make the link or even attempted to report on outputs in their annual reports."
- At local level – where responsiveness is most expected – councillors were often viewed in a somewhat negative light. They were frequently perceived to have more powers than they did, and many people felt that they did an inadequate job. For example, the 2005 Gauteng Citizen Satisfaction Survey found that people "were largely unaware of the processes of councils"

and that perceptions of nepotism were widespread. Councillors maintained poor communication with their constituencies.

- The representative function of councillors is further undermined by the extent to which South African politics, and its electoral system, make political parties rather than communities the central focus. Since the endorsement of the party is critical to a councillor's career prospects, issues of corruption and mismanagement that might embarrass the party tend not to be aired.
- Structurally the local government system is relatively new and has created difficulties. Dr Doreen Atkinson, for example, has drawn attention to the sheer size of some municipalities, which makes them very difficult to service and administer. Local governments lack the capacity to carry out their mandates. The efforts of the National Treasury to boost capacity also appear too small to reduce the lack of skilled personnel very rapidly.
- Difficulties similar to those at local government level are evident at provincial level. The Public Service Accountability Monitor (PSAM) indicated in a study of four departments in the Eastern Cape that there were severe problems in respect of resource allocation and strategic planning; expenditure management; internal monitoring of expenditure and service delivery; and breaches of legislation and financial misconduct. It noted for instance that in 2002 the Auditor-General said that not a single resolution of the provincial Standing Committee on Public Accounts had been implemented between 1995 and 2002.
- At the time of writing, only six provinces had made submissions. Substantial effort, funding and publicity went into seeking input from the public through questionnaires administered by community development workers. However, only two provinces turned over their questionnaires, which have not been incorporated into this draft. Efforts are underway by Technical Support Agencies to translate and summarise these CDW inputs, but these efforts are incomplete. This draft cannot be considered a fair reflection of the views of the nation until those public and provincial views are properly considered and reflected, particularly under this question.

The Positive Case: Government Actions so Far

The APRM should recognise the extraordinary problems left behind by apartheid, the difficulties of talking about governance structures with wide variance in their capacity levels and the efforts of government to roll out wholly new programmes and services to all citizens using what has proven to be very new or problematic local government systems. It should note also that government and society have clearly acknowledged the variety of problems at sub-national level.

The Presidency noted:

One of the striking challenges for the new South Africa was to render the vast machine of the Public Service more responsive, more representative and more accountable to the public in whose name it acts. The apartheid state machine was fundamentally geared towards control of the public rather than to serve it. The scale and intensity of unmet needs left by this legacy and the challenge to meet these demands continues to place a heavy strain and demand on the resources of the democratic government. The culture of the apartheid bureaucracy was principally directed at promoting and defending an unequal and oppressive social and economic system. In the eyes of the majority of the black population, the apartheid public service was discriminatory and exclusionary, and served primarily as a control mechanism. As a result it was a highly authoritarian, hierarchical, rule-bound and

centralised, top-down institution.

In contrast, democratic South Africa's system of governance provides for co-responsibility and co-operation between the different spheres and agencies. Within this system local and provincial government have been assigned a key role in the social and economic upliftment and development of local communities including poverty alleviation, the extension of basic services and promoting local democracy. The governance system recognises their key role in the progressive realisation of rights through the delivery of basic social and municipal services. Consequently significant authority and support (fiscal and administrative) is provided to the local and provincial spheres.³⁷

The SAIIA-ISS-AICC submission noted:

Centuries of segregation and decades of apartheid in South Africa left behind a legacy of gross inequality in the delivery of public services such as housing, water, sanitation and electricity. Separate, racially-based local authorities were specially created to reflect and reinforce residential and economic separation.

Municipal authorities serving white areas could rely on their strong local tax base to provide well-developed and maintained infrastructure and efficient public services. The resources devoted to developing other population groups were grossly inferior and inadequate. Black urbanisation was strictly regulated and townships were denied industrial, commercial and retail development. The high cost of transport from isolated townships severely restricted opportunities for low-skill residents.

During the 1980s, overloaded black local authorities could not cope with growing service demands, and were discredited by mismanagement and corruption. Township communities responded to the deteriorating quality of public services with mass boycotts of rent and service charges. These local protests were a key factor in bringing about South Africa's democratic transition.

The post-apartheid era also brought with it a newly organised local government structure, creating new challenges when nine new provinces replaced the 'Bantustans' and four former provinces. A primary goal of the ANC when it came to power in 1994 was to redress the impacts of apartheid with regard to a more equitable distribution of public services and unifying the myriad administrative and financial systems left from apartheid. Central to this process was involving people in the decisions about how services should be delivered. The Reconstruction and Development Programme (RDP) focused on a people-centred, grassroots vision of development that was based on growth through redistribution. Local authorities, in particular, underwent a long process of restructuring in order to extend services more efficiently and equitably to historically disenfranchised communities.³⁸

New Laws and Systems

The submissions noted a variety of new laws and systems that have been put in place to improve fiscal management at sub-national levels. These include:

- Requiring more frequent and detailed financial reporting, operational performance reporting, audits and imposing penalties for non-compliance through the Public Finance Management Act, Municipal Finance Management Act, and Municipal Systems Act;
- Promulgating an Intergovernmental Relations Framework;
- Establishing various co-ordinating bodies at local, district, provincial and national levels;
- Creating various capacity-building initiatives run by the Treasury and Department of Provincial and Local Government (DPLG);
- Establishing a system for allocating national revenues to provinces and local governments through the Division of Revenue Act;
- Establishing a three-year rolling budget system, the Medium-Term Expenditure Framework (MTEF) system that affords a predictable picture of future government

³⁷ Submission to the South African APRM by the Presidency, p. 4.

³⁸ SAIIA-ISS-AICC submission, p. 106.

spending and includes systems for negotiating with sub-national governments on priorities and revenue shares;

- Conducting audits of provincial and local governments by the Auditor-General;
- Creation of a system for preparation of municipal Integrated Development Plans with public input;
- Creation of the National Anti-Corruption Forum that brings together the public sector, business and civil society to develop national consensus against corruption;
- To improve service delivery 66 Multi-Purpose Community Centres have been established;
- Introduction of Community Development Workers (CDWs) to improve citizen access to benefits of government socio-economic programmes;
- A system for monitoring and evaluation system to judge the effectiveness and performance of government, which is now under development. In terms of this system, departments are to report every two months on progress against set deadlines and targets, and information is to be posted online.
- Launching of an imbizo programme to give the public more interaction with government and avenues to register complaints; to bypass formal structures and give ordinary citizens a platform to raise issues with the president, deputy president and other top officials;
- Forming the President's Co-ordinating Council;
- Deploying special advisors and resources to local government through Project Consolidate;
- Defining and funding a variety of targeted grant programmes to transfer funds to lower levels of government;
- Removing cross-boundary municipalities;
- Piloting the use of citizen satisfaction surveys to measure the responsiveness of government;
- Establishing a thoughtful MTEF system that manages funding and plans for future allocations through multi-year spending projections (SAIIA and Busa)³⁹.

Improvements needed

- Generally seeking to establish systems to improve performance management of public bodies and different levels of government (Busa, SAIIA);
- Trying to improve the technical and managerial capacity of municipalities and service delivery departments (Busa);
- Developing managerial capacity through revitalisation of the South African Management Development Institute and the Public Service Education and Training Authority (Busa);
- Investment in a new Integrated Financial Management System to replace outmoded government information processing systems (Busa);
- Continued improvements in the quality and content of planning, budgeting, project management and reporting systems, including quarterly monitoring of progress against the published targets of Government's Programme of Action for the 2004-2009 period (Busa);
- Targeted support for municipalities under stress, and for critical infrastructure development capacity in identified provincial departments and local authorities (Busa)

³⁹ Business Unity South Africa, Submission to the South African APRM Process, 3 March 2006, p. 10.

SAIIA); and

- Improved co-ordination of local public services through multi-purpose community centres and phased in employment of local community development workers (Busa, the Public Service Commission).

See also **Appendices A and B** listing laws and institutions affecting fiscal management

Key Governance Issues

Service delivery at local level is arguably one of the biggest challenges facing South Africa. Few submissions raised the issue in terms of economic governance and management. The SAIIA-ISS-AICC submission argued that problems with decentralisation directly contributed to service delivery and administrative backlogs at the local sphere. The bulk of the material in this section, therefore, comes from that submission.

Local and provincial performance:

There was broad consensus among the government and other submissions on the issue of poor operational and fiscal performance in sub-national governments, with the problem most acute at municipal level. The result is a substantial problem of inability to spend allocated funds at sub-national level, weak performance in delivering public services and poor compliance with fiscal control and reporting requirements.

As the Presidency noted, the country is not spending allocated funds at provincial and local level:

While South Africa has constructed an impressive post-apartheid government system, challenges do exist. These challenges are most acute at the local government sphere. Many municipalities are finding it extremely difficult to meet their developmental mandate due to an inadequate economic base and or high levels of poverty and unemployment. Moreover, small towns particularly in rural areas also often lack the financial, administrative or service delivery potential and capacity to provide adequate services and governance.⁴⁰

This contention was also raised in the submissions made by parliament,⁴¹ and by the Eastern Cape.⁴² The North West Province concurred. The PFMA at national level is successful, but at provincial and local government levels there is lack of implementation, transparency and

Indicators for Objective 3, Question 2

Describe (briefly) the legal provisions and policies establishing a system of decentralisation between national and sub-national authorities in your country;

Assess the effectiveness of this system with respect to the following:

- Degree of consistency of policies and programmes initiated by sub-national authorities with the development challenges of the particular geographical area; and
- Capacity of sub-national authorities to generate (if applicable) and manage fiscal resources, and plan and implement economic policies.

List the key challenges encountered by your country in implementing an effective system of decentralisation.

Please give detailed explanation with supporting material where applicable.

⁴⁰ Submission to the South African APRM by the Presidency, p. 2.

⁴¹ Report Of The Joint *Ad hoc* Committee On Economic Governance And Management – A Response to the African Peer Review Mechanism Questionnaire, p. 30.

⁴² Eastern Cape Province: African Peer Review Mechanism Provincial Report, p. 21.

management skills as well as poor communication skills.⁴³ Disparities between rich and poor districts and capacity constraints make decentralisation difficult.

Sangoco noted:

On the whole, local government has been plagued with poor governance, failure to control assets, weak financial accounting, and exorbitant pay packages from some administrators. Project Consolidate, the DPLG rescue package, shows that 67% out of the 138 municipalities paid performance bonuses to [officials in] the municipalities during 2005. We as part of [civil society] have been also concerned about these salaries, which surpass even that of the President – with less than half the responsibility and delivery. Many municipal officials and the unions have, however, raised the issues of the under funding of many municipalities where poor people live, including non-payment for services due to poverty.⁴⁴

The South African Youth Council said:

Although there have been attempts by government to integrate rural development, we haven't seen much success in the implementation of such projects and policies. The majority of rural and under serviced communities have no access to food security and basic income. Programmes aimed at poverty reduction and skills development (EPWP, NYSP) have not been implemented in other provinces.⁴⁵

The SAIIA-ISS-AICC submission noted:

Surveys of citizen satisfaction find that people believe the national government has improved performance over the past 10 years but satisfaction with local government is markedly lower. The surveys found that "slightly more than a third of Gauteng residents perceive local government to have improved, with about a third feeling it has worsened. ... Interestingly, opinions are voiced firmly, as indicated by low "don't know" figures."⁴⁶

Busa noted:

The dramatic restructuring of local government institutions, boundaries and functions during the past decade has been based on a real decentralisation of functions and powers. The key concern is capacity for policy implementation at the local level. The previous round of local government restructuring demonstrated the long time taken to reorganise at the local level and the direct implications for basic service delivery, sustainable infrastructure and the financial position of local councils. Although decentralisation is expected to contribute to enhanced service delivery over time, the current political system encourages loyalty to political party leaders rather than to the local electorate.⁴⁷

⁴³ North West Province, p. 52.

⁴⁴ Sangoco, "Sangoco and the APRM: a submission to the South African process," p. 19.

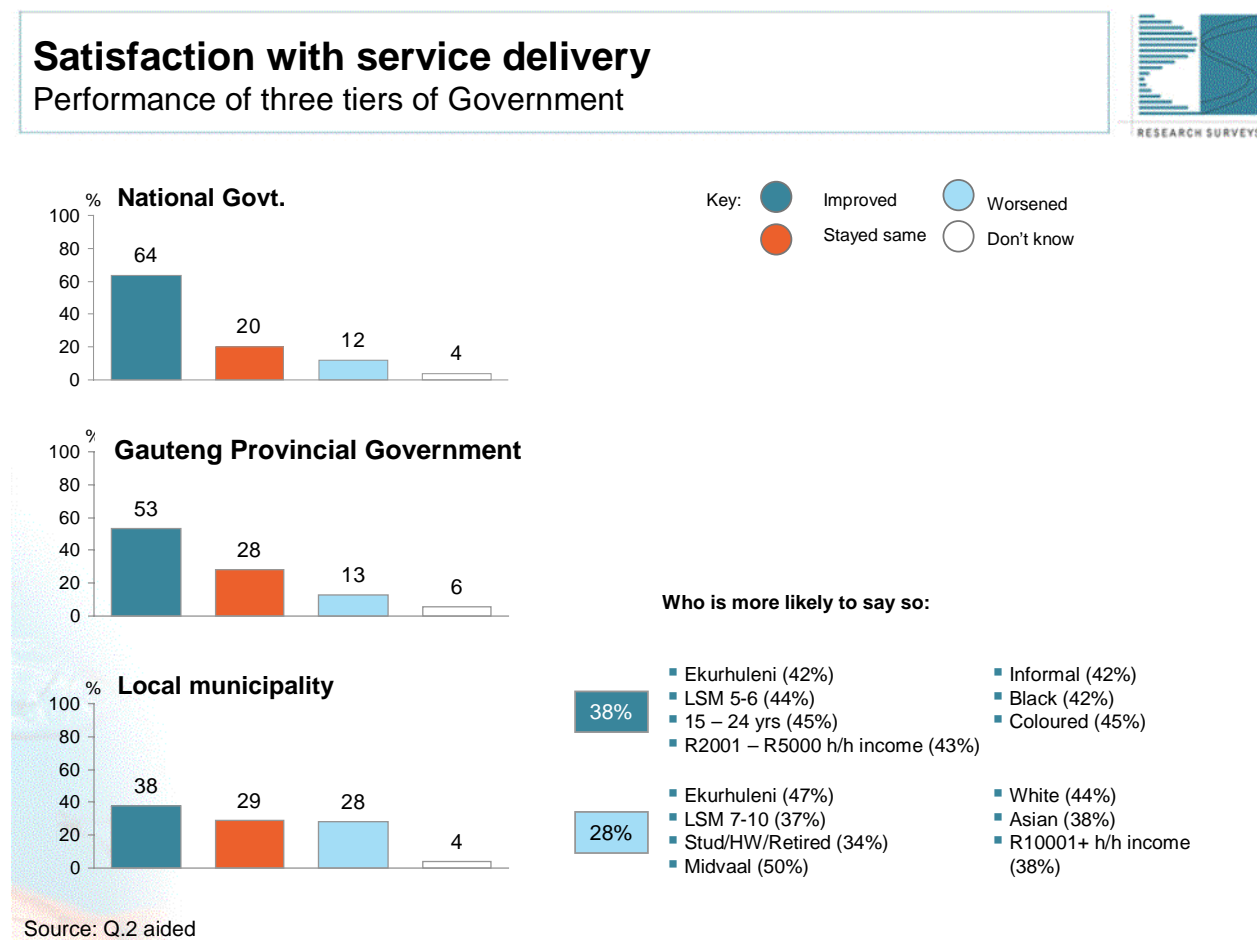
⁴⁵ SA Youth Council, submission to the SA APRM, p. 8.

⁴⁶ Gauteng Department of Developmental Planning and Local Government, "Citizen Satisfaction Survey", July 2005, p. 26, cited in SAIIA-ISS-AICC submission, p. 8.

⁴⁷ Business Unity South Africa, Submission to the South African APRM Process, 3 March 2006, p. 8.

Citizen Perceptions of Government Performance

The following chart is extracted from the 2005 *Gauteng Citizen Satisfaction Survey* and gives an indication of how citizens rate service delivery.



Source: 2005 *Gauteng Citizen Satisfaction Survey*

South Africa's Local Government System

The country's local government system is a result of trying to deal with the difficult legacies of apartheid, which left effective governance in some areas but weak systems in much of the country.⁴⁸ Integration of the former homelands structures and massive rural to urban migration

⁴⁸ Sections 139(1)(a) and (b) and 155(7)l of the constitution give national and provincial government executive and legislative authority to oversee the performance of municipalities. Sections 215 and 216 and other provisions in Chapter 13 grant powers to the National Treasury to oversee and regulate the financial affairs of municipalities. Local government's wide range of powers and functions are described in Part B, Schedules 4 and 5 of the 1996 Constitution. The powers listed in Schedule 4 are the same as those that apply to provincial and national government, however national and provincial governments have the executive authority to ensure that municipalities carry out certain duties adequately in the areas of: air pollution; building regulations; child care facilities; electricity and gas; fire fighting services; local tourism; municipal airports; municipal planning; municipal health services; municipal

compounded the difficulties of crafting a coherent system that could dispense services equally to all. The system now in place faces significant problems.

The SAIIA-ISS-AICC submission noted the complex nature of South Africa's sub-national governance. The national sphere has the greatest number of skilled managers as well as the most important forms of tax. Municipalities have responsibilities to deliver services and should theoretically be more responsive to voters, but they do not have the resources required to do so. Many local governments are failing to provide services and to manage funds properly, and the national government faces a situation where it must try to help failing local government without overturning local democratic choice. Local governments are unlikely to be able to rectify this situation by themselves. Corruption and poor service delivery at local level are compounded by problems with "a basic and serious financial management problem"⁴⁹ at provincial level (according to the Auditor-General). The Auditor-General said that in the 2003/04 fiscal year, 38% of the 111 annual reports from provincial departments failed to receive "unqualified" status. Four provinces did not submit their annual reports in 2003/04.

Party-list system blocks accountability, penalises dissent: The Media Institute of Southern Africa (Misa), Busa and the SAIIA-ISS-AICC submissions argued that problems of an unresponsive government derive from the structure of proportional representation which allows parties rather than voters to choose candidates and thus makes candidates unaccountable to voters and afraid to offend party bosses who can make or break a career by removing a name from a party list. Since personal promotion depends on serving the party and protecting its reputation, public debate around corruption and non-performance is suppressed.

Misa noted:

Candidates for election under the PR system are theoretically chosen by party branches, but in reality there is much confusion and complaints that the lists are finalised by committees under the instruction or influence of the leaders at party headquarters. A proposal by the Van Zyl Slabbert Commission to marry the PR and constituency systems so that greater representation of people would occur has been rejected by the government. Another flaw in the overall system is the vast amount of centralised power wielded by the presidency which militates against the practice of good democratic governance. The President appoints his cabinet — quite rightly but then his powers of appointment are spread widely through other government structures. He appoints the premiers in the provinces controlled by his party, the mayors of the major metropolitan areas where the African National Congress is in the majority, the directors-general of the various government departments and has ultimate authority over the names of party candidates for the various levels of government. The presidency itself is a huge department of several hundred officials whose responsibilities range over the total spectrum of government and

public transport; municipal public works (with respect to those functions assigned under the Constitution or any other law); ferries; jetties, piers and harbours (excluding national and international shipping matters); stormwater management in built-up areas; trading regulations; water and sanitation services (drinkable water and domestic waste and sewage disposal services). (See 'White paper on local government', 1996, p. 4. and 'Local government', www.southafrica.info/pls/procs/iac.page?p_tl=690&p_t2=1823&p_t3=2716&p_t4 Two pieces of legislation – the Municipal Structures Act of 1998 and the Municipal Systems Act 1999 (and their subsequent amendments) – establish the powers and responsibilities of various local government bodies. They are complemented by the Intergovernmental Framework Act of 2005.

⁴⁹ Loxton, Lynda "Fakie slams provinces for lack of accountability, poor controls", *Business Report*, 30 May 2005.

include assessment of departmental policies and conduct. Oversight by parliamentary committees can be – and is – overridden by the government.⁵⁰

Busa also noted that the political system created negative incentives undermining accountability:

- Serious problems exist at local government level that can be attributed to technical and political shortcomings. At the technical level there has been an inability to appoint people with the necessary technical skills, while at the political level, local councillors appear to be ill-attuned to local politics. Failure to deliver and corruption has led to protests in a number of local government constituencies. It has led to some serious soul searching by the ruling party as to the suitability of their candidates in the forthcoming local government elections. One weakness seems to be that candidate selection is a centralised function. This does not provide the appropriate level of accountability of these councillors to their local constituents. Further, candidates are sometimes selected more on party affiliation basis (and in some cases because of relationships with existing officials) and not primarily on suitability and qualification for the job.⁵¹
- The electoral system (party list) gives undue power to party bosses and removes accountability of elected individuals to their constituents.
- There are signs that the executive is weakening parliament through the officials of the dominant party exercising their duties not primarily in a way that is accountable to parliament but to the ruling party and its executive members. In this there is a problematic blurring of party and state.
- The centralisation of power in the executive and an increasing propensity to remove the substance of legislation from the respective bills and place them in regulations where ministers and officials can exercise unfettered discretion, diminishes the accountability and transparency principles of a parliamentary democracy.
- There is some evidence that appointments to independent institutions by government are directed at individuals who will be loyal to the party line.
- The politicisation of local government officials (the appointment of executive mayors for example) has contributed to a worrying centralisation of functions and power and a growing lack of transparency. Other parties and citizens are kept in the dark about key issues and debate.⁵²

The SAIIA-ISS-AICC submission discussed the difficulties posed by South Africa's proportional representation and party lists.

The Alternative Information and Development Centre (AIDC) argued that formal democracy is important, though insufficient for effective oversight, and therefore sound economic governance. The party list system means that party loyalty is a major factor in an MP's career. Furthermore, the issues that they face are complex and many may not be up to the task. They may choose to "give up" and accept the party line on these issues. AIDC said that "no amount of information, advice and 'capacity-building' can compensate for lack of political will amongst members of parliament."⁵³

Customer Service Attitudes

The SAIIA-ISS-AICC submission noted:

⁵⁰ Media Institute of Southern Africa, "Representation to the African Peer Review Mechanism on conditions which contribute to or detract from good political governance by the South African government — compiled by the South African Chapter of the Media Institute of Southern Africa", p. 2.

⁵¹ Business Unity South Africa, Submission to the South African APRM Process, 3 March 2006, p. 7.

⁵² Business Unity South Africa, Submission to the South African APRM Process, 3 March 2006, p. 7.

⁵³ AIDC, "Economic Governance And Management" within the African Peer Review Mechanism in South Africa, a presentation to the *Ad hoc* Joint Parliamentary Committee on Economic Governance and Management in South Africa for the SA APRM, p. 6.

Once the belief takes hold that governments do not listen to citizen complaints, people begin either withdrawing from official processes or acting to bypass them. Declining voter turnout is one signal of declining interest in democratic institutions and disaffection with politics. Riots and the burning of councillors' houses are signs that citizens do not believe election processes deliver results in keeping with their declared wishes.⁵⁴

Government began efforts in 1995 through the DPSA's *White Paper on Transformation of the Public Service Delivery* to define and create a responsive, customer-focused public service. The paper defined eight principles known as the Batho Pele ("People First") principles, which were to guide government departments in improving service and responding to public needs. This was a major departure from the past, but over years later, there is growing public dissatisfaction. Across all levels of government, but particularly at local level, there is a perception that elected and non-elected officials are not responsive to citizen complaints, ignore civic inputs regarding contentious decisions on who should get new houses or roads, and are unwilling to help citizens solve problems and frequently seek to suppress rather than act upon valid criticism of government actions. Several surveys and much anecdotal evidence support this:

PSC 2000 Survey Findings

- Citizens are seldom consulted about their needs;
- Citizens are typically unaware of the standards they should be demanding;
- Access to services remains a problem;
- Whilst courtesy standards had been set in many departments, departments were unable to measure whether these standards were being met as they had not canvassed the opinion of their clients;
- Information and dissemination campaigns were not always comprehensive, and there were gaps in communication between institutions and the communities they served;
- Citizens were not kept abreast of the performance of either provincial or national departments;
- Limited efforts had been made to establish complaint handling mechanisms, and where they exist they "rarely function effectively"; and
- "Very few departments undertake meaningful analysis of the performance in terms of value for money."

- In 2000 the Public Service Commission (PSC) undertook a citizen satisfaction survey that found that citizens did not feel consulted, that feedback functions were patchy or ineffective and complaints handling mechanisms were weak and ineffective.⁵⁵ (See findings box above.)
- The Parliamentary Portfolio Committee on Public Services and Administration conducted a fact-finding tour to the Eastern Cape, KwaZulu-Natal, Limpopo and North West Provinces in July and August 2005 and reported widespread problems of poor services, failure to communicate between national departments and poor service to citizens.⁵⁶

⁵⁴ SAIIA-ISS-AIDC, p, 111. There were more 50 disturbances in the year to August 2005, according to John Kane-Berman of the Institute for Race Relations. *Business Day*, 25 August 2005.

⁵⁵ The Public Service Commission did publish a report on a 2001 survey that focused on health, education and social welfare functions. It examined specific services and functions of the departments, but did not report generalised comments in the same fashion as the 2000 survey.

⁵⁶ Parliamentary Portfolio Committee on Public Services and Administration, "Provincial oversight visit by the Portfolio Committee on Public Service and Administration," 31 July-12 August 2005.

- Nearly half of the electorate is dissatisfied with the performance of municipal government, according to Markinor's Biannual Government Performance Survey conducted in November 2005.⁵⁷
- In 2002, at the request of former minister Kader Asmal, the Public Protector investigated public service levels and found "there (are) problems related to the general compliance of Batho Pele and that the management of discipline in the public service is a point that needs attention." Directors-General were asked by the Public Protector why this was so, and noted the following, among many factors:

The attitude of the public servants, not having a sense of urgency when dealing with the public; a lack of openness in the public service and the secretive attitude of some officials lead to lack of responsiveness; a lack of will and commitment on the part of some public officials to do their work on time; the exodus of trained and experienced staff in the public service in the last 10 years ...; the deterioration of complaint handling mechanisms; lack of diligence and commitment to service delivery on the part of employees; service standards have not been established to provide a specific level and quality of service to customers.⁵⁸

- Gauteng – arguably one of the country's best-run provinces – conducts an annual citizen satisfaction survey, drawing similarly stark conclusions about government responsiveness. The survey report summarised citizen views of municipal government as "not held accountable, unreliable, [has] poor service, [makes] false/empty promises, authoritarian, rude, takes time to do things, greedy, not representing 'me', helpful at times, satisfied with some services."⁵⁹

Overall, respondents across all surveyed areas [including urban, township, rural, affluent and poor areas] predominantly had negative perceptions of the municipality. ... Amongst the majority of respondents, there was mention of minimal work being done to ensure the provision of the above-mentioned services, once again linked to the negative perception of the municipality. Hence a major gap between the rationale for a municipality and the actual delivery of services.⁶⁰

- It is important to note that the Gauteng survey found that satisfaction with services was higher in affluent areas and much more negative in urban and informal settlements.
- In the Gauteng survey, 63% agreed with the statement that there is "lots of corruption in the departments," 51% said "municipality funds are not well managed," 44% said "bad performance of civil servants is not corrected," 53% agreed that "officials involved in housing are corrupt," 49% agreed that "processes for allocating houses are unfair," 45% disagreed that the "municipality is in touch with their needs," but 43% said the "the municipality is better now than 10 years ago."⁶¹

The idea of assessing the tone and attitude of government toward citizens was embraced in the *White Paper on Transforming Public Service Delivery* (No. 1459 of 1997), which advocated

⁵⁷ Mafela N, "SA divided on service delivery", *Sunday Times*, 5 February 2006.

⁵⁸ Baqwa S, Public Protector's Report No.19, 10 June 2002, www.polity.org.za/html/govt/pubprot/report19.html.

⁵⁹ Gauteng Department of Developmental Planning and Local Government, "Citizen Satisfaction Survey", July 2005, p. 8.

⁶⁰ Gauteng Department of Developmental Planning and Local Government, "Citizen Satisfaction Survey", July 2005, p. 8.

⁶¹ Gauteng Department of Developmental Planning and Local Government, "Citizen Satisfaction Survey", July 2005, pp 28-37.

measuring government service based on its responsiveness to citizens using a set of service principles known as the Batho Pele principles (see box below).

The PSC supported this view, arguing that such surveys should be commended as a governance management of best practice that ought to be conducted frequently across all government departments.

With regard to the Batho Pele principles, the survey found most people had heard of the concept, but were unfamiliar with the specifics. However,

[The principles were] not perceived to be realistic, with the municipality not considered to take citizens' needs sufficiently, and with commitment, into consideration. Furthermore, the municipality was perceived to be a 'dictator' in reality, with citizens' needs not considered a priority.⁶²

The anger expressed by citizens in recent riots over service delivery would seem to support the contention that there is a significant problem deserving much greater government attention and more frequent surveys would help put offending departments and levels of government on notice.

Evaluating the service ethic throughout government would be a valuable exercise for South Africa to do as part of its APRM analysis. Ghana and Kenya included such surveys in their research for APRM. The SAIIA-ISS-AICC submission asserted that these surveys would be a valuable, objective addition to the South African assessment.⁶³

Service standards should be developed and implemented: Developing service standards is important because it defines the levels of delivery that departments are expected to achieve. The PSC conducted a study in 2004 to evaluate the performance of national and provincial departments in implementing service standards.⁶⁴ Of the 132 departments that received questionnaires, 115 responded, however only 57 had service standards. Of these 57, only 35 had standards that complied with the principles of quantity, quality and time. Furthermore, just 20 had standards that specifically addressed complaints or redress.

Annual reports are a public relations exercise: Presently, departments are required to produce annual reports, but they do not focus on attitudes and customer service. They are public relations vehicles designed to put the best possible spin on government activities, but in so doing fail to

Batho Pele Principles

1. **Consultation:** Citizens should be consulted about the level and quality of the public services they receive and, wherever possible, should be given a choice about the services they are offered.
2. **Service Standards:** Citizens should be told what level and quality of public services they will receive so that they are aware of what to expect.
3. **Access:** All citizens should have equal access to the services to which they are entitled.
4. **Courtesy:** Citizens should be treated with courtesy and consideration.
5. **Information:** Citizens should be given full, accurate information about the public services they are entitled to receive.
6. **Openness and transparency:** Citizens should be told how national and provincial departments are run, how much they cost, and who is in charge.
7. **Redress:** If the promised standard of service is not delivered, citizens should be offered an apology, a full explanation and a speedy and effective remedy; and when complaints are made, citizens should receive a sympathetic positive response.
8. **Value for money:** Public services should be provided economically and efficiently in order to give citizens the best possible value for money.

⁶² Gauteng Department of Developmental Planning and Local Government, "Citizen Satisfaction Survey", July 2005, p. 13.

⁶³ Afrobarometer, "Citizens Experiences with South Africa's Public Service", *Afrobarometer Briefing*, 10 March 2005.

⁶⁴ PSC, *Draft Report on a First Evaluation of Service Standards in the Public Service*, 2004, cited in PSC, *Public Service Commission, State of the Public Service Report 2005*, p. 25.

provide information to parliament or citizens that would allow meaningful analysis of problems and corrective actions needed. It is vital that all levels of government examine the attitudes and responsiveness of elected and non-elected government officials, quite apart from their statutory powers or management performance.

According to SAIIA-ISS-AICC:

Such a problem cannot be solved by central edict, but should be addressed by remedies that promote a culture of responsive governance in which citizens know their rights to information and redress of problems. Those rights are enshrined through systems of transparency, reporting back to constituencies and regularised efforts of government to allow citizens to rate the effectiveness and responsiveness of different public bodies.⁶⁵

As the PSC citizen satisfaction survey recommended:

- Conducting open, honest, transparent and ongoing consultations with citizens;
- Involving employees (as citizens and providers) in the entire process; and
- Re-measuring satisfaction levels regularly to determine trends and the effectiveness of the improvements that have been implemented.⁶⁶

Such ratings should factor into the management and rewards of the civil service staff. When citizens believe their complaints are dealt with fairly and promptly, they are more likely to direct their attention to working with and improving government rather than attacking it in protest.

Poor quality, late reports: Although local, district and provincial governments all are required to report back on financial and service delivery matters, a variety of official sources indicated that required reports are filed late, without proper information or not submitted at all. Of the 284 municipalities in the country, only 148 (52%) filed their financial reports with the AGSA by the deadline for the fiscal year ended 30 June 2005. By 30 September, 36% had still not filed.⁶⁷ This is an improvement from the fiscal year ended 30 June 2002, when 78% of municipalities did not submit reports to the AGSA by the deadline.

Poor communication: Information about council decisions is not regularly and adequately disseminated to people. As people are not adequately informed, they cannot contribute in making decisions. Systems for municipal communication are also weak and this contributes to the problem of citizens being uninformed about the progress of local government. Citizen satisfaction surveys confirm that local, provincial and national government have exacerbated public anger and compounded service delivery problems with poor communication and poorly conceived, hasty political promises. For instance, the government's decision to offer a certain amount of water for free was announced hastily and politically opportunistically as "free water" during the 2000 local government election campaign. This in turn exacerbated the problem of non-payment for services, and might have been avoided if it had been carefully and properly communicated.

SAIIA-ISS-AICC found that websites, which could serve a valuable role in informing the public, do not carry current or in-depth information. Participants in the 2005 *Gauteng Citizen Satisfaction Survey* said they were aware of communication channels but "the consensus was that

⁶⁵ SAIIA-ISS-AICC, p. 113.

⁶⁶ Public Service Commission, Citizen Satisfaction Survey: Overview Report, 2003.

⁶⁷ Fakie, S, "Report of the Auditor-General on the Submission of Financial Statements by Municipalities for the Financial Year Ended 30 June 2005", www.agsa.co.za/reports/localgov.

not enough was being done to inform or interact with the community.”⁶⁸ Survey participants made a number of suggestions, including: putting up small offices or mobile municipal units in shopping centres to allow for complaints and enquiries, flyers, newsletters, radio commercials which “reach where television cannot reach,” and personal visits, particularly for the elderly and people in areas far from council offices.

Expectations and the real powers of councillors: Many residents do not properly understand the difference between municipal officials and elected councillors. Councillors help to formulate policy and represent residents; officials are responsible for implementing policy and administration. The failure of officials to attend to residents’ complaints can have the effect of discrediting the political process.

Officials and CSOs interviewed by SAIIA-ISS-AICC noted that local councillors are often seen by the public as their envoy not merely to a given council with limited means and powers, but as their agent of all of government. Because of the limited funding available to a council and its high degree of dependence on grants from national and provincial governments, councillors may be able to vote for local projects that fail to materialise because of funding decisions taken at higher levels of government. As a result, councillors are often blamed for the broader failures of government to allocate resources where individual citizens would like. In addition, certain key citizen demands, such as housing, are not administered by local councils in all cases but rely on provincial and national actions. Nevertheless, when housing goes up in a contentious place or new units are allocated to squatters instead of long-standing backyard shack dwellers, tempers flare and the blame is often directed at the councillor for the area. This may also be seen as a consequence of the proportional representation system, where provincial and national MECs and MPs have no local support base.

Ward committees: Ward committees provide a structured channel of communication between geographic communities and their political representatives at the ward and metropolitan level.⁶⁹ These committees represent an opportunity for communities’ interests to be represented, and, ideally, should be used to ensure wide representation from civic, development, business, trade union, taxi, women, youth, religious, cultural and other groups. However, participation rates vary widely. The Gauteng citizen survey found that only 30% of people had participated in a ward committee. At the same time, ward committees are increasingly becoming a political arena for sectarian turf battles – even within the same political organisation – and this is taking energy away from work needed to reflect community priorities.⁷⁰ Ward committees, led by the ward councillor, are expected to develop rules to govern membership and proceedings. In terms of the resources needed to carry out their duties, each councillor has access to a centralised constituency office (each political party will have its own), and to technical and administrative staff. A practical problem exists, however, in reaching all of one’s constituents. Some wards in rural areas cover enormous distances, making regular contact with constituents difficult.

⁶⁸ Gauteng Department of Developmental Planning and Local Government, “Citizen Satisfaction Survey”, July 2005, p. 14.

⁶⁹ ‘White paper on local government’, 1996, p. 56.

⁷⁰ Atkinson, D, *A passion to govern: third generation issues facing local government today*, Centre for Development and Enterprise, June 2002, p. 9.

Councillors do not report back to communities: Communities affected by service delivery riots and protests have in particular complained that elected councillors do not brief citizens on government affairs, live outside their designated wards and do not fulfil the mandate to meet regularly with citizens. The Gauteng Department of Local Government noted that “communities’ trust in ward councillors is at its lowest in most areas and this is evident in the results of the Citizen Satisfaction Survey.”⁷¹ The 2005 Gauteng Citizen Satisfaction Survey reported that citizens “were largely unaware of the processes” of councils ... Perceptions of nepotism and favouritism were discussed as a ‘given’ fact of life.” As one survey respondent said: “Ward councillors are elected as somebody’s nephew.”⁷² Ward committees should be chaired and convened by the councillor elected to the ward area, and are expected to meet with their ward committee once a month or not less than four times a year.⁷³

SAIIA-ISS-AICC claimed that people are dissatisfied because they are not involved in the process of nominating candidates for local elections and candidates chosen by party structures often do not report back to communities about the status of government plans and decisions.

The ANC has pledged to improve ward councillors’ interaction with communities through ward committees. ANC councillors will now be made to sign a pledge committing themselves to live in the community that elected them, to listen to the views of the community and to hold public meetings to report back at least four times a year. However, if this is a systemic deficiency, it should become a requirement of law with attendant reporting systems and penalties, not merely an internal party affair. Like any requirement for public officials, the demand to hold meetings and report to constituents would require a system for reporting the attendance of councillors and for following up on citizen’s complaints.

However, it could also be argued that citizens need to be more proactive in becoming involved in the political process. Ward committees and council meetings (which open to the public) are not always well attended.

District councils too large: The country previously had over 800 municipalities, which were amalgamated into the present 284. District councils were created to provide a form of local governance to rural areas, oversee smaller local councils and help deliver on the valuable national goal of offering quality services to all citizens. However, the new councils are in many cases far too large and unwieldy to be managed effectively.

According to Dr Doreen Atkinson, an HSRC researcher on local government:

Some of the new amalgamated district municipalities are inordinately large in geographic terms – for example, Xhariep is the size of Hungary, Northern Free State has the same diameter as Belgium, and Namakwa is as long as Kansas. Some local municipalities are also vast: in the Northern Cape, some municipalities are built around three or four towns and have diameters of up to 150km.⁷⁴

Amalgamation created administrative, patronage and political problems affecting service: SAIIA-ISS-AICC explained that:

⁷¹ Gauteng Department of Local Government, 2004/05 Annual Report, p. 8.

⁷² Gauteng Department of Developmental Planning and Local Government, “Citizen Satisfaction Survey”, July 2005, p. 14.

⁷³ ANC local government election manifesto 2006.

⁷⁴ Centre for Development and Enterprise, “Local Government in South Africa: Priorities for Action (Roundtable Discussion with the Minister of Provincial and Local Government), *CDE Roundtable 7*, 2003, p. 27.

Many towns had been independent and well managed but through the amalgamation process were folded into larger political entities that included multiple towns. The process created massive administrative, management and political problems that continue to play out and harm service delivery. Staff with very different task descriptions had to be integrated into a common organisation. Forming one entity out of several formerly separate towns – each with its own allegiances and political loyalties – created major uncertainty among staff, jockeying for position, and stimulated a new level of patronage politics. New municipalities also had to integrate different billing revenue systems, working with different municipal rates, using different credit control policies. Often this was done using poor systems of data management.

For example, Ekurhuleni metro in Gauteng's East Rand, combined the local administrations of nine towns: Alberton, Benoni, Boksburg, Brakpan, Edenvale/Lethabong, Germiston, Kempton Park/Thembisa, Nigel and Springs, many of which were formerly independent towns.⁷⁵ None had been poor performers, but amalgamation set in motion a massive struggle for political control and jobs. This led to a destructive pattern of patronage, favouritism and created major problems of merging incompatible accounting, payroll, and human resource systems.

New regulations in 2002 did not resolve the problem, leaving in their wake extremely complex service delivery structures, inconsistent responsibilities and budgetary arrangements across the country. The task of integrating administrative, financial and information systems proved to be time-consuming, complex and difficult.

Unclear lines of authority between district and local councils: The Local Government Transition Act did not provide for a clear description of the powers of District Councils.⁷⁶ In October 2000, the Municipal Structures Act was amended ostensibly to divide duties for water, health, sanitation and electricity between local and district councils. The districts were to be akin to service wholesalers; and local councils more to retail service providers. However, the practical division of duties spawned widespread criticism as unwieldy and creating unneeded layers of administration. The Municipal Advisory Committee recommended that DPLG not transfer service delivery functions to districts because it would compound difficult problems of accountability and create a fourth layer of government.

Councils burdened with duties but not capacity: For poorer, rural councils the awkward split of responsibility with district councils results in unfunded mandates. Atkinson noted:

'Devolution by stealth' is a major problem in these smaller, more rural municipalities. This process describes departments making increasing demands on municipalities without realising the full implications of what they are asking. The evidence also shows that huge 'unfunded mandates' are coming through the system, from environmental affairs to transport to water to finance. National government has changed the way in which municipalities can use their 'equitable share' [funding from National Treasury] which is in effect a 'creeping assignment' of responsibilities, with damaging unintended consequences. Municipalities now have to use their 'equitable share' to subsidise the municipal accounts of indigent people.⁷⁷

Financial Management and Planning

Problems with national government delivery targets: Despite significant delivery of housing, electricity, water and other services, national government does not present a clear picture of service delivery backlogs. In 2003, the DPLG said it would take R38.4 billion a year to address

⁷⁵ Two former councils were also incorporated, the Khayalami Metropolitan Council and the Eastern Gauteng Services Council, according to www.ekurhuleni.com. Note that the website spelled "Edenvale" incorrectly as "Denvale".

⁷⁶ 'White paper on local government', 1996, p. 13.

⁷⁷ Centre for Development and Enterprise, "Local Government in South Africa: Priorities for Action (Roundtable Discussion with the minister of Provincial and Local Government), *CDE Roundtable 7*, 2003, p. 28.

infrastructure delivery backlogs,⁷⁸ but in 2005 government said it planned to spend R400 billion on infrastructure programmes over the next five years. The additional funding is good and it is commendable if government reappraises its goals and financial means. However, shifting goals contributes to unrealistic expectations and public dissatisfaction. This undermines faith in the system and seems to be promoting a culture of protest rather than one of participation as the route to obtaining needed service from government.

In addition, targets have been set in ways that lead to confusion by the public. In the HSRC's *State of the Nation 2005-2006* report, David Hemson noted that original targets set under the Reconstruction and Development Programme failed to account for a massive movement of people from rural to urban areas and a simultaneous dramatic increase in the number of households (people are setting up households with fewer people). This means that South Africa is further behind service delivery demands despite building many new houses, installing water points, etc.

Between 1994 and 2002 an additional 1.3 million households obtained improved toilet facilities. However, this was insufficient to change coverage at the basic level, which has declined from 67% to 62%.⁷⁹

Annual Reports and Financial Statements

Departments, provinces and municipalities are not using annual reports optimally. Criticism has been raised that instead of providing useful information, some reports are treated as a public relations exercise to promote achievements. Budgets are not being aligned to outcomes in annual reports, financial misconduct is not always reflected and there is often no focus on customer attitudes towards service delivery as previously mentioned in this section. The PSC's major findings with regard to annual reports are cited below.

Annual reports should be accurate, timely and accessible, written in plain language and should be carefully structured to provide citizens with useful information on a department's performance.⁸⁰ Unfortunately they are more often "public relations" documents. The PSC cites research by the Auditor-General analysing the Annual Reports of 19 national departments which found that approximately half did not link their performance information to their plans and budgets.⁸¹ This means the annual reports did not contain useful information for the public as to whether department efforts were successful.

No agreed framework for performance criteria: A framework for performance criteria is lacking. This is exacerbated by reporting requirements being contained in different sets of prescripts, which creates uncertainty about what should be contained in annual reports. Though the budget is forward-looking (setting objectives or intended performance) and the annual report is backward-looking (actual performance), the framework of performance criteria should be the same for both.⁸²

⁷⁸ Centre for Development and Enterprise, "Local Government in South Africa: Priorities for Action (Roundtable Discussion with the minister of Provincial and Local Government), *CDE Roundtable 7*, 2003, pp. 6-7.

⁷⁹ Hemson D, *State of the Nation 2005-2006*, Human Sciences Research Council.

⁸⁰ PSC, *State of the Public Service Report 2005*, p. 6.

⁸¹ Auditor-General, *Draft audit outcomes for 2003/4*, 2004, cited in PSC, *State of the Public Service Report 2005*, p. 44.

⁸² Public Service Commission, "Evaluation of Annual Reports as an Accountability Mechanism," p. 24.

Lack of long-term strategies in departments: Corporate plans and budgets provide an overview of the institution's strategy for the short, medium and long term. They also provide valuable information on the objectives, inputs, outputs, envisaged outcomes/results and performance indicators, and how these relate to each other. Only eight (of 24) of the departments referred to the existence of a corporate/business plan and provided lists of objectives/outputs. Of these eight departments, only two provided information on strategies and/or performance indicators. It was, however, not possible to establish the relationship between these pieces of information without a thorough analysis being carried out by the reader.⁸³

Need quality information: The lack of appropriate information not only handicaps legislatures in making policy and addressing vital public needs, but also makes it virtually impossible for legislatures to assess government performance. Such inadequate information is tantamount to a breach of the accountability contract between government and its citizens, because government is not in a position to account for its performance.⁸⁴

It was found that departments largely reported on their activities – what they had done during the year – and that this was mostly limited to a description of the achievements and the benefits of programmes, or progress with the implementation of programmes. Quantified information was rarely provided. Outputs should be linked to departmental objectives and the targets set. Many departments failed to make the link or even attempt to report on outputs in their annual reports. Twenty-one departments provided figures and/or lists on the volume of activities executed during the year. Increases or decreases were not explained and analysed. No quantity, quality or timeousness performance indicators were reported on. This made it almost impossible to make an informed judgment on the performance of a department. Some departments provided statistics on societal and economic conditions (outcomes) without showing how these related to departmental outputs. Statistics were provided by 21 departments, but the analysis and interpretation of the statistics was left to the reader, thus rendering the information less useful.⁸⁵

There was no relation of outputs to costs or inputs to enable the reader to make a judgment about value for money.⁸⁶

Separation of annual reports and financial statements: Currently, annual reports and financial statements are submitted separately and at different times. The question may be asked whether annual reports and financial statements should not be integrated, since the financial position and financial results are important performance criteria. It is also important to relate output performance to financial and other inputs.⁸⁷

On the basis of the research done, it was clear that a basic requirement to assess financial performance is that the information must enable the reader to establish whether money was spent regularly, frugally and as voted by the legislature. Because at present, financial accounts are submitted separately from annual reports, the current annual reports do not serve this function. This problem is exacerbated when the annual reports are compiled on a calendar year basis (13 departments), because the outputs can then not be linked to expenditure for a particular financial

⁸³ Public Service Commission, "Evaluation of Annual Reports as an Accountability Mechanism," p. 28.

⁸⁴ Public Service Commission, "Evaluation of Annual Reports as an Accountability Mechanism," p. 31.

⁸⁵ Public Service Commission, "Evaluation of Annual Reports as an Accountability Mechanism," p. 28.

⁸⁶ Public Service Commission, "Evaluation of Annual Reports as an Accountability Mechanism," p. 29.

⁸⁷ Public Service Commission, "Evaluation of Annual Reports as an Accountability Mechanism," p. 24.

year. Some of the reports were not presented according to budget programmes, which make any linkage of performance with expenditure impossible.⁸⁸

Mandatory reporting: Unlike the public service in many other countries, there is no formal requirement that the national or provincial executives should report on the overall performance of the government (government-wide reports) or on important cross-departmental government policy initiatives. The reporting of progress on such initiatives is then unfortunately left to the discretion of departments. It is therefore difficult to obtain a comprehensive overview of progress in this respect without approaching individual departments for information.⁸⁹

Provincial Accounting and Controls

Problems with poor service delivery at local level are compounded by poor administration, planning and accounting control at provincial level. Basic policies, procedures and asset registers were not in place, pointing to “a basic and serious financial management problem,” the Auditor-General noted in a 2003/04 report on provincial finances.⁹⁰ In the 2003/04 fiscal year, 38% of the 111 annual reports from provincial departments failed to receive “unqualified” status from the Auditor-General, meaning they contained substantial problems. Four of nine provinces did not submit their annual reports in 2003/04. The AGSA noted that provinces failed to link measurable objectives with set time frames to their expenditure, while most departments did not report on targets set in the national budget.⁹¹

Performance of the Department of Provincial and Local Government (DPLG)

Together with the National Treasury, the Department of Provincial and Local Government (DPLG) plays a crucial oversight role in trying to rectify poorly performing or collapsing local authorities and assisting them with capacity-building programmes. However, there are significant problems in the way the DPLG related to provinces and municipalities.

Lack of control/monitoring of grants: While a wide variety of reports documented the extensive failure of municipalities to manage funds properly, control corruption and account for funds, the DPLG does not exert adequate control or follow-up on use of the grants it makes to lower levels of government. The Auditor-General noted in his 2002/03 analysis of the DPLG:

The department effected transfer payments of R2,4 billion to various provincial departments and local authorities. This constitutes 35.8% of the department’s expenditure. Due to the ineffective monitoring and review over compliance with the requirements of the Division of Revenue Act and gazetted conditions, I could not even through alternative procedures satisfy myself that the transfer payments were utilised as stipulated.⁹²

At the time of writing, the DPLG had not posted its 2004/05 annual report (containing the most recent analysis) on its website.

⁸⁸ Public Service Commission, “Evaluation of Annual Reports as an Accountability Mechanism,” p. 28.

⁸⁹ Public Service Commission, “Evaluation of Annual Reports as an Accountability Mechanism,” p. 24.

⁹⁰ Loxton L, “Fakie slams provinces for lack of accountability, poor controls”, *Business Report*, 30 May 2005.

⁹¹ Loxton L, “Fakie slams provinces for lack of accountability, poor controls”, *Business Report*, 30 May 2005.

⁹² Department of Provincial and Local Government, 2002/03 Annual Report, p. 58.

DPLG failed to file reports: Even though it has an oversight role and is supposed to ensure that municipalities and provincial governments abide by national rules, the DPLG itself failed to meet its reporting requirements in 2002/03. As the Auditor-General wrote: “No reliance could be placed on the work of internal audit as no audit reports were finalised and presented to the Audit Committee during the year under review.”⁹³

DPLG does not properly control assets: Although department said in its annual report that “there was an improvement in the manner in which the DPLG manages and controls its assets,”⁹⁴ the Auditor-General noted in his 2002/03 analysis that problems remain:

During the audit of assets, the following shortcomings in the control of assets and inventory were identified and brought to the attention of the accounting officer: The Asset Management Policy had not been approved. No unique identification number was allocated to control assets and their physical locations ... [There is] inadequate control over equipment moving to/from the IT section.⁹⁵

This problem is a generalised one throughout government. The Auditor-General examined provincial and national budgets in 2003/04 and found that “asset management is a perennial issue that is not being effectively addressed.”⁹⁶

Accounting and control weaknesses: The Auditor-General noted in his 2002/03 report:

A number of high-risk control weaknesses existed, i.e. no formally approved security policy, no disaster recovery plan, no change control procedures, no backup and restore procedures and no user account management procedures. Furthermore, formally approved service level agreements also did not exist between the department and all the third parties with whom it had arrangements for the delivery of IT services.⁹⁷

Poor quality information in DPLG annual report: The DPLG produced an annual report similar to other government departments, which followed a style similar to that used in corporate annual reports. However, the information offered very cursory descriptions of major programmes, including only the intentions of the programmes and no meaningful analysis of the issues, dynamics or problems in provincial or local government or the department itself. As a result, the report is a public relations document rather than a meaningful report to aid citizens or parliament in determining what ought to change or be subjected to greater scrutiny. There is no overview offered of systemic problems in provincial or local governments and no discussion of the extent of service delivery backlogs or how the department would address them. As it is now constituted, the DPLG annual report provides almost no useful information to the public that would enable an assessment of how it conducts its affairs or whether its efforts were successful. There is no meaningful discussion, only a table that offers short sentence fragments to outline its projects. Under “consultation arrangements with customers,” the DPLG lists “improved communication channels and relations” as an accomplishment without elaboration.⁹⁸

The DPLG, like all departments, ought to be required each year to produce a clear, common-sense report of gaps and governance problems and present this at open hearings of the relevant portfolio committee parliament. The President’s Co-ordinating Council, which meets to discuss key problems in intergovernmental relations, noted that year-end performance evaluations ought

⁹³ Department of Provincial and Local Government, 2002/03 Annual Report, p. 58.

⁹⁴ Department of Provincial and Local Government, 2002/03 Annual Report, p. 19.

⁹⁵ Department of Provincial and Local Government, 2002/03 Annual Report, p. 58.

⁹⁶ Loxton L, “Fakie slams provinces for lack of accountability, poor controls,” *Business Report*, 30 May 2005.

⁹⁷ Department of Provincial and Local Government, 2002/03 Annual Report, p. 58.

⁹⁸ Department of Provincial and Local Government, 2002/03 Annual Report, p. 205, table 1.2.

to be included in the reports of each department with problems and corrective measures to be undertaken. If this logic applies to lower levels of government, it ought to be applied equally to the more strategic national departments.⁹⁹

Common Problems Within Municipalities

Poor quality or non-existent computerised financial systems: A wide variety of reports and officials noted that financial systems used by local authorities for billing of services, debt collection, tracking of assets and other aspects of accounting are incompatible with district, provincial and national systems. As a result, there are no reliable figures on the level of debt of municipalities. This calls into question the validity of figures used in medium-term financial frameworks for localities and the ability to assess progress and backlogs in infrastructure delivery. The Gauteng Department of Local Government noted in its 2004/05 annual report that “Municipalities are losing millions in revenue because of corrupted data that needs to be cleansed.”¹⁰⁰

Failure of local officials to follow financial control laws: Municipalities do not comply with requirements to file financial and performance reports as required by the MFMA. The Auditor-General noted:

The main area of concern is that where on average municipalities are taking four to six months to submit their financial statements, the act requires that the reports be submitted within two months.¹⁰¹

- Municipalities that are sole owners of so-called municipal entities (power companies, water companies, development agencies etc) that are required to produce their own statements must combine those municipal entity reports into a consolidated report. In fiscal year 2005, 80% of the 15 municipalities concerned failed to file reports within three months of the close of the fiscal year.
- Of 68 municipal entities (state-owned enterprises or institutions such as local zoos or power agencies), only 30% met the submission deadline.
- Local governments are required to submit financial reports to the Auditor-General within two months of the close of the fiscal year and the Auditor-General is to complete audits of them within three months. However, of the 284 local municipalities only 95 (33%) were able to receive completed audits by 30 April 2005, 10 months after the end of the financial year. Forty municipalities (14%) had not yet submitted financial statements for auditing by that date, whilst 145 (51%) were submitted after the deadline of 30 September 2004.¹⁰²
- In the Eastern Cape, local government MEC Sam Kwelita told the provincial parliament that only two municipalities out of more than 40 had received unqualified audit reports from the Auditor-General, and a significant number had not bothered in eight years to report their finances for an audit.¹⁰³ (See also **Difficulties in Eastern Cape Governance**).

⁹⁹ Ministry of Provincial and Local Government, press statement of the President’s Co-ordinating Council, 8 April 2005.

¹⁰⁰ Gauteng Department of Local Government, 2004/05 Annual Report, p. 8.

¹⁰¹ Ensor L, “Poor Debt Collection ‘Cripples Municipalities’”, *Business Day*, 18 November 2005.

¹⁰² Auditor-General’s Annual Report 2004-2005, p. 23.

¹⁰³ Hartley W, *Business Day*, 14 September 2005.

Money not spent: Money set aside for much-needed projects is sometimes not allocated to the correct agencies in order for projects to be implemented, the North West province said. district and local municipalities need to meet quarterly to review budget allocations and ensure money is utilised effectively. The province proposed creating a monitoring and evaluation mechanism and suggested monthly reporting to track progress.¹⁰⁴

Stricter sanctions for non-performance seldom invoked: Although the MFMA and PFMA (solid, detailed laws requiring regular and timely financial and performance reporting by municipalities) and other legislation declares that municipalities and provinces have various reporting and management obligations, and hold accounting officers personally responsible for financial mismanagement, the practical sanctions that can be imposed by national government for non-compliance are infrequently invoked. Mayors of municipalities that fail to file on time are required to lodge a letter explaining and stating when reports will be filed, but no sanctions can be invoked for failure.

For example, the formula for allocating funds for Municipal Infrastructure Grants has five components, one of which is a bonus or penalty based on past performance. But only the Northern Cape saw a decrease in its allocation of Municipal Infrastructure Grant funds between 2005 and 2006 in the MTEF. If certain provinces perform poorly, that record should be widely publicised so that voters may apply pressure for performance. Officials who fail to comply with rules should publicly be named by the Auditor-General, not receive performance bonuses and become ineligible for office.

No effective salary controls: There are no effective controls or standards for municipal salaries, which has allowed wide variation in salary levels and bonus schemes. Nepotism and political favouritism has resulted in to allocate exorbitant or unjustified salaries for top officials while key technical staff are underpaid.

- 67% of the 138 municipalities subject to the DPLG's Project Consolidate rescue plan awarded performance bonuses to municipal managers in the past year.¹⁰⁵
- News reports highlight many instances of municipal managers earning more than the president or collecting large salaries and bonuses despite gross failures to deliver services or collect revenues.

The PSC explained:

Prior to the implementation of the new salary grading system for the Public Service, the awarding of salaries on appointment and promotion was highly regulated through the Personnel Administration Standard.¹⁰⁶ Under a new grading system implemented in 1996, only minimum salary ranges could be awarded. The introduction of the new Public Service Regulations (PSR) changed this, and as of 1 July 1999, executing authorities were given flexibility regarding the awarding of salaries and promotion.¹⁰⁷ This newfound flexibility could be exercised at

¹⁰⁴ North West Province, p. 53.

¹⁰⁵ Mafela N, "Fat Bonuses for Officials at Ailing Municipalities", *Sunday Times*, 8 January 2006.

¹⁰⁶ PSC, *Report on the abilities of the departments to deal with devolved authority regarding remuneration and conditions of service*, July 2004, p. 21.

¹⁰⁷ PSC, *Report on the abilities of the departments to deal with devolved authority regarding remuneration and conditions of service*, July 2004, p. 21.

the discretion of executing authorities with the only requirement being that that reason(s) for the awarding of salaries be recorded.¹⁰⁸

According to DFID-UK, the funder of the Integrated Provincial Support Programme,¹⁰⁹ the “goal of this programme is to develop effective public services and to help partner provinces implement growth and development strategies for poverty elimination.”¹¹⁰ However, DPSA pointed out that the programme also helps to provide technical support in areas such as performance management and service delivery improvement.¹¹¹ The main beneficiaries of integrated support programmes so far have been the Eastern Cape, KwaZulu Natal, Northern Province, Mpumalanga and Free State (the last two provinces joining after 1999).¹¹²

According to SAIIA-ISS-AICC:

The desire of politicians to build a support base through patronage and control of resources is a well-documented difficulty of political systems the world over. All elected leaders should have the right to choose key staff to help set the course of policy, but if the bulk of the civil service is selected based on political loyalties rather than merit, the ability of governments to carry forward programmes declines precipitously. This is a key lesson from the study of young democracies across Africa. Municipalities are willing to pay top salaries for municipal managers and mayors, but they are unwilling to pay competitive salaries for technical staff, engineers and financial managers, who are needed to ensure projects are implemented timeously. To allow top politicians the latitude to make new policy without sparking job safety fears among civil servants, mature democracies the world over have built systems to distinguish between policy-setting political appointees and ordinary technocratic civil servants. This distinction is enforced with strong civil service examinations and systems for properly defining the needed skills of a job and applicants for it. At local level, such systems for merit-based selections are widely disregarded or openly ignored. In many cases, municipal managers have been selected on the basis of loyalty to local politicians rather than a genuine transparent contest of skills and qualifications.¹¹³

Non-payment for services: Not paying for municipal services is a long-standing problem in South Africa, and poor service delivery is increasingly being used to justify this. This poses a threat to municipalities’ viability as they derive a lot of their revenue from reselling water and electricity.

Shortage of Key Technical and Managerial Skills

Local and provincial governments are facing a profound capacity problem,¹¹⁴ with many unable to file adequate reports, manage projects or comply with national laws on managing funds, tendering and planning. Evidence of the severity of the problem comes from numerous sources:

¹⁰⁸ PSC, *Report on the abilities of the departments to deal with devolved authority regarding remuneration and conditions of service*, July 2004, p. 21.

¹⁰⁹ Department for International Development, United Kingdom.

¹¹⁰ See DFID, “Integrated Development Support Programme, SA, <http://www.u4.no/projects/project.cfm?id=315>”, 28 March 2003, p. 1.

¹¹¹ Fraser-Moleketi, G, “Address to the National Council of Provinces, <http://www.polity.org.za/html/govdocs/speeches/2000/sp0919a.html>”, 19 September 2000, p 6

¹¹² To date, support to the provinces has been focused on three areas: 1) “Improving the capacity of provincial government to co-ordinate transformation and achieve the Provincial Growth and Development Strategy, 2) Developing and implementing frameworks for performance management in line with Batho Pele and national regulations, and 3) Improving service delivery and financial management in targeted departments including the re-prioritisation of budgets.

¹¹³ SAIIA-ISS-AICC, p. 123.

¹¹⁴ North West Province, p. 53.

As President Thabo Mbeki noted in launching the Project Consolidate effort to assist municipalities:

Before the launch of the project, an audit was done on municipalities, focussing at their capacity on service delivery and implementation of policies. This audit found that 136 of the 284 municipalities have little or no capacity to service their areas and therefore need urgent support to improve their delivery mechanisms.¹¹⁵

According to a February 2006 press report:

Deputy President Phumzile Mlambo-Ngcuka said a shortage of engineering, management, finance, information technology and other key skills were hurting government efforts to boost infrastructure and investment. The lack of skilled manpower is so crippling that Mlambo-Ngcuka said at a news briefing that the government was considering drafting retirees back into the work force, luring South Africans emigrants home and drawing in new immigrants.¹¹⁶

The Auditor-General noted that provincial and local government departments had a senior management vacancy rate of 61%, which was compounded by a significant 20% vacancy rate in key national departments that support local service delivery – including the Departments of Public Service and Administration, Provincial and Local Government, the National Treasury, Public Enterprises, Public Works and Science and Technology (in the 2002/03 and 2003/04 financial years.) “This, together with the expected increase in economic activities and service delivery in our country, creates serious concerns about the long-term ability of these government departments to deliver on their mandates,” Fakie said.¹¹⁷

Henk Langenhoven, executive director of the South African Federation of Civil Engineering Contractors, noted:

There are so many worthy infrastructure project ideas on the drawing board, but they are not being translated into reality ... A recent skills audit has revealed technical vacancies as high as 74% at local authorities. The decision-making expertise is not there and budget allocations are just not being channelled through to projects.¹¹⁸

The Auditor-General found that only 8% of government workers qualified as “highly skilled” while 90% were considered either low- or semi-skilled. In Gauteng’s housing department alone, there is a 30% shortfall of skilled senior staff.¹¹⁹

The National Treasury’s provincial financing figures reveal that after three-quarters of the 2004/2005 financial year, the provinces had spent only 46.4% of their combined R12 billion capital budgets, which meant that many infrastructure projects were simply not going ahead. The backlog could be as high as R170 billion.¹²⁰

Hiring based on political/family loyalties rather than merit: Closely related to the problem of lack of control on salaries is a lack of disciplined procedures to ensure that civil service jobs are filled on merit with qualified people. Government’s contention that local authorities lack capacity effectively concedes that municipalities are staffed with people ill-equipped to perform the tasks demanded of them, on top of significant numbers of unfilled positions (discussed under **Financial Weaknesses of Local Government**).

¹¹⁵ Address by President Thabo Mbeki to the National Council Of Provinces, KwaZulu-Natal, 5 November 2004, <http://www.anc.org.za/ancdocs/history/mbeki/2004/tm1105.html>

¹¹⁶ Nullis C, “South Africa confronts a lack of skilled labour”, Associated Press, 6 February 2006.

¹¹⁷ Ensor L, “Lack of managers hobbles delivery, Fakie tells MPs”, *Business Day*, 21 January 2005.

¹¹⁸ Healing J, “Plenty of money, but no one to spend it”, *Sunday Times*, 27 February 2005.

¹¹⁹ Benjamin C, “Skills shortage dogs local services”, *Business Day*, 17 August 2005.

¹²⁰ Healing J, “Plenty of money, but no one to spend it”, *Sunday Times*, 27 February 2005.

A study of local service delivery problems for the Human Sciences Research Council found:

Amalgamation brought the rise of patronage politics. In some provinces, political parties vetted candidates for the posts of municipal managers in all municipalities. Patronage politics has led to the appointment of political parties' "favourite sons," often with very poor qualifications or experience.¹²¹

Mamphela Ramphela, managing director at the World Bank and a former UCT vice chancellor observed:

The appalling skills gaps in the civil service and the unsustainable vacancy rates reflect not only lack of skills, but the corroding effect of politicisation of appointments at many levels of our civil service. There are too many skilled professionals being denied job opportunities at the various levels of government because they are outside of the party political networks that have captured civil service jobs for patronage. Comparative analyses worldwide point to the importance of limiting political appointments based on loyalty to the top layer. Strict professional competency criteria need to be applied for the rest of the system to ensure efficiency and effectiveness. We need to strengthen professional recruitment, promotion, training and retention of public officials at all levels. Mediocrity has to be rooted out and meritocracy promoted.¹²²

President Thabo Mbeki noted:

Some of the people who are competing to win nomination as our candidate local government councillors are obviously seeking support on the basis that once elected to positions of power; they will have access to material resources and the possibility to dispense patronage. These goings-on tell the naked truth that the ranks of our movement are being corrupted by a self-seeking spirit that leads some of us to view membership of our organisation [the ANC] as a stepping stone to access to state power, which they would then use corruptly to plunder the people's resources for their own personal benefit.¹²³

Pressure to transform local government forced out qualified staff: After 1994, government sought to accelerate racial transformation of local government and offered attractive voluntary severance packages to civil servants. As a result, many skilled technicians, accountants, engineers and managers left government. The broader economy faces severe shortages in such skills and universities are producing far fewer graduates than required by the public and private sectors. Many retired officials re-entered local government services as contractors working at significantly higher cost to government. Affirmative action was used as a guise to expand patronage politics, which directly undermines merit-based hiring.¹²⁴

The exodus of skilled staff from government service was large. Azar Jammie, chief economist at Econometrix, estimated that as many as 20,000 people left the public service for better paying jobs during the past decade.

"Delivery paralysis" at the local level, he said:

Was due to a lack of skilled people able to take decisions in the public services. Apartheid robbed blacks of a good education, but when the new government came to power it put them in place of people who had a lot of experience. The new people were out of their depth, because there was insufficient skills transfer.¹²⁵

Scale of national capacity-building is too small: Given the size of the problem and the large amounts of available infrastructure funds that cannot be spent for want of effective staff, the

¹²¹ Lucas P, "Small municipalities caught between unrealistic expectations and critical shortages", *HSRC Review*, June 2003.

¹²² Ramphela M, "Our young democracy", Steve Biko Memorial Lecture, *Business Day*, 14 September 2005.

¹²³ Mbeki T, *ANC Today*, 14-20 October 2005.

¹²⁴ Atkinson, D, *A passion to govern: third generation issues facing local government today*, Centre for Development and Enterprise, June 2002, p. 12.

¹²⁵ Staff Reporter, 'South Africa: Rising Pressure on Government to deliver quicker', *IRIN NEWS*, 27 May 2005.

National Treasury's efforts to boost local capacity are inadequate and unlikely to bring about meaningful change soon. According to the 2005 MTEF, there are only 30 advisors working in selected municipalities in support of the MFMA. In consequence, planning and implementation management centres have been established in 47 districts to assist with planning and management. Municipalities have used financial management grants to employ 250 interns, and such grants funded training for 600 municipal officials. The allocations for these capacity-building steps are not small (R596 million over the 2005 MTEF). But the total numbers affected – even if the programmes worked perfectly – would seem inadequate to the problem.

Although the need for capacity-building is pronounced, the National Treasury held spending flat for capacity-building grants in the 2005 MTEF, noting only that they are under review:

Over the past four years – since 2002 – more than R2.4 billion has been committed for capacity-building and restructuring activities but without measurable impact on capacity. These grants will be reviewed in 2005/06 and in the interim, have been capped.¹²⁶

According to Project Consolidate, 136 municipalities are in dire financial condition and need direct assistance. But the Local Government Financial Management Grant to most municipalities was either R250,000 or R500,000 with a few larger cities receiving more (Johannesburg and Tshwane each received R3 million in 2005/06, but this falls to R500,000 in 2006/07). This is sufficient only to hire one or two skilled managers or conduct short-term training.

Municipalities that have civil engineering staff report a 35% vacancy rate, and metropolitan councils report a 45% vacancy rate.

Continued vacancies in local government will mean that existing infrastructure will degenerate and be rendered worthless. "Protests relating to lack of service delivery, as were witnessed in 2005, could become commonplace," noted a recent assessment of problems with infrastructure delivery by the civil engineering profession.¹²⁷

More fundamental solutions required: SAIIA-ISS-AICC suggested that sending in management teams to problematic municipalities is an appropriate step, given the capacity limitations at national and provincial levels. However, a durable solution requires a fundamentally larger output of finance, accounting and project management graduates from South African universities, loosening work permit rules to allow importation of needed professionals from Africa or further abroad and replacing patronage-based recruitment with professional merit-based hiring. Although some municipalities pay very high salaries for a few top officials, securing such jobs is seen as dependent on political connections rather than merit. Comparatively low salaries are offered to skilled engineers, planners, accountants and other needed technocrats. As a result, the high salaries offered to the few do not have the desired effect of drawing skilled professionals into the public service.¹²⁸

¹²⁶ Department of Treasury, 2005/06 Medium Term Expenditure Framework, Chapter 7.

¹²⁷ Cokayne R, "SA faces engineering crisis," *Business Report*, 24 October 2005.

¹²⁸ SAIIA-ISS-AICC, p. 125.

Difficulties in Eastern Cape Governance¹²⁹

The Public Service Accountability Monitor (PSAM) believed that since provincial administrations are integral to public service provision in South Africa, it was important for the APRM's review to take account of their expenditure management and the efficiency of their efforts to provide services.¹³⁰ This section summarises the PSAM submission (and all footnotes come from it).

The PSAM submission focused on four departments in the Eastern Cape. On average, these departments collectively account for over 85% of the Eastern Cape Province's total annual budget allocation.¹³¹

- The Department of Housing and Local Government;
- The Department of Education;
- The Department of Health; and
- The Department of Social Development.

The submission used five indicators of accountability and effectiveness to evaluate the performance of these departments between 2000 and 2004:

- Resource allocation and strategic planning;
- Expenditure management;
- Internal monitoring of expenditure and service delivery;
- Legislative breaches and financial misconduct; and
- Accountability to oversight bodies.

The Eastern Cape is one of the poorest of South Africa's provinces, and has acquired a reputation since 1996 as being one of the worst managed and most inefficiently administered. A number of national and provincial initiatives have attempted to improve governance and delivery in the province since this time.

For example, between 1998 and 2000, cabinet invoked Section 100 of the constitution, enabling it to assume direct control over failing provincial government departments.¹³² In 2003 a national

¹²⁹ Public Service Accountability Monitor (PSAM), "Submission to the African Peer Review Mechanism, South Africa Country Review" Rhodes University, Grahamstown, 10 March 2006. All subsequent footnotes in this section are from the PSAM Report.

¹³⁰ 58% of budgeted expenditure in South Africa is administered by its nine provincial administrations, with 38% administered through national government departments. See National Treasury, *Budget Review*, 2005, p. 127. These figures are for the 2004/2005 financial-year. The remaining 4% of the national budget is allocated to local government to supplement its locally raised revenues. See also National Treasury, *Provincial Budgets and Expenditure Reviews: 2001/02 – 2007/08*, Sep. 2005, Chapter 8, p. 123.

¹³¹ For instance, in the 2001/2002 financial-year the combined budget allocation to the Departments of Housing, Education, Health, and Social Development (Welfare) was R18.1 billion whereas the total provincial budget allocation was R21.1 billion. This amounts to 85.4% of the provincial budget. See Eastern Cape Provincial Treasury, *Budget Statement 2002/2003*, 7 March 2002.

¹³² During 1998 the national Department of Finance intervened in the Eastern Cape Province in terms of section 100 (1) of the constitutions. It agreed to provide the province with an amount of R600 million to partially cover its deficit for the 1997/98 financial year. The provincial cabinet in return had to make a commitment to keep within budget and to improve financial and cash flow management over the next 3-year medium term expenditure framework period. The section 100 intervention was subsequently extended for another year to 31 March 2000. See General Report of

government directed Interim Management Team assumed control over the major service delivery departments in the province (including Health, Education, Social Development and Public Works) and a Joint Anti-Corruption Task Team was dispatched to clear up a backlog of un-investigated corruption cases in the province.

In April 2005 the Eastern Cape Premier, Nosimo Balindlela, announced the establishment of a Judicial Commission of Inquiry into the Finances of the Eastern Cape Provincial Government. The mandate of the “Pillay Commission” included an evaluation of public expenditure management and the investigation of alleged incidents of mal-administration, fraud and corruption (relating to procurement) between 1994 and 2004.

The PSAM submission was drawn from written evidence presented to the above Judicial Commission in February 2006. It identified a number of ongoing systemic and structural public expenditure management deficiencies that continue to hamper effective service delivery. The submission also contained a number of recommendations.

Resource allocation and strategic planning

Provincial Members of the Executive Committee (MECs) with the accounting officers (or heads) of government departments are required by law to produce a publicly accessible strategic plan for departments as the start of the financial year. This plan must identify the social needs of the population and set out service delivery programmes to address them. A budget is then proposed and a set of service delivery indicators identified. The provincial legislature can only endorse departments’ strategic plans and the provincial treasury should only allocate budgets, if the prescribed criteria are met.

The Public Service Management Framework, introduced in June 1999, requires all provincial service delivery departments to begin their strategic planning process at least 12 months before the start of the financial year. A department’s strategic plan must, by law, meet certain minimum requirements. It should:

- Identify the department’s core objectives;¹³³
- Describe the activities and programmes necessary to realise these core objectives;¹³⁴
- Include measurable outputs for all programmes;¹³⁵
- Include information necessary to define the posts required to undertake the proposed activities and to determine the department’s organisational structure;¹³⁶ and

the Auditor General on the Accounts of the Eastern Cape Provincial Administration for the Financial Years 1997-98 and 1998-99, PR62/2000, Part 2, sections 2.1-2.

¹³³ Public Service Regulations, 1999, Part 3, Section B. Strategic Planning, pp. 7-8.

¹³⁴ Public Service Regulations, 1999, Part 3, Section B. Strategic Planning, pp. 7-8.

¹³⁵ The *National Treasury Guide for Accounting Officers* introduced in October 2000 states that departmental accounting officers ‘should ensure that outputs are sufficiently quantified and appropriate service delivery indicators developed as soon as possible.’ See *Guide For Accounting Officers: Public Finance Management Act*, National Treasury, Oct. 2000, Section 2 –Financial Planning, p. 10.

¹³⁶ Public Service Regulations, 1999, Part 3, Section B. Strategic Planning, pp. 7-8. Section B.2(a), (c) and (d) state that ‘based on the strategic plan of the department, an executing authority shall (a) determine the department’s organisational structure in terms of its core and support functions;...(c) define the posts necessary to perform the relevant functions while remaining within the current budget and medium term expenditure framework of her or his

- Include a human resource plan indicating the personnel to meet the department's functions, including the number of employees, their competencies and training needs. It should also include a strategy "to recruit, retain, deploy and develop" staff within the department's available budgeted funds;¹³⁷ and
- Include a detailed service delivery improvement plan identifying the department's "customers" and their needs, and evaluate the department's capacity to meet these needs. This requires a process of extensive consultation with internal and external stakeholders.¹³⁸

The strategic plans produced by the reviewed Eastern Cape departments between 2000 and 2004 did not include an adequate needs analysis; showed no evidence of effective consultation with stakeholders; did not include accurate information on the departments' service delivery environments; and failed to include a coherent recruitment and retention strategy, according to the PSAM.

For example:

- The strategic plans produced by the Eastern Cape Department of Housing consistently failed to identify the number and location of persons requiring housing in the province between 1999 and 2004; and
- The Department of Social Development failed to produce accurate and updated figures for the number and location of persons in the province in need of child support grants or those requiring other forms of social assistance, such as pensions and disability grants.

Expenditure Management

Public expenditure incurred by provincial government departments in South Africa is subject to strict regulation by the PFMA – supported by the National Treasury regulations and a range of implementation guidelines – and the Division of Revenue Act (Dora), which is passed annually.

The accounting officer (generally the HOD) within any government department is responsible for "the effective, efficient, economical and transparent use of resources" and requires her/him to take appropriate steps to prevent "fruitless and wasteful expenditure."¹³⁹

department, which shall constitute the department's approved establishment; and (d) utilise the human resource plan described in regulation IIID to plan to meet the resulting human resource needs.

¹³⁷ Public Service Regulations, 1999, Part 3, Section D.1 (a), (b) and (c).

¹³⁸ The Public Service Regulations require departments to produce a Service Delivery Improvement Programme (SDIP) in which they identify who their 'customers' are, what services they provide to these 'customers', and what barriers prevent their 'customers' from accessing these services. The idea of the SDIP was clearly premised on an extensive process of consultation given that it was needed to develop strategies to remove barriers to service delivery, improve communication with 'customers' and lead to the development of service standards. See, Public Service Regulations, 1999, Part 3, Section C.1 Service Delivery Improvement Programme, p. 8. Such consultation is required to meet the Constitutional principle that 'People's needs must be responded to, and the public must be encouraged to participate in policy making.' South African Constitution, Chapter 10 Public Administration, section 195(1)e. The need to involve both internal and external stakeholders in the strategic planning process was subsequently made explicit by National Treasury guidelines which state that departments must ensure stakeholder and community input. See Generic Format for Strategic Plans for Provincial Departments, National Treasury, 11 July 2002, Part A, Section 3.8, p. 10.

¹³⁹ Public Finance Management Act, sections 38(1)(b) and (cii), Chapter 1 Definitions, p. 8.

The PFMA stated that before transferring any funds to an entity within or outside government an accounting officer “must obtain a written assurance from the entity that that entity implements effective, efficient and transparent financial management and internal controls systems.”¹⁴⁰

The Dora also stated that all conditional grants can only be spent in a way consistent with their intended use. If provinces or municipalities under-spend or make improper use of conditional grants the transferring national department can either delay further payments,¹⁴¹ or withhold these if there is “a serious or persistent material breach of the conditions to which the allocation is subject.”¹⁴²

In order to ensure effective public expenditure management by government departments, the PFMA sets out the general requirement that accounting officers maintain “effective, efficient and transparent systems of financial and risk management” and take steps to safeguard departmental assets.¹⁴³ In addition, the PFMA and public service regulations both oblige MECs to ensure that their departmental personnel are governed by “efficient, effective and economical” human resource management procedures.¹⁴⁴ This requires effective performance management systems to govern the employment of all officials.¹⁴⁵ Finally, the PFMA requires that accounting officers of departments ensure that they establish cost-effective procurement and provisioning systems.¹⁴⁶

All of the reviewed departments routinely over- or under-spent their budgets and incurred fruitless and wasteful expenditure between 2000 and 2004. None of these departments were found to have established effective financial control mechanisms (including asset management systems, capital expenditure management systems, procurement systems, and controls over transfer payments) by the Auditor-General, or efficient and economical human resource management systems (including performance management systems or personnel and leave record

¹⁴⁰ Public Finance Management Act, section 38(1)(j).

¹⁴¹ Division of Revenue Act, 2003, section 21.

¹⁴² Division of Revenue Act, 2003, section 22(1)(b).

¹⁴³ Public Finance Management Act, 1999, Chapter 5, Section 38(a)(i), (c)(ii) and (d).

¹⁴⁴ Section 195(1)(h) of the Constitution states that public administration must exhibit ‘good human resource management.’ Public Service Regulations state that it is the responsibility of executing authorities within departments to assess the human resource needs of departments. This should be done by identifying the total numbers of staff required to meet departmental objectives, and the necessary competencies and capacities staff will require to fulfil these objectives. In addition, the regulations note that training needs should be assessed and all human resource planning should be undertaken with due cognisance of the available budget. See, Public Service Regulations, 2001, Section 3 D1, pp. 12-13. Lastly, section 38(b) of the PFMA states that accounting officers are responsible for the ‘effective, efficient, economical and transparent use of the resources of the department.’ This clearly presupposes that departments will implement efficient and effective human resource management processes and procedures.

¹⁴⁵ Resolution 13 of the Public Service Co-ordinating Bargaining Council, 1998, states that all senior management within the public service must sign performance agreements. See, Public Service Co-ordinating Bargaining Council Resolution 13 Senior Management (Performance Agreements), 1998, section 3. The Public Service Regulations of 2001 require that performance management systems should have been ‘fully implemented by all departments with effect from 1 April 2001.’ See, Public Service Regulations, 2001, part VIII, B.1. In addition Section 38(1)(b) of the PFMA requires that accounting officers ensure the ‘effective, efficient, economical and transparent use of the resources of the department.’

¹⁴⁶ Public Finance Management Act, 1999, section 38(1)(a)(iii). The PSAM’s references to procurement issues are drawn from Auditor-General and audit committee reports.

systems), the PSAM found.

For example:

Between 2000 and 2004 the Eastern Cape Department of Housing and Local Government under-spent a cumulative total of R928 million (or 29% of the total budget) allocated for the construction of houses.¹⁴⁷ In the period between 2002 and 2004 only 15 performance agreements were signed with members of the department's more than 1,000-strong staff;

Between 2000 and 2004 the provincial Department of Education overspent its personnel budget by R1.1 billion (primarily due to its employment of an annual average of 13,000 staff additional to the fixed establishment).¹⁴⁸ In addition, in this same period, despite an infrastructure backlog totalling R15.8 billion, the department spent only R19.7 million (or 37 %) of an available amount of R510 million on educational infrastructure (including the maintenance of school buildings) in the province.

Internal monitoring of expenditure and service delivery

Legislation compels all accounting officers in government departments to provide detailed reports on the implementation of their strategic plans and expenditure of budgeted funds to their executive authorities and relevant treasuries. This provides the basis for a monitoring framework that enables the department's internal audit unit to identify potential risks in expenditure and in managing resources.¹⁴⁹ This allows the department's audit committee to advise managers on the effective running of programmes and activities.¹⁵⁰ To ensure that this system works effectively, departments must produce monthly financial reports, quarterly performance reports, comprehensive annual reports, and detail their use of conditional grants.

Between 2000 and 2004 the Auditor-General found that all four reviewed departments failed to establish effective internal audit units and internal audit committees. Numerous instances of non-compliance with the reporting requirements were also identified. All four departments failed to maintain adequate systems for monitoring the economy, efficiency and quality of their services.

For example:

- In the period under review neither the internal audit unit nor the audit committee functioned effectively within the four departments. Consequently, this calls into question the efficacy of the internal monitoring of in-year financial expenditure and performance reporting in these

¹⁴⁷ See Department of Housing, Local Government and Traditional Affairs, Annual Reports, 2001/02, p. 85, 2002/03, p. 110, and 2003/04, p. 80.

¹⁴⁸ In the period between 2001 and 2004 the Department had an average staff additional to the fixed establishment of 13,000.

¹⁴⁹ Public Finance Management Act, 1999, Section 38(1)(a)(ii). Internal audit units are required to have a three-year strategic plan and their objectives should be based on an assessment of key areas of risk for the Department concerned. See: Guide For Accounting Officers: Public Finance Management Act, National Treasury, Oct. 2000, Section 6 Corporate Management and Internal Controls, pp. 31-32.

¹⁵⁰ Ibid, pp. 32-34. The Audit Committee is required to ensure effective communication between a department's internal audit unit and its management. It should, *inter alia*, examine the performance of the internal audit unit, review the effectiveness of a department's internal controls, monitor management's response to identified weaknesses, evaluate the performance of management, and consider the quality of financial information produced by the department. See Treasury Regulations, 2001, Section 3.2.

departments during the period between 2000 and 2004.

- Between 2001 and 2004 the Auditor-General observed that the quality of information in the Department of Housing and Local Government's monthly and quarterly reports was inadequate and often inaccurate and that the MEC had not always been provided with the necessary quarterly performance reports.

Legislative breaches and financial misconduct

The PFMA states that an accounting officer for a government department commits an act of financial misconduct if she/he wilfully or negligently makes or permits unauthorised, irregular, fruitless or wasteful expenditure or fails to comply with a range of additional provisions.¹⁵¹ These include failure to: have an adequate system of financial control; collect all money due; take disciplinary steps against an official who does something to undermine the financial management or control systems of the department; keep proper records; or report accurately on the department's financial results or performance.

The PSAM acknowledged that although the Eastern Cape Auditor-General had reported multiple breaches of the PFMA by the four departments to the relevant MECs and the provincial legislature as instances of "financial misconduct",¹⁵² there was no evidence of these accounting officers being subject to disciplinary hearings.¹⁵³

Accountability to oversight bodies

The constitution requires the Auditor-General to audit and report annually on the "accounts, financial statements and financial management" of all government departments. These reports must then be submitted to the relevant provincial legislature for its consideration.¹⁵⁴ A key function of the Auditor-General is to ensure that government departments are properly managed and that their resources "are procured economically and utilised efficiently and effectively."¹⁵⁵

The provincial portfolio committees must then scrutinise the content of the annual reports and investigate queries raised. The legislature and its committees must exercise oversight of executive authorities in the province and their corresponding government departments.¹⁵⁶ In carrying out

¹⁵¹ Public Finance Management Act, 1999, section 81(1)(a) read with section 86(1). Section 86(1) states that the accounting officer's non-compliance with one of the provisions listed in this section must be committed wilfully or 'in a grossly negligent way' in order to constitute a potential criminal offence.

¹⁵² Section 81 of the Public Finance Management Act, Act 1 of 1999, defines 'financial misconduct' as a wilful or negligent failure to comply with the requirements of sections 38 through to 42 of the PFMA, or where unauthorised, irregular or fruitless and wasteful expenditure occur. This form of misconduct is committed by either the accounting officer or an official to whom a power or duty is assigned by the former.

¹⁵³ The first reported disciplinary charges against an Eastern Cape official in terms of the PFMA were instituted by the MEC for Education, Mkangeli Matomela, in November 2004. See 'Bisho cracks down on incorrect spending', *The Herald*, 24 November 2004. However, even this report fails to indicate that these charges were a direct response to the Auditor-General's departmental audit findings.

¹⁵⁴ Constitution of the Republic of South Africa, Act 108 of 1996, section 188(1) and (3).

¹⁵⁵ Auditor-General Act, 1995, section 4(d).

¹⁵⁶ Constitution of the Republic of South Africa, Act 108 of 1996, section 114(1) and (2).

this function, a provincial legislature or any of its committees may require a person or department to appear before it to explain irregularities.¹⁵⁷

Since 1996, the Eastern Cape Auditor-General had raised the same issues indicating weak financial management in all four departments, the PSAM found. These issues related to poor asset management, a lack of effective personnel controls, the absence or ineffectiveness of internal auditing, and inadequate controls over transfer payments. The reviewed departments displayed an inability and/or an unwillingness to address problems raised by the Auditor-General and recommendations made by their portfolio committees.

For example:

- Between 2000 and 2004 the Auditor-General issued audit disclaimer opinions for 74.5 % of the combined budget allocated to the Eastern Cape Departments of Housing, Education, Health and Social Development. This effectively means that these departments could not adequately account for R58.6 billion out of a total of R78.5 billion spent during this period; and
- In 2002 the Auditor-General pointed out that not a single Eastern Cape Standing Committee on Public Accounts (Scopa) resolution had been implemented in the seven financial years between 1995 and 2002.¹⁵⁸

¹⁵⁷ Ibid, section 115(a) and (b).

¹⁵⁸ See General Report of the Auditor General on the Accounts of the Eastern Cape Provincial Administration for the Financial Years 1997-98 and 1998-99, PR62/2000, Part 1, section 6. This report noted that Scopa 'has pursued its mandate with commendable diligence during the past number of years and has conducted hearings on a number of audit reports. However, the committee is being frustrated in its effort to contribute to proper accountability since not one of the Committee's resolutions tabled in and accepted by the legislature since its inception, has been responded to by the accounting officers concerned.' This finding is also repeated in the Interim Management Team Report, June 2003, p. 17.

Recommendations for Objective 3

- Improve the accountability cycle through better co-ordination and communication between all arms of government. (Parliament)
- Bolster parliament's role in scrutinising legislation. A challenge to the development of a comprehensive democratic culture of governance exists in a situation where the legislature remains overshadowed by the executive. Parliament needs to play "a more independent, assertive and challenging role."¹⁵⁹
- Monitor the implementation of policy and legislation regularly to ensure effective service delivery. (Parliament)
- Strive to inculcate an attitude of responsiveness to the public throughout the public service. The aim should be a "culture" in which the public service is committed to helping people and also where citizens know their rights and how to assert them.
- Establish uniform performance criteria for annual reports and budgets, so as to allow for better comparisons of plans and results. (PSC) Annual reports should contain meaningful information that lends itself to analysis. (PSC- implied) The reporting period should be the same for annual reports as for budgets to enable a proper evaluation of spending and outcomes. At present this is not possible as budgets cover financial years and annual reports deal with calendar years. (PSC - implied) Annual reports are, in any event, treated as public relations exercises, rather than as frank records of departments' activities.
- Require the national and provincial executive to report on the overall performance of the government and on special cross-departmental initiatives. (PSC – implied)
- Improve the financial systems of local authorities. At present, many such local systems are not compatible with their national or provincial counterparts, and consequently there are no reliable figures on the level of municipal debt.
- Improve the contact between local councillors and their communities. It is widely felt that local councillors do not report to their constituents about government plans and programmes. The party, as opposed to community, orientation of South Africa's electoral system probably helps create this environment. There might be a need to entrench report back responsibilities in law. (SAIIA-ISS-AICC)
- Consider reform of the local government system to address some systemic deficiencies, for instance the extreme size of some of them, and the unclear lines of responsibility between district councils and local councils. (HSRC)
- National government should deal with non-payment for services by assisting municipalities to improve their services while aggressively collecting revenue.
- Address the capacity challenges and constraints evident at local government level.¹⁶⁰ This might be done through ensuring a greater supply of skilled personnel to work in local government. This could be done through a larger output of appropriate graduates from universities, loosening work permit regulations to attract foreign skills, and instituting strict

¹⁵⁹ Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for UNECA, Development Management Division, July 2002, p. 92.

¹⁶⁰ Parliament Consolidated Executive Summary, p. 19.

merit-based hiring. At present, local governments suffer from a severe lack of capacity and this is affecting their ability to provide services.

- Institute penalties in those areas where there are currently none, for officials who fail to perform. For instance, if a municipality does not file its financial reports on time the mayor is required to lodge a letter explaining why this is so and stating when it will be done. However, there are no sanctions for not doing this. Similarly, if provinces or municipalities fail to perform adequately, this should be acknowledged and publicised. Officials who fail to comply with the law should be named and declared ineligible for office.
- Expand Public Service Regulations in order to enforce compliance in respect of the inadequate implementation of national policies at provincial level. The DPSA suggests possible linkages between compliance and budgets. (DPSA)
- Address inconsistencies between departments' operationalisation through centralised and macro-economic human resource planning. This perhaps would be best if it were to be done in a sector-specific manner. (DPSA) The DPSA has said that the Minister of Public Service and Administration has "broad accountability" over the public service, but limited actual authority. Centralisation might give the minister the latitude to act. (DPSA - implied)
- Revamp a broad range of service conditions within the public service. All conditions of service (i.e. leave, overtime, official travel, resettlement and state housing) should be brought within a national framework. The conditions and processes for each type of termination of employment should be established clearly. Grievance procedures should be reviewed, as should the PSC's role with a view to improving them. (DPSA)
- Manage records of employees' past performance efficiently via a comprehensive IT-based national HR management system. (DPSA)
- Ensure that departments comply strictly with the provision of Treasury Regulations regarding accurate record keeping and reporting. The Public Service Commission noted in its *Report on Financial Misconduct* that departments were frequently not doing this. The lack of accurate record-keeping can be circumvented if departments strictly adhere to the regulations which stipulate that the accounting officer must, as soon as the disciplinary proceedings are completed, report to the Public Service Commission on the outcome.
- Consider amending the Treasury Regulations to include the cost of financial misconduct, as well as an indication of the amount recovered in the list of information that should be reported on. This will help the Treasury to obtain a comprehensive picture of the impact of financial misconduct on the Public Service.¹⁶¹
- Institute strict measures to ensure accounting officers report cases where the state has suffered losses or damages as a result of financial misconduct to the South African Police Service. The PSC would remind accounting officers to report on measures taken to ensure that such cases are reported.¹⁶²
- Improve the accountability and capacity of managers to manage discipline through encouraging managers to act severely against transgressors. It is therefore recommended that accounting officers ensure that the management of discipline is included in the performance agreements of managers.¹⁶³

¹⁶¹ Public Service Commission "Report on Financial Misconduct 2005" p. 31-31.

¹⁶² Public Service Commission "Report on Financial Misconduct 2005" p. 32.

¹⁶³ Public Service Commission "Report on Financial Misconduct 2005" p. 33-34.

Objective 4: Fight Corruption and Money-Laundering

INTRODUCTION: A discussion of corruption and its prevalence requires examination of its inter-connected political, economic and corporate governance dimensions. The APRM questionnaire, however, breaks the material up into separate discussions in the political realm, economic and fiscal management and corporate governance. This report has chosen therefore to discuss all these aspects in this section.

It first presents the available surveys and opinions on the magnitude of corruption, and then summarise anti-corruption measures. It then discusses issues drawn from the submissions and supplementary material.

It also splits the first question into two parts for ease of reference.

The APRM Questionnaire includes the following questions and indicators in this section:

Question 1: What is the prevalence of corruption in the public administration in your country and what measures have been taken in this regard?

Indicators for Objective 4, Question 1

Describe (briefly) the root causes and magnitude of corruption in the public administration;

Give evidence of progress made to fight corruption with respect to the following indicators:

- Existence of legal provisions establishing clear and enforceable procurement rules in the public sector;
- Existence of legal provisions establishing a national Code of Conduct of civil servants including regular disclosure of assets;
- Cases of corruption in the public sector assessed by an Ombudsman;
- Parliamentary Accounts Committee, or other relevant authority in the past five years; and
- Follow-up action including prosecutions of cases of corruption for the past five years.

Outline the key challenges encountered in fighting corruption in public administration and efforts to address these challenges.

Please give detailed explanation with supporting material where applicable

Question 2: What is the prevalence of money-laundering in your country?

Indicators for Objective 4, Question 2

Outline key measures taken in terms of legislation, policies and programmes, institution development and resource allocation to combat money-laundering in your country;

Give evidence of progress made in building capacity to fight money-laundering with respect to the following:

- Cases of money-laundering in the past five years,
- Follow-up action including prosecutions of cases of money-laundering in the past five years;
- Outline the challenges encountered in combating money-laundering and
- efforts to address these challenges.

Question 1a: What is the prevalence of corruption in the public administration of your country?

Summary of responses to Objective 4, Question 1a

- Corruption is of major concern in South Africa, and along with organised crime, affects the country's development efforts. Billions of rands are lost annually to graft in the public and private sectors.
- Submissions differed over measures of the prevalence of corruption in the country, and all acknowledged the difficulties in measuring corruption itself, as opposed to perceptions of corruption. Government departments – including the Department of Public Service and Administration and the National Treasury – were generally optimistic, making the points that perception of corruption levels are often much higher than peoples' daily experiences of the phenomenon. Different sectors of society also have different experiences of corruption, and some government departments are seen as much more corrupt than others.
- Local and international civil society groups, however, felt more strongly that corruption is increasing in South Africa. Sanco's submission emphasised that corruption is an enormous problem in the South African private sector, and not just among civil servants. Busa noted the negative effects of corruption on employment and investment levels.
- The Public Service Commission outlined the prevalence of maladministration and corruption in the public service in **Objective 3**.

Overview of National Anti-Corruption Efforts and Rankings

The APRM Self-Assessment Questionnaire asks in the criteria used for evaluation for an overall assessment of the level of corruption in the country. The following summarises publicly available surveys and actions of government.

Corruption is a major concern, and retards South Africa's development efforts. A report by the Institute for Security Studies (ISS) in 2005 estimated that in 2003, almost R2 billion was lost to corruption in the Department of Social Development, while the Department of Labour may have lost as much as R1 billion of the funds earmarked for skills development. The Road Accident Fund may also have lost R1 billion in that year. The private sector may be losing as much as R50 billion annually to fraud and corruption.¹

Organised crime syndicates thrive on corruption in the private and public sectors. Business Unity South Africa, (Busa) said:

There are no statistics available on the penetration of organised crime groups in the South African government or private sectors but it is clear that they are associated with vehicle hijackings, cash-in-transit robberies and bulk theft of commercial products.²

¹ Van Vuuren H, *National Integrity Systems Transparency International Country Study Report Final Draft South Africa* 2005, p. 8.

² Business Unity South Africa, Submission to the APRM Process, 3 March 2006, p. 11.

However, they acknowledged, “Fraud and corruption are among the most difficult crimes to detect and protect.”³

The consolidated government submission said:

A significant disjuncture exists between perceived levels of corruption and actual experience thereof. Generally, experience levels are significantly lower than perceptions. Clear patterns of difference in perception are discernable from the various socio-economic and demographic strata used in samples. Attitudes and perceptions about the state of corruption vary between national, provincial and local spheres and between public organisations in each sphere.⁴

The *Country Corruption Assessment Report – South Africa* (CCAR) jointly published by the South African government and the United Nations Office on Drugs and Crime in 2003 recognised that measuring the extent of corruption is extremely difficult, as there is no central database of corruption cases, and “no standard approach in terms of definitions, methodologies, samples and sources” used in studies of corruption in South Africa.⁵

In surveys of perceptions about corruption conducted for the CCAR, 41% of respondents believed that corruption was one of the most important issues to be addressed in South Africa, with a further 39% saying there was a lot of corruption but that it was not the most important issue. In the business sector, 62.1% thought it had become a serious issue in business (although only 12% said they would not invest because of corruption).

However, research for the report also showed that people’s *actual experiences* of graft were considerably lower than perceived levels of corruption. Various sectors of society experienced corruption in different areas. The most common areas where South African citizens perceived the highest corruption were in seeking employment and the provision of services such as water, electricity and housing.

According to the government:

Perception and experience studies generally show a high level of correlation when corruption-vulnerable areas are identified. Vulnerable areas include policing, customs, the issuing of identity documents, citizenship/residence and employment-related permits, procurement as well as housing, employment and municipal functions.⁶

The CCAR also revealed how difficult it was to gather data on official corruption cases from government departments and law enforcement agencies. South Africa’s ranking on Transparency International’s Corruption Perception Index, which measures public and investor perceptions about the level of corruption across most of the countries in the world, shows a disturbing downward trend since 1998.

Most submissions to the APRM process in South Africa on corruption felt that it was a serious and growing problem, prevalent in all spheres of society. While corruption in government was mostly flagged, irregularities in the private sector went unnoticed. For example, the South African National Civic Organisation (Sanco) said:

Corruption is endemic in all sectors of South African society. However, the perception is that corruption is

³ Business Unity South Africa, Submission to the APRM Process, 3 March 2006, p. 12.

⁴ Consolidated APRM 2nd draft pp. 18-19.

⁵ *Country Corruption Assessment Report- South Africa*, published jointly by the South African government and United Nations Office on Drugs and Crime – Regional Office for Southern Africa (UNODC/ROSA), April 2003, p. 3.

⁶ Consolidated APRM 2nd draft p. 19.

limited to public servants. The role of the private sector is seldom mentioned. For corruption to be effectively tackled, high moral standards should be entrenched.⁷

North West Province concurred:

Corruption is a major threat to national stability ... [and] is taking places at all the various levels of government, local, provincial and national especially amongst senior managers ... government is not doing enough and low earnings [by civil servants] lead to corruption.⁸

Corruption continues because society allows it, the North West Province said. “Public acceptance of corruption through a ‘let’s live with it’ [attitude] is considered to be a major factor contributing to corruption.”⁹

The Auditor-General’s office felt that government should toughen its stance:

The government should send a clear message that there will be zero tolerance to maladministration and corruption. In addition, there should be a clear control instrument in place to indicate corruption. A controlled framework environment is essential in this regard [to ensure prevention rather than cure]. A monetary value of approximately R40 billion is presently lost to corruption in South Africa. This excludes the social costs of corruption, which are arguably more devastating, as corruption stifles economic growth and development ... Corruption is frequently detected, but it requires strong political will to deal with it. Therefore, an attitude of zero tolerance is important, in conjunction with strong disciplinary measures and enforcement.¹⁰

Busa said:

[Because of corruption and crime] fewer jobs are being created and smaller businesses find it difficult to enter the market. Crime has also impacted on investment. Foreign investment as a percentage of GDP has averaged 17%, which is low by the standards of other successful developing countries. This leads to a ‘crime trap’ where the conditions that create higher rates of crime, such as increased poverty and inequality, are reinforced and the values of the people may be irrevocably changed.¹¹

The Northern Cape Report said many respondents questioned both the public sector’s recruitment methods as well as skill development. They perceived public servants as lazy, unaccountable, unskilled, unprofessional and corrupt, but admitted that some public officials were performing well.¹²

Northern Cape residents also said the level of corruption in politics was very high, with ineffective measures in place to curb it. They repeatedly pointed out the presence of nepotism by the ruling party in reference to tendering and jobs, especially at the local government level.¹³

The graph overleaf, based on Transparency International’s Corruption Perception Index over the last eight years, shows that South Africa is perceived to be a slightly more corrupt country than it was in 1998, falling from a ranking of 5.2 out of 10 (with 10 meaning completely devoid of corruption) to 4.5 in 2005. The government submission pointed out the difference between perceptions of corruption and the reality on the ground, and noted that people’s experience of

⁷ *Submission of the South African National Civic Organisation (Sanco) to the African Peer Review of the Republic of South Africa*, 17 January 2006, p. 12.

⁸ North West Province Submission to the APRM Process, p.55.

⁹ North West Province, Submission to the APRM Process p.56.

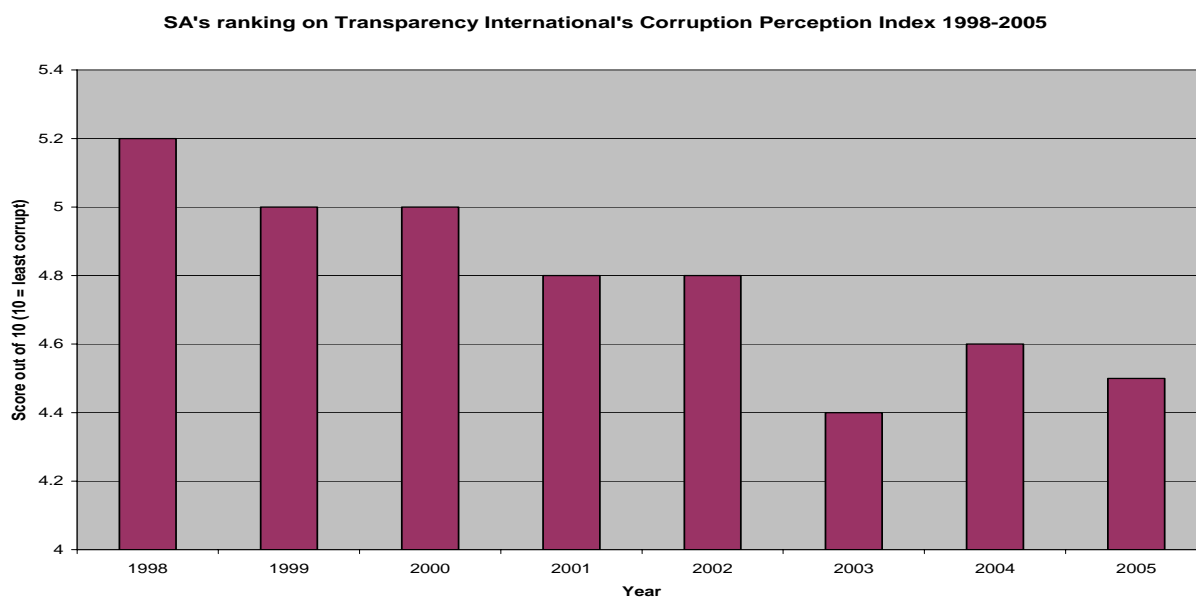
¹⁰ Report on the Joint Ad Hoc Committee on Economic Governance, Summary of the Auditor-General’s Submission, February 2006, p. 40.

¹¹ Busa, p.10.

¹² Northern Cape, African Peer Review Mechanism Content Report, p. 5.

¹³ Northern Cape, African Peer Review Mechanism Content Report, p. 6.

corrupt practices seems to suggest a lower prevalence of corruption than surveys such as TI's suggest.



Question 1b: What measures have been taken to fight corruption?

Summary of responses to Objective 4, Question 1b

South Africa has strong systems to counter and reduce corruption in the public and private sectors, with considerable improvements to the legal framework instituted since 1994. As in many other areas of policy, the key challenge comes in implementing these laws, according to government, provincial, business and civil society submissions from Institute for Democracy in South Africa (Idasa), SAIIA-ISS-AICC, Sanco, Sangoco, Odac and others.

- The DPSA outlined some of the main corruption prevention laws, including: the Prevention and Combating of Corrupt Activities Act (2004), the Promotion of Access to Information Act (2000), the Promotion of Administrative Justice Act (2000), the Protected Disclosures Act (2000), the Public Finance Management Act (1999), the Municipal Finance Management Act (2003), and the Financial Intelligence Centre Act (2001).
- There is some debate reflected in the submissions as to whether South Africa should have a single independent anti-corruption body. According to SAIIA-ISS-AICC, AU codes and standards explicitly call for such a body, but South Africa has opted not to create a single anti-corruption entity. The institutions that do exist ultimately report to a political office, the minister of justice. South Africa must deal with the serious charges that corruption prosecutions may be politically motivated and manipulated.
- Insufficient attention has been given to public education and prevention of corruption efforts, according to the 2003 joint report on corruption by the South African government and United Nations Office on Crime and Drugs (known as the *Country Corruption Assessment Report* or CCAR).
- A major issue that emerged from the submissions and anti-corruption research – including parliament, Idasa, Odac, SAIIA-ISS-AICC, Transparency South Africa, Transparency International and the Center for Public Integrity – was the lack of regulations on the provision of funding to political parties from private sources, both local and international. This is also a requirement of the 2003 AU Anti-Corruption Convention. Unregulated party funding opens the political system to abuse by those wishing to buy influence. Idasa recently lost a court case in which it sought to compel political parties to reveal their private funding sources, and is currently negotiating a way forward with the larger parties, including the ANC.
- Idasa highlighted the damaging effects that corruption (or allegations of corruption) within political parties have on people's trust of these institutions. A case study on the parliamentary travel voucher scam was cited in the SAIIA-ISS-AICC submission, as was a discussion of the deputy president's December 2005 trip to Dubai using airforce transport.
- Idasa also emphasised the problem of the misuse of state resources for party political purposes.
- Several submissions, including some provinces, acknowledged that conflicts of interest are not optimally managed. Despite the existence of robust codes of ethics for public servants, ministers and MPs, these are frequently ignored and oversight bodies lack staff and the will to enforce sanctions.

- Idasa and SAIIA-ISS-AICC raised the issue of the lack of a “cooling off period” for senior government officials, members of parliament or provincial legislatures or those working for state regulators entering the business world immediately after leaving office, where their previous positions may have given them privileged inside information.
- The same institutions also highlighted growing instances of nepotism, especially at the provincial and local government levels, with relatives of senior officials often securing lucrative government contracts.
- Public procurement processes are vulnerable to corruption, noted several submissions, including those from the Eastern Cape and Northern Provinces. The ISS said there would be challenges for government’s new decentralised supply chain management framework, including onerous new responsibilities for accounting officers who will need more training, the need monitoring, a dispute resolution mechanism and consistent application of the framework in all areas of procurement.
- Despite the existence of the strong Protected Disclosures Act to shield those who expose corruption (whistleblowers), in practice, employees have suffered negative consequences for drawing attention to corrupt acts in the workplace in both the public and private sectors. There was broad support in the submissions for revising the legislation, including from the National Treasury, North West Province, CCAR, DPSA, Transparency South Africa, the Public Service Commission and Odac.
- Among others, according to the SAIIA-ISS-AICC submission, the following institutions have an anti-corruption mandate (to differing degrees) at present: the South African Reserve Bank; the South African Police Service; the National Prosecuting Authority, including the Directorate of Special Operations (the “Scorpions”) and the Assets Forfeiture Unit; the Special Investigative Unit; parliament; parliament’s Standing Committee on Public Accounts; the Public Protector; the Auditor-General, the Financial Intelligence Centre and the news media. The report evaluated the effectiveness of each institution in detail. Common patterns of resource constraints, staff attraction and retention problems, and overlapping institutional mandates emerged.
- The South African Reserve Bank is broadly considered independent from political interference, particularly in the realm of monetary policy and inflation targeting. The submissions, however, failed to comment on the efficacy of the SARB as a regulator of banks and banking in South Africa. This should be updated for the final report.
- The South African Police Service investigates corruption through its Commercial Crime Unit, Organised Crime Units and Detective Branch. The former Anti-Corruption Unit has been replaced with the Independent Complaints Directorate to investigate cases of corruption, misconduct and theft in the police service. The police face acute resource constraints in investigation corruption cases, staff retention problems, heavy caseloads, long case durations, and uncertainty about jurisdiction over certain corruption cases. The now-repealed 1992 Corruption Act made it extremely difficult to secure corruption convictions, and therefore fewer and fewer charges were laid, with many cases rather being framed as fraud or theft.
- The head of the National Prosecuting Authority is appointed by the president and reports to parliament, but is ultimately accountable to the minister of justice. Although this is a political appointment, it has been argued that the National Director of Public Prosecutions should be

impartial and above party politics. The NPA has become embroiled in politics, with various factions within the ruling alliance and elsewhere accusing it of favouritism and factionalism.

- The Directorate of Special Operations (the “Scorpions”) is a division within the NPA, and is generally regarded by the public as the state’s main anti-corruption body. Modelled on the American Federal Bureau of Investigation, it deals with organised crime and corruption, complex financial crime, racketeering and money-laundering. The DSO’s average conviction rate stands at 90%, but it has been accused of “cherry-picking” winnable cases. The Khampepe Commission, established to determine whether the DSO should retain its independent investigative and prosecutorial role, is expected to report its findings in 2006.
- The Assets Forfeiture Unit of the NPA focuses on confiscating property and goods acquired by criminal means. Like the DSO, it has a high rate of convictions in the cases it initiates. The AFU appears to have better relations with other law enforcement agencies, compared to the DSO. The unit acknowledges its limitations, and that it does not recover enough assets to deter criminals or prevent or compensate for corruption.
- The Special Investigative Unit has a specific anti-corruption mandate. It was prevented from being part of the investigation into the arms deal in the early 2000s, and its independence seems to have diminished. The unit is now linked to the NPA. It faces large backlogs and has taken on too many cases that could have been handled elsewhere.
- Several submissions highlighted deficiencies in South Africa’s proportional representation electoral system. They said the party list system – which gives voters little say in choosing candidates –has led to poor accountability of elected persons. MPs are accountable to the party, which makes parliament weak as an oversight institution.
- Idasa noted weaknesses in the oversight role played by parliament with respect to the budget: lack of meaningful participation by the provinces; insufficient detail to monitor and evaluate budgeting practices; and lack of incentives to ensure efficient and accountable resource allocations.
- The Standing Committee on Public Accounts plays a critical oversight role in parliament, receiving all reports from the Auditor-General for scrutiny. Civil society submissions and opposition MPs discussed the damage to Scopa’s credibility following the investigation into the arms deal in the early 2000s. They also noted that Scopa has performed better in its handling of the Oilgate investigation.
- The Public Protector, or ombudsman mandated to investigate conduct by the government or public administration alleged to be improper or resulting in impropriety or prejudice and can take appropriate remedial action. The Public Protector’s Office has received increasing numbers of cases since its establishment. According to the Department of Justice and Constitutional Development has contributed to efficient administration. Its recommendations are respected and implemented by government departments. The SAIIA-ISS-AICC submission, however, contends that the Public Protector suffers from capacity constraints due to large case volumes, and that the impartiality of this office has been questioned. His role in the ongoing Oilgate issue is examined at length.
- There was no discussion of crimes such as internet banking fraud in relation to money-laundering. This should be updated for subsequent drafts.

South Africa has strong systems to counter and reduce corruption in both the public and private spheres, but there is room for improvement. While it may appear that corruption is just a post-apartheid phenomenon, before 1994 nepotism, favouritism, patronage and graft abounded. The legal system has been considerably strengthened since 1994. There are strong laws and rules on public procurement, robust codes of conduct in the public and private sectors, and several bodies with a mandate to combat graft. According to the Department of Public Service and Administration (DPSA), the following are some of the main legal instruments:

- **The Prevention and Combating of Corrupt Activities Act (Act 12 of 2004)** provides the legal definition of corruption and creates a range of offences.
- **The Promotion of Access to Information Act (Act 2 of 2000)** promotes transparency and allows access to information held by government and private bodies.
- **The Promotion of Administrative Justice Act (Act 3 of 2000)** compels officials to ensure that decisions affecting the public are made fairly and allows the public to demand written explanations for administrative decisions.
- **The Protected Disclosures Act (Act 26 of 2000)** encourages whistleblowing in the workplace and seeks to protect those who expose unlawful and irregular behaviour. It is being revised.
- **The Public Finance Management Act (Act 1 of 1999)** and **Municipal Finance Management Act (Act 56 of 2003)** govern the control and use of public finances at all levels of government.
- **The Financial Intelligence Centre Act (Act 38 of 2001)** was designed to combat money-laundering.¹⁴
- The **Department of Public Service and Administration** has taken the lead on galvanising not only government but also business and civil society groups to act in terms of anti-corruption strategies and practices.

The government submission said:

In addition to the anti-corruption actions, a code of conduct for employees in the Public Service has been in place since 1994, with revisions in 1997 and 1999. A system of financial disclosure applies to all employees of the senior management service in terms of the Public Service Regulations. Such measures are also considered for officials employed in municipalities.

The independent Public Service Commission (PSC) monitors compliance to the requirements of the system of financial disclosure and the PSC reports on such compliance.¹⁵

The National Anti-Corruption Forum (NACF) was created in 1999. It works closely with the Public Service Commission and comprises members from government, civil society and

¹⁴ Department of Public Service and Administration, *Anti-Corruption Capacity Requirements*, Guidelines for implementing the Minimum Anti-Corruption Capacity Requirements in Departments and Organisational Components in the Public Service, January 2006, p.6.

¹⁵ Consolidated APRM 2nd draft, p. 40.

business. They advise government and sectors on anti-corruption strategies and facilitate the sharing of best practices.¹⁶

Several other institutions play a role in exposing, preventing or prosecuting corruption. The constitution guarantees the independence of bodies such as the Public Protector and Auditor-General, with a (partial) anti-corruption mandate. Some of the country's anti-corruption institutions include:

- The South African Reserve Bank (SARB)
- The South African Police Service (SAPS)
- The National Prosecuting Authority (NPA), including the Directorate of Special Operations (DSO) (the “Scorpions”) and the Assets Forfeiture Unit (AFU)
- The Special Investigative Unit (SIU)
- Parliament
- Parliament's Standing Committee on Public Accounts (Scopa)
- The Public Protector
- The Auditor-General of South Africa (AGSA)
- The Financial Intelligence Centre (FIC)
- The news media and freedom of information legislation.

These institutions are examined in detail later on in this report.

The 2003 CCAR, published jointly by the South African government and United Nations Office on Drugs and Crime – Regional Office for Southern Africa (UNODC/ROSA), summarised the situation in South Africa:

Commitment to good and clean governance, and thus anti-corruption, was and still is one of the priorities of the democratic South Africa and its Government since 1994. Indeed, the Government of South Africa has undertaken a number of important and far-reaching anti-corruption measures. These range from the adoption of the comprehensive framework for initiatives to combat and prevent corruption in the public service (known as the Public Service Anti-Corruption Strategy), through to the promulgation of a rather comprehensive anti-corruption related legislative framework and the development of investigating and prosecuting anti-corruption capacities, to efforts to develop partnerships with business and civil society. ... many of these efforts have started yielding results, but others are lagging behind and need further development in order to complement the strategic anti-corruption undertaking.¹⁷

Anti-corruption specialist Hennie van Vuuren, at ISS wrote:

The country has developed an advanced framework of law, strategy and institutions that have a mandate to combat corruption. Specialised anti-corruption institutions have been set up, together with state institutions, which are mandated by their constitutions to support constitutional democracy. South Africa has developed a bold new piece of anti-corruption law, which complements existing legislation that promotes an open accountable democracy. However, despite the fact that political will does exist to tackle corruption, the implementation of anti-corruption measures presents a serious challenge.¹⁸

¹⁶ Parliament, Joint Ad-hoc Committee on Democracy and Good Political Governance: Public Hearings Report, Annexure B, February 2006, pp. 10-11. See also South African Police Service, “Collecting Information for South Africa's Self-Assessment Report and Programme of Action for the African Peer Review Mechanism (APRM): Department of Public Service and Administration.”, p. 15.

¹⁷ *Country Corruption Assessment Report - South Africa*, published jointly by the South African government and United Nations Office on Drugs and Crime, Regional Office for Southern Africa (UNODC/ROSA), April 2003, p. 2.

¹⁸ Van Vuuren H, *National Integrity Systems Transparency International Country Study Report*, Final Draft South Africa 2005, p. 8.

Provincial APRM reports also commented on corruption. Gauteng Province said:

Provincial and local government have made a clear commitment to encouraging whistleblowing and eradicating corruption. The province has an anti-corruption strategy, which it is popularising [with] the slogan, 'Blow the whistle on fraud and corruption'.¹⁹

The Western Cape said:

In the case of the Western Cape, the current Marais/Malatsi trial sheds light on the level of government's commitment to fighting corruption in the public sector. The utilisation of the Asset Forfeiture Unit had effects on the substantial recovery of amounts in the case of the former Goodwood College Rector and the Accounts Administrator to the Provincial Department of Housing.²⁰

Researchers from the Institute for a Democratic South Africa (Idasa) commented:

Government has in the past ten years passed a panoply of legislation pertaining to corruption and potential conflicts of interest in government and the public service. However, serious gaps remain in the implementation of such legislation.²¹

The CCAR acknowledged that while South Africa has a robust and excellent legislative framework and transparency legislation, it is struggling to implement anti-corruption measures:

There are serious weaknesses and shortcomings in the capacity and will of public sector bodies to implement and to comply with the laws. For example, certain public bodies view some of the legislation (e.g. Access to Information) as too demanding of resources. There are overlapping mandates, which affect the law enforcement agencies and the constitutionally created bodies. Proper legislative changes are needed to better define the mandates and facilitate co-ordination in the fight against corruption. The legislation is focused on the public sector and does not deal adequately with the private sector. Thus legislative efforts are needed to provide for the inclusion of certain corporate governance measures. Finally, promulgation of adequate legislation and regulatory mechanisms for the private funding of the political parties and political campaigns is expected.²²

Parliament concurred there were problems around implementing anti-graft laws:

There are problems regarding implementation of legislation dealing with corruption, particularly when cases go to court. Disciplinary procedures are long and tedious when they get to court, partly because courts themselves lack the capacity to handle all cases. In terms of corruption by multinationals, South Africa has legislation in place to prosecute them but this has not yet been used. There is a need to effectively implement legislation and policies.²³

What the Codes and Standards Say

The major codes and standards referred to in the APRM are the AU Maputo Convention on Preventing and Combating Corruption (2003), the UN Convention on Corruption, the AU Durban Declaration on Democracy, Political, Economic and Corporate Governance (2002) and the Solemn Declaration and Memorandum of Understanding of the Conference on Security,

¹⁹ Gauteng Assessment Report: African Peer Review Mechanism (draft 10), 8 March, 2006, p.23.

²⁰ Western Cape Province African Peer Review Mechanism: Final Report, p.66.

²¹ Idasa, ePoliticsSA, "Government Ethics – balancing competing interests in the public interest, Edition 05, 16 August 2004, p. 1.

²² *Country Corruption Assessment Report- South Africa*, published jointly by the South African government and United Nations Office on Drugs and Crime – Regional Office for Southern Africa (UNODC/ROSA), April 2003, p. 6.

²³ Parliament: *Report of the Joint Ad Hoc Committee on Economic Governance and Management: a response to the African peer review mechanism questionnaire*, 2006, p. 31.

Stability, Development and Co-operation in Africa (CSSDCA). Corruption also is central to the codes on fiscal transparency, banking regulation and conventions against money-laundering.

The codes call for a common-sense approach to fighting corruption, with laws and institutions designed to anticipate the inevitable temptations of human nature and formulate preventive systems accordingly. International best practice acknowledges that no single super-institution is sufficient, but a variety of vigilant bodies and means of imposing transparency are necessary. The AU called for an independent anti-corruption authority. The AU acknowledged that for investigators and prosecutors to be free to charge senior politicians, they must be insulated from interference from the executive branch, which may face the temptation to protect its reputation by suppressing sensitive investigations.

While little mention has been made of freedom of the press and freedom of information in the APRM questionnaire, international best practice recognises their importance in supporting governments' anti-corruption and accountability efforts. Therefore laws affecting media freedom, criminal libel and suppression of publication are important.²⁴

Beyond general guidelines, the standards cited by the APRM call for some specific elements. All these form part of the codes and standards against which countries are evaluated:

- A genuinely independent anti-corruption authority with an independent budget;
- Transparent declaration of political party financing;
- Transparent and accountable budgeting by the government with quarterly budget reports to the public and semi-annually to parliament;
- Transparent public tendering with clear published standards;
- Steps to fight money-laundering and comply with the 40 provisions of the international Financial Action Task Force;
- A code of conduct for public officials;
- Declaration of the assets of politicians and civil servants upon entry and exit of office and regularly between entry and exit; and
- Effective independence of the judiciary, parliament and corruption prosecuting authority.

The following section examines how South Africa measures up to the requirements of specific codes and standards related to corruption and oversight.

Codes Call for Central Anti-Corruption Body

South Africa does not have one supreme corruption-fighting institution, which is contrary to the APRM call for an independent anti-corruption body. The Conference on Security, Stability, Development and Co-operation, July 2002, obligated African countries to adhere to the:

²⁴ The codes and the APRM questionnaire suggest analysis of corruption in six ways or levels. Instead of discussing each law and institution under each of these six levels, this report has opted to deal with specific requirements of the codes and then bring these levels of analysis to bear in addressing each institution. The levels are (1) the existence, staffing, funding and capacity of required institutions, (2) the adequacy of laws and procedures, (3) the conformance of government to those laws, (4) analysis of how government handled particular incidents of corruption, (5) the number of prosecutions and the results of cases, and (6) surveys or other measurement of corruption levels.

Adoption, signing and ratification of an AU Convention on Combating Corruption and establish by 2004 in each African country (where it is not presently in existence) an independent anti-corruption commission, with an independent budget that must annually report to the national parliament on the state of corruption in that country.

The SAIIA-ISS-AICC submission said:²⁵

Effectively fighting corruption is a crucial national goal that should not be lost amid the larger number of common criminal cases that clog the courts and overwhelm police and prosecutors. Providing a separate anti-corruption body would provide a clear central focal point for reporting corruption information and disseminating it to the public. It would also allow for more rational decisions about levels of funding and staffing. By raising the profile of corruption investigations, it would send a stronger signal to public officials that the political system is serious about preventing graft. Hennie van Vuuren of the ISS believes it is time to reopen the debate in South Africa about the need for a single anti-corruption institution.

Although the individuals in national public office have shown more political will than in other African countries, there are signs that the systems in South Africa suffer the same systemic weakness that plague anti-corruption efforts in Ghana, Kenya, Malawi, Uganda, Nigeria and many other countries. The country's top anti-corruption bodies (such as the Directorate of Special Operations within the National Prosecuting Authority, the Special Investigations Unit and the Public Protector) ultimately report to a political office-bearer, the minister of justice. The system continuously stands accused by the media and public of resisting prosecution of senior political figures. Although many in government would argue that there is no clear evidence of such bias, the appearance of impropriety is widespread; surveys show a substantial majority of citizens believe corruption is common and riots over corruption allegations threaten the fabric of social harmony. Whether these allegations are factually correct or not is immaterial. Through the debates around the partisan handling of the arms deal investigation, failure of senior politicians to abide by wealth declaration rules, the parliamentary Travelgate scandal and the Jacob Zuma prosecutions it became clear that many people expressed grave doubts over the impartiality of public institutions – even among those who believe Zuma's actions are deeply inappropriate. Such widespread doubts about impartiality are something no government should take lightly.

In finding Schabir Shaik guilty of a “generally corrupt relationship” with the country's former deputy president, the court directly contradicted the conclusions of the nation's highest offices responsible for fighting corruption. The National Director of Public Prosecutions, the Public Protector and the Auditor-General, who formed the arms deal Joint Investigation Team (JIT), concluded that corruption was evident but that it did not significantly influence the awarding of contracts. Moreover, the Auditor-General engaged in substantial editing of the arms deal report stripping out politically damaging detail.²⁶

Left unattended, the perception that justice is biased is a dangerous trend. In many African nations it has led to increasing factionalisation of politics and feeds a culture of entitlement and corruption. Creation of an anti-corruption body with powers to investigate and prosecute without having to seek permission from the minister of justice or president would go some way to remove doubts about impartiality.

Anti-Corruption Strategy Neglects Prevention and Education

The CCAR noted that while there has been considerable effort devoted to increasing law enforcement capacity in investigations and prosecutions, far less funding and attention has been given to efforts to prevent corruption and public education on the subject. The report states, “This constitutes one of the major weaknesses of the South African approach to corruption.”²⁷ Indeed anti-corruption bodies in Ghana, Mauritius and Malawi, following global best practice, have

²⁵ SAIIA-ISS-AICC submission, p. 73.

²⁶ Kajee A, “South Africa”, *2006 Global Corruption Report*, Transparency International, Berlin, p. 244.

²⁷ *Country Corruption Assessment Report- South Africa*, published jointly by the South African government and United Nations Office on Drugs and Crime – Regional Office for Southern Africa (UNODC/ROSA), April 2003, p. 7.

adopted public education and prevention strategies, which focus, among other things on whistleblowing, freedom of information and reporting corrupt activities.

Unregulated Private Funding to Political Parties

The African Union Anti-Corruption Convention (2003) requires disclosure of private funding to political parties. However, South Africa permits unrestricted private and foreign funding to political parties, contrary to global best practice, which was noted in the Idasa, SAIIA-ISS-AICC and parliament submissions. Parliament noted, “The challenges regarding political party finance reform are also important in dealing with corruption.”²⁸

Under the AU Convention which South Africa ratified in 2005 Article 10, “Each State Party shall adopt legislative and other measures to (a) proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and (b) incorporate the principle of transparency into funding of political parties.”

Under the CSSDCA, African states are obliged to:

Conclude by 2004 legal mechanisms for the institution of campaign finance reform including disclosure of campaign funding sources and for proportionate state funding of all political parties, to ensure transparency, equity and accountability in electoral contests.

State funding to political parties represented in the South African parliament is transparent and well controlled but there is currently no regulation of funding from private sources, domestic or foreign. This poses a major conflict of interest and has been at the heart of some of the most damaging corruption incidents, most recently in the Oilgate and Oil-for-Food cases.

Idasa said:

While this gap in the law persists, it will mean that South Africa’s anti-corruption apparatus falls short and is not optimally effective.”²⁹ And given that the country is a signatory to the AU Convention it seems inevitable that South Africa will sooner, rather than later be compelled to regulate.³⁰

Political parties in South Africa are not obligated to stipulate where any of their private funding comes from, nor how they raise money. Many have argued in court that they – among all private and government bodies – should not be subject to the provisions of South Africa’s freedom of information laws.

Idasa argued that it is therefore almost impossible to determine whether procurement awards or other government actions are made on the basis of political donations. Routinely starved of organisational funds, parties and ambitious individual politicians face a continuous temptation to alter policy or engage in deals designed to draw private funding.

This system has led in the US, France and many African states to a condition of perpetual lobbying and the corrupt exchange of funding for favourable policy changes or access to state

²⁸ Parliament: Report of the Joint Ad Hoc Committee on Economic Governance and Management: a response to the African peer review mechanism questionnaire, 2006, p. 31.

²⁹ That is, failure to regulate the raising of funds and procurement of additional financing for political activity potentially creates the opportunity for corruption to take root. See: February, J, *Political Party Funding, Submission to APRM Secretariat, Idasa*, December 15, 2005, pp.1-2.

³⁰ February, J, *Political Party Funding, Submission to APRM Secretariat, Idasa*, 15 December, 2005, p. 2.

tenders. Illustrating the dangers of unregulated party financing, a recent report by Kenya's former top anti-corruption officer noted that the Kenyan government engaged in phoney tenders because the ruling party lacked funds to fight the 2007 election.³¹

The absence of regulation of private payments to political parties is thus a grave weakness in South Africa's anti-corruption architecture:

South Africa was one of 25 nations subjected to a detailed critique of its anti-corruption systems conducted by the Center for Public Integrity (CPI). It concluded: "The most glaring omission in electoral processes and accountability provisions is the lack of rules governing either receipt or disclosure of private or foreign contributions to political parties."³²

The CPI report commented:

The lack of regulation on private and foreign funding [to political parties] is one of the greater dangers to our democracy, both in terms of the integrity of political outcomes and in terms of levels of corruption. While it is generally agreed that when individual politicians take money in return for political favours the crime of corruption is committed, there seems to be a large perceptual grey area in situations where parties, rather than individuals, accept financial benefit."³³

Van Vuuren said:

This is probably one of the last areas in which corruption can go both undetected and unpunished, given the country's extensive anti-corruption armoury ... The next two to three years before fundraising commences in earnest [for the 2009 national elections] provide an ideal opportunity for reform."³⁴

The CPI also pointed out that in South Africa, there are no limits on the amounts donated to either political parties or individual candidates by either individuals or firms, and no cap on the total amount a party can spend.³⁵

In the 2004 election year, the ANC received R42 million in public funding, the DA R9 million and small parties such as the Freedom Front Plus (FF+) R1 million. Private funding for political parties is believed to be much larger than public funding. This potentially allows benefactors to buy political influence. In a state such as South Africa where one party is overwhelmingly dominant, this reinforces unequal access to funds. According to Idasa, "When public decisions are made, or perceived to be made, on the basis of political contributions, not only will policy be suspect, but the government will not be seen as accountable to the people."³⁶

There are mounting allegations in the press about foreign governments or wealthy individuals making donations to political parties in return for political favours:

- A trial is currently underway where former Deputy Minister for Social Development in the Western Cape, David Malatsi, stands accused of accepting R400,000 in donations for the New National Party (NNP), which was then in government from an Italian businessman,

³¹ BBC, "Kenyan deputy refuses to resign", 2 February 2006, <http://news.bbc.co.uk/2/hi/africa/4674704.stm>.

³² Camerer M, "Integrity Assessment," South Africa Report for Global Integrity, Center For Public Integrity, 2003, p. 3. Note that the American spelling of "center" has been used for this institution's name.

³³ "Indicator Scores", South Africa Report for Global Integrity, Center for Public Integrity, 2003, Indicator 18a.

³⁴ Van Vuuren H, *National Integrity Systems Transparency International Country Study Report* Final Draft South Africa 2005, p. 40.

³⁵ "Indicator Scores", South Africa Report for Global Integrity, Center for Public Integrity, 2003, Indicators 18b, c and d.

³⁶ Calland R and p. Graham, *Democracy in the Time of Mbeki*, 2005, Cape Town: Idasa, pp. 179-180.

Riccardo Augusta, the developer of the Roodefontein Golf Estate in Plettenberg Bay.³⁷ The donation to the party was an apparent bribe to obtain permission for the development to bypass an adverse environmental impact assessment.

- In December 2004, the Western Cape leader of the Independent Democrats (ID), Lennit Max, alleged that party leader Patricia de Lille had taken money from a prominent gangster in the Western Cape to fund her 2004 election campaign. She refuted the claim and Max was suspended from the party.
- German businessman Jurgen Harksen made sizeable donations to the Democratic Party (DP)/ Democratic Alliance (DA) in the Western Cape before his extradition to Germany to face several fraud charges.
- The ANC has reportedly received large amounts of money from the Malaysian, Saudi and Iraqi governments, among others.

Idasa has spearheaded lobbying efforts for the regulation of private political party funding since at least 1997. Civil society activism increased in 2004 when parliament excluded a clause on private funding of political parties from the new Prevention and Combating of Corrupt Activities Bill. Idasa requested all of South Africa's political parties to reveal their funding sources as public bodies. The larger political parties refused to do so.

Idasa lost a High Court case against the ANC, DA, IFP and NNP in 2005, with the court ruling that political parties were private, not public, entities and therefore did not have to disclose private funding. Although Idasa lost their court case, it did result in an undertaking being made by the ANC to move to a regime of funding transparency. To date this commitment has not yet resulted in a shift in policy.

Recognising however that the litigation was brought in the public interest and the importance of the principles of transparency and openness which are at stake, Justice Griesel made no order as to costs. He held:

[This decision] does not mean that political parties should not, as a matter of principle, be compelled to disclose details of private donations made to their coffers ... [Idasa] have nevertheless made out a compelling case – with reference both to principle and comparative law – that private donations to political parties ought to be regulated by way of specific legislation in the interest of greater openness and transparency.³⁸

Recommendations by opposition parties have included mandatory disclosure for all amounts over a certain threshold (R50,000 has been suggested) and banning contributions by foreign countries or companies. Almost certainly due to civil society pressure, before the 2004 elections several large companies revealed how much they had paid to different political parties. Mining giant AngloGoldAshanti has even developed a policy to regulate all future contributions to political parties.

³⁷ Herzenberg C, Idasa Position Paper: Regulation of private funding to political parties. Idasa, Pims-SA. October 2003.

³⁸ February, J, Political Party Funding, Submission to APRM Secretariat, Idasa, December 15, 2005p. 19. See also www.idasa.org.za/programmes/pims/party funding campaign.

Examples of unauthorised use of state resources for partisan political purposes:

- [The use of state resources], a commonly noted feature of ruling parties' campaigns in established and developing democracies alike. More important is the common practice of using public funds to pay staffers who carry out partisan activities.³⁹
- Acceptance of money in return for an unauthorised favour or the promise of a favour if elected to office. It is useful to consider what private parties can 'purchase' from a politician.⁴⁰
- Government contract and benefits: Bribes can influence the choice of private suppliers of public goods and services and the exact terms of those supply contracts. It can also affect the terms of re-contracting during project implementation.

Although party funding is an international issue and no single model of regulation exists, Idasa recommended:

- Regulation aimed at the prevention and elimination of corruption;
- Political parties should be adequately funded by the state to allow them to perform multiple functions;
- Citizen participation and engagement in political parties should be encouraged to promote greater accountability;
- There should be a promotion of equality and fairness between electors, parties and candidates;
- Transparency and disclosure are the main pillars for control; and
- Public attention is crucial: the media should provide the information for the public to analyse.⁴¹

Idasa maintained:

Corruption or even the whiff of corruption by members of political parties merely serves to introduce an unwelcome level of cynicism about the political process amongst citizens. Moreover, public trust in otherwise legitimate and credible institutions and processes of governance stands to be eroded. Political corruption, it has been argued increases income inequality and poverty through lower economic growth, poor targeting of social programmes and the use of money by the wealthy to lobby government for favourable policies which could in effect have the potential to perpetuate inequality. The causes of corruption are complex and are rooted in a country's policies, bureaucratic traditions, political development and social history. Corruption tends to flourish when standards are lax or poorly defined, regulatory institutions and enforcement practices are weak, and government policies generate economic rents.⁴²

Travelgate scandal damaged public trust in MPs and parliament: The SAIIA-ISS-AICC submission detailed the negative effects of the abuse of parliamentary travel vouchers on parliament's credibility.⁴³

³⁹February, J, *Political Party Funding, Submission to APRM Secretariat*, Idasa, 15 December, 2005, p. 12.

⁴⁰ Gray, Cheryl & Kaufmann, Daniel. 'Corruption and Development'. Finance & Development Publication March 1998. P. 7, cited in February, J, *Political Party Funding, Submission to APRM Secretariat*, Idasa, 15 December, 2005, p. 12.

⁴¹February, J, *Political Party Funding, Submission to APRM Secretariat*, Idasa, 15 December, 2005, p. 14.

⁴² Bottelier, Pieter, Senior Advisor to the World Bank – East Asia and Pacific Region. 'The Social and Economic Costs of Corruption', p. 2, cited in, February, J, *Political Party Funding, Submission to APRM Secretariat*, Idasa, 15 December, 2005, p. 10.

⁴³ SAIIA-ISS-AICC submission, pp 62-63.

The “Travelgate” investigation, which involved abuse of parliamentarians’ travel vouchers, arose originally during 2002. By early 2006 it had not been effectively resolved.

MPs are issued with a book of travel vouchers against which they can claim a specific number of flights, rail or bus journeys for themselves and their families in a calendar year. Vouchers are verified against proof of ticket purchase and must be used to commute between parliament and their constituencies.

Although the former speaker of parliament had exposed individual cases in 2002, a subsequent forensic audit revealed a far more extensive pattern of abuse of travel vouchers by parliamentarians in collusion with travel agents. The abuse consisted of falsely claiming for “legitimate” parliamentary business flights, when such trips were never made. In some instances, private holiday flights were billed as legitimate parliamentary flights, in others, flights were not taken and the cash value was pocketed, or split between the MP and the travel agency.

The alleged fraud is not an isolated incident. The DSO (Scorpions) investigated some 20,000 travel vouchers, with some 7,000 tickets allegedly forged. The estimated value of the alleged fraud is R13 million,⁴⁴ although reports in January 2006 suggested that the true figure could be as much as R36 million.⁴⁵

Although the allegations have damaged parliament’s image, the manner in which the matter has been handled has compounded the problem.

Although almost one in ten (37) MPs including the Speaker of the National Assembly and cabinet ministers, have been mentioned during the course of investigations, initially no member of parliament resigned, or was suspended by his or her party pending the outcome of the investigation. Craig Morkel (DA) was the only MP to take a voluntary suspension pending the outcome of the criminal proceedings, after the party publicly named him (with his consent). Five ANC MPs resigned in June 2005, having accepted a plea bargain from the NPA and have had to pay large fines, and a further three ANC members are no longer in parliament.

The contents of the forensic report conducted for parliament has been withheld from the public. While there is a legitimate case to be made for legal and reputational protection against such allegations, as well as the presumption of innocence and the right to a fair trial, court cases involving related travel agents made public the details of criminal charges relating to MPs’ abuse of the system.

When parliament re-convened in February 2006, 21 MPs still faced criminal charges for defrauding parliament in this scandal.⁴⁶ There is also growing controversy over the alleged unfair dismissal of the accounting officer in parliament who initially exposed the scandal, and allegations that the amounts involved in the fraud are much higher than initially thought.

Transparency International’s 2006 *Global Corruption Report* comments:

The fallout from Travelgate has been varied. On the one hand, it showed that the anti-corruption bodies and judiciary have a fair degree of independence and are able to carry out their functions without hindrance, even when high-ranking members of the ANC were involved. On the other, there have since been moves to “muzzle” the Scorpions by incorporating the unit into the regular police force. A judicial commission of inquiry has been convened to determine the Scorpions’ future. That decision could signal the strength of the government’s commitment to fighting corruption at the highest levels.⁴⁷

Abuse of privileges:⁴⁸ This issue came to the fore in January 2006 in the aftermath of a controversial trip taken by Deputy President Phumzile Mlambo-Ngcuka, dubbed “Gravy-plane” by the media. In late December 2005, the deputy president flew on an airforce jet to Dubai with her husband and children. The costs (estimated at about R700,000) were entirely covered by the Presidency. At first the Presidency claimed that the trip was a private holiday, and that for

⁴⁴ “Scorpions reveal details of Travelgate probe”, *Cape Times*, September 10 2004.

⁴⁵ Dawes N, “Travelgate bill doubles”, *Mail & Guardian*, 27 January to 2 February 2006.

⁴⁶ Hartley W, “Parliament faces sequel ‘annus horribilis two’”, *Business Day*, 6 January 2006.

⁴⁷ Kajee A, “South Africa”, *2006 Global Corruption Report*, Transparency International, Berlin, p. 244.

⁴⁸ SAIIA-ISS-AICC submission, p. 78.

security reasons, the deputy president was entitled to use state resources such as the jet both for public and private purposes. Over the next few days, it emerged that the aircraft had also carried her personal assistant's children and her friend, former ambassador Thuthukile Mazibuko-Skweyiya (wife of Zola Skweyiya, Minister of Social Development). Mlambo-Ngcuka maintained that the trip was partly work-related, examining infrastructure development projects.

According to the Handbook for Members of the Executive and Presiding Officers, the deputy president cannot be accompanied by a member of cabinet or his/her spouse. Rules also only allow officials to be flown to their final destination, but there is evidence that the aircraft made an additional stop. Although initially stating that the trip was partially business-related, Mlambo-Ngcuka claimed some liability, apologised, and in the end admitted it was an oversight on her part.

The incident generated immense reaction from the media and the public response was divided, with many feeling that the trip was an extravagant misuse of state resources.

In February 2006, Auditor-General Shauket Fakie hinted that he might consider an urgent audit of the trip "due to public interest in the issue." This followed a rejection by the ANC-dominated Scopa of a call by the DA for a special investigation into the trip. Scopa had said the issue would be covered in the routine audit by the Auditor-General of the presidency. The DA and FF+ also petitioned the Public Protector to investigate the trip.⁴⁹

Managing Conflicts of Interest

The constitution clearly sets out to prevent conflict of interest among cabinet ministers and deputy ministers, members of parliament, and senior civil servants. However, the systems and regulations leave significant problems. The North West Province said that "nepotism is very high in the public sector" and that has contributed to corruption.⁵⁰

Ministers and deputy ministers have to abide by the Executive Ethics Code, part of national legislation, which precludes them from accepting any other paid work, exposing themselves to any potential conflict between their official responsibilities and their private interests, or using their positions inappropriately for gain for themselves or others. There are similar provisions designed to prevent members of parliament facing conflicts of interest. Members of the Executive, as MPs, are also bound by them. Parliament promulgated a code of conduct in 1997. The code requires members to declare any personal or private financial interests of their own, their spouse, partner or business associates, and withdraw from any parliamentary committee where a conflict of interest could arise.

Van Vuuren commented :

The executive arm of government, particularly members of cabinet, have emerged relatively untainted by corruption since 1994. This is probably the result of good salaries, a high level of oversight from both the Opposition and the media. ... A strong standard of checks and balances has been put in place with the creation of the Executive Members' Ethics Act (No. 82 of 1998). This requires the disclosure of assets and interests by

⁴⁹ Webb B, "Fakie open to interim gravy-plane audit", *The Star*, 2 February 2006.

⁵⁰ North West Province, p.55.

senior officials, which should be recorded in the register of Executive Members Interests that the president's office has a duty to maintain.⁵¹

No restrictions on senior government members entering business: The SAIIA-ISS-AICC and Idasa submissions noted the lack of rules preventing officials from leaving positions within state regulatory agencies and immediately joining a company that had been subject to that regulatory agency.

Idasa said:

Since 1994 South Africa has witnessed a variety of initiatives designed to promote ethics in the public sector. Despite these measures, there has been a concern about the absence of post-employment restrictions. The argument is essentially that, to ensure gains accrued through the current regulations are not undermined by the actions of former officials, a sound approach to post-public sector employment is necessary. Inasmuch as such regulations are not part of South Africa's legal framework, it will represent a gap in our generally strong anti-corruption apparatus.⁵²

Concern has also been raised about the "revolving door" practice in which retiring members of parliament, including high profile and well-connected MPs (particularly cabinet ministers) who have been privy to the inner workings of governmental policy and planning, leave parliament to immediately take up positions in the private sector, thereby potentially providing the employing company with a considerable competitive advantage.

Post-employment restrictions are sanctions imposed upon those who leave retire or resign from public office. They are designed to ensure that such former office holders derive no unfair advantage for themselves or for others from:

- The confidential information to which they had access while holding public office;
- Their former association with government; and
- Using their current position to secure future personal advantage.⁵³

There have been several recent high-profile examples (where no corruption allegations have been proven):

- Former Premier of the platinum-rich North West Province, Popo Molefe, joined a consortium involved in buying platinum mines scarcely two months after leaving office.
- Former Minister of Justice Penuell Maduna was involved in purchasing a stake in the country's biggest synthetic fuel company less than a month after leaving government.
- The late former Minister of Defence Joe Modise joined an arms company after leaving government.

There are no post-employment restrictions, or cooling off periods, between resignation from parliament and the assumption of a private sector position.

Government has recently reviewed both this matter and the MP Code of Conduct.⁵⁴ Insofar as question marks about the efficacy of the voluntary Code of Conduct and respect for the authority

⁵¹ Van Vuuren H, *National Integrity Systems Transparency International Country Study Report Final Draft* South Africa 2005, p. 32.

⁵² Idasa Submission on Government Ethics Regulations and the Absence of Post-Employment Restrictions, p. 1.

⁵³ February J, Idasa, *Post Employment Restrictions*, 2004, p. 3.

⁵⁴ See the Idasa PIMS 2003 Ethics Report *Ibid*; Kidder Asmal "Joint Committee on Ethics and Members' Interests Review: The Role and Function of the Ethics Committee", Tuesday, 10 August 2004,

of the Ethics Committee go to the heart of parliament's credibility, the lasting impression is less than satisfactory. Idasa calls the lack of post-government restraint of trade restrictions a "lacuna in South Africa's ethics laws."⁵⁵

Enforcement of a cooling-off period: One of the recommendations of the Joint Investigation Team (JIT) report into the arms deal was that:

Parliament should take urgent steps to ensure that high ranking officials and office bearers, such as ministers and deputy ministers, are not allowed to be involved, whether personally or as part of private enterprise, for a reasonable period of time after they leave public office, in contracts that are concluded with the state.⁵⁶

To date, parliament's Ethics Committee has not acted upon this. ISS recommended that South Africa should introduce regulations suitable to local conditions, with a mandatory cooling off period of at least six months. (See **Scopa**).

Relatives of senior officials often get government contracts: Nepotism allegations are notoriously difficult to prove or quantify. Some departments, such as Correctional Services at provincial level, have been accused (in the media and by opposition parties) of nepotism (despite exoneration by the Public Protector). Concerns have increased recently about business ventures with government involving those related to or intimately connected to ministers and MECs. Van Vuuren gives examples of how those close to powerful officials are receiving valuable government contracts:

- Nambita Stofile, (wife of the former Eastern Cape Premier and a current national minister), benefited from business in that province. She is a director of two separate companies that have secured at least five contracts from the provincial government, although she has denied having an unfair advantage.⁵⁷

Some argue that relatives and partners of politicians who hold office should be barred from competing for government business, while others say this infringes on their rights as citizens to trade freely and choose their professions. They argue that if tender procedures are conducted transparently – including coming forward with interests publicly (disclosure), and when a potential conflict arises, withdrawing for the decision-making body if necessary (recusal) – then any such contract won by a relative is legitimate. When relatives win contracts it does not necessarily mean there has been corruption, but it does fuel perceptions and raises questions about conflict of interest.⁵⁸

<http://www.pmg.org.za/docs/2004/appendices/040824asmal.htm> and D. Sing, "Promoting Ethical Behaviour Amongst Public Representatives and Public Servants in South Africa" <http://www.up.academic/soba/SAAPAM/administratio%20publica/vol9no1/sing.htm>

⁵⁵ Idasa, ePoliticsSA, "Government Ethics – balancing competing interests in the public interest", Edition 05, 16 August 2004, p. 4. The TSA was unable to verify the claim that both Gauteng and the Western Cape have restrictions on officials moving from provincial government positions to the private sector, where their government involvement could give them advantage or have direct influence on future business prospects.

⁵⁶ Idasa, ePoliticsSA, "Government Ethics – balancing competing interests in the public interest", Edition 05, 16 August 2004, pp. 3-4.

⁵⁷ See Groenewald Y, "In the pound seats: State contracts awarded to the wives of politicians", *Mail & Guardian*, 28 May 2004, quoted in Umqol'uphandle – SA Corruption Briefing, Issue 17, Pretoria: ISS, 14 July 2004.

⁵⁸ SAIIA-ISS-AICC, p. 78.

Public Procurement Vulnerable to Corruption

The supply of goods and services to the public sector across national, provincial and local government has an estimated value of approximately R180 billion annually. The North West report noted procurement procedures are in place, but enforcement is a challenge.⁵⁹ Being at the interface between the government and private enterprise, procurement the world over is an area where corruption often occurs.

Van Vuuren said:

Public procurement is necessary to enable the public service to deliver on its developmental mandate to the South African people (be that in terms of building houses, constructing bridges or providing schools with textbooks). At the same time, public procurement was identified by government as a driver for black economic empowerment, particularly for small and medium-sized entrepreneurs. It is therefore essential to ensure that the effect of corruption in this particularly vulnerable area is mitigated.⁶⁰

Government's 2001 Joint Comprehensive Procurement Assessment Report identified several existing issues in tendering in South Africa at the time, and noted the challenges for any future tendering framework:

- insufficient planning and linking of procurement requirements to budgets;
- lack of uniform bidding and other procedures across the public sector;
- conflicts of interest due to the composition of tender bodies;
- consultants not being selected in a systematic, competitive manner;
- flaws in the awarding of tenders, particularly corruption;
- insufficient training of staff (a key factor); and
- the procurement processes being too rule-driven (which often invites corruption).

The CCAR said:

The public sector has started to blacklist suppliers that take part in corrupt practices. This strategy forms part of the ongoing procurement reform within the South African public sector. A blacklist of corrupt public servants also needs to be developed. Further work is required to ensure that procurement systems are effectively controlled, especially within the area of preferential procurement, where opportunities exist for the discretionary award of contracts.⁶¹

However, in the CPI report, Camerer noted:

In terms of debarment, companies found guilty of violations such as bribery or incompetence are included on a list compiled and circulated by the Treasury to government departments. In theory, companies on the list are precluded from receiving government contracts; in practice, however, this list is rarely consulted.⁶²

Some departments, such as the National Treasury, have stronger systems to overcome these challenges.

⁵⁹ North West province, p.56.

⁶⁰ Van Vuuren H, *National Integrity Systems Transparency International Country Study Report Final Draft South Africa 2005*, p. 64.

⁶¹ *Country Corruption Assessment Report- South Africa*, published jointly by the South African government and United Nations Office on Drugs and Crime – Regional Office for Southern Africa (UNODC/ROSA), April 2003, p. 8.

⁶² Camerer M, "Integrity Assessment", South Africa Report for Global Integrity, Center for Public Integrity, 2003 p. 4.

Decentralised tendering: Following a long assessment of the tender board system by government and the National Treasury, provincial tender boards have been eliminated in South Africa, and the national State Tender Board will be phased out and replaced by the “Supply Chain Management Framework” (SCMF), which decentralises the procurement function to accounting officers in the three different spheres of government (national, provincial and local). It will change procedures – in an attempt to reduce corruption – for accounting officers in various departments all along this chain.

Van Vuuren noted some formidable challenges to implementing this framework, including heavy new responsibilities on accounting officers who will require training and education; the need for a dispute resolution mechanism should there be challenges to their decisions; the need for careful monitoring by National Treasury and the AGSA’s office; and the need to ensure that the Supply Chain Management Framework is applied consistently to all areas of procurement.⁶³

Whistleblowers Still Unprotected

Despite the legal protection offered to those employees who expose corruption in both private and public organisations under the Protected Disclosures Act (PDA) of 2000,⁶⁴ “in practice it is rarely safe to blow the whistle without suffering negative consequences.”⁶⁵

In a presentation to Parliament, the National Treasury agreed:

The protection of whistleblowers has not been as effective as intended by legislation as in many instances they feel that they are not protected and therefore feel discouraged. Disciplinary procedures against perpetrators are not satisfactory.⁶⁶

The North West report said: “Officials are afraid to blow the whistle (for) fear of intimidation and victimisation.”⁶⁷

The CCAR noted:

The Protected Disclosures Act provides state-of-the-art protection to whistleblowers in a workplace, but it requires guidelines on policy and procedure for implementation to be effective.⁶⁸

Transparency South Africa (T-SA) noted:

Though whistleblowers are protected under the Protected Disclosures Act, several have been fired, blackmailed or publicly tainted by their employers for exposing corruption.⁶⁹

⁶³ Van Vuuren, op. cit.

⁶⁴ The Protected Disclosures Act (PDA) seeks to protect employees who alert their employers or the public to corruption or danger in the workplace from “detriment” resulting from their actions.

⁶⁵ Camerer M, “Integrity Assessment,” South Africa Report for Global Integrity, Center For Public Integrity, 2003, p. 4.

⁶⁶ Parliament: *Report of the Joint Ad Hoc Committee on Economic Governance and Management: a response to the African peer review mechanism questionnaire*, 2006, p. 31.

⁶⁷ North West Province, p.56.

⁶⁸ *Country Corruption Assessment Report- South Africa*, published jointly by the South African government and United Nations Office on Drugs and Crime – Regional Office for Southern Africa (UNODC/ROSA), April 2003, p. 6.

⁶⁹ Molelel, C and S Russouw, “Whistleblowers need protection,” 20 August 2004. Transparency International South Africa (TISA). Available online: http://www.tisa.org.za/index2.php?option=content&do_pdf=1&id=23

The PSC also wrote:

Recent media reports show a lack of understanding by the public and officials of the legal framework and guidelines for whistleblowing. This gives rise to an urgent need for education and awareness-raising. To help public sector managers support accountability and implement the Protected Disclosures Act of 2000, an easy-to-read guide on whistleblowing has been created.⁷⁰

Problems with the PDA include low public awareness on how to use the act, and a cumbersome appeal process. There is no standard award of compensation for dismissals resulting from exposing corruption. (See also **Corporate Governance** section).

Transparency International's 2006 *Global Corruption Report* commented:

Though well intended, the PDA appears to have failed whistleblowers in several instances, not only because it sets out exactly to whom disclosures are to be made, but also how the informant wishes to claim its protection. The act specifies that a whistleblower must make what is referred to as a "protected disclosure" to a specified group of persons if s/he wishes to avoid suffering "an occupational detriment." The manner in which the disclosure is made is also regulated. Government employees ... are free to register grievances as long as a prescribed procedure is followed ... The disciplinary offence – and the legal confusion – derives from the public service regulations, and what they proscribe in terms of communicating, especially outside the public services. There is therefore a tension between the regulations and the PDA. The jury is still out on the effectiveness of the PDA, as many potentially successful attempts to blow the whistle are likely to go unreported.⁷¹

Odac said unless laws are enforced, other individuals are inevitably discouraged from bringing malpractice in their workplace to the attention of authorities. This in turn allows corrupt practices to proliferate unchecked. Individual whistleblowers in the past five years have found little protection. Odac cited some examples:⁷²

- The governor of Grootvlei prison, Tatolo Setlai, videotaped illegal practices by guards inside the prison. Setlai was later suspended, then arrested on modest charges. He was assured that his case would be dealt with quickly in order to allay concerns that he was being victimised as a whistleblower, and to avoid the chilling effect this would have on other whistleblowers. However, the case took 18 months before all charges against him were dismissed. During this time, the Scorpions investigating unit characterised Setlai as a "very bad man."
- Jakes Jacobs released a video of fellow Rand dog unit policemen setting their dogs on unarmed Mozambican migrants. He was initially suspended, but was reinstated following action by police commissioner Jackie Selebi and the Minister for Safety and Security. However, no further action was taken to protect Jacobs' position at his workplace, where he was ostracised. Because of the suffering he was subjected to in the workplace, Jacobs has gone on record to say that if given a second chance he would not blow the whistle.
- Glen Chase, a senior accountant in the transport department of the Northern Cape, blew the whistle on MEC John Block and other senior employees in the department for utilising state funds for private use. Chase was dismissed for releasing official information to the public without authority. Chase denies informing the media and said that he made the disclosure to the Auditor-General and the Public Protector as a "protected disclosure" under the PDA.

⁷⁰ PSC, "Whistleblowing: A guide for public sector managers promoting public sector accountability implementing the protected disclosures act", 2004 as cited in the "State of the Public Service Report 2005"

⁷¹ Kajee A, "South Africa", 2006 *Global Corruption Report*, Transparency International, Berlin, pp. 245-6.

⁷² Open Democracy Advice Centre, "The State of Whistleblowing and Access to Information in South Africa: A Submission to the African Peer Review Mechanism", p.19.

The CCAR recognised the work that still has to be done to get South Africa's whistleblower protections working efficiently:

For a whistleblowing mechanism to be effective, there must be effective protection of the identity of the whistleblower and there must be effective follow-up of all *bona fide* disclosures. Most government departments do not have policies and procedures in place to comply with the Protected Disclosures Act. Few departments have a hotline, and even fewer have effective procedures to operate it effectively, and yet, this is the only whistleblowing mechanism that departments rely on. Installation of such hotlines is often not properly supported by investigation capacity, policies and evaluation."⁷³

The Transparency South Africa website offered evidence of the initial difficulties in getting these hotlines working, and the relatively low impact they have had in bringing perpetrators to book:

- In 2003, only eight national departments had established anti-corruption hotlines, and there were none in the Eastern Cape, North West or Free State Provinces.
- In Gauteng, 54% of the hotline's reported cases were dealt with in 2000. Mpumalanga received 3,600 calls in 2001, but only 12 criminal charges were laid against individuals. In contrast, the Western Cape recorded 83 calls with 27 disciplinary charges laid.⁷⁴

Odac said they supported the work of the South African Law Reform Commission to amend the PDA to provide more robust protection for whistleblowers. The Commission is considering the following changes:⁷⁵

- Widening the ambit of the Act to include a broader category of people including contractors. Many whistleblowers are not in formal employer/employee relationships, and as downsizing, outsourcing and restructuring continue to take their toll on the traditional employment relationship, this category of whistleblower can only grow.
- Extending the damages that may be awarded to the extent of the actual loss suffered.
- Allowing a remedy in the case of so-called 'citizen's whistleblowing,' where the person reporting the wrongdoing requires the protection of the law.
- Protecting the whistleblower against defamation actions, and actions in terms of the Public Service Regulations, by which whistleblowers are disciplined for the release of information that was not authorised or for bringing their department into disrepute.

⁷³ *Country Corruption Assessment Report- South Africa*, published jointly by the South African government and United Nations Office on Drugs and Crime – Regional Office for Southern Africa (UNODC/ROSA), April 2003, p. 8.

⁷⁴ See <http://www.tisa.org.za/index.php?option=content&task=view&id=18>.

⁷⁵ Open Democracy Advice Centre, "The State of Whistleblowing and Access to Information in South Africa: A Submission to the African Peer Review Mechanism", p. 20.

Review of Specific Oversight Institutions

This section outlines the key strengths and weaknesses in some of the major institutions that have a role in exposing, preventing or prosecuting corruption. Clear patterns of resource constraints, staff attraction and retention problems, and overlapping institutional mandates and responsibilities emerge. It will examine the following in some detail:

- The South African Reserve Bank (SARB)
- The South African Police Service (SAPS)
- The National Prosecuting Authority (NPA), including the Directorate of Special Operations (DSO) (the “Scorpions”) and the Assets Forfeiture Unit (AFU)
- The Special Investigative Unit (SIU)
- Parliament
- Parliament’s Standing Committee on Public Accounts (Scopa)
- The Public Protector
- The Auditor-General of South Africa (AGSA)
- The news media and freedom of information

The South African Reserve Bank (SARB)

According to the governor of the Reserve Bank, Tito Mboweni, cited in Idasa’s 2002 *Monitoring Progress Towards Good Governance* Report:

In South Africa, monetary policy is implemented by the country’s central bank ... the South African Reserve Bank. The primary objective of monetary policy –as stated in the county’s Constitution as well as the South African Reserve Bank Act, No 90 of 1989 – is the protection of the South African Rand in order to obtain balanced and sustainable economic growth ... In order to achieve this objective, the Reserve Bank’s primary goal is the achievement of financial stability. Financial stability means that financial markets and institutions are functioning effectively.⁷⁶

Since February 2000, the SARB adopted inflation targeting as its monetary policy framework. The Minister of Finance publicly announces a numerical target range for the inflation rate, for a set period. (See **inflation targeting** section).

International best practice suggests that a central bank must be independent to achieve its goals and prevent politicians from interfering with monetary policy, even as democratic governments change.

According to Idasa,

Critics of central bank independence argue that an autonomous central bank is ‘undemocratic’ – that it is against democratic ideals to allow un-elected officials to make monetary policy decisions that have not been examined by the elected representatives of the population. Central bank independence however, does not mean that the central

⁷⁶ South African Reserve Bank, *Monetary Policy Review*, April 2002, p. 1, cited in Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 71.

bank is not accountable to anyone. An autonomous central bank makes policy decisions without political interference, but is accountable to parliament.⁷⁷

Mboweni, cited in Idasa's *Monitoring Progress Towards Good Governance* report, confirmed that the SARB meets the three preconditions for central bank autonomy:

- A clearly defined monetary policy framework and operational procedures, with the bank's independence legally defined;
- Transparency, where the public and government are continuously updated; and
- An efficient institutional framework to insulate monetary policy decisions from political interference.⁷⁸

According to Mboweni cited in Idasa 2002,

Transparency is one of the preconditions of central banks' autonomy and means that the government and public should be continuously informed of the central bank's policy stance. The South African Reserve Bank has aimed to make its inflation-targeting policy as transparent as possible. The inflation target [and the timeframe are announced publicly. The Reserve Bank will be accountable if the target is not met].⁷⁹

After every meeting of the Monetary Policy Committee, a statement is issued. A Monetary Policy Forum has been established for all interested parties to interact and raise concerns. The Reserve Bank publishes a Monetary Policy Review bi-annually which explains its actions, publishes a quarterly bulletin, and reports on local and global monetary developments that could influence the inflation rate. The Bank also regularly reports to parliament.⁸⁰

South African Police Service (SAPS)

The SAPS investigates corruption through its Commercial Crime Unit, Organised Crime Units and Detective Branch. Cases of misconduct against the police are investigated by the Independent Complaints Directorate (ICD).

The SAPS Anti-Corruption Unit (ACU) was established in 1996 to tackle increasing police corruption, but has since been shut down. Between 1996 and 2001, the unit received nearly 21,000 allegations of police corruption, about 3,000 officers were arrested and about 600 convictions were made.⁸¹ The unit's low conviction rate was attributed to capacity constraints, problematic witnesses (who were often anonymous and provided insufficient information), and

⁷⁷ Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 72.

⁷⁸ Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 72.

⁷⁹ Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 72.

⁸⁰ Idasa, *Monitoring Progress Towards Good Governance: The African Governance Report, National Country Report for South Africa*, Public Opinion Service, Institute for Democracy in South Africa, Produced for Uneca, Development Management Division, July 2002, p. 72.

⁸¹ Newham G and L Gomomo, "Bad Cops Get a Break: The closure of the SAPS Anti-Corruption Unit", *SA Crime Quarterly*, No. 4, June 2004, p. 5.

the flawed Anti-Corruption Act of 1992 that repealed the common law offence of bribery while instituting difficult legal requirements in order to prove corruption.⁸²

As there was little substantive information given by the SAPS regarding the closure of the ACU, much speculation arose as to possible motivation behind the decision. This takes the form of complaints that the ACU had become too independent; that the unit was perceived as being racist, as most of those investigated were black; and finally that the unit was not specifically focused on corruption, often investigating petty theft and fraud.⁸³

The Independent Complaints Directorate (ICD): Created in 1996, the unit acts as an oversight body. They investigate complaints against members of the police service and look into deaths resulting from police misconduct⁸⁴

The ICD established two mechanisms to combat corruption: the Proactive Research Unit and the Anti-Corruption Command (ACC), which was created in response to the increase in corruption complaints in the 2003/4 financial year. The Proactive Research Unit conducts research, establishes trends and maintains a complaint database.⁸⁵

The ACC deals only in corruption cases, brought to its attention by civilians and SAPS whistleblowers. According to a submission from parliament, the body cited considerable challenges in combating corruption, such as significant backlogs in complaints, limited resources and rural access, as well as less than satisfactory co-operation from SAPS agencies.⁸⁶

Acute resource constraints at the Commercial Crime Unit: The CCAR noted the Commercial Crime Unit “has experienced difficulties in retaining experienced staff.” In 2001, this unit, responsible for investigating all commercial crime, had just 990 police and 121 civilian administrative staff members (representing about 0.85% of 130,000 SAPS employees). Despite a new training curriculum, “the staff turnover, restricted budget, heavy caseload and long case duration has reduced its effectiveness in securing convictions,” and uncertainty remains on whether the SAPS or DSO has jurisdiction over fraud cases.⁸⁷

- In 1998, the Commercial Crimes Unit investigated only 88 cases in terms of the (now repealed) 1992 Corruption Act, 149 in 1999 and 125 in 2000, representing less than a quarter of a percent of all cases investigated by the unit. However, because of the difficulties the old act presented in securing convictions, many cases were framed as fraud or theft cases instead.⁸⁸

⁸² Newham G and L Gomomo, “Bad Cops Get a Break: The closure of the SAPS Anti-Corruption Unit”, *SA Crime Quarterly*, No. 4, June 2004, p. 7.

⁸³ Newham G and Gomomo L, “Bad cops get a break: the closure of the SAP Anti-Corruption Unit”, *SA Crime Quarterly*, No. 4 June 2004, p. 4.

⁸⁴ Final Report of the Joint Ad-hoc Committee on Democracy and Good Political Governance, Annexure B, p. 58.

⁸⁵ Final Report of the Joint Ad-hoc Committee on Democracy and Good Political Governance, Annexure B, p. 58.

⁸⁶ Final Report of the Joint Ad-hoc Committee on Democracy and Good Political Governance, Annexure B, pp. 58-59.

⁸⁷ *Country Corruption Assessment Report- South Africa*, published jointly by the South African government and United Nations Office on Drugs and Crime – Regional Office for Southern Africa (UNODC/ROSA), April 2003, pp. 46-47.

⁸⁸ *Country Corruption Assessment Report- South Africa*, published jointly by the South African government and United Nations Office on Drugs and Crime – Regional Office for Southern Africa (UNODC/ROSA), April 2003, pp. 46-47.

In an attempt to expedite the investigation and prosecution of white-collar crime cases, the NPA and Department of Justice established a Special Commercial Crimes Unit (SCCU) in 2000 as a pilot project. The SCCU's mandate is to accept matters for investigation and prosecution emanating from the SAPS Commercial Branches in Johannesburg and Pretoria. The SCCU combines the efforts of prosecutors and investigators to ensure speedy investigation and finalisation of trials. The pilot project has proved very successful, and has been expanded to Durban and Port Elizabeth. Since the establishment of the SCCU in Pretoria, there has been an increase in the conviction rate from 86.6% to 96.2%. However, according to an NPA report to parliament in June 2004, lack of funding has prevented the opening of an office in Cape Town. The SCCU head also reported to parliament that all the offices face an enormous workload and lack capacity and personnel. This institution needs more support from the government and private sector.⁸⁹

In their submission, the government said:

Plans are underway to establish and roll out more Specialised Commercial Crimes Courts: A programme was launched in Pretoria in 2000 and new courts for Durban and Port Elizabeth have been launched late last year (2005). These courts have gained strong business support and international acclaim as a best practice model. They deal with a variety of commercial crimes and corruption and statistics show that they finalise a greater number of cases and achieve higher conviction rates than normal regional courts.⁹⁰

National Prosecuting Authority (NPA)

The National Director of Public Prosecutions (NDPP) heads the National Prosecuting Authority (NPA), and his/her independence is guaranteed by the constitution. It is a ten-year non-renewable position. The president appoints the head of the NPA and although s/he reports to parliament, s/he is accountable to the minister of justice. The NPA has the power to institute criminal proceedings on behalf of the state and to carry out any necessary functions incidental to instituting criminal proceedings.

The first NDPP, Bulelani Ngcuka, resigned in July 2004 after successfully moulding an organisation with the capacity and political will to effectively tackle corruption and organised crime. In an interview with the *Financial Mail* shortly after announcing his resignation, Ngcuka commented that “a politically independent director of public prosecutions is wishful thinking.” Ngcuka said that what is needed is someone with the support of the ruling party, but with objectivity in taking decisions.

When we started with asset forfeiture we suffered a number of setbacks because of loopholes in the legislation. The law needed to be changed. Parliament did so in the shortest time it has yet taken to pass an amendment. That happened because I was able to explain to the leadership and political parties, even the opposition, why it was necessary. They trusted me and that facilitated communication. A second reason is the scramble for budget. If nobody knows you, you get nothing. So it is very important that you have somebody in whom the ruling party has confidence. Remember, this position is quasi-judicial; it straddles the line between the executive and the judicial. The Executive has a say, because at the end of the day it is the Executive, not the judiciary, that must account for the crime rate and answer to the population.⁹¹

⁸⁹ Van Vuuren H, *Transparency International Country Study Report Final Draft South Africa 2005*, p. 64.

⁹⁰ Consolidated APRM 2nd draft, p. 22.

⁹¹ Bruce P, “The end of an era” (interview with Bulelani Ngcuka), *Financial Mail*, Johannesburg, 30 July 2004.

In February 2005 Advocate Vusi Pikoli was confirmed by President Mbeki as the new head of the NPA. The NPA has become embroiled in politics, with various factions within the ruling alliance accusing it of favouritism and factionalism. This is unhealthy and undermines public trust in the institution.

Directorate of Special Operations (DSO) (the “Scorpions”)

Generally regarded by the public as the state’s main anti-corruption body, the Directorate of Special Operations (DSO) was established by President Mbeki in 1999 to deal with organised crime and corruption, complex financial crime, racketeering and money-laundering. The DSO – more often called “the Scorpions” because of its scorpion insignia – is a division within the NPA, and was officially launched in January 2001 when the National Prosecution Authority Amendment Act came into force. The DSO replaced three former investigating units: the Investigating Directorate: Organised Crime and Public Safety; the Investigating Directorate: Serious Economic Offences; and the Investigating Directorate: Corruption.

Modelled after the US Federal Bureau of Investigation, the unit’s creation represented a novel blend of integrated crime analysis, investigation and prosecution within South African law enforcement. The DSO strategy involves addressing and disrupting organised crime; becoming a depository for crime information in order to analyse trends and determine targets; implementing anti-racketeering and money-laundering legislation; and “proliferating the perception of victory over crime, essential to enhance public confidence.”⁹²

The Scorpions have indeed enhanced the public’s confidence in anti-corruption measures. An average of 90% of prosecuted cases result in convictions.⁹³ With such a success rate, the unit sends a message to both the public and criminals:

The focus of the Scorpions on high-profile crimes, matched with its success rate ... may act as a deterrent to potential perpetrators of high-profile crimes by creating the sense that the state *does* have sufficient capacity to tackle such activities. Similarly, the Scorpions have come to represent the state’s capacity and political will to tackle cases of ‘grand corruption’. The latter is a necessity given the lack of faith in the police to tackle crimes such as corruption (although this perception may not be entirely correct) ...⁹⁴

However, the Scorpions’ success rate has not shielded them from criticism – especially from fellow law enforcement agencies. SAPS has accused the Scorpions of “cherrypicking” winnable cases based on the Scorpions’ strict and extensive case selection criteria.⁹⁵ Better relationships and co-ordination with SAPS is just one of the challenges facing the Scorpions.⁹⁶ Others include:

⁹² Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005, p. 75.

⁹³ Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005, p. 76.

⁹⁴ Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005, p. 76.

⁹⁵ Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005, p. 76.

⁹⁶ Van Vuuren points out that any inclination by government to incorporate the DSO into the SAPS would not only undermine public confidence, as the DSO would basically cease to exist given the potential for capacity overlap, but also take tensions between the DSO and SAPS from bad to worse. See Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005, p. 79.

While the Scorpions is said to be staffed with mostly young, motivated university graduates, the DSO could use improvement in skill areas related to the courtroom.⁹⁷

Political challenges: Created under the Mbeki presidency, the Scorpions have had presidential support; however their critics have grown increasingly vocal in the president's second term. Media reports cite "ANC insiders" when putting forth the notion that former Deputy President Jacob Zuma and National Police Commissioner Jackie Selebi were seeking to reduce the unit's independence.⁹⁸ The very success of this unit and the manner in which it has sometimes conducted its business (as well as political pressure, institutional clashes and jealousies from within the SAPS) prompted the president to establish a commission of enquiry (the Khampepe Commission) into the mandate and location of the DSO. The specific issue under examination is whether the DSO ought to retain its independent investigative and prosecutorial role or be incorporated under the SAPS.⁹⁹ The findings of the Khampepe Commission are expected in 2006.

Assets Forfeiture Unit (AFU)

Also a part of the NPA, the Assets Forfeiture Unit was created in May 1999 in order to implement sections of the Prevention of Organised Crime Act of 1998, focusing on property and goods acquired by criminal means. Under chapters five and six of this Act, the state is allowed to confiscate assets assumed to have been procured from the proceeds of crime through civil action against the property without an actual criminal conviction against its owner. Though the unit does not have a specific anti-corruption mandate, from early on it identified corruption and serious economic offences as targets and by June 2000 had lost only five cases out of the 28 it had initiated. The money generated from these forfeitures was deposited into a Criminal Assets Recovery Fund, in order to assist law enforcement agencies in combating organised crime when no identifiable victim is found.¹⁰⁰

One of AFU's strategic objectives has always been the development of asset forfeiture law via test cases. In this regard, legal challenges to the AFU's seizures remain. However, the unit has obtained more than 60 High Court judgments serving to clarify asset forfeiture law. Furthermore, during 2003-2004, the AFU had a success rate of more than 80%.¹⁰¹

Also, in contrast to the DSO (see above), the AFU maintains good relations with key partners such as the South African Police Service, Directorate of Special Operations, South African Revenue Service and other law enforcement structures. The unit is also in the midst of signing formal guidelines for co-operation with both the SAPS and DSO.¹⁰²

⁹⁷ The Portfolio Committee on Justice and Constitutional Development. Justice budget: input by units of the National Prosecuting Authority, 18 June 2004. As reported by the Parliamentary Monitoring Group www.pmg.org.za, as cited in Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005, p. 78.

⁹⁸ Boyle B, S Msomi *et al*, "Mbeki, Zuma battle over Scorpions", *Sunday Times*. Johannesburg. 20 February 2005, as cited in Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005, p. 78.

⁹⁹ See government notice No. R317 dated 1 April 2005 published in the Government Gazette No. 27446.

¹⁰⁰ Schönteich M, "The Asset Forfeiture Unit: Performance and Priorities" Nedbank ISS Crime Index, Vol. 4 June 2000, No. 3, May-June, www.iss.co.za/Pubs/CRIMEINDEX/00VOL4NO3/Assetforfeiture.html

¹⁰¹ Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005, p. 79.

¹⁰² Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005, p. 81.

The AFU conceded that more needed to be done to make a dent in criminal proceeds:

Through its interaction with the Treasury, the AFU estimates that it would have to recover 10 times its current recovery figures to make a real impact. The AFU has identified 13 priority crimes, ranging from keeping brothels, through to drug money and violent crime. The three areas in which the largest percentage of assets have been frozen in the past five years are economic crime (62.8%), natural resources (9.7%) and corruption (8.1%) – corruption represents a monetary value of over R57 million.¹⁰³

However, Vusi Pikoli, the head of the National Prosecuting Authority said in March 2006 that the unit had frozen more than R1 billion in criminal assets since its formation. He said R100 million of this, would be paid into the criminal asset recovery account. This fund was set up to finance the fight against crime with money taken from convicted criminals.¹⁰⁴

The Special Investigative Unit (SIU)

The Special Investigative Unit (SIU) was established in 1996, with a specific anti-corruption mandate. Originally a stand-alone institution, it was linked to controversy over the arms deal investigation (see Case Study below on **Parliament and the Arms Deal: A Test of Oversight and Accountability**) and this may explain its decreased independence, as it is now more closely linked to the NPA.

The unit's head is a presidential appointment and reports directly to the president. If the SIU receives information it wishes to investigate, it must submit an application to minister of justice for the matter to be proclaimed by the president in the *Government Gazette*. If the application is granted, the investigation goes forward. The Special Investigating Units and Special Tribunals Act (74 of 1996) allows special tribunals to be established, so that SIU cases can be quickly dealt with and are not tied up in the slow mainstream judicial process. If the investigation reveals a possible crime, the case is then forwarded to the NPA.

The CCAR noted:

The SIU has accumulated a significant backlog of work; which ... may take up to three years to complete ... [A recent review of the SIU] concluded that the team's effectiveness was hampered by taking on too many less serious matters, which added unnecessarily to their workload. Many matters could have been dealt with elsewhere. The inflow of work and the prioritisation of matters are now being handled far better.¹⁰⁵

Parliament

A variety of submissions said that the dynamics of the party list system, tight central control of candidates' ranking on party lists and political culture/norms have rendered parliament weak as an oversight institution. SAIIA-ISS-AICC said a system that expected loyalty to a party instead of accountability to voters was not healthy for a vibrant democracy:

This is intrinsically unhealthy for democracy and may account for the sometimes poor levels of performance of MPs and their failure to tackle issues such as poor service delivery and corruption within the state. It further

¹⁰³ Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005, p. 79.

¹⁰⁴ Sapa, "AFU freezes R1bn in loot", 8 March 2006.

¹⁰⁵ *Country Corruption Assessment Report- South Africa*, published jointly by the South African government and United Nations Office on Drugs and Crime – Regional Office for Southern Africa (UNODC/ROSA), April 2003, pp. 52-53.

accounts for parliament in general and the majority party in particular, having a poor record of executive oversight since 1994.¹⁰⁶

AIDC commented on the effectiveness of parliament in its oversight role:¹⁰⁷

On the face of it, South Africa has a well-developed parliamentary system, including an array of Parliamentary Portfolio Committees (PPCs) with well-defined oversight responsibilities. Government departments are required to report to their respective parliamentary committee(s); although the regularity and clarity with which they do so undoubtedly differs from department to department, and according to the differing demands placed upon them by their respective committees in parliament. The capacities and will of the PPCs to engage with and interrogate the departmental officials who report to them also differ widely; with some – such as transport – being more effective than others.

With regard to most parliamentary committees, however, there is a clear tendency for the related departmental officials to simply report intermittently what they are dealing with or already implementing; leaving the legislators with little space within which to influence the direction of policy implementation, let alone engage actively in actual policy formulation. This probably holds true with many of the PPCs but is particularly marked with the economic committees. It is also clearly anomalous that parliamentarians are invited to deal with the minute details of national economic legislation, once it is eventually presented to them, and yet have minimal say or influence over strategic economic policy making, and even less over international investment and trade negotiations and agreements that carry considerable influence over many areas of domestic concern.

Part of the solution to this highly imbalanced state of affairs is that departmental officials should be required to present to parliamentarians a range of clear alternative policy options on the issues at stake, and different scenarios for them to consider. At present most such PPC sessions are little more than presentations on what government officials have already decided to do or are carrying out, as if these are the only and self-evident paths to follow. Pervasive current practices turn the parliamentary hearings into virtual public relations exercises for the respective ministries/departments and, in very large measure, undermines the oversight role of the committees. Officials must be required to make their presentations much more accessible/intelligible to the parliamentarians. Whereas many technocrats tend to do the exact opposite; either for lack of the necessary communication skills or in order to deliberately obfuscate matters to get their views endorsed ... or to demonstrate their “superior” technical skills and unquestionable role.

A strengthening of the role of the parliamentary committees could also be supported through greater access – and inputs – to PPC hearings for related civil society stakeholders on the matters under consideration. Equally fundamentally, an essential requirement to make the parliamentary committees more effective is the much greater information and 'capacity building' of the [MPs] in the areas where they have assumed particular responsibilities. In part, this should be done through the official parliamentary - and the respective party - research/support structures. But, according to the parliamentarians themselves, these seem to be under-resourced and over-stretched. The further problem, however, is that their potential utility to MPs arises in large measure through the latter knowing what to prioritise, what issues need following up, and what the key questions are ...

It is especially de-motivating where individual MPs – regardless of their newly acquired information and insights – are possessed by party loyalty, and bound by party political discipline not to oppose or even publicly question the established line within their party. The fact that MPs in South Africa are elected through party lists makes them particularly susceptible to such subjective feelings and objective pressures, which discourage independent thinking and questioning positions, and optimally effective roles. This poses sensitive political questions about members of parliament and their parties, but any consideration of the effectiveness of 'economic governance' in South Africa, and thus of the role of parliamentary bodies in this regard, has to take up the question of this country's indirect system of parliamentary election and the weak accountability of elected national representatives ... other than through periodic ballot exercises. However, the limitations ... of more direct electoral systems within representative parliamentary democracy applies throughout the world.

¹⁰⁶ SAIIA-ISS-AICC submission, p. 25.

¹⁰⁷ Alternative Information and Development Centre, *Economic Governance and Management within the African Peer Review Mechanism in South Africa*, a presentation to the Ad Hoc Joint Parliamentary Committee on Economic Governance and Management' in South Africa for the SA APRM, p. 6.

It has also to be noted that, faced with the complexities and enormous demands placed upon them in roles for which many MPs are not well-prepared, many of them 'give up' and settle into the less demanding routines and formalistic processes and merely nominal oversight roles. No amount of information, advice and 'capacity-building' can compensate for lack of political will amongst members of parliament. At worst, such abdication of responsibility can deteriorate into misuses of power and even abuses of their positions. This is, of course, an extremely difficult political problem everywhere and also poses universal political challenges within parliamentary democracies throughout the world. However, it is only by looking beyond the surface at 'subjective' political factors, rather than focusing only at the level of institutional analysis, that fully effective democratic government can be made a reality.

Idasa's budget management service noted that although parliament can discuss the overall budget, it lacked the power to effectively deal with money bills (See also **Objective 2**). The legislature does not yet have powers to amend the budget. This severely weakens the oversight role of parliamentary committees in the budget process.

- Although the budget process is changing gradually, it still does not include meaningful participation by the provinces. Provincial input in the budget process is not commensurate with their expenditure responsibilities.
- Documentation on the budget does not contain sufficient detail to facilitate monitoring and evaluation of government budgeting practices.
- Public sector management of resources does not include an incentive system to ensure efficient and accountable allocation of resources. Public sector management reform is critical to efficient and effective delivery of services in South Africa.¹⁰⁸

Ruling Party Protective of Members: The law of the land is “innocent until proven guilty.” The ruling party has displayed a tendency not to publicly condemn senior members and government officials implicated in alleged corruption or other illegal acts. While a public condemnation could open government to charges of defamation and/or *crimen injuria*, political party leaders should sanction offenders who threaten parliament's image and ultimately government's integrity. Their silence has been interpreted as being over-protective of party members. Critics charge that they ignore or dismiss allegations against powerful party insiders until those individuals are found guilty by the court system, which means that cabinet or parliament avoid having to take decisions that may damage the party politically.

- Both parliament and the executive failed to publicly condemn former ANC Chief Whip and head of parliament's Joint Standing Committee for Defence, Tony Yengeni, for not complying with parliamentary codes and ethics in his acceptance and non-disclosure of a 47% discount on a luxury Mercedes Benz facilitated by the European Aeronautical Defence & Space Company (EADS), a successful foreign contractor in the arms deal. Former Speaker Frene Ginwala supported Yengeni until he was convicted, and only then requested him to resign.¹⁰⁹
- National government did not intervene when former Mpumalanga Premier Ndaweni Mahlangu reappointed Steve Mabona to the provincial cabinet as safety and security MEC. He had been forced to resign, after lying about his role in issuing a fraudulent driver's licence to Baleka

¹⁰⁸ Idasa Budget Information Service, “THE BUDGET – A TOOL FOR CHANGE”, <http://www.internationalbudget.org/resources/library/trainingmanual.doc#reform>, April 1998.

¹⁰⁹ Allan C, “Nixing corruption needs practice and leadership”, *Mail & Guardian Online*, 22 December 2003.

Mbete, then Deputy Speaker of Parliament (and current Speaker). Mahlangu had defended Mabona by saying it was acceptable for politicians to lie.¹¹⁰

- Eastern Cape MEC for Health, Dr Bevan Goqwana, responsible for the province's R4.5 billion health budget, owned a private ambulance company and admitted to running a private specialist practice while in office. He was also listed as a director of the private St Mary's hospital. (Former) Eastern Cape Premier Makhenkesi Stofile admitted that he authorised these conflicts of interests, making him party to breaching the Executive Members Ethics Act.¹¹¹
- Some ex—MPs implicated in Travelgate featured prominently on ANC party lists for the 2006 local government elections.

SAIIA-ISS-AICC contended that implicated officials should be suspended pending the outcome of investigations. The dismissal of former Deputy President Jacob Zuma, after the courts found that he had a “generally corrupt relationship” with his financial advisor Schabir Shaik, showed the president's tough stance against corruption in government, and the willingness to act after the courts had ruled.

See also **Objective 2**.

The Standing Committee on Public Accounts (Scopa)

The Standing Committee on Public Accounts (Scopa) is one of the most important oversight committees in parliament. It receives all the Auditor-General's reports for scrutiny. Idasa noted that

Scopa has the unique constitutional mandate to follow up on issues that the Auditor-General has identified as unsatisfactory. Scopa is therefore a crucial link in the chain of accountability.¹¹²

Traditionally, Scopa is chaired by an opposition MP.

The R30 billion Strategic Defence Procurement Package (or arms deal) issue has seriously weakened Scopa. South Africa's Auditor-General, Shauket Fakie, bypassed Scopa when he submitted the results of an investigation into the controversial arms deal by a Joint Investigations Team (JIT) – made up of the National Director of Public Prosecutions (NDPP), Public Protector and his own office – directly to cabinet (the body that had made the procurement decision), on the basis that it was a “special report.” There are allegations that cabinet then altered or at least had sight of the contents before Scopa, thus seriously weakening parliament's oversight function.¹¹³ Former ANC Scopa member Andrew Feinstein resigned from committee in protest on 1 September 2001 and former Scopa Chair Gavin Woods (IFP) resigned in 2002.

¹¹⁰ Allan C, “Nixing corruption needs practice and leadership”, *Mail & Guardian Online*, 22 December 2003. The Moldenhauer Commission found that Mabona had lied about his involvement in the irregular (although not fraudulent) issuing of Baleka Mbete-Kgositsile's driver's licence. The Commission also ordered Mbete-Kgositsile to return her licence. See “Licence problem is resolved”, *Daily Dispatch*, 11 September 1997 at <http://www.dispatch.co.za/1997/09/11/page%2017n.htm>

¹¹¹ Allan C, “Nixing corruption needs practice and leadership”, *Mail & Guardian Online*, 22 December 2003.

¹¹² Idasa, “Democracy and the Arms Deal Part 3”, A Submission to Parliament, 5 August 2003, p. 7.

¹¹³ In January 2005, a South African arms contractor who had been a losing bidder in the arms deal used access to information legislation to make public earlier drafts of the JIT report. There are telling omissions in the final draft, perhaps made at the request of cabinet, including indications of flawed tendering for jets, political influence from

Some MPs said that Scopa moved from being strongly autonomous to being closer to the executive, leading to reduced confidence.

Patricia de Lille feared that “Scopa has become another compliance committee, stamping reports of government.”¹¹⁴

According to Douglas Gibson, the Chief Whip of the DA, “[Scopa] has suffered almost a mortal injury [following the arms deal investigation]. It is going to take years for Scopa to recover, if it ever does.”¹¹⁵

The CPI report said:

Whereas before 2001 Scopa had a proud tradition of working consensually as a committee and exercising its role in a non-partisan fashion, the arms deal ... significantly weakened the committee which then voted along party lines with direct political interference from the ruling party ... Thus, while there is seldom political interference into the work of the committee, on the few occasions it happened in recent times, it did not receive any protection, even from the overall legislature from whence such protection should be forthcoming.¹¹⁶

Gavin Woods was replaced as Scopa chair by a member of the New National Party (NNP), Francois Beukmann. While this upheld the tradition of appointing an opposition MP to chair Scopa, the ANC and NNP at the time were co-operating closely. This led to questions over Beukmann’s impartiality. In an interview with Van Vuuren, Woods said:

Francois Beukmann knew the least about finances. So he could be managed [by the ANC]. He is a lawyer, and he may be a brilliant lawyer, but he knows precious little about finances. With the emergence of sub-committees [chaired by the ANC] the work has been taken out of the hands of the chair, leaving him basically to do administrative work.¹¹⁷

Woods also said that Scopa members often do not go further than what the AGSA himself recommends when summoning senior officials for questioning.

Idasa noted that there is time and the opportunity for Scopa to reassert its oversight role, as the arms deal is set to run for 12 years.¹¹⁸

Parliament’s APRM report failed to mention the effectiveness of Scopa, or the arms deal.

Defence Minister Joe Modise, irregularities in the contracts for supplying new helicopter engines and that the off-set programme (where a contract award would result in greater investment into South Africa) was “materially flawed.” This all contradicts the AGSA’s claim that the report was not significantly altered.

¹¹⁴ P de Lille, interview with van Vuuren, September 2002.

¹¹⁵ D Gibson, interview with van Vuuren, September 2002.

¹¹⁶ “Indicator Scores”, South Africa Report for Global Integrity, Center For Public Integrity, 2003, Indicator 35c.

¹¹⁷ G Woods, interview with van Vuuren, September 2002.

¹¹⁸ Idasa, “Democracy and the Arms Deal Part 3”, A Submission to Parliament, 5 August 2003, p. 5.

Case Study: Parliament and the Arms Deal¹¹⁹

Like all matters in contemporary South Africa, the corrosive legacy of apartheid protruded into the origins of arms deal. The substantive basis for the arms deal was the threadbare state of the equipment of the South African National Defence Force, largely as a result of decades-long arms embargo and the financial limitations placed on the National Party government through the dual impact of biting international banking sanctions and the country's involvement in a host of costly wars in the region, most notably in support of Unita in Angola. The cutting of international lines of credit in 1985 forced the South African Finance Ministry and the Reserve Bank to attempt to run an overall balance of payments surplus and to protect the capital and current accounts. In practical terms this translated into expensive (and irreplaceable) military equipment, such as jet fighters and naval warships, rapidly becoming both obsolete and unsustainable.

Yet while the case for the replacement of old and high maintenance equipment was easy to make, the scope, content and timing of any such replacement and procurement process were areas for considerable debate and disagreement. Disagreement centred on four areas. Firstly, the identification of a national threat (or otherwise) necessitating the procurement package. Secondly, the identification and sourcing of appropriate hardware to meet such a real or potential threat. Thirdly, the timing and structure of payment for such equipment, either as a package deal, or piecemeal. Fourthly, questions of affordability and national priority – a classic 'guns versus butter' debate.

The former chair of the Parliamentary Committee on Defence has claimed that it was the committee's rejection of the proposal by the defence minister at the time, the late Joe Modise, to make use of second-hand military equipment to replace the SANDF's aging and obsolete equipment which led to the drafting of the 1996 Defence White Paper and subsequent Defence Review.¹²⁰ If so, it was also parliament's somewhat superficial treatment and acceptance of the Defence Review in April 1998 that ultimately led to its own nadir with respect to the arms deal.

While the Defence Committee concerned itself with overseeing transformation and a shift in the ethos away from over-secrecy of SANDF operations, it was technically ill-equipped to make sense of and critically examine the massive and complex arms deal. In addition to its direct financial and macro-economic implications, the package included provision for the generation

¹¹⁹ This section is adapted from a forthcoming case study of parliamentary failure by Tim Hughes, "The South African Parliament's Failed Moment", Blackwell, 2006.

¹²⁰ Modish T, "Parliamentary Oversight of the Department of Defence: 1994 to 2003", in Le Roux L, M Rupiya and N Ngoma (eds), *Guarding the Guardians – Parliamentary Oversight and Civil-Military Relations: The Challenges for SADC*, Institute for Security Studies, Pretoria, 2004.

¹²¹ While much has been made of the off-set, counter-trade and job creating potential of the arms deal, the penalty clauses for non-delivery of the off-set targets is a mere 10% of contract value, rather than the off-set value. It is contended by the government that this is twice as high as the international norm of 5% of contract value. Some of the off-set elements of the deal have been met. For more information on the offset arrangements see Christopher Wrigley, *The South African deal: A case study in the arms trade*, Campaign Against Arms, London, June 2003. <http://www.caat.org.uk/information/publications/countries/southafrica-0603.pdf>

of counter-trade, or off-sets, amounting to R104 billion, while generating some 65,000 jobs.¹²¹

Numerous aspects of the arms deal are worthy of examination, but the sheer magnitude of the total procurement package, which was originally stated as R29.8 billion, but when signed amounted to R33 billion makes it South Africa's largest single public procurement package. Political and strategic arguments aside, the magnitude of the deal elevated it to a position of significant material importance for the South African taxpayer and indeed non-taxpayer. Furthermore, its sheer scope and complexity confronted parliament and a number of its committees (Scopa, Defence, and Trade and Industry) with the task of making sense of the deal in all its guises, as well as exercising adequate oversight and holding the Executive to account for its actions, particularly given the deal's long-term implications.

Pursuant to the Defence White Paper of 1996, a cabinet sub-committee and thereafter the full cabinet approved the South African Defence Review, a comprehensive 15 chapter report of the operations and requirements of the South African National Defence Force. Chapter 13 of the Defence Review laid out the equipment requirements and acquisition policy of the Department of Defence. In April 1998, parliament gave its approval of the Review, thus providing a mandate for the commencement of Strategic Defence Packages for the Acquisition of Armaments at the Department of Defence. In November 1998 the first concerns were raised at the rapidity with which in just seven months the cabinet announced the names of the preferred bidders for the supply of new equipment. Then Deputy President Thabo Mbeki appointed Jayendra Naidoo, former executive director of the National Executive Development and Labour Council (Nedlac), to examine the affordability of the proposed arms package taking into account the country's socio-economic priorities. In this regard the attractiveness of the domestic investment and job-creation potential of the proposed counter-trade and off-set programmes within the arms deal became a highly significant dimension. Less than a year later, in September 1999, the cabinet announced that it was satisfied with all aspects of the proposed arms deal including that of off-sets and counter trade and that it was approving the expenditure of R21.3 billion over eight years (possibly rising to R29.9 billion over 12 years). Given the weight of importance accorded to the off-sets and counter-trade, the Ministries of Defence, Finance, and Trade and Industry formed part of the government negotiating team. It was also in September 1999 that the first accusations of graft, bribery and corruption became public when Patricia de Lille MP (PAC at that time) announced in parliament that she had received documentation from concerned ANC MPs of substantial malpractice in the granting of arms deal contracts.

Since there is a constitutional requirement that the Auditor-General examine all government expenditure and in particular the arms deal given its magnitude, the AGSA commenced a review of the selection process of the granting of contracts to the primary contractors.¹²² Consistent with the requirements and ethos of the constitution, the Auditor-General reported his findings to parliament's Standing Committee on Public Accounts. The Auditor-General established and reported on a number of key areas of concern, including the choice of more expensive contractors within the tendering process, but added "(A)spects of independence,

¹²² South Africa Auditor-General, "Special Review of the Selection Process of Strategic Defence Packages for the Acquisition of Armaments at the Department of Defence (DOD)" [RP 161-2000], Pretoria, 15 September 2000.

fairness and impartiality could have been addressed more significantly ... the potential conflict of interests that could have existed was not adequately addressed by this process.”

Additionally the Auditor-General found there to have been “material deviations from the originally adopted value system.” Furthermore the report noted, “I am of the opinion that the guarantees, in the case of non-performance, may be inadequate to ensure delivery of National Industrial Participation (NIP) commitments. This could undermine one of the major objectives of the strategic defence packages which was the counter-trade element of the armaments package deal.”

The Auditor-General’s review went on to note that elements of the process were not in line with Ministry of Defence requirements for dealing with international offers nor compliant with procedures laid down for armaments acquisition policy. State parastatal Armscor procedures were not fully adhered to, budgets were inadequate and arithmetic errors were found. The Auditor-General’s review concluded, “Many allegations regarding possible irregularities in contracts awarded to sub-contractors exist ... I recommend that a forensic audit of or special investigation into these areas be initiated.”

Upon receipt of the Auditor-General’s report and recommendations, the National Assembly referred it to Scopa for its consideration.

Consistent with the convention practised amongst parliaments of Commonwealth countries, the South African parliamentary public accounts committee has been chaired by a member of an opposition party since 1994. In the first term of the new parliament the chair was Ken Andrew a member of the Democratic Party and in the second parliament Dr Gavin Woods, a member of the Inkatha Freedom Party (which continued to serve in the cabinet until the 2004 elections). This continued practice ran against the trend of electing ANC chairs to all portfolio committees after the 1999 election.

It would be misleading to characterise Scopa’s treatment of the Auditor-General’s review as flexing its constitutional muscles. Yet Scopa’s engagement with the arms deal enquiry became an important litmus test for its and by extension, parliament’s *locus standi*, not simply with respect to the constitution, but also with respect to the executive and the Chapter Nine institutions of the Auditor-General and Public Protector. Scopa’s hearing into the report of the Auditor-General on 11 October 2000 established a number of important pegs in the ground. In addition to Scopa members and the chair of the Parliament’s Defence Committee, the 11 October hearing saw present the Head of the Special Investigative Unit, Judge Edward Heath, the Auditor-General, the Ministry of Finance, the head of the government arms acquisitions, the negotiator of the arms deal counter-trade packages, the chief executive and chairman of Armscor, the Secretary of Defence and senior members of the SANDF. Significantly the chair of Scopa refused the SANDF the opportunity to conduct a presentation to the committee, but rather asserted that the DOD had been called to the hearing to answer questions raised by Scopa. This set an important precedent.

Besides the inadequacy of certain responses provided by some of those questioned by Scopa, what is of particular significance is the tenacity of the questioning by committee members belonging to the ruling party. Former ANC Scopa committee member Laloo Chiba is recorded

as expressing the following during questioning of ANC stalwart and Director of Acquisitions Chippy Shaik, “Your response is not acceptable. The answer of statutory costs is not correct ... I want total calculations to be re-submitted to this committee within seven days ... What will be the total outlay – R50, R60, or R70 billion? Without such calculations, how could you motivate such purchases? ... Submit copies of these agreements to this committee within three-to-four days with the contracts and figure work.”

The head of the ANC in Scopa, Andrew Feinstein, although less aggressive in tone, asked the following questions of his fellow party member Shaik:

Why don't we spend most of our budget on arms in order to leverage economic development? It doesn't make sense to me as an economist. International literature suggests these offsets are subsequently diluted or disappear, or the suppliers factor the penalties into the costs. Why should South Africa be different from the international experience? We need the legally binding contracts ... was cabinet misled? On what basis was the cabinet decision made? The Auditor-General has noted that the packages were negotiated before the Budget was provided. Did the tail wag the dog? When did conflicts of interest occur? ... Was the minister advised of the conflicts of interest? ... Did you declare your conflict of interest?¹²³

This form of questioning illustrates the serious and non-partisan approach adopted by Scopa in its hearings and was the guiding ethos underpinning its report into the arms deal. On 30 October 2000 Scopa presented its findings to parliament in the form of its Strategic Arms Purchases Review: Final Report on Standing Committee on Public Accounts Final Report. Scopa recommended the establishment of an independent and expert forensic investigation. Most significantly, however, Scopa argued that given the complex and cross-cutting nature of the issues under investigation, a multi-sector investigative team ought to be assembled to carry out the investigation. Scopa's recommendation was that the team be comprised of the Chapter Nine Offices of the Auditor-General and Public Protector, the Investigations Directorate of the Serious Economic Offences Office and the (Judge) Heath Special Investigative Unit and “any other appropriate investigative bodies.” Scopa proposed that it would prepare a written brief for such an independent investigative body and that it would report back to parliament at regular intervals. Concurrently Scopa would continue with its own examination of the arms deal which would include the questioning of cabinet ministers. Crucially, *Scopa's report was adopted by the National Assembly without debate on 2 November 2000*. Whether parliament was aware of the political and constitutional implications of Scopa's report and recommendations must remain speculative. Assuming it fully applied itself to the content and recommendations of the report, this may be interpreted as a strong mandate from parliament to the committee to push the boundaries of its activities and authority with respect to Chapter Nine institutions and indeed the executive branch. If, on the other hand, parliament failed to apply itself fully to the consequences of the Report without debate, this would reflect as an indictment on the institution.

Despite Scopa's parliamentary mandate the entities it corralled into the investigating team were

¹²³ Standing Committee on Public Accounts Parliamentary Hearings, Selection Process of the Strategic Defence Packages; Stockholdings in Department of Defence, 11 October 2000. Note: Shaik's brother is and was a Director and material beneficiary of a company that won contracts in the arms deal.

less unquestioning of their role and mandate. The Scopa meeting of 13 November 2000 debated the respective areas of expertise and overlap between the institutions involved.¹²⁴ Emerging from the meeting, however, was a clear objective for the investigation, the sourcing of finance, the resources required, administrative arrangements, processes to be followed, the contracting of expertise, the broad framework of the investigation as well as the identification and management of Departmental documentation required. The team, co-ordinated under the aegis of the Auditor-General undertook to report back in July 2001.

It was at this time that the executive began to recognise that a tipping point had been reached in which parliament in the guise of Scopa had successfully galvanised four powerful, professional investigative bodies to examine what was entirely an executive initiative and programme. It was then that it mobilised in response to these rapid developments.

Firstly, the executive removed Judge Willem Heath and thus the Special Investigative Unit from the team. Heath and his Unit had developed considerable expertise into governmental corruption. The former Justice Minister, Penuell Maduna, sought to have Heath removed from the Scopa investigating team on the grounds that a sitting judge could not head the Special Investigative Unit. On 28 November 2000 the Constitutional Court held that Heath's role in the Special Investigative Unit (SIU) was unconstitutional. Woods responded by writing to President Mbeki requesting a Presidential Proclamation allowing the SIU to re-join the investigation. Maduna recommended against such a proclamation, advice which the president took and announced that he would not issue such an enabling proclamation.

Furthermore, the case for the government was put to South African public on 12 January 2001, by former Trade and Industry Minister Alec Erwin, Finance Minister Trevor Manuel, Defence Minister Mosiuoa Lekota and former Public Enterprises Minister Jeff Radebe.¹²⁵ Pre-empting the Scopa/Auditor-General's Report, the thrust of the ministers' contention was that there had been no wrong-doing whatsoever and that even the figures of the ballooning cost of the arms deal were both an exaggeration and misreading of the financing calculations of the deal. Most significantly however, the ministers took aim at both the Auditor-General and Scopa. According to them, the Auditor-General,

(M)ay not have been adequately exposed to the high-level decision-making process ... Accordingly, the (AGSA's) inferences are based on incomplete information ... The Auditor-General is entitled to his opinion as to the adequacy of the performance guarantees ... We believe that we are entirely within international practice and ... that the Auditor-General is incorrect when he sees the counter-trade aspects of the deal as a major objective of the deal ... The Auditor-General has not correctly dealt with the matter of the first order values ...

¹²⁴ Scopa chair Gavin Woods convened a meeting with the members of the JIT at which a working division of labour was thrashed out. Cognisant of the constitutional, legal and political imperatives, in November 2000 Woods had sought independent legal counsel opinion. He additionally wrote to Fink Haysom, legal adviser to former President Mandela and retained by Speaker Dr Frene Ginwala, to request a legal opinion as to how Scopa ought to interact with the four entities in the investigating team. Haysom forwarded a legal opinion that set out the distinctive constitutional and legal modalities required for the individual institutions in the JIT to report to Scopa and parliament. He made the point, however, that Scopa could not instruct the JIT with respect to its activities.

¹²⁵ Government Communication and Information Service, "Background Noted on the Strategic Defence Procurement Package for the Press Statement issued by the Ministers of Defence, Finance, Public Enterprises and Trade and Industry", 12 January 2001.

and he will need to hold further discussions with the Ministry of Defence to clarify this matter.

Scopa came off no less lightly. The ministers accused the committee of not understanding the immense complexity of the arms procurement process and thus arriving at false and erroneous assumptions. The ministers accused Scopa of failing to take up the offer of ministerial assistance or even requesting ministerial assistance in explaining the detail of the deal. More powerfully however, the ministers signalled their strategic line of attack by asserting that Scopa had acted *ultra vires* by involving investigative agencies other than the Auditor-General. A further nail in the coffin of Scopa's investigation was driven home by a letter issued in January 2001 to Woods by the Leader of Government Business in the House, axed Deputy President Jacob Zuma,¹²⁶ who challenged the basis and approach of Scopa's investigation.

Ironically, the *coup de grace* in the assault on Scopa came not from the executive, but from within parliament itself. On 27 December 2000 the then Speaker of the National Assembly, Frene Ginwala, issued a statement in which she questioned the association of the Heath SIU and the Office for Serious Economic Offences in the Scopa investigative team. Furthermore, she adjudicated that Scopa had gone beyond its mandated powers in sub-contracting outside units to conduct work on its behalf. She further asserted that the chair of a committee may not commit the committee to a course of action, hearing, or investigation, without the full consultation and support of the particular committee. As such, Ginwala implied that Woods had acted *ultra vires*.

On 22 January 2001 the ANC members of Scopa fell into party line and publicly announced that their interpretation of Scopa's 14th Report differed from Woods', in that they rejected the insistence that specific investigative units had to serve in the investigative team. This cleared the way for the Heath Special Investigative Unit to be excluded. On the same day the guillotine fell on Feinstein, head of the ANC Study Group on Public Accounts.¹²⁷ He was replaced by Geoff Doidge, Deputy Chief Whip of the ANC. Justifying the tightening of party control in Scopa, ANC Chief Whip, Tony Yengeni¹²⁸ acknowledged that the party and president sought to effectively control and subordinate parliament and Scopa to their will, which is a fundamental violation of separation of powers:

There was no objection to these changes, as it was the ANC government that was under attack, it was imperative that the lines of accountability between the ANC members in the committee (Scopa) and the ANC leadership be strengthened. I don't want to cast aspersions. We really wanted to improve our capacity, but also wanted people who are going to be the political link with ANC structures so that the ANC from the president down could exercise political control.¹²⁹

¹²⁶ Former head of the National Directorate of Public Prosecutions Bulelani Ngcuka subsequently publicly announced that the NDPP had found *prima facie* evidence of corruption against Zuma as part of its investigation into the arms deal, but that the prospects of a conviction were too low to attempt to prosecute. His financial adviser Schabir Shaik was found guilty of fraud and of having a "generally corrupt" relationship with then Deputy President Jacob Zuma. Zuma was relieved of the deputy presidency, and will be on trial for corruption in 2006.

¹²⁷ Feinstein subsequently resigned from Parliament and left the country to work in London.

¹²⁸ Yengeni was subsequently charged with fraud and corruption by the Scorpions and found guilty of receiving a bribe from a successful contractor in the arms deal while Chair of Parliament's Defence Committee and convicted of a criminal offence.

¹²⁹ As quoted in Paton C, "Drowning in a Sea of Troubles", *Sunday Times*, 4 February 2001.

These developments signed the death warrant of bipartisanship in Scopa, but also cast grave doubts about the ruling party's commitment to the cardinal principles of openness, accountability and transparency. Moreover it signalled the moment in which Scopa's *raison d'être* was compromised for the sake of party solidarity and the protection of the executive rather than holding it to account. The die had been cast and hereafter, while the Joint Investigative Team (JIT) continued its brief under the auspices of the Auditor-General,¹³⁰ sans the particular skills and experience of Heath, the credibility of the investigation would always be in doubt. By the time of its second committee Report on the arms deal in May 2001, Scopa had become a divided and divisive entity unable to agree even on procedural matters. ANC members accused the chair of hijacking the committee and the official opposition Democratic Alliance was unable to associate itself with the Second Report of the committee. The DA tabled eight substantive amendments to the report, some of which were profound and went to the heart of the constitutional mandate, authority and obligation of the committee. All were rejected.

On 15 November 2001 the Joint Investigative Team released its Report to parliament and cleared the government of any wrong-doing in the arms deal. While the report highlighted inadequacies and shortcomings within the tendering process, these were of a technical nature. Prosecutions pursuant to the findings of the report and the work of the Directorate of Public Prosecutions were aimed at private individuals, who although strongly connected to cabinet ministers and the ANC did not pose a threat to the integrity and reputation of the government. However, widespread public criticism of the JIT report resulted in the Auditor-General taking the unusual step of drafting a Special Report on the JIT Report to refute and rebut allegations of a 'whitewash' and of executive pressure to expunge potentially damaging detail and evidence.

With the JIT Report completed and presiding over an irreconcilably divided committee, Scopa Chair Gavin Woods resigned his position on 25 February 2002. Minutes of the committee meeting of 26 February 2002 record the intensity of the debate as to whether part of the meeting ought to be held in camera and whether transcripts ought to be publicly released. The threatened, or potential, abrogation of core principles of openness, transparency and accessibility provided for in the constitution, parliament and committee work bears testimony to the depths to which the committee had sunk in the maelstrom of the arms deal.¹³¹

Scopa regaining credibility on "Oilgate": Themba Godi MP (PAC) was named new Scopa chairperson in October 2005, but his impartiality was questioned by the DA, as he had previously proposed that the PAC merge with the ANC.¹³² However, in its handling of the Oilgate scandal, Scopa appears to be regaining some credibility.

¹³⁰ The JIT was finally constituted of the Public Protector who was responsible for the public phase of the investigation and liaising with other investigating agencies; the Auditor-General responsible for the overall investigation and reporting with specific responsibility for examining the content and processes followed in the arms deal - including areas of risk, conflict of interests and cost to the State; and the National Directorate of Public Prosecutions examining, *inter alia*, any criminal aspects of the arms deal.

¹³¹ All parliamentary committee minutes are available on-line at www.pmg.org.za

¹³² "DA said Scopa chair shows protection of ANC interests", *The Herald Online*, 25 October 2005.

In May 2005, the *Mail & Guardian* newspaper exposed the alleged laundering of public funds to the ANC's 2004 election campaign fund through the parastatal PetroSA and a private black economic empowerment company, Invume Management. Invume had requested a R15 million advance on an oil transaction, and had transferred R11m of this to the ANC. PetroSA had subsequently doubled up the payment.¹³³

The Freedom Front Plus (FF+) said that it had ten tough questions for PetroSA when its management appeared before Scopa on 24 August 2005, but was prevented from asking them as the Scopa chairperson only allowed questions from the standing committee. "The ANC members of the committee dominated the question time with extended questions about non-essential issues," said Freedom Front Plus leader Pieter Mulder.¹³⁴

However, in November 2005 Scopa criticised Invume Management and PetroSA regarding Oilgate. Scopa made the first official public acknowledgement that the transaction was irregular" and contradicted the Public Protector's findings in July 2005 that PetroSA's advance payment to Invume was "lawful, well-founded and properly considered."¹³⁵ It also criticised the endorsement of the Public Protector's report by parliament's Mineral and Energy Portfolio Committee on 31 August.¹³⁶

Anchen Dreyer MP (DA) commented said she was "impressed" at the way Scopa under Themba Godi had handled the matter, adding that "perhaps Scopa is wanting to regain lost credibility."¹³⁷

Public Protector (Ombudsman)

The Public Protector is an independent Chapter Nine institution, enjoined by the constitution

To investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged to be improper or to result in any impropriety or prejudice; report on that conduct; and take appropriate remedial action.¹³⁸

The Public Protector must have legal expertise and has a non-renewable seven-year appointment. It takes two-thirds of the National Assembly to remove him or her. The president appoints the Public Protector, based on Parliament's recommendation. Any citizen (barring some public officials in particular circumstances) may report a matter to the Public Protector, who is then bound to investigate the matter (he or she may also initiate his or her own investigations). Matters under the Public Protector's jurisdiction include institutional maladministration in state or public entities, abuse of power or improper conduct by officials, and any act or omission leading to improper prejudice to another person.

According to the Department of Justice and Constitutional Development (DOJCD), the Office of the Public Protector has received more than 70,000 complaints over the last nine years, with the

¹³³ Brümmer S and S Sole, "Scopa hits out at Oilgate 'irregularity'", *Mail & Guardian*, 18 November 2005.

¹³⁴ Mulder P, "Oilgate and What it Means for the South African Political System", Africa Dialogue Lecture Series, University of Pretoria, 8 November 2005, p. 3.

¹³⁵ Brümmer S and S Sole, "Scopa hits out at Oilgate 'irregularity'", *Mail & Guardian*, 18 November 2005.

¹³⁶ Mulder P, "Oilgate and What it Means for the South African Political System", Africa Dialogue Lecture Series, University of Pretoria, 8 November 2005, p. 3.

¹³⁷ Brümmer S and S Sole, "Scopa hits out at Oilgate 'irregularity'", *Mail & Guardian*, 18 November 2005.

¹³⁸ South African Constitution 181(c).

monthly average number of complaints having risen from 165 in the period from October 1995 to September 1996, to 1,441 in the 2003/04 financial year. Over that time the office has grown substantially.

The Public Protector is also empowered to initiate an “own initiative investigation” of evidence or allegations which arise independently of a specific complaint. “The office considers this function to be important to fulfil its duty to promote good governance and to strengthen constitutional democracy.”¹³⁹

The volume of complaints referred to the Public Protector is cited as an example of the esteem in which it is held.¹⁴⁰ It has also received recognition from similar organisations.

The DOJCD contended that the Public Protector contributes to efficient administration. The recommendations for redress and improvement that the office makes are respected and implemented by government departments, and the receipt of large numbers of “small cases” concerning similar problems can help to alleviate a larger problem, or to identify systemic weaknesses. The Public Protector’s work also contributes to laying unfounded media speculation about politically sensitive issues to rest.¹⁴¹

SAIIA-ISS-AICC said that the Office of the Public Protector suffers from capacity constraints. According to its 2003 report to Parliament, it had processed 48,017 complaints from 1995-2001, with an average turnaround time of six to nine months. Half the cases in any year were carried over to the next and the continual receipt of new cases was putting ever greater pressure on the office. Inadequate resources were preventing it from conducting on site investigations in some cases.¹⁴²

Impartiality of Public Protector questioned: Despite the need for the Public Protector to function objectively, the impartiality of the incumbents has been questioned. Both the past and present office bearers (Advocate Selby Baqwa SC and Advocate Lawrence Mushwana) are high-ranking members of the ANC. There have been allegations that they have been susceptible to pressure from the party.

A comment in theCPI report:

Both incumbents to date ... have given the impression of being relatively independent-minded generally, but both seem(ed) prone to using contorted logic to arrive at executive-minded decisions in high-profile, sensitive cases while another said [n]either ... have successfully supported the independence of the agency in the face of executive pressure.¹⁴³

Mushwana’s tenure has been somewhat more controversial than Baqwa’s. Rhoda Kadalie, a prominent South African human rights activist, made the following comment:

Lawrence Mushwana’s probe into an undeclared gift received by former deputy president Jacob Zuma ended up exonerating him; similarly, Defence Minister Lekota was exonerated for not disclosing shares and directorships;

¹³⁹ DOJCD, *Democracy and Good Political Governance in South Africa*, p. 49.

¹⁴⁰ DOJCD, *Democracy and Good Political Governance in South Africa*, p. 39-41.

¹⁴¹ DOJCD, *Democracy and Good Political Governance in South Africa*, p. 42-48.

¹⁴² Mushwana, L. Presentation before the Portfolio Committee on Justice and Constitutional Development, Parliament, Cape Town, 12 June 2003, cited by SAIIA - Nepad Project

¹⁴³ Peer review comment, “Indicator Scores”, South Africa Report for Global Integrity, Center For Public Integrity, 2003, Indicator 53e.

Deputy President Phumzile Mlambo-Ngcuka was also let off the hook for accepting a diamond tiara worth thousands [of rands] from a person who was later appointed to the SA Diamond Board; and Zanele Mbeki equally was absolved from buying from public works, at way below the market price, a house which she tried to sell for double the price a few months later.¹⁴⁴

She added that Mushwana's "track record of investigating high-profile cases implicating the executive is scandalous." She contended:

Mushwana is a master at skirting investigations that implicate the ruling elite. His tenure has been characterised by contempt for the constitution and for his obligation to be independent, impartial and exercise his powers and perform his functions without fear, favour or prejudice. As a former ANC MP, Mushwana, like most of the heads of the Chapter 9 institutions who have all been co-opted into uselessness, dares not bite the hand that feeds him.¹⁴⁵

For his part, Mushwana believed that his office is used by opposition political parties to test political disputes or "for the media frenzy that such reportage was likely to cause."¹⁴⁶ He claimed that despite having found in favour of several high profile ANC officials, he has "taken over 17,000 decisions on complaints, mostly against senior ANC leaders in charge of departments and parastatals ... (and has) dealt with corruption and maladministration in a dispassionate manner."¹⁴⁷

Public Protector and "Oilgate": In 2005, a controversy erupted which has had implications for the Public Protector. "Oilgate", as it became known, involved a payment of R15 million by state company PetroSA to a BEE company, Invume management, which then contributed R11 million to the ANC's election funds. The Public Protector was also asked to investigate alleged payments by Invume to a company run by the brother of the then minister of minerals and energy, Phumzile Mlambo-Ngcuka, and to a construction company for improvements to the home of Dr Zola Skweyiya, the Minister for Social Development.

The Public Protector on 29 July ruled that there was no misconduct or maladministration by PetroSA or any other public official, and that the R15 million lost its character as public money when it was paid by PetroSA and was thus beyond his jurisdiction,¹⁴⁸ even though a state company had made a payment to a private company. Parliament's Standing Committee on Public Accounts (Scopa), however, subsequently reported "irregularities" by both PetroSA and Invume. In January 2006, the *Mail & Guardian* newspaper filed a court challenge to Mushwana's findings on Oilgate, seeking to have his July 2005 report overturned and redone. It claimed Mushwana's report avoided probing parts of the scandal, but exonerated government and the parastatals involved.¹⁴⁹

Subsequently, documents suggested that Dr Skweyiya had appealed for cabinet to accept a tender for a management contract by a consortium, IT Lynx, linked to Sandi Majali, the CEO of Invume.¹⁵⁰ Carmel Rickard, a *Sunday Times* journalist, argued that Mushwana had failed South

¹⁴⁴ Kadalie R, "Public Protector is a master at protecting the ANC elite", *Business Day*, 23 February 2006.

¹⁴⁵ Kadalie R, "Public Protector is a master at protecting the ANC elite", *Business Day*, 23 February 2006.

¹⁴⁶ Sefara M, "Watchdog or lapdog? SA's Public Protector faces heat." *Cape Argus*, 16 July 2004.

¹⁴⁷ Sefara M, "Watchdog or lapdog? SA's Public Protector faces heat." *Cape Argus*, 16 July 2004.

¹⁴⁸ Mulder P, "Oilgate and What it Means for the South African Political System", Africa Dialogue Lecture Series, University of Pretoria, 8 November 2005, pp. 2-3.

¹⁴⁹ Brummer S, "M&G wants Oilgate report overturned", 31 January 2006.

¹⁵⁰ Wa Ka Ngobeni, W, Mahlangu, D and Lubisi, D "How Skweyiya backed Oilgate man Majali", *Sunday Times*, 12 February 2006

Africa and interpreted his mandate so narrowly (drawing distinctions between “public” and “private” matters in relation to public figures) as to exclude himself from becoming involved in an important investigation.¹⁵¹

At the time of writing, IT Lynx, was suing Dr Skweyiya for “non-performance” on the contract.¹⁵² Mushwana had also indicated that he would reopen the investigation into Dr Skweyiya, in light of new information.¹⁵³

Steven Motale, political editor at *The Citizen*, wrote:

Mushwana’s recent findings, in particular those pertaining to the Oilgate saga, have cast doubt on his fitness to execute his duties without fear or favour. His findings have fuelled the perception that his office is an inefficient watchdog, whose primary role is to merely vindicate ANC top brass who have been accused of wrongdoing.¹⁵⁴

The Auditor-General of South Africa (AGSA)

The Auditor-General of South Africa (AGSA) is the supreme institution empowered to audit and report on the accounts and financial management of all spheres of government and other statutory and non-statutory bodies. The office of AGSA is constitutionally guaranteed as a Chapter Nine institution. S/he is appointed by the National Assembly, and must submit audit reports to the relevant national or provincial legislature and all reports must be made public. Under the Public Finance Management Act, he must report to parliament on the accountability of public entities.

Although the office does not have prosecutorial powers and serves only to uncover and disclose problems, the office is a vital source of information for parliament and the public. If it does not perform its duties adequately or publicise them broadly, there is no other source of information on the state of government accounts – save the media and what government chooses to say about itself.

Parliament’s APRM report noted:

The AGSA is subjected to the Internal Auditing Standards and receives an independent review from the Public Accounts and Auditors’ Board, as well as several peer reviews that check compliance and report on it, and also conducts quality control measures. The standards are technicality driven, and annual stakeholder satisfaction surveys are also conducted. South Africa has also subjected itself to a peer review mechanism by leading auditors all over the world. This is done reciprocally so as to allow for learning opportunities. The improvement that is now taking place is not enough to take South Africa to the next level at this point in time. It requires a lot of input from the National Treasury, but also the right calibre of people to help [the]AGSA. [The adoption of] number of standards are being delayed due to a lack of capacity, and National Treasury is holding back on these, precisely because of this vicious circle of a lack of capacity.¹⁵⁵

The report also reflected discussion held by the committee on the meaning of the independence of the AGSA:

¹⁵¹ Rickard, C “Mushwana’s armour rusts for lack of use”, *Sunday Times*, 23 January 2006.

¹⁵² Wa Ka Ngobeni, W, Mahlangu, D and Lubisi, D “How Skweyiya backed Oilgate man Majali”, *Sunday Times*, 12 February 2006.

¹⁵³ Sapa, “Oilgate probe reopened”, <http://iafrica.com/news/sa/939074.htm>, 3 March 2006.

¹⁵⁴ Motale S, “Is Mushwana fit for vital office?”, *The Citizen*, 24 March 2006.

¹⁵⁵ Report on the Joint Ad Hoc Committee on Economic Governance, Summary of the Auditor-General’s Submission, p. 41.

The independence and accountability of the AGSA is a critical factor in determining the credibility and effectiveness of the institution. The concept of an independent AGSA should have several principles, including the absence of government interference. The extent of independence of AGs critically affects their credibility. Many AGs in Africa are not wholly independent, but report to, and are funded by [the] Ministry of Finance, which compromises their effectiveness. However, South Africa does not experience this shortcoming. Although 'independence' implies different meanings to different African countries, it generally refers to the extent to which institutions can act autonomously, in terms of their own control over their processes and resources, as well as and human material and resource availability.¹⁵⁶

Furthermore, in the discussions around the role of the Auditor-General held in parliament:

The AGSA indicated that 'accountability' should be output, outcomes and results-based and not inputs-based as has traditionally been the case. Most African countries are grappling with public finance management and are learning from the [PFMA]. Both the PFMA and the [MFMA] are extremely ambitious and potentially effective financial management structures. The challenge in the African continent broadly is the lack of a public finance management framework. However, South Africa's specific challenge relates to the level of commitment and political will to comply with the existing legislative framework. Good financial management processes [are] the key driver to accountability.¹⁵⁷

Auditor-General's reports less informative: According to SAIIA-ISS-AIC, the Auditor-General's office produces reports in a timely way on all national departments, provincial governments and municipalities. However, the Auditor-General's office has several crucial weaknesses. While the office performs its duties in a far more timely way in comparison to the office in other African countries, its reports are extremely superficial and contain very little detailed information when compared to the work produced by much more poorly funded Auditors' General in Ghana, Kenya, Malawi and Mauritius.¹⁵⁸ While other Auditors' General make detailed public reports running to hundreds of pages listing specific information about tenders awarded outside of the legal rules, money gone missing and payments unauthorised, the South African AGSA provides only minimal information that gives no indication of who is culpable or how the error in question occurred. For example, the AGSA's report on the accounts of the Department of Provincial and Local Government 2002/03 noted only that "Fifteen payments (R4.8 million) were made in error to local authorities and is included in accounts receivable disallowed." No further explanation is offered over a large sum of missing funds.

The AGSA's office is founded on the idea that public information is a critical antidote to unaccountable individuals and institutions. However, without detailed information the public and parliament cannot fulfil their roles in pressuring for accountability.

Performance management reports and audits not completed as required: The Municipal Systems Act (section 46) requires municipalities to implement a performance management system and submit an annual report on results to the Auditor-General for audit. In 2002/03 the AGSA completed only 21 such audits and in 2003/04 completed 22 out of 284 municipalities. This is a reflection of municipalities not having set up performance management systems as required and the AGSA not having completed the audits. The AGSA did not explain why the

¹⁵⁶ Report on the Joint Ad Hoc Committee on Economic Governance, Summary of the Auditor-General's Submission, p. 39.

¹⁵⁷ Report on the Joint Ad Hoc Committee on Economic Governance, Summary of the Auditor-General's Submission, p. 41.

¹⁵⁸ The South African Institute of International Affairs has conducted in-depth analyses of fiscal governance, using the APRM methodology in Malawi, Ghana, Mauritius and Kenya in 2004-2005.

audits were not complete in his report, but noted: “It is clear that overall governance in respect of PMSs was still not satisfactory at the key municipalities during the period under review.”¹⁵⁹

Auditor-General’s reports not broadly distributed: The AGSA no longer produces a single consolidated report on issues in public finance. Instead the office issues a brief report on each provincial, local and national entity. Those bodies are supposed to include the AGSA’s reports along with their financial statements in an annual report that should be tabled in the relevant parliament, legislature or municipal council. However, many such entities file their reports late or not at all and a substantial number do not make the information readily available to the public. As a result, the AGSAs work is substantially reduced in its value and power to assist with accountability.

According to the AGSA, the office cannot provide audit reports directly to the public, but citizens must go directly to each individual entity. There are a total of 27 national departments, 111 provincial entities, 284 municipal governments and many state-owned enterprises that produce accounts subject to AGSA review. The AGSA also conducts a variety of special investigations and, where appropriate, passes information on to the relevant investigative/prosecutorial body. However, these reports are not available on the AGSA’s website. To force the media and parliament to chase every one of these documents separately is inefficient and contrary to the spirit behind having an Auditor-General.

Integrity of AGSA damaged by arms investigation: Auditor-General Shauket Fakie’s editing of the arms deal report suggested that his political loyalties superseded his constitutional mission. The final report was published after Fakie met with President Mbeki and before presenting the report to Scopa. Cape Town businessman Richard Young, MD of arms company C²I² Systems who was a losing bidder in the arms deal. Young used the Promotion of Access to Information Act (PAIA) in a protracted three-year legal battle to obtain early drafts of the JIT report from the Auditor-General’s office. These early drafts reveal that the final arms deal report was substantially edited.

According to *Business Day*, fundamental differences between the drafts and the final version included:

- the removal of strong objections from senior defence force members against purchasing more jet aircraft;
- the influential role the then Minister of Defence, the late Joe Modise played in ensuring that the R15 billion purchase of jet aircraft happened despite objections from defence department experts;
- Modise’s key role in ensuring that British-made Hawk aircraft were chosen over the substantially cheaper Italian Aermacchi MB339;
- the removal of findings that suggested substantial shortcomings in the procurement process in almost all of the product lines purchased; and

¹⁵⁹ The requirements of the Municipal Systems Act (2000) and the Municipal Finance Management Act are being phased in based on the capacity of municipalities with the high capacity municipalities required to abide by 30 June 2006, medium capacity ones by 30 June 2007 and low-capacity municipalities by 30 June 2008. Fifty municipalities are deemed high capacity by the National Treasury. The first performance management systems audits were done in 2002/03. Fakie S, “General Report of the Auditor-General on the Audit Outcomes of Local Government for the Financial Year Ended 30 June 2004”

- the inclusion of findings that affirm the integrity of the government's contracting position (for example "No evidence was found of any improper or unlawful conduct by government ... There are therefore no grounds to suggest that government's contracting position is flawed") that did not appear anywhere in the earlier draft versions.¹⁶⁰

In *Business Day*, Young was quoted: "The huge changes happened between 18-26 October 2001. The drafts had gone to the Presidency on 4 October while Fakie met with the President around 16 October."¹⁶¹

Critics accused the office of buckling under executive pressure, such as permitting reports to be amended by the cabinet before release and thus failing both parliament and the electorate. In defending his handling of the report in an interview with the *Sunday Times*, Auditor-General Shauket Fakie said all changes were initiated by the JIT.

When we looked at the message the report was giving and how it came across, we had to make some changes, not to the substance of the report but to how it came across. When Young sought a copy of the draft to determine what was cut, the Auditor-General fought the request. "I knew the kind of debate that I would be embroiled in if I issued the draft report. Every word I changed I would have to sit down and explain."¹⁶²

According to SAIIA-ISS-AICC:

The Auditor-General exists to serve the interests of the people, as represented by parliament and the very existence of the institution acknowledges the need in all democracies to hold the executive branch – the actor with control of policy and purse strings – to account. Instead of serving the interests of full disclosure and public accountability, Fakie's editorial changes to the arms deal report served only the interest of allowing the executive to escape blame for the obvious flaws in the management of the process. Although the institution is well defined in law, the arms deal incident suggests Fakie put loyalty to party and government before his constitutional duty to the public. In 2003, Scopa implicitly acknowledged the point by recommending changing the law so that that in future forensic investigations, the Auditor-General need not consult the Executive. However, the law has not been changed to date in this regard.

The Auditor-General has proved somewhat stronger in highlighting the numerous expenditure and budgetary deficiencies in government departments, particularly within provincial and local government.¹⁶³

Some departments consistently receive qualified audit reports: Home Affairs, Public Works, and Water Affairs and Forestry all received qualified reports for the four years up to 2003/04, while Correctional Services and Statistics South Africa had qualified reports for three consecutive financial years. Qualified audit reports are those where auditors lack sufficient information.

In 2003/04, eleven departments received a qualification, up from eight in the two previous financial years, which "suggests that the implementation and policies and procedures by management to satisfy the requirements of the [Public Finance Management Act] is proving difficult."¹⁶⁴

In the Eastern Cape, for example, the recommendations made by the Auditor-General were seldom implemented; particular departments such as education have received audit disclaimers

¹⁶⁰ Cohen T, "Arms-deal report cover-up", *Business Day*, 7 January 2005.

¹⁶¹ Cohen T, "Arms-deal report cover-up", *Business Day*, 7 January 2005.

¹⁶² Barron C, "Watchdog worried about our tax wastage", *Sunday Times*, 5 February 2006.

¹⁶³ SAIIA-ISS-AICC submission, p. 99.

¹⁶⁴ Fakie SA, *General Report of the Auditor-General on Audit Outcomes for the Financial Year 2003-04*, Pretoria, 8 December 2004, p. 5.

year on year for the same problems, such as the failure to submit documentation. The Auditor-General noted in reports that his queries have been raised repeatedly (since 1995 in some instances), yet no progress appears to have been made to address them by departments. (See **Governance in the Eastern Cape** at the end of **Objective 3**).

Departments do not concentrate sufficiently on performance management: President Mbeki has tried to impose delivery targets on all departments at a political level, but there is no management system to track whether spending patterns are geared to achieve these targets. The AGSA concentrated on auditing financial statements with only *ad hoc* performance audits, and noted that the financial statements he receives are not linked to progress against departmental targets:

The challenge that we face by concentrating on our auditing of financial statements is the expectation gap between the product my office delivers and the product the stakeholders require, since their focus is on service delivery. This gap in expectation will continue unless the financial statements submitted by audited entities contain information on performance measured against predetermined objectives.¹⁶⁵

Although the AGSA has,

identified the need for a shift in the scope of my reporting, [the report recognises that] extended performance information auditing cannot supersede the existing audit process.¹⁶⁶

This concern was reiterated in the 2003/04 report, which highlighted “fundamental deficiencies in the reporting on performance information in the annual reports. This includes poor linkage to budget commitments, lack of measurable objectives and lack of explanation of deviations from planned targets and outputs. Much work is required in the development of reporting in this area, if we are to achieve effective accountability around service delivery.”¹⁶⁷

Auditor-General struggles to collect revenue from local authorities: The office of the Auditor-General has difficulty in recovering audit fees from cash-strapped municipalities.¹⁶⁸

Outsourced forensic auditors lack funds to do job properly: Between 70% and 80% of forensic auditing for the AGSA’s office is done by contracted professionals.¹⁶⁹ Insufficient funding often curtails their effectiveness.

Van Vuuren noted the example where the telecommunications portfolio committee requested the AGSA to investigate the awarding of South Africa’s third cellular phone licence to Cell-C despite the bidder’s poor funding provisions.

He added:

In his final report the AGSA indicated that he was concerned by impediments created by resource constraints and the urgency and haste with which he was requested to undertake the audit (a point he raised from the outset).¹⁷⁰

¹⁶⁵ Fakie SA, *Activity report for the financial year 2002-2003*, Pretoria, 2004.

¹⁶⁶ Fakie SA, *Activity report for the financial year 2002-2003*, Pretoria, 2004.

¹⁶⁷ Fakie SA, *General Report of the Auditor-General on Audit Outcomes for the Financial Year 2003-04*, Pretoria, 8 December 2004, p. 2.

¹⁶⁸ *Country Corruption Assessment Report- South Africa*, published jointly by the South African government and United Nations Office on Drugs and Crime – Regional Office for Southern Africa (UNODC/ROSA), April 2003, p. 50.

¹⁶⁹ Van Vuuren H, *National Integrity Systems Transparency International Country Study Report Final Draft South Africa* 2005, p. 46.

¹⁷⁰ Interview with the author, September 2002. Cited in Van Vuuren *op. cit.*

The AGSA in his 2003-04 report noted that outside auditors place less emphasis on compliance with the Public Finance Management Act (PFMA) and Treasury regulations, internal audits and audit committees and asset management.

Non-Disclosure Rife in Government

After a January 2006 Auditor-General's report, ethics charges were brought against 14 cabinet ministers – including Deputy President Phumzile Mlambo-Ngcuka, according to media reports – for failing to declare directorships in private companies and closed corporations. Though the charges were later retracted after the Auditor-General admitted the database upon which the report was based was outdated, the report found a substantial number of government officials and public employees had financial interests to declare.¹⁷¹

Government employees have been asked to declare any of the following according to the Code of Conduct for Assembly and Permanent Council Members (Code of Conduct) and Chapter 3, regulation C of the Public Service Regulations, 2001:

- Shares and other financial interests in private or public companies and other corporate entities recognised by law;
- Directorships and partnerships;
- Remunerated work outside the public service;
- Consultancies and retainerships;
- Sponsorships;
- Gifts and hospitality from a source other than a family member; and
- Ownership and other interests in land and property, whether inside or outside the Republic.¹⁷²

According to the Auditor-General, more than 1,600 MECs and upper-level (SMS grade 13 or higher) were identified as directors or members in companies and close corporations. The majority of them, the Auditor-General reported, did not disclose all their interests.¹⁷³

The report also identified a total of 50,223 low-level employees – the majority of them employed in the education sector – as being directors and/or members of companies and/or close corporations.¹⁷⁴

As to whether employees were benefiting from these positions or received approval regarding these positions, the Auditor-General's investigation was hampered by two facts: the majority of departments did not have systems of control in place to manage whether employees were

¹⁷¹ Sapa, 'Premature to punish ministers', *Sunday Times*, 22 March 2006, www.sundaytimes.co.za/zones/sundaytimesNEW/topstories/topstories1143002430.aspx

¹⁷² Auditor-General, "Report on the declarations of interest by ministers, deputy ministers and government employees", January 2006, p. 5.

¹⁷³ Auditor-General, "Report on the declarations of interest by ministers, deputy ministers and government employees", January 2006, p. 7.

¹⁷⁴ Auditor-General, "Report on the declarations of interest by ministers, deputy ministers and government employees", January 2006, p. 9.

engaged in other remunerative work and the insufficient departmental responses received in the majority of instances.¹⁷⁵

All reports produced by the Auditor-General's office are tabled in parliament and addressed then by bodies such as Scopa, depending on the sector covered in the report. In this instance, however, President Mbeki himself has requested further investigation

The News Media and Freedom of Information

The APRM questionnaire alluded to the media, freedom of expression and access to information when it discussed the right of the child and in the section on corporate governance. There are no clearly defined indicators. The Declaration on Democracy, Political, Economic and Corporate Governance referred to criteria such as adopting clear codes of good governance at all levels; providing an accountable, efficient and effective civil service; ensuring an effective functioning of parliament, parliamentary committees and anti-corruption bodies; and ensuring an independent judicial system. These are all highly important requirements for good governance. However, there is no requirement for a country to foster a free and independent media.¹⁷⁶ Global experience suggests recognising Freedom of Speech is insufficient; mechanisms have to be in place to enshrine this right.

The APRM questionnaire should be revised to include specific questions on the government attitude to and the operations of the media and the legal and social environment in which it operates as the presence of a free and independent press is essential for good governance. The media's watchdog role holds society accountable and is vital to democracy.

Journalists and enlightened states maintain good governance must be subject to the unfettered presence of free and independent media that exercise a watchdog role over the conduct of governance at all levels in society. This value is implicit in findings of the European Court of Human Rights when dealing with the role of the media in society and is also contained in the Declaration of Principles of Freedom of Expression in Africa proclaimed by the African Union's African Commission on Human and Peoples' Rights on October 23 2002.¹⁷⁷ The media's role transcends all facets of governance, democratic and political, socio-economic and corporate governance but this report has chosen to include it in this section on economic management and governance.

As the South African National Editors' Forum (Sanef) and the Media Institute of Southern Africa (Misa) argued, freedom of expression, media freedom and access to information were essential adjuncts to formal democratic institutions and were therefore requisite parts of the system of democratic accountability:

Sanef and Misa believed that the right of access to information, the level of freedom of expression and, an important element in it, media freedom, are a true measure of democracy and

¹⁷⁵ Auditor-General, "Report on the declarations of interest by ministers, deputy ministers and government employees", January 2006, p. 10.

¹⁷⁶ Comment from R Louw, 20 March 2006.

¹⁷⁷ Adopted in Banjul, The Gambia, October 2002.

good governance in a society. There can be no democracy in a country that denies access to information or tramples on freedom of expression and media freedom.¹⁷⁸

Although the APRM questionnaire does not look at the media and freedom of expression, submissions from Sanef, Sanco, Misa and SAIIA-ISS-AICC touched on the subject to varying degrees. Misa went to the extent of drawing up specific questions applicable to the media that should be included in the official questionnaire.¹⁷⁹

Misa emphasised, the media played critical role as a watchdog over the government, officials, the business community and other key social players, promoting accountability and serving as a powerful instrument in the fight against corruption.¹⁸⁰

According to research by Van Vuuren, in South Africa, official government processes uncovered about 60% of corruption in state structures, civil society exposed about 18% and investigative journalism was responsible for bringing to light about 8% of state corruption.¹⁸¹ While journalism's direct contribution may seem small, the media unearth politically sensitive cases otherwise left untouched by politicians and civil society.

Misa argued "the media's role in this sphere is to ferret out instances of corruption, mal-administration and misdemeanour mostly buried, submerged or alluded to sometimes without detail."¹⁸²

An example is the latest report of the Auditor-General on cabinet ministers failing to declare to parliament their business interests where the AGSA did not mention names and the media was required to dig deeper and disclose the names - in official documentation and publicise it widely.

Percentage wise the media's role in unearthing corruption may seem small but Misa felt its contribution was significant.

The media's main task is to gather and publicise news and information – most of which emanates from public and private institutions and occurrences in public and a relatively small part of its resource, because of the costs involved, is directed at investigative journalism and the uncovering of misconduct. Such investigations by their nature also require the gathering of information from official documentation.¹⁸³

They also indicated:

If it wasn't for the media, the public at large would be ignorant of the corruption 'uncovered' by the government and civil society because these would remain hidden. One has only to observe the manner in which government and its spokespersons try to obfuscate, "spin" or even deny wrong-doing when corruption is exposed in the media to appreciate the role the media plays in publicising this material – and it should be appreciated that references in government documentation are frequently obscured and journalists have to investigate extensively to bring the material to light.¹⁸⁴

¹⁷⁸ South African National Editors' Forum (Sanef), "The South African media and the moral agency of individuals, Submission to the African Peer Review Mechanism," January 2006, p. 1 and the presentation by the Media Institute of Southern Africa (Misa) to the APRM February 2006.

¹⁷⁹ Media Institute of Southern Africa (Misa), Presentation to the African Peer Review Mechanism.

¹⁸⁰ Media Institute of Southern Africa (Misa), Presentation to the African Peer Review Mechanism, p. 4.

¹⁸¹ Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005 , p. 85.

¹⁸² Comment from R Louw, 20 March 2006.

¹⁸³ Comment from R Louw, 20 March 2006.

¹⁸⁴ Comment from R Louw, 20 March 2006.

Some government bodies operating in anti-corruption capacities – for example the NPA and the Scorpions – used media coverage to help them decide on targets or cases. Media exposure fuelled the NPA's investigations into Shaik and Zuma's involvement in aspects of the controversial arms deal, as well as allegations of rape against Zuma.

While acknowledging the media contributed to public accountability, Sanco felt the press was not always neutral in its choice of issues and treatment of allegations:

The role of the media in highlighting corruption cannot be overstated. In our information age, the media plays a significant role in setting the agenda and confirming priorities. However, as Sanco we maintain that our media has played a limited and lack-lustre role in exposing corruption in society. Media reports has reinforced a perception that corruption exists in government and a few individuals within the private sector. It is Sanco's opinion that corruption exists in South African society. Corruption is not limited to certain sectors but cuts across all sectors.¹⁸⁵

While the media rights advocacy group Reporters Without Borders rated South Africa as a beacon of press freedom in the region,¹⁸⁶ the US-based NGO Freedom House, in its annual global review of media independence, drew attention to the country's lingering apartheid-era laws that restrict access to information and compel journalists to divulge sources.¹⁸⁷ Freedom House also noted the growing sensitivity to media criticism demonstrated by the government.

The SAIIA-ISS-AICC submission said the posture of government officials and spokespersons often reflected a hostile attitude that denied or excused public service failures rather than taking them on board and energetically responding to them.

Anti-media sentiments have been expressed from the top. For example, President Thabo Mbeki wrote in the 23 August 2002 edition of the weekly electronic newsletter, *ANC Today*:

The mass media in South Africa is still shaped by the same political and economic forces which existed under apartheid. As a result it tends to reflect the interests, views and political aspirations of those who benefited from apartheid. Linked to this is the predominantly commercial nature of the media, which means that the media generally addresses itself to the affluent sections of society.¹⁸⁸

Reporters Without Borders in the 2002 *South Africa Annual Report* said despite changing demographics in the media – growing numbers of black editors and reporters, increasing black ownership of publications and broadcast media assets, the ruling party felt the press served the interest of those who benefited from apartheid and are destructively critical.¹⁸⁹

¹⁸⁵ Submission Of The South African National Civic Organisation (Sanco) To The African Peer Review Of The Republic Of South Africa," 17 January 2006, p. 12.

¹⁸⁶ Reporters Sans Frontieres, South Africa – 2003 Annual Report, <http://www.rsf.org/>

¹⁸⁷ It is perhaps worth noting that a similar ranking of countries according to degree of press freedom done by Reporters Sans Frontieres ranked South Africa 31 out of 167 countries surveyed, the third highest African country after Benin and Namibia. Reporters Sans Frontieres, Worldwide Press Freedom 2005, accessed 18 January 2006, www.rsf.org/

¹⁸⁸ Mbeki T, "Media Transformation An Essential Part of Social Change," *ANC Today*, Vol 2, No 34, 23 August 2002.

¹⁸⁹ Reporters Sans Frontieres, South Africa – 2002 Annual Report

This report quoted Minister in the Presidency Essop Pahad:¹⁹⁰

We face a situation that is almost unique in democratic countries. The ultra-majority political tendency in South Africa represented by the ANC does not have the slightest representation in the media. While reaffirming his attachment to press freedom, he denounced “irresponsible journalism” of certain publications.

Sanef disputed accusations that the media used its power and platform to drive their own agendas. They argued most of what is on the agenda for public consumption actually came from government documents.¹⁹¹

Much important information about all levels of government is never dug out by the media and reported for public consumption. The very foundation of the world’s democratic press was the reporting of government and business and many of the activities of business would also be conducted off the public stage if the media did not put them there.¹⁹²

The editors’ forum believed their adversarial role is good for social development.

Insofar as it informs the people of their rights and the government’s obligations, like pensions and grants, it can only be positive. It is difficult to see how – or why – an informed public would obstruct social development, even if they had become somewhat cynical of government’s good intentions.¹⁹³

Threats to media freedom: South Africa does not face a situation where journalists are threatened with physical harm but there is a worrying trend emerging where those with economic and political power are resorting to the courts and other forms of harassment, said Console Tleane of the Freedom of Expression Institute.

SAIIA-ISS-AICC said this not only threatened freedom of information, it also undermined journalists’ ability to uncover scandals and expose corruption.

“There are a number of defamation cases before the courts, involving papers like the *Mail & Guardian* and *Business Day* and it is smaller papers that constantly face the threats of being closed down,” said Tleane. The *Mail & Guardian* is being sued, among others, by wealthy oil trader Sandi Majali and the African National Congress over its Oilgate revelations.¹⁹⁴ (See **Public Protector**).

In May 2005, a gagging order was placed on the *Mail & Guardian* by the Johannesburg High Court when it was preparing to publish further damaging information about the Oilgate scandal. The weekly went to print, but the Oilgate story was completely blacked out on page two. This was the first time since the 1980s that the paper had been restricted in what it could publish.¹⁹⁵ But the newspaper is not taking this lying down. In January 2006 it filed a court challenge to have the Public Protector’s findings on Oilgate – in which he exonerated major political players – reversed and re-investigated.

¹⁹⁰ Reporters Sans Frontieres, South Africa – 2002 Annual Report

¹⁹¹ These documents include gazettes, reports and proceedings, particularly the reports of auditors-general, at the levels of national, provincial, district and local government and the proceedings of legislative bodies and the courts, including civil actions involving the government, and the actions of police.

¹⁹² South African National Editors’ Forum (Sanef), January 2006, p. 5.

¹⁹³ South African National Editors’ Forum (Sanef), January 2006, p. 5.

¹⁹⁴ Zvoyuya P, “SA’s Press Freedom Still Threatened”, *Mail & Guardian*, 4 November 2005.

¹⁹⁵ Wolmarans R, “Media freedom has ‘suffered major blow’”, *Mail & Guardian*, 27 May 2005.

The paper's editor Ferial Haffajee said

Mushwana tried to bury important allegations unearthed by the *Mail & Guardian*, and he smeared us in the process. A newspaper is built on little other than its credibility and reputation – Mushwana wilfully sought to damage ours. It is unusual for a newspaper to enter activist territory and legally challenge someone with whom we disagree, but we felt this is necessary to protect our own credibility and the public's right to know.¹⁹⁶

In addition, some journalists who expose crime or corruption have had their safety threatened in the past year. SAIIA-ISS-AICC noted:

- In February 2005, SABC's Mpumi Phaswa was assaulted by relatives of Joseph Zitha, the suspected leader of a criminal syndicate, after attempting to take a photograph of Zitha.¹⁹⁷
- In April 2005, a police officer threatened to beat journalist Frans van der Merwe of the *Limpopo Mirror* and *Zoutpansberger* newspapers.¹⁹⁸
- Former Beaufort West mayor Truman Prince was charged with public violence in 2005 after an alleged assault on a team from the SABC's "Special Assignment" programme. Prince was implicated in a documentary on child prostitution.

Conflicting laws: Sanef, Misa and SAIIA-ISS-AICC also noted that a variety of new and old laws remain on the books, which conflict with the constitutional guarantees of freedom of the press and speech.

The editors' forum said although they have been negotiating with government for the past nine years to have the laws scrapped no progress has been made.

Sanef said:¹⁹⁹

Concerns were first raised in a meeting with President Nelson Mandela in 1996, and his office undertook, in a letter dated November 8, 1996, "to follow up the editors' concerns regarding legislative issues that might impact on media freedom", which included Section 205 of the Criminal Procedure Act (51 of 1977) and other statutes.

The basis of the discussion is a memorandum commissioned originally by the Freedom of Expression Institute in 1989 on "Legislation Infringing Freedom of Expression: A call for amendment" by Victoria Bronstein and Solange Rosa at the Centre for Applied Legal Studies at the University of the Witwatersrand, April 2000.

They noted "Many statutory provisions that originated under apartheid and make profound incursions into the rights of freedom of expression and access to information have not been repealed in the last few years."

The statutes in contention are:

- Criminal Procedure Act 51 of 1977, sections 153, 154, 205;
- Magistrates Court Act 32 of 1944, section 5;
- Inquests Act 58 of 1959, section 10;
- Maintenance Act 23 of 1963, sections 5 and 11;
- Defence Act 44 of 1957, sections 101, 118 and 119;

¹⁹⁶ Brummer S, "M&G wants Oilgate report overturned", *Mail & Guardian*, 31 January 2006.

¹⁹⁷ Freedom House, Inc. Freedom of the Press Country Reports 2005: South Africa.
www.freedomhouse.org/template.cfm?page=16&year=2005&country=6834.

¹⁹⁸ *Ibid.*

¹⁹⁹ South African National Editors' Forum (Sanef), "The South African media and the moral agency of individuals, Submission to the African Peer Review Mechanism," January 2006, pp. 7-8.

- Armaments Development and Production Act 57 of 1968, section 11A;
- National Supplies Procurement Act 89 of 1970, sections 8, 8a and 8b;
- Petroleum Products Act 120 of 1977, section 4a;
- National Key Points Act 102 of 1980, section 10;
- Protection of Information Act 84 of 1982, sections 3, 4 and 5.

Sanef and Misa said the laws conflict with the constitutional right of access to information

Bronstein and Rosa say this list includes “only those statutes which have been identified as being of the most immediate concern” and is not exhaustive. Statutes, which conflict with the Promotion of Access to Information Act (2 of 2000), have “impliedly been repealed”, but so long as they remain on the statute books any conflict would have to be resolved on a costly, case-by-case basis. Rosa and Bernstein note that several statutes give judicial officers the discretion to hold hearings behind closed doors, exactly the kind of exclusion which media are likely to contest. The list drawn up by Bronstein and Rosa also includes a post-apartheid law, the Promotion of Equality and Prevention of Unfair Discrimination Act, which they claim, can restrict freedom of expression and of the media.

Some critics have argued that the Anti-Terrorism Bill (12 of 2003) potentially infringes both the right to publish and the right to privacy. An article on the ANC website dated November 2003 said: “True to the spirit of our Constitution, especially the Bill of Rights, the Government is now ready to transform security legislation that would protect the hard fought democracy of this country. Most importantly, though, is that this legislation will guarantee a sustained security freedom for all citizens against deliberate and organised terrorism.” It is not clear that this has happened.²⁰⁰

The language is similar to that used in America and Britain to justify anti-terrorism legislation there and there are strong views among journalists that far from protecting freedom of expression and freedom of the media this legislation imposes intolerable restrictions which have the effect of achieving the aims of terrorism.²⁰¹

Editors have expressed concerns that the legislation intrudes into personal and journalistic privacy with regard, for example, to the extraordinary powers of search, seizure, and access to telephone and e-mail records. It also poses dangers for the confidentiality of journalists' sources. There are concerns that cell phone companies may already be releasing journalists' cell phone information to intelligence agencies.²⁰²

²⁰⁰ South African National Editors' Forum (Sanef), “The South African media and the moral agency of individuals, Submission to the African Peer Review Mechanism,” January 2006, pp. 7-8.

²⁰¹ Comment from R Louw, 20 March 2006.

²⁰² South African National Editors' Forum (Sanef), “The South African media and the moral agency of individuals, Submission to the African Peer Review Mechanism,” January 2006, pp. 7-8.

Laws impeding journalists

Section 16 of the constitution asserts and protects the media in the performance of their obligations to the broader society but this provision is often ignored²⁰³ as journalists have been barred from covering certain court cases and news events.

Some examples cited by Sanef and Misa²⁰⁴

- The public and journalists were barred from the Johannesburg Magistrate's Court when former Deputy President Jacob Zuma appeared on a charge of rape, on the spurious grounds that the hearing was confidential;
- Journalists have also been excluded from provincial council and committee meetings in Mpumalanga and many local councils and metropolitan councils make all decisions in their closed committees and use the open council meetings only to endorse these decisions;
- The Ministry of Safety and Security refuses to supply crime statistics at intervals more frequent than a year and the information published is at least six months old. Journalists have been barred from riot scenes, for example in Diepsloot, and police have frequently refused to give information to journalists on various pretexts.

Misa said the expulsion of the press from offices in parliament that they occupied for 100 years and where they had ready access to parliament and parliamentarians were both unprofessional and unconstitutional.²⁰⁵ The move has resulted in the media being seriously obstructed in obtaining confidential access to parliamentarians and "off the record" information. Journalists in the new quarters some 150 metres from the parliament building say they feel "isolated."²⁰⁶

Another major complaint raised by Sanef, Misa and SAIIA-ISS-AICC was Section 205 of the Criminal Procedure Act which forces journalists to reveal their sources and give evidence in court proceeding. This law empowers the courts to imprison any person who refuses to disclose information relating to a criminal investigation.

Misa argued:

Journalists accept that Section 205 is required to enable the prosecution to summons bank clerks, revenue officials and others bound by employee oaths of secrecy to give evidence, but believe the "just excuse" not to give evidence contained in Section 189 of the Act should be applied to them so that they are not forced to reveal sources.²⁰⁷

If journalists are forced to disclose sources they are placed in the position of police informers and the public will lose its trust in journalists to protect confidential sources. Should this occur, informants seeking to protect their identity may not supply information to the media on the promise of confidentiality and an important facet of journalism, the disclosure of corruption, fraud, maladministration and other crimes, will no longer be possible thus frustrating the Constitutional duty to exercise freedom of the media and freedom of expression.²⁰⁸

It is unclear how many journalists have been subjected to hearings under Section 205 because proceedings can be held in secret.²⁰⁹ The issue only comes to the fore when journalists complain.

²⁰³ South African National Editors' Forum (Sanef), January 2006, p. 7.

²⁰⁴ South African National Editors' Forum (Sanef), January 2006, p. 7.

²⁰⁵ Media Institute of Southern Africa, Presentation to the African Peer Review Mechanism, p. 12.

²⁰⁶ Comment from R Louw, 20 March 2006.

²⁰⁷ Comment from R Louw, 20 March 2006.

²⁰⁸ Media Institute of Southern Africa, Presentation to the African Peer Review Mechanism, p. 9.

²⁰⁹ Media Institute of Southern Africa, Presentation to the African Peer Review Mechanism, p. 9.

However, some recent high profile cases include former *Sunday Times* journalist Ranjeni Munusamy and Cape Times photographer Bennie Gool.

In defence of Munusamy who was called to testify before the Hefer Commission which investigated allegations that Bulelani Ngcuka was a spy for the apartheid regime, Raymond Loiww, a member of the SA National Editors' Forum who appeared for Sanef, Misa and FXI, argued that reporters should never be made to testify as this would compromise their independence and professionalism, endanger their lives and undermine democracy. Sanef also explicitly said that it supported the principle, not the individual.

Gool refused to answer questions about his photographs on the fiery death of gangster Rashied Stagie, saying his life and those of other photographers would be in danger if they were seen to be collecting evidence for the prosecution.

Misa said a Record of Understanding was signed by Sanef, the Ministers of Justice and Safety and Security in 1992 which accepted there was:

A need to balance the interests of the maintenance of law and order and the administration of justice on the one hand with the right of freedom of expression and specifically freedom of the press and other media. The parties agreed to investigate the amending the Criminal Procedure Act.²¹⁰

However, some journalists decide on their own volition to give evidence before the courts such as Alameen Templeton a journalist from *The Star*. He gave evidence on behalf of the state in a case where an employer was accused of throwing a worker into a lions' den. Templeton did not seek permission from his editor nor inform the newspaper of his decision to testify and was suspended in 2005.

Sanef responded: "People who talk to journalists need to be assured they are talking to journalists and not extensions of the law enforcement agencies."²¹¹

Access to information legally guaranteed, but compliance lags: Enshrined in the constitution and the Promotion of Access to Information Act (PAIA) (Act 2 of 2000), the protection and promotion of access to information in South Africa has come a considerable distance since the days of apartheid. However, there remain obstacles and potential threats to freedom of speech. Procedures under PAIA are tedious and time consuming.²¹² There is poor awareness of and compliance with PAIA across a range of government entities, as well as private companies who are also obliged by PAIA to reveal information.

Other laws potentially undermine free speech: Van Vuuren cites several laws that potentially limit and threaten freedom of expression:²¹³

- The **Interception and Monitoring Bill (Bill 50-2001)** (not yet in force) enables the monitoring of journalists' communications by the state or employers under certain conditions. This law may eventually be tested in the Constitutional Court should it be found to be in conflict with the right to privacy as contained in the Bill of Rights (Chapter 2 of the constitution).

²¹⁰ Media Institute of Southern Africa, Presentation to the African Peer Review Mechanism, p. 9.

²¹¹ www.sanef.org.za

²¹² Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005, p. 82.

²¹³ Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005, p. 83.

- The **Protection of Information Act (84 of 1982)** is a remnant of apartheid, and is regularly used by the state to prevent the media from accessing information that may be pertinent to the public, according to NGOs such as FXI.²¹⁴ This occurs despite the act being in many ways directly contrary to the Promotion of Access to Information Act (PAIA).
- **Section 205 of the Criminal Procedure Act (51 of 1977)** empowers courts to subpoena witnesses to give evidence without allowing any form of qualified privilege to journalists. It is now the subject of a Constitutional Court challenge.²¹⁵ (See **laws which impede journalists**)
- The **Protection of Constitutional Democracy against Terrorism and Related Activities Act** will restrict coverage and therefore the public's right to know, and also put unprecedented legal pressure on journalists to reveal sources. After NGOs and Cosatu objected to sections of the original bill, many controversial clauses were dropped but the ones that journalists object to remain.

Access to information and Administrative Justice: A variety of submissions argued that two key concepts are necessary supports to democratic accountability: the right of access to information held by government and the right of citizens who are subject to unfavourable decisions by a government body to know the reasons why. The latter is enshrined in the Promotion of Administrative Justice Act (PAJA) and the former is incorporated in the Access to Information Act. SAIIA-ISS-AICC, Sanef, Black Sash, Idasa, Odac and Misa all discussed these matters and expressed very similar views about the importance of the laws and the conclusion that, although the laws are valuable, a wide variety of government departments fail to uphold the law or resist providing information. In a study of government responses to requests for information, Odac found that about two-thirds received no reply at all, either positive or negative. When responses do come they are often extremely slow or partial.

Such conclusions were also affirmed by the PSC:

Another important piece of legislation protecting citizens and ensuring fairness is the Promotion of Access to Information Act of 2000 that grants citizens the right of access to information held by the state. The Human Rights Commission, whose ambit the monitoring of the implementation of this Act falls, is currently faced with serious problems of non-compliance by government departments with this Act.²¹⁶

The PSC added:

Recent media reports show a lack of understanding by the public and officials of the legal framework and guidelines for whistleblowing. This gives rise to an urgent need for education and awareness-raising.

To help public sector managers support accountability and implement the Protected Disclosures Act of 2000, an easy to read guide on whistleblowing has been created.²¹⁷

Sanef noted that the public right to information is reinforced by Section 32 of the Constitution.²¹⁸

²¹⁴ Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005, p. 83.

²¹⁵ Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005, p. 83.

²¹⁶ Public Service Commission, *State of the Public Service Report 2005*, p.30.

²¹⁷ PSC, "Whistleblowing: A guide for public sector managers promoting public sector accountability implementing the protected disclosures act", 2004 as cited in the "State of the Public Service Report 2005"

²¹⁸ South African National Editors' Forum (Sanef), "The South African media and the moral agency of individuals, Submission to the African Peer Review Mechanism," January 2006, p. 6.

32 (1) Everyone had the right of access to –

(a) any information held by the state; and

(b) any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

Sanef noted the importance of the access to information laws, but, like the Black Sash, Misa, Odac and SAIIA-ISS-AICC, said that government was often not supportive of the law:

Although the South African Constitution guarantees media freedom, free access to information held by the state and freedom of expression and South Africa has subscribed to a number of regional and international protocols to this effect, the performance of our ministers, politicians and civil servants in carrying out these principles is highly variable and requires urgent corrective attention by the government.²¹⁹

Misa noted with concern that the Access to Information law is not being upheld by government and that in some cases it is being used to make even slower the exchange of information to the media because some departments say that the media must file access to information requests rather than the customary press inquiries:

The Promotion of Access to Information Act is in force to enable information to be supplied by public bodies – but the application of this legislation leaves much to be desired. Government departments are frequently reluctant to provide information in terms of the Act and delay handing it over. There are also indications that officials demand that questions – which would normally be answered as part of the general question and answer process that occurs daily between media and government officials — must be framed in terms of the Act which has the effect of delaying the supply of the information and possibly rendering it out of date.²²⁰

The SAIIA-ISS-AICC submission said:

Access to Information Legally Guaranteed, But Compliance Lags: Enshrined in the constitution and the Promotion of Access to Information Act (PAIA) (Act 2 of 2000), the protection and promotion of access to information in South Africa has come a considerable distance since the days of apartheid. However, there remain obstacles and potential threats to freedom of speech. Procedures under PAIA are tedious and time consuming.²²¹ There is poor awareness of and compliance with PAIA across a range of government entities, as well as private companies who are also obliged by PAIA to reveal information.²²²

As it offered the most comprehensive analysis, this report quotes here extensively from Odac, which specialises in advocacy on access to information law. Its submission noted:²²³

The Promotion of Access to Information Act (PAIA) was approved by Parliament in February 2000 and went into effect in March 2001.²²⁴ It implements the constitutional right of access and is intended to “Foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to

²¹⁹ South African National Editors’ Forum (Sanef), “The South African media and the moral agency of individuals, Submission to the African Peer Review Mechanism,” January 2006, p. 9.

²²⁰ South African Chapter, Media Institute of Southern Africa (Misa), “Representation To The African Peer Review Mechanism on conditions which contribute to or detract from good political governance by the South African Government”, p. 8.

²²¹ Van Vuuren H, Transparency International Country Study Report Final Draft South Africa 2005 , p. 82.

²²² SAIIA-ISS-AICC submission, p. 108.

²²³ Odac, “The State of Whistleblowing and Access to Information in South Africa” a submission to the SA APRM, p. 4.

²²⁴ Promotion of Access to Information Act, Act 2 of 2000. <http://www.gov.za/gazette/acts/2000/a2-00.pdf> . For a detailed analysis of the Act, see Currie and Klaaren, The Promotion of Access to Information Act Commentary (Siber Ink 2002).

information” and “Actively promote a society in which the people of South Africa have effective access to information to enable them to fully exercise and protect all of their rights.”

Under the Act, any person can demand records from government bodies without showing a reason. State bodies currently have 30 days to respond (reduced from 60 days before March 2003 and 90 days before March 2002).

The Act also includes a unique provision, required by the Constitution, that allows individuals and government bodies to access records held by private bodies when it is necessary to enforce people's rights. Private bodies are also required to respond within 30 days ... South Africa's access to information legislation is exemplary, and has been called “the gold standard” for such legislation. It is Odac's position that the Act itself is adequate and appropriate to the South African circumstances, although there is a strong need for the Parliamentary Rules Board to finalise rules for the use of the Act. In particular, there is an urgent need for an adjudication system allowing a more rapid, accessible and inexpensive resolution to contested decisions to withhold release of records. This is addressed further in the following section.

In the absence of the necessary rules, applicants for information held by public bodies are restricted in their right of appeal to the same body that refused access, followed by appeal to the High Court. This is an extremely expensive and lengthy process that is out of the reach of the vast majority of South Africans. In addition, Odac's monitoring exercise, described in greater detail below, suggests that the internal appeal process currently mandated by the Act very seldom results in a changed outcome, indicating the value of an independent appeals mechanism.

The South African History Archive (SAHA), an NGO engaged in access to information work, has commented on this obstacle:

“The single most cited complaint about the implementation of PAIA is the lack of a cheap, accessible, quick, effective and authoritative mechanism for resolving dispute under the Act. What is sought is a forum which can be accessed after refusal of a request by a public or private body or rejection of internal appeal against refusal of a request by a public body, but before resort to court action.”²²⁵

Odac supports this conclusion.

The South African Human Rights Commission (SAHRC) assumes primary responsibility for oversight of PAIA, particularly reporting on implementation and usage of the Act.

SAHRC is required to publish an annual report to the National Assembly on PAIA and the implementation of the Act. SAHRC is responsible for conducting outreach to public departments to educate public servants about their duties under the Act, as well as reaching out to private bodies. SAHRC is also responsible for compiling the PAIA manuals of public and private bodies required under Section 32 of the Act, and publishing statistics on the use of the Act annually.

SAHRC has expressed concern over the manner in which public bodies have treated their obligations to submit reports detailing their implementation of PAIA in each annual reporting period.

During the previous reporting period (2002 – 2003), the Unit experienced difficulties in obtaining the section 32 reports from information officers. The Commission placed reminders on the Commission's website but there was no significant response. At a cost of R80,000, the Commission placed advertisements in four leading newspapers reminding information commissioners to submit the reports. As a last resort, the Commission wrote to the Office of the President, the Speaker of Parliament and the Minister of Justice. The Minister of Justice acknowledged receipt of the letter and subsequently wrote to Director Generals of various government departments requesting them to submit their reports. Following the Minister's letter, the Commission received reports from some public bodies, but not all responded.²²⁶

These difficulties have persisted.

In the most recently reported period, SAHRC received about 20 reports by the original due date, from more than 800 public bodies. Following an email to all information officers, 13 additional reports were received. Further

²²⁵ Esarbica Journal, Vol. 22 (2003), p. 51.

²²⁶ SAHRC Annual Report, April 2003 – March 2004, p. 101.

intervention by the Minister of Justice, the Office of the President and other prominent public offices succeeded in bringing the number of reports received up to 46, 16 fewer reports than from the previous reporting period.

SAHRC must take more robust action to ensure that public bodies take their obligations under PAIA seriously, including reporting obligations. Without diligent reporting by public bodies it is impossible to assess the implementation of the Act and its impact on South African democracy and society. Such action by SAHRC could include outreach to public bodies in the form of training in the provisions of PAIA.

The Department of Justice is responsible for the legislative aspects of PAIA, including rules, regulations and amendments. It is the Department's responsibility to consult with stakeholders on obstacles to PAIA's successful realisation of the right of Access to Information.

Odac has undertaken a monitoring study of implementation of PAIA during 2003, during which Odac monitored 100 information requests submitted by a diverse group of requesters. Of these requests, only 23% resulted in disclosure of the desired information, while just over half of the requests received no response from the relevant public body. These results are analyzed in greater detail below.

The study identified major challenges to implementation both in submitting requests and in getting responses to requests for information. Under the Act, information officers are required to assist individuals who are unable to make written requests by translating an oral request into written on the prescribed form, providing a copy to the requestor. However Odac's study found that 70% of oral requests could not be submitted, while a further 10% were given oral refusals. In particular, blind and illiterate requesters experienced severe obstacles in making requests. Though some departments, including the Premier of the Eastern Cape and the Department of the Defence displayed some commitment to assisting disadvantaged requesters, the study concluded that "PAIA is inaccessible for the illiterate."

One of the greatest obstacles in South Africa to the right of Access to Information is the problem of "mute refusals," the monitoring term for requests for information that do not receive a positive or negative response during the appropriate time frame. 62% or nearly two thirds of requests submitted received no response, with occasional responses after the prescribed period of 30 days. It should be noted that the period of 30 days is considerably longer than the average response period allowed by most Access to Information legislation internationally. A longer timeframe for requests is therefore not appropriate or justified.

The problem of mute refusals has been documented by Odac in its own work and in previous studies. The Department of Justice itself took 8 months to respond to a request for its legally-required information manual. There is also evidence that responses to requests for information are politically influenced, with requesters perceived as being capable to criticise the government more likely to have their requests refused or ignored.

In part, this failure of implementation appears to be due to a lack of adequate training in the Act and lack of guidance by the SAHRC. However, the lack of a rapid, inexpensive, authoritative and effective dispute resolution mechanism has prevented the development of a useful body of practice around interpretation of the Act. This in turn has hindered the establishment of good practice and higher standards of responsiveness.

Administrative Justice: Research indicated that compliance by departments with the provisions of the Promotion of Administrative Justice Act of 2000, "is almost uniformly disappointing." Few have provided training on the matter – even though it is required by the statute.²²⁷

The Black Sash, which conducts education on administrative justice issues and assists citizens in seeking administrative justice when services are denied, noted poor compliance with the Promotion of Administrative Justice law, that much greater education of the public and civil service would be required to realise the law's goals and that mechanisms to enforce compliance on reluctant officials were ineffective.²²⁸

²²⁷ Public Service Commission, *State of Public Service Report 2005*, p. 30.

²²⁸ Black Sash, "The Black Sash Submission to the Joint Ad-hoc Committees on Socio-Economic Development and Economic Governance of the African Peer Review Mechanism", November 2005, p. 11.

One of the most important pieces of legislation for which the Black Sash lobbied was the Promotion of Administrative Justice Act of 2000 (PAJA). PAJA asserts, following the Constitution that “Everyone has the right to administrative action which is lawful, reasonable and procedurally fair ... and anyone whose rights to administrative justice have been adversely affected by administrative action has the right to be given written reasons.” This Act, a crucial achievement, establishes a framework for fair administrative action by all Government Departments.

PAJA and the Access to Information Act of 2000 (PAIA) remain the backbone of the development towards open and transparent governance. Currently both these acts and the mechanisms contained within them are tested due to high cost litigation taking place against Government and the roles of the court bordering on that of service delivery agent.

The Black Sash believes that the ineffective delivery of services, such as experienced by clients who visit our Advice Offices, is a serious infringement of basic human rights. While the policies and infrastructure may be in place to deliver a range of social grants within the Department of Home Affairs and Social Development, there is concern that the poor delivery is failing large numbers of poor people entitled to support under the law.

We know that many officials work hard to apply the principles of Batho Pele, but the advice offices continues to encounter inefficiency, incompetence, unwillingness or dishonesty in our systems. Consequently, many of the cases brought to the Black Sash are rooted in the denial of the right of clients to procedurally fair administrative action.

This generally happens in four ways:

- The official fails to decide on the eligibility of the grant applicant within the 90 days prescribed by the Department’s Norms and Standards;
- Grants are cancelled without notice or reason,
- An unsuccessful applicant is not given reasons,
- The right to appeal is not granted.

Misa recommended:

- South Africa should review legislation which can be used to censor or restrict the media in carrying out its duties or people wishing to exercise freedom of expression.
- Officials should be trained in the principles of the constitution which apply to the media and people’s freedom of expression.
- The criteria for APRM assessment must be amended to include a section in the questionnaire that will elicit the extent to which a government fosters a free and independent media.

Question 2: What is the prevalence of money-laundering in your country?

Summary of responses to Objective 4, Question 2

- Submissions noted that South Africa should do everything in its power to deal with money laundering. The key piece of legislation was the Financial Intelligence Centre Act (Fica) collects information and makes it available to agencies, such as the police, which can act on it.
- Chamsa, however, said that the act places burdens on business. The time taken to complete the various processes, such as winding up estates, adds costs to business.
- Fica, and measures to combat money laundering generally, also faces challenges since South Africa has a large informal sector and a predominantly cash economy. The National Treasury said that there were problems relating to skills and experience to investigate and deal with money laundering.

Money-laundering is the processing of criminal proceeds in order to disguise their illegal origins – laundering dirty money into clean money. While relatively few APRM submissions looked explicitly at money-laundering, those that did agreed that South Africa should make every attempt to fight money-laundering, tighten legislation and enforce those laws. “Money-laundering is a problem for which the solution is to ensure national action and international co-operation,” said the government submission.²²⁹

According to the National Treasury:

South Africa’s legislative framework to combat money-laundering consists of the Prevention of Organised Crime Act, Act No. 121 of 1998 (the POC Act), the Financial Intelligence Centre Act, Act No. 38 of 2001 (the FIC Act) and Protection of Constitutional Democracy Against Terrorist and Related Activities Act, Act No. 33 of 2004 (“the POCDATARA Act”).²³⁰

The Financial Intelligence Centre (FIC) was established in February 2002 under the Financial Intelligence Centre Act (Fica of 2001), which also set up South Africa’s regulatory anti-money-laundering regime.

The National Treasury said Fica imposed certain obligations on a wide range of financial and non-financial “accountable institutions” vulnerable to be used for money-laundering. These obligations entail, amongst other things, identifying customers; record-keeping; reporting certain information; and implementing internal rules and training to ensure compliance with these obligations.²³¹

²²⁹ Consolidated APRM 2nd draft p. 41.

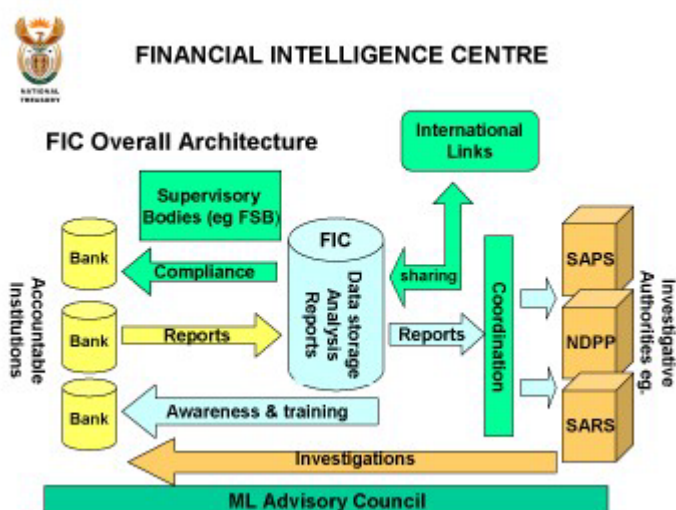
²³⁰ National Treasury: An input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 25.

²³¹ National Treasury: An input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 25.

They added:

The FIC started functioning in February 2003 and has since then referred a number of matters for investigation by law enforcement agencies. Investigations into these matters are still pending and may lead to charges of money-laundering. However, no information on these investigations is currently available.²³²

The centre does not actually investigate nor prosecute money-laundering. Instead, it facilitates such actions by making the information it collects available to investigating authorities like the SAPS, the NPA through the DSO, the AFU; intelligence services; and SARS. Efforts at cross-border co-operation have also been undertaken as embodied in the Eastern and Southern Africa Anti-Money-laundering Group. In keeping with this spirit, the FIC also disseminates information to counterpart bodies in other countries. Hence, the centre has become a repository of information as well as playing a part in co-ordinating policy aimed towards strengthening South Africa's anti-money-laundering regime.²³³



Source: www.fic.gov.za/

Challenges for the FIC: The FIC seems to be adequately structured, funded, staffed, and provided with the necessary resources to combat money-laundering. Yet the South African context brings with it its own challenges in fighting this type of financial crime – the predominantly cash economy, large informal sector and the international dimensions of money-laundering.²³⁴ In addition to these contextual constraints, the centre is hampered by a lack of public awareness surrounding money-laundering. Twenty-six of 33 auditors surveyed were aware of anti-money-laundering measures. However, when asked to name the measures provided for in the legislation, they cited a diverse list with rarely one reply the same as the other. It should be

²³² National Treasury: An input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 25.

²³³ Financial Intelligence Centre Web Site, www.fic.gov.za/.

²³⁴ Standing A and H van Vuuren, "The Role of Auditors: Research into Organised Crime and Money-laundering", Institute for Security Studies, Occasional Paper 73, May 2003.

noted that seven were completely unaware of any measures by the state to combat money-laundering.²³⁵

Checks and balances are onerous: Chamsa said, the Fica provisions add a great additional administration burden on financial and legal institutions. The legal fraternity has advised that as result of this Act, the cost of their services where financial transfers take place have increased significantly. The time taken for processes, such as the winding up of deceased estates, has also increased substantially, adding to their costs.²³⁶

The Western Cape said:

If South Africa does not tighten its legislative framework in an attempt to fight money-laundering, the country has the potential to become one of the top money-laundering centres globally. One of the disadvantages of developing countries like South Africa is their vulnerability to attract money-laundering activities; this is further exposed with the country's adopted approach to liberalising markets and thus integrating South Africa financial market into global markets. In response to this, South Africa adopted and implemented some of the legislations that seek to curb and prevent money-laundering.²³⁷

There is also the potential to abuse anti-money-laundering laws to infringe on civil liberties. Chamsa's submission said:

The Interception and Monitoring of Communications Act makes it illegal for an employer to read emails and to record telephone conversations of employees without their consent, yet government intends to legalise phone tapping, albeit through a court order, in order to combat money-laundering. Business sees an inconsistency in this action, and pleads for moderation in actions taken to address the serious issue of money-laundering.²³⁸

The National Treasury cited skills deficiencies and inexperience as major challenges to combating money-laundering:

This applies to all areas of the Anti-Money-laundering/Counter Financing for Terrorism from a shortage of skills and experience to investigate and prosecute money-laundering offences, to a shortage of skills and experience to implement various parts of the legislation within the accountable institutions. An additional challenge concerning the implementation of the legislation is that the current measures for its enforcement by supervisory bodies are inadequate.²³⁹

There was also the view from Chamsa that whatever restrictions are put in place, those intent on carrying out money-laundering activities will find a way around it and those persons who are law abiding are the ones penalised.²⁴⁰

²³⁵ Standing A and H van Vuuren, "The Role of Auditors: Research into Organised Crime and Money-laundering", Institute for Security Studies, Occasional Paper 73, May 2003.

²³⁶ Parliament: *Report of the Joint Ad Hoc Committee on Economic Governance and Management: a response to the African peer review mechanism questionnaire*, 2006, p. 31.

²³⁷ Western Cape Province, p. 66.

²³⁸ Parliament: *Report of the Joint Ad Hoc Committee on Economic Governance and Management: a response to the African peer review mechanism questionnaire*, 2006, p. 31.

²³⁹ National Treasury: An input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, p. 25.

²⁴⁰ Parliament: *Report of the Joint Ad Hoc Committee on Economic Governance and Management: a response to the African peer review mechanism questionnaire*, 2006, p. 31.

Drug Trafficking and Money-laundering Interlinked

The drug market in South Africa is the largest in the sub-region. More than 100 syndicates are known to be active in the drug trafficking industry in South Africa. Most appear to launder their profits locally in the acquisition of motor vehicles, legitimate businesses, front companies and residential properties, ISS said.

Dagga (marijuana) and mandrax (methaqualone) sales feature prominently among the sources of illegal funds, but they are by no means the only ones familiar to crime syndicates. Significant sums are also generated from sales of cocaine, heroin and ecstasy. Since the early 1980s the drug industry has been known to influence trends in ‘downstream’ crimes, notably vehicle theft, smuggling, corruption, housebreaking, armed robbery and murder.²⁴¹

They also noted:

Money-laundering in South Africa may also be precipitated by activities such as trafficking in resources such as abalone, human trafficking, *hawala* currency transfers.

The South African context may also be ripe for money-laundering in terms of migrant communities present in country who often have “no recourse to the financial institutions and are regularly in violation of currency movement control laws.”²⁴²

²⁴¹ Goredema C, ‘Money-laundering in Southern Africa: Incidence, magnitude and prospects for its control’, *Institute for Security Studies Paper 92*, October 2004, p. 3.

²⁴²

Recommendations for Objective 4

- Toughen the government stance on corruption. The Auditor-General's office felt that it should send an unambiguous message that there would be zero tolerance for corruption. (AG) Other submissions implicitly supported this, saying that public acceptance of corruption was allowing it to thrive. South Africa needed high moral standards.
- Distinguish corruption from financial mismanagement, such as irregular expenditure. This is particularly important in quantifying the incidence of corruption in the public sector.²⁴³ (Parliament)
- Initiate, at Statistics South Africa, the collection of statistics on economic crime, including corruption. (Parliament)
- Create a dedicated independent anti-corruption agency with ample funding, the powers to investigate, subpoena and prosecute and with a careful appointment process to ensure that it is staffed with people willing to challenge politically or economically powerful institutions. (SAIIA-ISS-AICC and Sangoco)
- Consider and debate whether it would be better for South Africa to have a single anti-corruption body (which might be more focussed and strategic in its efforts, and also possibly in a stronger position to lobby for resources), or several bodies, with different briefs (which might enable the development of more highly specialised skills).
- Improve the protection of whistleblowers under the Protected Disclosures Act and make sure that corrupt officials are appropriately penalised. In addition, the concept of "whistleblower" needs to be defined and further clarified in the Act. (Parliament) It may be necessary to widen the ambit of the Act to include a broader category of people including contractors - many whistleblowers are not in formal employer/employee relationships. Other considerations involve extending the damages that may be awarded where a loss was suffered; allowing a remedy in the case of so-called "citizen's whistleblowing," where a whistleblower requires the protection of the law; and protecting the whistleblower against defamation actions, and actions in terms of the Public Service Regulations, by which whistleblowers are censured for release of information that was not authorised or for bringing their departments into disrepute. The South African Law Reform Commission is investigating these issues. (Odac)
- Hold corporations to account through stronger civic activism. As Sangoco put it, "civil society groups – unions and NGO's – must engage more in the business sector and consider ways of advancing a culture of stake-holder and share-holder activism in companies. It is our view that the lack of activism is a contributory factor in mal-governance in the corporate world, where corruption, bribery and greedy incomes inequality prevails."²⁴⁴ (Sanco/Sangoco)
- Introduce stronger corporate governance, broader civic consultation over major government tenders that would help curtail opportunities for corruption, and swifter disciplinary procedures against public officials who transgress. (Sanco)

²⁴³ Parliament Consolidated Executive Summary, p. 19.

²⁴⁴ Sangoco, "Sangoco and the APRM : a submission to the South African process", 6 March 2006, p. 28.

- Civil society needs to be vocal and advocate action against mismanagement and misappropriation of public funds. It needs to report and be vocal against any corruption by reporting it to the relevant agencies when they experience it. Civil society should also encourage “community and political support and vigorously promote the work of the National Anti Corruption Forum (NACF).” Sangoco remarks that “an influential vehicle in the fight against corruption is urgently needed.”²⁴⁵ (Sangoco; Disability)
- Provide funding for civil society anti-corruption work. Government domination of foreign aid funds deprives civil society of resources. Sangoco noted that funding of civil society work fighting corruption should be seen as an investment in more effective government: “Investment in anti-corruption activities, if these are well thought through and strategies implemented, almost always results in cost recovery and the state should see anti-corruption work in this light. Greater investment by the state (taking into account that it is already the source of the majority of funding for anti-corruption activity) will also ensure that there can be greater public accountability for the use of resources, which is difficult to ensure when the state uses donor funds for this purpose.”²⁴⁶ (Sangoco)
- Regulate private donations to political parties. The means proposed for accomplishing this varied. Sangoco suggested that a central fund could be established which would receive donations and pass them on to parties. This would break the link between donor and political parties. (Sangoco) Idasa and the SAIIA-ISS-AICC submission called for the full disclosure of all domestic and foreign funding to political parties.
- Enforce ethics codes and wealth declarations with much stiffer penalties for failure to disclose business interests or conflicts of interest. The register of the wealth and interests of members of parliament, the executive and civil servants should be made fully public and accessible to the media. (Sangoco/SAIIA-ISS-AICC)
- Introduce laws to prohibit government stakeholders and officials leaving government service and going into the employ of firms the officials had been involved in regulating. To allow officials to leave the public service and immediately go into lucrative private sector jobs is to leave open a significant door to corruption, as officials can be paid off for favourable policy decisions with employment. (Idasa/Sangoco)
- Adopt the Transparency International Integrity Pact “which has been successfully implemented in numerous developing and developed countries, attempts to bind governments and businesses in a legal agreement to ensure that procurement processes are corruption free. This requires all companies tendering for a public contract to sign an agreement – together with the government/public sector agency – that provides that should any party pay a bribe it would be automatically excluded from the contract and certain penalties will be imposed. An important aspect is that civil society would monitor the implementation of this agreement.”²⁴⁷ (Sangoco)

²⁴⁵ Sangoco submission, p. 13.

²⁴⁶ Ibid., p. 26.

²⁴⁷ Ibid., p. 25.

- Develop protocols (between government, labour, business, civil society and other relevant stakeholders) governing business behaviour in foreign countries.²⁴⁸
- More aggressive demands should be made by the SA Human Rights Commission, which is responsible for monitoring the Public Access to Information Act, for government bodies to produce annual reports on the implementation of the act. (Odac)
- Create an accessible, cost-effective, efficient dispute-resolution body to adjudicate disputed requests for information when government departments or public bodies deny the public requested information or decline to answer the public at all. (Odac)
- Undertake an independent investigation to identify obstacles to implementation of the PAIA and recommend strategies for overcoming these obstacles. The Public Protector should do this. The recommendations he makes could then form the basis for a renewed implementation strategy by the SAHRC. The SAHRC was regarded as having failed in responsibility to implement the act.(Odac)
- Amend the PAIA to exempt small businesses from the responsibility to compile information manuals. Repeated deferral of the due date of manuals for different bodies undermines the PAIA regime and public respect for the Act. Smaller private bodies with a staff of fewer than 50 people and an annual turnover of above R2 million in some sectors are exempt from compiling the manual for a period of five years until 31 December 2011. (Odac)
- Modify the procedures for resolution of disputes over access to information to ensure that they are more accessible, cheap and effective than is currently the case, through the creation of an Information Ombud. An Information Ombud Office with a mandate to make recommendations or rulings on any access to information disputes set before it offers the greatest gains in impartiality, cost-efficiency and responsiveness. (Odac)
- Examine the provisions in the PAIA that deal with appeals. The PAIA requires that a requester that has been denied information by a public body must appeal to the same body before taking any other action seeking the release of the information. If this is unsuccessful, the requester may take the issue to the High Court. This is an expensive and cumbersome process that curtails the right of access to information. (Odac) The refusal to give access to information (in terms of the PAIA) should also be subject to the Promotion of Administrative Justice Act (PAJA) of 2000. Decisions under PAIA are exempted from the PAJA requirements that reasons must be given for administrative decisions. In order fully to realise the right of Access to Information, requesters must be able to demand reasons for any denial of access, allowing them to refine requests or request other records that may serve their purposes. Refusing a request for information under PAIA must, by law, be based in a given exemption under PAIA, and requesters have a right to know which exemption has resulted in their refusal.

²⁴⁸ Report of the Joint ad hoc Committee on Economic Governance and Management – A response to the African Peer Review Questionnaire, p. 35.

Objective 5: Accelerate regional integration by participating in the harmonisation of monetary, trade and investment policies

The Positive Case: Accelerating Integration, Increasing Trade

The dti: Since the demise of apartheid, South Africa had demonstrated considerable commitment towards regional and economic integration¹ and “a sound policy framework exists within the country for the promotion of regional integration.”²

The Business Sector: Chamsa supported the country’s efforts and called on government to continue strengthening and accelerating regional integration, seeing considerable economic gains.³

UN Conference on Trade and Development: South Africa is counted among the five top foreign investors in Africa, which also include France, the Netherlands, the United Kingdom and the United States. Together these five countries accounted for over half of the total flows to the region in 2004.⁴

The provinces: The country played a leading role on Nepad and regional integration and trade agreements added to investment and created more jobs, the Northern Cape noted.⁵

Given its economic interests in Africa, it is not surprising that South Africa has been one of the most active promoters and drivers of the New Partnership for Africa's Development (Nepad), an initiative that focuses on strengthening and improving governance and enhancing economic development on the African continent.

Continental integration and trade must be carefully managed: Expanding regional integration and trade must be carefully managed, planned and executed. South Africa’s size relative to the region means its involvement in these processes is pivotal to their significance and success. As the Western Cape put it, “South Africa cannot become an island of opulence in a sea of poverty”,⁶ and the South African NGO Coalition said integration with the region must be conducted on terms of “solidarity” and to the benefit of all.⁷

Expansion at the cost of local industries: Regional integration and expanded trade should also not compromise the country’s own commercial enterprises. Cosatu argued trade policy should ensure sufficient protection for domestic markets combined with steps to improve competitiveness⁸ and the Northern Cape encouraged government to employ more protectionist measures to safeguard industries vital to the domestic economy, such as clothing.⁹

¹ The Department of Trade and Industry’s responses to Economic Governance, p. 2.

² *Ibid.*

³ Chamsa’s submission on Parliament’s process and response to its self-assessment on the African Peer Review Mechanism, p. 6.

⁴ UN Conference on Trade and Development (UNCTAD), *World Investment Report 2005: Transnational Corporations and the Internationalisation of R&D*, New York: UNCTAD, 2005, pp. xxii.

⁵ Northern Cape, African Peer Review Mechanism Content Report, p. 10.

⁶ Western Cape Province, African Peer Review Mechanism: Final Report, p. 67.

⁷ Sangoco submission, p. 2.

⁸ Cosatu, p. 14.

⁹ Northern Cape, African Peer Review Mechanism Content Report, p. 10.

Accusations of trade growing at expense of neighbours: South Africa's competitive strengths and trade supremacy vis-à-vis many African countries have been sources of considerable discontent. Accusations that South Africa is too dominant and protectionist, and that it acts as a "big brother"¹⁰ rather than a partner in development, are not uncommon.

The Western Cape acknowledged this:

Currently, South African exports dominate the regional market with fewer imports from the region entering into the South Africa market. This could be interpreted as inequity in regional trade and if it continues unaltered South Africa's image could be tainted as a dominant force (another "America in Africa").¹¹

In light of this perception, parliament called for an assessment of potential negative impacts of South Africa's trade with African countries,¹² and the Western Cape felt the country needed to "institute equitable trade policy regimes as this will support broader economic growth and development in the region."¹³

Of the five objectives in the economic governance and management thematic area of the APRM, Objective 5 – accelerating regional integration by participating in the harmonisation of monetary, trade and investment policies – attracted the fewest submissions. The main inputs came from the Department of Trade and Industry (the dti), Business Unity South Africa (Busa), parliament, the Department of Foreign Affairs (DFA), and Chambers of Commerce and Industry South Africa (Chamsa). Submissions from the South African left did not deal extensively with trade and regional integration, although Sangoco and Cosatu briefly mentioned it. Given the small number of submissions, supplementary material was included under this objective.

¹⁰ North West submission, p. 10.

¹¹ Western Cape submission, p. 67.

¹² Report of the Joint ad hoc Committee on Economic Governance and Management – A response to the African Peer Review Mechanism Questionnaire, p. 31.

¹³ Western Cape submission, p. 67.

Question 1: Is South Africa a member of any regional economic arrangement and what are the benefits and challenges of such membership?

Summary of responses to Objective 5, Question 1

South Africa places great emphasis on its foreign relations, and is a vigorous proponent of multilateralism. It has trade deals with the US, EU and SADC, and is active in international forums. Busa states that “there is no doubt that these achievements have contributed to a more sustainable and higher economic growth platform.”

South Africa’s involvement in the following bodies was discussed in the submissions:

- Southern African Development Community: this links a group of southern African countries and strives to promote sustainable development. A trade protocol has been signed and ratified, and aims to attain sustainable economic growth through industrialisation. It aims to become a free trade area by 2008, a customs union by 2010, and a common market by 2012.
- Southern African Customs Union: Sacu is a customs union between Botswana, Lesotho, Namibia, South Africa and Swaziland. It has traditionally concentrated on the sharing of revenue from customs and excise duties, although it has recently begun to place importance on the harmonisation of policies. Some trade experts regard Sacu as the core from which to integrate into the world economy. A problem exists here, as Sacu may have to conclude agreements with other states on issues it has not yet resolved internally.
- The Indian Ocean Rim-Association for Regional Co-operation: This group consists of states that border the Indian Ocean. Its goal is sustainable growth and balanced development throughout the region; economic co-operation; and trade liberalisation among its members.
- The limitations and difficulties which these bodies face include the fact that some states belong to multiple organisations (the membership of more than one customs union is problematic); slow implementation of protocols; and differing approaches to African problems by different states and also between different government departments (such as South Africa’s Department of Trade and Industry and Department of Foreign Affairs).

Strong focus on foreign relations, trade and regional integration: South Africa places a great deal of emphasis on its foreign relations, and is a strong supporter of multilateralism.

The Busa submission observed:

Trade deals with Europe, the SADC [South African Development Community] and improved market access to the USA are all critical components that have been negotiated to allow South African

business to compete in the global market place. At the international level, South Africa is playing a key role in the South-North dialogue regarding a multitude of agendas including – but not confined to – economic development, trade, market access, environmental, etc. There is no doubt that these achievements have contributed to a more sustainable and higher economic growth platform for South Africa.¹⁴

The Western Cape report said:

The post apartheid approach to regional economic integration shifted from South Africa's 'hegemonic regional trade' to a more co-operative approach. As a signatory of international trade agreements under the guidance of the World Trade Organisation (WTO), the democratic government recognised a need to open up its market and to do away with import substitution trade policies. With this new paradigm in mind, South Africa began to look at other regional states as equal partners. The promotion of a SADC free trade area is seen as a vital point in ensuring economic integration.

South Africa is an important direct investor in other SADC countries and continues to increase trade with its neighbours. ... Countries like Mozambique, Namibia and Zimbabwe and the Democratic Republic of Congo have received most foreign direct investments (FDIs) from South Africa. As the continent further commits itself to adhering to international best practices, investment flows will increase and regional countries will further benefit.¹⁵

Membership of Regional and Economic Bodies

The main regional economic groupings that South Africa belongs to are the Southern African Customs Union (Sacu) and the Southern African Development Community (SADC). It is also an influential member of the African Union, a driver of the Nepad initiative and belongs to the Indian Ocean Rim-Association for Regional Co-operation (IOR-ARC).

According to the dti, South Africa has taken a leading role in the region to address closer collaboration and economic integration. These include:¹⁶

- Establishing a free trade area (FTA) in the region;
- Developing basic infrastructure, human resources and the Berlin Initiative;¹⁷

Indicators for Objective 5, Question 1

Give year of accession and name of any regional economic integration arrangement to which your country is a member.

Give a brief assessment of the benefits of your country's participation in this/these regional economic integration arrangement(s).

List the challenges and lessons-learned from participating in these regional economic integration arrangements.

Additional indicators may be included to better reflect country-specific circumstances and experiences.

¹⁴ Busa submission, p.13.

¹⁵ Western Cape submission, p. 68.

¹⁶ The Department of Trade and Industry's responses to Economic Governance, p. 9.

¹⁷ The Berlin Initiative strives to foster closer co-operation between the European Union and SADC. Priority issues that are included under this Initiative are the consolidation of democracy in the Southern African region, combating

- Creating the necessary capacity to drive this complicated process forward;
- Developing and
- Placing gender issues on the SADC Agenda.

The Southern African Development Community (SADC)

South Africa signed the SADC Treaty in August 1994. Member states focus on regional co-operation for the socio-economic development of the Southern African region.

Parliament outlined SADC's objectives:

- Achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa and support socially disadvantaged communities through regional integration;
- Promote self-sustaining development on the basis of collective self-reliance, and the inter-dependence of member states;
- Achieve synchronisation between national and regional strategies and programmes;
- Promote and maximise productive employment and utilisation of resources of the region; and
- Achieve sustainable utilisation of natural resources and effective protection of the environment.¹⁸

SADC Trade Protocol: The trade protocol has been signed and ratified and is being implemented to promote trade and development in Southern Africa. Its strategy is founded on the long-term goal to attain sustainable economic growth through industrialisation.¹⁹ The protocol aims for the region to be a free-trade area by 2008, a customs union by 2010, and a common market by 2012. The latter two processes face significant political, economic, and bureaucratic challenges.²⁰

Chamsa noted the protocols would provide a sound foundation for growth of the southern African region.²¹

However, the Western Cape pointed out that eliminating trade barriers by 2008 poses a challenge to other member states,²² and parliament pointed out, trade balances in the region and continent are skewed in favour of South Africa. At the launch of SADC's Regional Indicative Strategic Development Plan (RISDP) in 2002, SADC chairman, Tanzanian President Benjamin Mkapa, urged South Africa to address imbalances:

He said the goal of a SADC FTA by 2008, a customs union by 2010 and a common market by 2012 would be compromised if the current structure of intra-SADC trade continued, where South Africa accounted for 50% of intra-SADC exports and 10% of its imports. Mkapa urged the country to improve current trade imbalances with its neighbours and suggested South Africa accept a larger share of the responsibility of addressing the enormous

illicit drug trafficking, clearance of landmines, regional integration, promotion of trade and investment and combating HIV/Aids.

¹⁸ Parliament, Report of the Joint ad hoc Committee on Economic Governance and Management – A response to the African Peer Review Questionnaire, p. 32.

¹⁹ The dti, *op. cit.*, pp. 9-10.

²⁰ Parliament, *op. cit.*, p. 32.

²¹ Chamsa, *op. cit.*, p. 6.

²² Western Cape submission, p. 69.

asymmetry in economic power between South Africa and the rest of the region by investing more in industrialisation of the region.

On the domestic front, the dti said, once implemented, the trade protocol will comprise increased competitiveness, diversification of products and markets, as well as the manufacturing of higher value-added products.²³

According to the dti, South Africa runs a trade surplus with SADC, which is not sustainable in the long run. However, this seems to be a political rather than economic judgement. Bilateral imbalances are meaningless – only the overall balance, with all countries is important.

In order to redress the current status, the country has embarked on policies that promote regional industrial development underpinned by the manufacturing of high-tech and value-added products. South Africa will source its imports from the region while facilitating technology and skills transfer by encouraging outward investment and technical assistance to member countries.²⁴

SAIIA trade experts have commented that a significant problem in achieving this goal, however, is the rules of origin in the SADC Trade Protocol. They have been criticised for their unnecessary complexity and onerous requirements, and that they help protect South African producers from competitors in other SADC countries despite tariff reductions. Furthermore, much work remains to be done in the area of trade facilitation, and institutional capacity in the region is very weak.²⁵

The dti called for:

The establishment of integrated manufacturing platforms, which will require a combination of sectoral co-operation, policy co-ordination and trade integration so that a dynamic regional economy capable of effectively competing in the global economy is established.²⁶

But organised business criticised the South African government's apparent exclusion of stakeholders from making input on SADC policy. According to Busa, a 2001 review provided explicitly for the creation of a SADC National Committee in each member state, to act as a consultative forum, with government, business and civil society.

To date South Africa does not have such a National Committee despite requests from organised business (directly to the Department of Foreign Affairs and also via Nedlac) that the National Committee be established with the required representation. It is understood that a SADC committee comprising government departments only has been established.²⁷

The Southern African Customs Union (Sacu)

The new Sacu Agreement, concluded in 2004, promotes decision-making on a consensual basis and has seen structures reviewed and democratised. South Africa is presently the deputy chair.

Sacu is made up of Botswana, Lesotho, Namibia, Swaziland (BLNS) and South Africa and aims to maintain the free exchange of goods among its members. It provides for common external and excise tariff to the customs area. All customs and excise duties collected in the common customs

²³ The dti, *op. cit.*, p. 10.

²⁴ The dti, *op. cit.*, p. 10.

²⁵ Interview with P Alves, 16 March 2006.

²⁶ The dti, *op. cit.*, p. 10.

²⁷ Busa submission, p. 15.

area are paid into the National Revenue Fund of Southern Africa. The revenue is shared among countries according to a revenue-sharing formula as described in the agreement.

Traditionally, revenue sharing has been the core focus and interest in the Sacu arrangement and to some extent it still is. However, the 2004 revisions have placed importance on the harmonisation of policies within the customs union, to align better the economic policies of Sacu members themselves, as well as with the rest of the region.²⁸ South Africa considers Sacu the core platform from which to integrate into the world economy.

Key structural features and benefits of the reformed customs union outlined by the dti:

- There are six national bodies or institutions responsible for the implementation and administration of Sacu. These are: a Council of Ministers (the supreme policy and decision making body); a Customs Union Commission of senior officials to advise the council; a Secretariat based in Windhoek; Technical Liaison Committees dealing with customs, trade, agricultural and transport issues; a Tariff Board which will recommend changes in the common customs tariff; and an ad hoc Tribunal which will settle disputes.²⁹
- Since July 2004, South Africa has ceased to decide unilaterally on changes to customs duties, anti-dumping measures, safeguard duties, rebates, refunds or duty drawback. A Tariff Board now makes recommendations on these matters and will advise the council before decisions can become final and binding.³⁰
- Unlike the old union, the new one provides for a tribunal as a dispute settlement mechanism. However, it is not yet operational, its rules and procedures have still to be formulated, and its panel members have not yet been appointed.³¹
- The reviewed Sacu agreement provides for the free flow of all goods among member states.
- Revenue payments are enhanced to compensate Botswana, Lesotho, Namibia and Swaziland for the disadvantages of being in a customs union with a much larger and more developed economy.³²
- Sacu will negotiate all future trade and Economic Partnership Arrangements (EPAs) on behalf of the member states, which curtails South Africa's autonomy to negotiate agreements unilaterally, such as the current US-Sacu FTA negotiations.³³

Sacu has brought several benefits to the BLNS states. The most apparent is the stability in financial policy of the weaker members (excluding Botswana which is not a member of the Common Monetary Area). This has introduced a certain amount of stability in local currencies of Swaziland and Lesotho, although currency volatility in the rand is transferred to those local currencies. The other substantial benefit is the revenue sharing arrangement under Sacu. Sacu revenues make up a significant share of the fiscus in most BLNS states. Concerns that South Africa is benefiting more from this arrangement than its partners has led to the adoption of a

²⁸ Parliament, *op. cit.*, p. 32.

²⁹ With the exception of the Tariff Board and the Tribunal, the other institutions of the new Sacu are already in operation. All Member States are represented on the new Sacu institutions.

³⁰ The Department of Trade and Industry's responses to Economic Governance, p. 6.

³¹ *Ibid.*, p. 6.

³² *Ibid.*, p. 6.

³³ *Ibid.*, pp. 6-7.

development component under the renegotiated Sacu agreement to engage more effectively with the concerns of the weaker members of the customs union.³⁴

Limitations of Regional Agreements

Some FTA issues not covered in Sacu agreement: The dti acknowledged that in negotiating new trade agreements, Sacu may have to enter into legal obligations vis-à-vis a third party without having dealt with these matters in the Sacu Agreement first. For example, there are no Sacu codes on services, intellectual property or investment. The dti urged Sacu immediately to negotiate amendments or to develop annexes in terms of Article 42 of the Sacu Agreement.³⁵

SAIIA trade experts said entering into legal obligations with the US without proper Sacu agreements in place could see the US terminate the current FTA negotiations with the union. Furthermore, there is a strong case to be made that harmonising policies across the five countries (which would, in most cases, require other countries adoption of South Africa's laws) is in the BLNS countries' interests.

Overlapping customs unions in Southern Africa threaten SADC's future: Busa noted that South Africa is already a member of a customs union (Sacu), but that SADC also aims to establish a customs union (not in itself a problem as all Sacu members are SADC states). But some SADC countries are negotiating customs unions with non-SADC countries. For example, Tanzania is both a SADC and East African Community member, and "it is simply impossible to be a member of more than one customs union."

Busa added that, because the current Cotonou Agreement between the African-Caribbean-Pacific (ACP) countries and the European Union (EU) is not World Trade Organisation (WTO) compliant, Economic Partnership Agreements (EPAs) will be negotiated and concluded between pre-defined ACP regions and the EU for implementation on 1 January 2008. Because the EU prefers to negotiate with regional blocs, each ACP region with which a partnership agreement is concluded is supposed to work towards establishing a Common Market.

Busa said:

The problem is that the ACP countries in the so-called "SADC EPA" comprise seven of the SADC countries with South Africa having observer status, whilst the other SADC countries form part of the so-called East and Southern Africa (ESA) EPA which also includes a number of non-SADC countries. This raises many questions regarding the future of SADC and the resources currently allocated to a structure that might not have any economic future. Clarity and certainty regarding the future of SADC is vital with a view to ensuring the optimum allocation of resources into viable and feasible regional structures.³⁶

Financial limitations and capacity constraints in SADC: The regional institution is highly donor-dependent, Capacity constraints at the secretariat level are reinforced by considerable capacity constraints within individual member states.

Political rivalry: Rather than co-operating at all times, there is considerable political rivalry among member states, although most of it remains hidden from public view. This was most

³⁴ Comment from N Grobbelaar, SAIIA, 24 March 2006.

³⁵ The Department of Trade and Industry's responses to Economic Governance, p. 7.

³⁶ Busa Submission, pp. 15-16.

evident in the differences in opinion between heads of summit on SADC's military engagement in the DRC and the role of the Organ on Politics, Defence and Security. This has been exacerbated by the continuing crisis in Zimbabwe and differing attitudes within the bloc on how to resolve the situation. The problem is further exacerbated by a lack of agreement on common values and democratic principles in individual states, despite the adoption of various protocols and summit statements on good governance and democracy.

Uneven economic development: These groups include states at very different levels of development, from the relatively developed economies of South Africa and Botswana, to post-conflict societies like the DRC and Angola, to micro-states with small economies like Swaziland and Lesotho. This makes the regional integration task extremely complex and difficult, as these states have unique national priorities and face out diverse development challenges.

The Indian Ocean Rim-Association for Regional Co-operation

South Africa is one of 18 members of the **Indian Ocean Rim-Association for Regional Co-operation (IOR-ARC)**. The other member-states are Australia, Bangladesh, India, Indonesia, Iran, Kenya, Madagascar, Malaysia, Mauritius, Mozambique, Oman, Singapore, Sri Lanka, Tanzania, Thailand, the United Arab Emirates and Yemen. China, Egypt, France, Japan and the United Kingdom are “Dialogue Partners”, while the Indian Ocean Tourism Organisation is an observer.³⁷

The IOR-ARC's main objectives are to promote sustainable growth and balanced development of the region and member states; focus on mutually beneficial economic co-operation; and promote trade liberalisation among members.³⁸

Challenges of belonging to regional bodies

Different departmental approaches create complex relationship with Africa: South Africa and sub-Saharan Africa sometimes find themselves on different sides of the fence in WTO negotiations on specific issues, a divergence reinforced politically by South Africa's bilateral and regional engagements on the continent, said SAIIA Trade experts Peter Draper and Nkululeko Khumalo. They argued:

There is a notable difference between the dti and DFA in the way they approach the continent and the WTO. While the dti pursues South Africa's narrow market access agenda and investment opportunities, DFA seeks to advance the broader African interest, as underpinned by Nepal and the African Union (AU). The result is a complex relationship between South Africa and sub-Saharan Africa.³⁹

Slow implementation of protocols retards integration: Protocols on trade, transportation and communications have lagged [under SADC]. Chamsa said much work was done in the 1990s on the harmonisation of customs regimes that called for common customs procedures, but noted that

³⁷ Parliament, *op. cit.*, p. 34.

³⁸ *Ibid.*, p. 34; DFA website <http://www.dfa.gov.za/foreign/multilateral/inter/10rarc.htm>

³⁹ Draper P and N Khumalo, “Friend or Foe? South Africa and Sub-Saharan Africa in the Global Trading System”, Chapter 1 in Draper P ed, *Reconfiguring the Compass: South Africa's African Trade Diplomacy*, SAIIA, 2005, p. 18.

proposals for compatible traffic legislation, with one-stop border posts have not yet been implemented.⁴⁰

Instability in member countries has negative impacts on members: The Western Cape and North West both identified the political and economic crisis in Zimbabwe as a threat to regional integration and stability. They did not provide recommendations on what South Africa should do.

⁴⁰ Chamsa submission, p. 6.

Question 2: What measures have been taken to ensure that national policies including policies in respect of intra African trade and investment promotion are consistent with and supportive of regional economic integration objectives?

Summary of responses to Objective 5, Question 2:

- The DFA noted that South African companies are major investors in Africa. South Africa grants preferential access to products from the region. It said that there are signs that the unequal trade balance may be rectifying itself.
- The dti said that a policy on intra-African investment exists – the policy is premised on deepening regional integration and promoting large capital projects. South Africa’s parastatals have invested large amounts in Africa. South African firms have expanded into African markets since the mid-1990s. They have received a mixed reception: they have proved tough competition to local businesses, and there have been claims that they have not always adhered to local labour standards.
- Challenges that have been identified include: economic relations remain disappointing; South Africa needs to liberalise more; South African companies need to promote “African Economic Empowerment” strategies; and there is some dispute as to whether Sacu or SADC should be the focus of South Africa’s efforts.

South Africa driving economic development

The government's vision for the continent involves the highest possible degree of economic co-operation, mutual assistance and joint planning, consistent with socio-economic, environmental and political realities.⁴¹

The country's role is pivotal in the expansion and further development of economic relations within the African continent. It plays an integral role in the continents' other major economies (Kenya, Nigeria and Egypt) and is also very dominant in its immediate neighbourhood.⁴²

Indicators for Objective 5, Question 2

Describe (briefly) the national economic policies, including policies on intra-African and investment promotion.

Assess the degree to which national policies are consistent with and supportive of regional economic integration objectives with respect to the following indicators:

- Consistency between national policy objectives and regional economic integration objectives;
- Growth in intra-regional trade volumes; and
- Growth in intra-African investment flows.

List the main challenges encountered and lessons learnt.

Additional indicators may be included to better reflect country-specific circumstances and experiences.

Driving Business in Africa

South Africa is the largest foreign investor in the region with a substantial investor presence in Kenya, Mauritius, Madagascar, Rwanda, Tanzania and Uganda.

- Apart from its economic relationship with four of its closest neighbours through Sacu, South Africa also has a well-established foothold in all sectors in other direct neighbours, such as Zimbabwe and, more recently, Mozambique. This prominence as a leading investor has rapidly expanded into the rest of SADC, even into such challenging environments as the Democratic Republic of Congo.⁴³
- As result of the country's efforts to grant preferential access to products originating from the region, there have been signs indicating a shift towards greater equilibrium in the current high levels of unequal trade balance and flows in favour of South Africa vis-à-vis regional trade partners.⁴⁴
- South Africa pursued its relations with strategic countries and partners through bi-national commissions, joint co-operation commissions, partnership forums and other mechanisms.

⁴¹ The dti, *op. cit.*, p. 11.

⁴² Grobbelaar N, "South African Corporate Engagement with Africa: Unpacking Negative and Positive Perceptions", *South African Yearbook of International Affairs* (2005/6 forthcoming), SAIIA, p. 1.

⁴³ Grobbelaar N, *op. cit.*, p. 1.

⁴⁴ Department of Foreign Affairs, General commentary with regard to the APRM questionnaire by the Department of Foreign Affairs, pp. 14-15.

This enhanced the country's co-operation and relations in fields such as trade, taxation, aviation, science and technology, culture and tourism.⁴⁵

South African businesses have moved rapidly to position themselves as producers of goods and services in a wide range of new markets in Africa since the demise of apartheid.

These businesses are making a strong contribution to the economic stability of the countries where they operate. The common aspects attracting the South African companies to invest in the continent are the growth potential of various countries, large size of many African markets, emerging democracy, African optimism, openness to FDI and willingness by the countries themselves to embrace new business.⁴⁶

The government has encouraged business to invest on the African continent and has highlighted opportunities that exist through business and technical missions into different countries. Large State-Owned Enterprises (SOEs) such as Eskom, Transnet and Telkom have invested considerable amounts in the continent, mostly in countries undergoing post-war reconstruction.⁴⁷ [The relaxation of exchange rate policy in South Africa has promoted foreign direct investment into the rest of Africa].

The Western Cape said the country has made its human and material resources available to ensure that the southern part of Africa is economically prosperous.⁴⁸

Investment into the rest of the continent shows that the country often leads in retail, property, construction, manufacturing, tourism, transport, telecommunications and financial services.

The only sectors where South Africa's dominance is overshadowed by the involvement of Africa's traditional investment partners, such as its former colonial rulers, the US, Russia and others, are in energy and sometimes in mining. However, South African gold mining companies have been particularly astute in their acquisitions on the continent and have helped increase the contributions of gold to overall export revenue in individual economies such as Mali, Ghana and Tanzania.⁴⁹

Challenges to Intra-African Trade and Investment

Economic relations with Africa remain disappointing: Despite establishing bilateral commissions with most African countries, economic relations in the region have lagged. Bilateral trade with the rest of Africa is dominated by South Africa and creates considerable resentment in the region that the relationship is not placed on a more equal footing. The reason why trade has not reached expected levels is related to a lack of complementarity in products, unequal economic development and the weakness of the private sector in the rest of Africa. Most African states also have long established trading relationships with traditional partners in the West⁵⁰ South African investment in the region has grown significantly but is hampered by difficult business conditions such as regulatory uncertainty, the cost of finance, lack of basic, supportive infrastructure, corruption, competition, different business cultures, languages difficulties, skills problems and the large informal sector in many of these countries.

⁴⁵ Department of Foreign Affairs, *op. cit.*, pp. 14-15.

⁴⁶ The dti, *op. cit.*, pp. 14-15. However, most African markets are in fact very small. Market-seeking is much less important than resource-seeking behaviour and strategic considerations, for example.

⁴⁷ The dti, *op. cit.*, pp. 14-15.

⁴⁸ Western Cape submission, p. 67.

⁴⁹ Grobbelaar N, *op. cit.*, pp. 1-2.

⁵⁰ Department of Foreign Affairs, *op. cit.*, p. 15. SA and North African companies have agreements on transport, trade, minerals and energy, science and technology, arts and culture, defence and other related areas.

Ensuring South African business promoted empowerment in Africa: The Department of Foreign Affairs commented:

As the government expects and insists on partnerships and broad-based Black Economic Empowerment (BEE) ventures domestically, it should expect the country's private sector to develop broad-based African Economic Empowerment (AEE) strategies as important components of their business in Africa.⁵¹

Most states do have local empowerment or indigenisation policies similar to BEE, but the bigger challenge is to create a business environment that is more conducive to sustainable business development and investments. This means giving priority to the unique challenges that face the domestic business sector. Many local businesses face similar problems that foreign (including South African) companies face, but are much weaker and are often unable to find the ear of government. They are also less able to deal with the many bureaucratic hurdles that come their way.

The government has encouraged businesses to invest on the African continent and has highlighted opportunities that exist through business and technical missions into different countries. Large State-Owned Enterprises (SOEs) such as Eskom, Transnet and Telkom have invested considerable amounts in the continent, mostly in countries undergoing post-war reconstruction. The relaxation of South Africa's exchange rate policy by the South African reserve bank to support South African investment into the rest of Africa has been particularly important in supporting investments such as that by MTN into Nigeria.

Further unilateral liberalisation required: The South African government should adopt a more generous approach to regional development through lowering tariffs and liberalising rules of origin.⁵²

Sacu or SADC? Some analysts suggest that Sacu is the better vehicle for realising integration, and should, over time and on the basis of careful co-ordination, take the lead from SADC in building regional economic integration.⁵³ Others have suggested that because the SA government sees Sacu as a sleeker and more viable institution, its political commitment to SADC as a vehicle for deeper integration may be limited.⁵⁴

Although the dti and other government departments in 2004 developed policy for intra-African investment promotion, it has not yet been approved by cabinet. The dti's input explained that this policy aimed to address long-term development challenges facing the continent, such as poverty reduction and socio-economic development.

Growth in intra-regional and intra-African investment flows

Information on intra-Africa investment flows is limited; and trade statistics provided by StatsSA and the dti are provided in **Appendix D**.

⁵¹ Department of Foreign Affairs, *op. cit.*, p. 15.

⁵² Qobo M, "The Political Economy of Regional Integration In Southern Africa", Chapter 3 in *Reconfiguring the Compass*.

⁵³ Qobo M, *op. cit.*

⁵⁴ Comments from SAIIA's P Alves and N Khumalo, 17 March 2006.

South Africa is driving investment into Africa:⁵⁵ The 2004 World Investment Report identifies three factors that have driven South Africa's outward foreign direct investment (FDI) in Africa:⁵⁶

- Liberalisation of South Africa's regulatory regime for outward FDI has facilitated firms' expansion abroad. The country has also signed six bilateral investment treaties (BITs) and 14 double taxation treaties (DTTs) in the region;
- Liberalisation of South Africa's trade and exchange controls has raised competition in local markets and encouraged firms to look abroad.⁵⁷ At the same time, privatisation and liberalisation in other African countries have allowed South African companies to acquire firms in the region.
- South African firms often have technological advantages over local competitors in Africa and greater familiarity with African conditions than transnational corporations from other regions.

SAIIA research conducted in 2004 showed that of the top 100 companies listed on the JSE, only eight of those companies and their subsidiaries did not have an Africa focus.⁵⁸

Acceptance variable: South African companies have experienced a mixed reception in Africa, often dependent on the particular country or sector in question. In certain sectors, they have been the source of much discontent, because they tend to be more competitive than existing local entities. There have also been incidents where local regulations (e.g. labour standards) have been ignored. However, investments in finance have been almost universally welcomed. Companies are looking at methods of socially responsible interactions in the communities in which they operate. Moreover, the long-term benefits of their presence are potentially very high; every effort should be made to ensure they (are allowed to) contribute effectively. Countries that have the greatest involvement from South Africa companies include Angola, Botswana, Ghana, Kenya, Mozambique, Namibia, Nigeria, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. However, there have been instances where South African-owned companies have been driven from African markets, as illustrated by SABMiller's withdrawal from Kenya because of Kenya Breweries' close relationship with their government.

Consequences of policy: Cosatu's submission did not deal with South Africa's relationship with the rest of Africa, but rather to the overall strategic thrusts and consequences of policy. In this regard it argued that policies emphasised support for export industries, which tend to be capital intensive. The fastest growing sectors have been minerals production, the auto industry and heavy chemicals. Infant industries have not received adequate support, although they could help supply the needs of local and regional markets.⁵⁹

⁵⁵ Grobbelaar N, "Can South African Business Drive Regional Integration on the Continent", pp. 91-92.

⁵⁶ World Investment Report 2004: *The Shift Towards Services*, UNCTAD p. 24.

⁵⁷ The South African Reserve Bank eased capital controls on SA companies wishing to invest in the rest of Africa in November 2002 from \$79 million to \$216 million in recognition of business's role in developing the continent, and in 2003 to \$2 billion per project for investment in Africa and \$1 billion for investment out of Africa. See www.reservebank.co.za

⁵⁸ This analysis was based on a survey of annual reports (1994-2003) of the top companies listed on the Johannesburg stock exchange, commissioned by SAIIA in 2004. See Benkenstein A, Brink C, Burden K & D Prins, 'African footprints: Top 100 South African companies', in *Investment in Africa*, Charlotte Brink Consulting, May 2004.

⁵⁹ Cosatu, p. 2.

Impact of increased trade and investment into Africa: SAIIA's business expert, Neuma Grobbelaar, argued that South African investment has brought both gains and losses.⁶⁰

One of the most significant gains is the enormous impact South African investment is having on the regulatory frameworks and business culture of countries in Africa, which is translating into clear gains for inter-regional trade and ultimately Africa's consumers.

A pertinent example relates to the expectations of consumers. The argument that often the impetus for trade liberalisation comes from disgruntled consumers is also relevant in Africa. Whereas the South African retail sector is displacing many of Africa's colourful and vibrant informal markets, it is also introducing a new discipline in the pricing structure of goods. South African investment has led to an increase in consumer choice, to a consistent and reliable supply of goods to local consumers, in turn resulting in greater price stability. This is particularly important within the context of a market dominated by the informal sector, as is the case in Africa.

Historically, both formal and informal traders could charge whatever they wished, especially in cases where stock was obtained through smuggling. The prices charged by South African retailers are a true reflection of the import duties and taxes that have to be paid by traders. This has introduced more transparency to the market and has resulted in growing consumer awareness amongst the population (although this is still in its infancy) in countries where South African companies have invested.

As is well known, tariffs are a considerable revenue earner for many governments in Africa in the absence of an otherwise well-developed and diversified tax base. Interestingly, many of these duties have now come down, due to consumer pressure, commitments under various free trade protocols in the Common Market for Eastern and Southern Africa (Comesa), SADC and other regional economic communities, and growing formalisation and broadening of the tax base as company sales tax contributes to government coffers.

The dti listed the following challenges and lessons learned from intra-African trade:⁶¹

- **Poor tracking of trade and investment information:** While intra-Africa trade and investment has increased over time, these statistics are not well recorded.
- **Nepad hopes to reverse negative investor perceptions, but implementation lags:** Political instability and poor infrastructure in parts of Africa has diverted potential investment. Nepad priority projects hope to create an environment conducive to domestic and international investment and trade flows. However, these projects have been slow to materialise, with resource mobilisation problematic. "In some cases there is lack of capacity in project mapping and management in the countries in which implementation is to take place. The AU should play a greater supporting role in this regard."
- **ADB's role unclear:** Several stakeholders have complained about the inaccessibility of the African Development Bank and its inability to support African initiatives. The dti recommended that the AU and Nepad Secretariat "engage the bank to come up with more flexible systems that will encourage achievement of the objectives that are in line with the continental agenda."

To these could be added uneven economic development, and lack of complementarity in trade (exacerbated by low skill levels and low technology inputs) which hampers intra-regional trade and investment. The region continues to trade mainly with its established former colonial powers and other developed markets.

⁶⁰ Grobbelaar N, "Can South Africa Drive Regional Integration?", *South African Journal of International Affairs*, Volume 2, Issue 2, Winter/Spring 2004, SAIIA, pp. 98-99.

⁶¹ The dti's responses to Economic Governance.

Question 3. What measures have been taken to ensure effective implementation of decisions and agreements made within regional economic integration arrangements?

Summary of responses to Objective 5, Question 3

Agreements have been concluded within and in relation Sacu and SADC to establish necessary structures. Parliament plays a role to promote co-operation across Africa. It suggests that the SADC parliamentary forum should be transformed into a SADC parliament with full legislative powers.

The dti said outlined the decisions and agreements South Africa had implemented in Sacu and SADC.⁶²

Sacu: The July 2004 agreement makes provision for four Technical Committees (Agricultural, Customs Technical, Trade and Industry and Transport). Although the Sacu Secretariat co-ordinates decisions, especially those made by the Council of Ministers, it is up to each individual member state to ensure that decisions are implemented.

Indicators for Objective 5, Question 3

Outline the measures taken in terms of legislation, policies, institution development, co-ordination, capacity building and resource allocation to facilitate effective implementation of decisions and agreements made within regional economic integration arrangements.

Assess the timeliness of adoption and implementation of regional decisions and agreements at the national level in your country.

List key capacity building constraints and efforts made to address these.

Additional indicators may be included to better reflect country-specific circumstances and experiences.

According to the dti, South Africa endeavoured to implement decisions on a quarterly basis, but some matters required investigation and such decisions may take longer to implement. The country has the capacity to implement decisions because a number of government departments are actively involved in Sacu matters. The dti intended to strengthen capacity by employing additional staff. Other stakeholder departments are developing units that specialise in Sacu matters.

SADC: South Africa established the necessary legislative framework, policies and resource-allocation to implement SADC Council of Ministers and SADC Summit decisions.

The country changed its legislation and tariffs were lowered in line with offers made during the SADC Trade negotiations that led to the SADC Protocol on Trade. Different national departments are responsible for relevant sectors in the SADC regional integration process, with the DFA as the co-ordinator.

A number of South African government officials have been seconded to SADC, and the country makes a sizeable annual contribution to the bloc. However, problems remain in implementation and monitoring at the SADC level.

⁶² The dti, *op. cit.*, p. 19.

Parliament noted:

The South African parliament has co-operative political and economic relations with the African continent, bilaterally and multilaterally. It plays a leading legislative, consultative and oversight role in respect of institution-building, peace, growth and the promotion of development within the SADC, African Union and the Pan-African Parliament (PAP), as well as in the effective implementation of the programmes.⁶³

Parliaments and parliamentarians have a critical role to play in the formulation and implementation of regional development and integration strategies. In the case of the SADC region, this includes a role in the transformation of the SADC Parliamentary Forum into a regional parliament or the establishment of the SADC parliament with full legislative powers.⁶⁴

⁶³ Parliament, Report of the Joint ad hoc Committee on Economic Governance and Management, pp. 34-35.

⁶⁴ *Ibid.*, pp. 34-35.

Question 4: Has your country adopted measures to promote regional monetary harmonisation, co-operation and co-ordination?

Summary of responses to Objective 5, Question 4

This question was very poorly covered and even the dti only briefly responded. This section would require more input for the final CSAR.

The dti said: The country is active in the implementation of regional agreements and in areas where capacity is lacking additional staff is being employed to address capacity constraints. Significant progress has been made to align national policies and regional policies that are aimed at regional integration. However, a major challenge that has arisen includes lack of rationalisation of work programmes among different departments. There is therefore a need to improve co-ordination between departments and other spheres of government in order to ensure effective implementation and efficient use of state resources.⁶⁵

Indicators for Objective 5, Question 4

Outline the measures taken in terms of legislation, policies, institution development, capacity building and resource allocation to promote regional monetary harmonisation, cooperation, and co-ordination.

Assess the progress made with respect to compliance with regional agreements, treaties and protocols on monetary harmonisation, cooperation and co-ordination.

Outline the benefits and challenges and elaborate on the steps taken to address the constraints.

Please give detailed explanation and additional indicators may be included to better reflect country-specific circumstances and experiences.

⁶⁵ Dti submission, pp. 20-21.

Recommendations for Objective 5

- Monitor the behaviour of South African companies abroad to ensure that they abide by good business ethics. Government, labour, business, civil society and other relevant stakeholders should develop protocols governing business behaviour in foreign countries. (Parliament)
- Forge partnerships with strategic countries in each region in the continent to promote economic integration. (the dti)
- Investigate the unequal trade balances within the continent, as this is not sustainable.⁶⁶ (Parliament)
- Continue working to integrate South Africa into the region. This has the potential to produce significant economic gains. (Chamsa) However, some groups emphasised that this should be done in a manner that would not harm the weaker states. For example, Sangoco stressed the need for integration to proceed on the basis of “solidarity.” (Sangoco)
- Establish a database on intra-Africa trade in order to assess growth and monitor its impact. (the dti)
- Improve co-ordination and standardisation of policies to promote regional integration. This is especially important in regard to free trade agreements between regional bodies (for example, Sacu), and other countries or organisations. If issues have not been co-ordinated and resolved internally by each of the negotiating parties before formal negotiations commence, conclusion of agreements may be hampered. (the dti)
- Continuously review the policies of the regional groupings so as to ensure the developmental agenda is achieved. (the dti)
- Establish “integrated manufacturing platforms.” These will require sectoral co-operation, policy co-ordination and trade integration. They will help to establish a vibrant, competitive regional economy. (the dti)
- Mobilise South Africa businesses to take advantage of opportunities in the continent through business and trade missions. (the dti)
- Implement the SADC trade protocol and possibly expand the SDI project. Finalise the establishment of Sacu institutions provided for in the new agreement e.g. the Tariff Board and Tribunal, and address outstanding technical issues such as codes on services, intellectual property, and investment. This will require the negotiation of amendments to the Agreement or the development of annexes in terms of article 42 of the Sacu agreement to address these outstanding issues. The lack of capacity and institutional framework in other Sacu member states needs to be addressed through Technical Co-operation programmes. (the dti)
- Develop a national Nepad strategy. This would involve attracting investment for Nepad projects and building broad support for the programmes. For example, South Africa should work with the Nepad Secretariat to extend information about the initiative.

⁶⁶ Parliament Consolidated Executive Summary, p. 20.

- Ensure that the African Development Bank plays its part in continental development. At present its role is unclear and it is perceived in some quarters as being inaccessible and not contributing to African initiatives. (dti)
- Establish and mobilise support for regional integration and for continent-wide strategies. Parliaments and MPs in SADC countries, for instance could help change the SADC parliamentary forum into a SADC parliament. (Parliament)
- People of African descent living outside the continent (the “African Diaspora”) should be encouraged to lend their support to Nepad. (the dti)
- Implement the protocols where harmonisation has been debated and largely agreed upon, as a matter of priority and for the process to be accelerated.⁶⁷ (Chamsa)
- South Africa’s private sector should develop broad-based African Economic Empowerment (AEE) strategies as important components of their business in Africa. This would set South African businesses apart from their counterparts from Europe and America . It would also show their commitment to the African continent.⁶⁸ (DFA)

⁶⁷ Chamsa submission on Parliament’s process and response to its self-assessment on the African Peer Review Mechanism, p. 6.

⁶⁸ General commentary with regard to the APRM questionnaire by the Department of Foreign Affairs, p. 15.

APPENDIX A

International Economic and Financial Instruments and Standards¹

According to parliament's report, South Africa is party to the following instruments and standards:

Name	Purpose	Date Signed	Department/s
1. Minimum wage fixing Machinery Convention (16/06/1928)	Creates and maintains machinery whereby minimum rates of wages can be fixed for workers employed in certain trades (including manufacturing and commerce) or parts of trades (particularly home working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise, and wages are exceptionally low.	28/12/1932	Labour
2. Convention concerning forced or compulsory labour	To suppress the use of forced or compulsory labour in all its forms within the shortest possible period.	05/03/1997	Labour
3. Immunities of the Bank of International Settlements 30/07/1936 and Amended 8 th January 2001.	The Bank aims to promote the co-operation of central banks and to provide additional facilities for international financial operations; as well as to act as trustee or agent in regard to international financial settlements entrusted to it under agreements with the parties concerned.		Reserve Bank/National Treasury
4. Statistics of Wages and Hours of Work (ILO No. 63) 20/06/1938	To provide guidelines regarding acceptable international standards regarding wages and hours of work.	08/08/1938	Labour
5. Convention on the International Bank for Reconstruction and Development 22/07/1944	United Nations agency created to assist developing nations by loans guaranteed by member governments		National Treasury

¹ Parliament report, pp. 75-83. Time did not allow the TSA to verify the information in these appendices. The final column headed "Departments" was not consistently filled in by parliament, and the TSA has therefore amended the table.

6. International Convention relating to international statistics 09/12/1948			
7. Articles of agreement on the International Finance Corporation (IFC) 25/15/1955	<p>The IFC promotes sustainable private sector investment in developing countries as a way to reduce poverty and improve people's lives, and is a member of the World Bank Group. The IFC is the largest multilateral source of loan and equity financing for private sector projects in the developing world. It promotes sustainable private sector development primarily by:</p> <ul style="list-style-type: none"> ▪ Financing private sector projects located in the developing world. ▪ Helping private companies in the developing world mobilise financing in international financial markets. ▪ Providing advice and technical assistance to businesses and governments. 		National Treasury
8. Articles of agreement of the International Development Association (IDA) 26/01/1960	The IDAs a United Nations specialised agency that provides long-term interest-free loans to least developed countries on terms more lenient than those of the World Bank.	12/10/1960	National Treasury
9. Monetary agreement – SA, Lesotho, Swaziland 07/12/1974	Creates monetary co-operation between South Africa, Lesotho, Swaziland and Namibia. In this regard, the Rand remains the legal tender between all these countries.	05/12/1974 and Amended several times in 1986, 1989 and 1992.	National Treasury
10. Agreement establishing the African Development Bank (DBSA) 07/05/1982	The African Development Bank funds development initiatives in Africa	13/12/1995	National Treasury
11. Agreement establishing the Development Bank of Southern Africa 30/06/1983	The DBSA is mandated to accelerate sustainable socio-economic development in the region by funding physical, social and economic infrastructure. The DBSA finances and sponsors programmes and projects formulated to address the social, economic and environmental needs of	1983	National Treasury

	the people of southern Africa in improving their quality of life. The Bank adheres to the principles of sustainable development.		
12. Convention establishing the Multilateral Investment Guarantee Agency (MIGA) 11/10/1985	<p>MIGA is a member of the World Bank Group, as well as a multilateral risk mitigator that promotes foreign direct investment into developing countries in order to help support economic growth, reduce poverty and improve peoples lives by:</p> <ul style="list-style-type: none"> ▪ Insuring investors against political or non-commercial risks ▪ Mediating disputes between investors and governments ▪ Advising governments on attracting investment ▪ Sharing information through online investment information services 	02/03/1994	National Treasury/the dti
13. Treaty establishing the African Economic Community (Abuja Treaty) 03/06/1991	The Abuja Treaty established the Economic Community of Africa in order to promote economic, social and cultural development and the integration of African economies. The aim of the AEC is to establish, on a continental scale, a framework for the development, mobilisation and utilisation of the human and material resources of Africa in order to achieve a self-reliant development.	25/06/2001	National Treasury
14. Marrakech Agreement Establishing the World Trade Organisation 15/04/1994	The Marrakesh Agreement developed out of the General Agreement on Tariffs and Trade (GATT) to establish the World Trade Organisation. The Agreement supplemented the GATT with several other agreements, on such issues as trade in services, sanitary and plant health measures, trade-related aspects of intellectual property, and technical barriers to trade. It also established a new, more efficient and legally binding means of dispute resolution.	02/12/1994	The dti
15. Framework agreement on financial co-operation with the European Investment Bank	To foster financial co-operation, trade, development and co-operation between the European Community and its member states and the Republic of South Africa	4/12/1999	National Treasury/the dti

16. Constitutive Act of the African Union 11/07/2000	The Union aims to achieve greater unity and solidarity between African countries, as well as to accelerate the political and socio-economic integration of the continent. It also aims to encourage international co-operation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights; promote peace, security, and stability on the continent.	23/04/2001	DFA
17. Protocol to the treaty establishing the African Economic Community relating to the Pan African Parliament (AU). 02/03/2001	To facilitate the establishment of the Pan-African Parliament and to ensure that the continental Parliament effectively ensures the full participation of the African peoples in the economic development and integration of the continent.	03/07/2002	The dti/DFA
18. Protocol against corruption (SADC)	A SADC legal instrument against corruption.	15/05/2003	DOJCD/DPSA/ National Treasury/AGSA
19. United Nations convention against corruption 31/10/2003	Member States are required to construct compatible and concrete legislation to counter corruption, as well as to establish criminal and other offences to cover a wide range of acts of corruption. The Convention also calls for significantly increased co-operation between States and mutual assistance, especially in the area of money-laundering. States and parties are also obliged to promote the involvement of civil society in the campaign against corruption as much as possible.	22/11/2004	DOJCD/DPSA/ National Treasury/AGSA
20. Memorandum of understanding on co-operation in the area of Public Service and Administration 29/04/2005		29/04/2005	DPSA
21. Nepad Framework Document 2001	The Nepad strategic framework document arises from a mandate given to the five initiating Heads of State (Algeria, Egypt, Nigeria, Senegal, and South Africa) by the Organisation of African Unity (OAU) to develop an integrated socio-economic	October 2001	Presidency/the dti

	<p>development framework for Africa.</p> <p>Nepad is designed to address the current challenges facing the African continent. Issues such as the escalating poverty levels, underdevelopment and the continued marginalisation of Africa needed a new radical intervention, spearheaded by African leaders, to develop a new Vision that would guarantee Africa's Renewal.</p>		
23. Good practices on fiscal transparency	The Code of Good Practices on Fiscal Transparency was developed in response to a consensus that good governance is of central importance to achieving macroeconomic stability and high-quality growth, and that fiscal transparency is a key aspect of good governance.		National Treasury
24. Guidelines for public debt management	Public Debt Management aims to ensure that the Government's financing needs and its payment obligations are met at the lowest possible cost over the medium to long-run, consistent with a prudent degree of risk. Debt management encompasses the main financial obligations over which the central government exercises control.		National Treasury
25. International standards in Auditing			National Treasury/AGSA
26. International Accounting Standards			National Treasury/AGSA
27. Code of good practices on Transparency in Monetary and Financial Affairs	The code identifies desirable transparency practices for central banks in their conduct of monetary policy and for central banks and other financial agencies in their conduct of financial policies.		National Treasury/AGSA
28. Principles for payment systems	The core principles apply to systematically important payment systems. A payment system is systematically important where, if the system were sufficiently protected against risk, disruption within it could trigger or transmit further disruptions amongst participants or systematic disruptions in the financial area more widely. Systematic importance is determined mainly by the size or		National Treasury/AGSA

	nature of the individual payments or their aggregate value.		
29. Core principles for security and insurance supervision and regulations			National Treasury/AGSA
30. Core principles for effective banking supervision	An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banking organisations. Each such agency should possess operational independence and adequate resources. A suitable legal framework for banking supervision is also necessary, including provisions relating to authorisation of banking organisations and their ongoing supervision; powers to address compliance with laws as well as safety and soundness concerns; and legal protection for supervisors. Agreements for sharing information between supervisors and protecting the confidentiality of such information should be in place.		SARB
31. AU Conventions on preventing and combating corruption	The main purpose of the protocol is to promote and strengthen good governance and economic growth in Africa by developing the mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.	South Africa signed the convention on 16/03/2004 but has not ratified it.	DOJCD/DPSA/ National Treasury/AGSA
32. Best Practices for budget transparency	The Best Practices are designed as a reference tool for Member and non-member countries to use to increase the degree of budget transparency in their respective countries. The Best Practices are based on different Member countries' experiences in each area and are not meant to constitute a formal "standard" for budget transparency.		National Treasury
33. Principles of corporate governance (International and National)	To provide a basis for review of corporate governance matters; as well as to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that has a role in the process of developing		The dti

	good corporate governance.		
34. Economic, social and Cultural rights	The main focus is on demographic and statistical data, a brief history of the pre- and post-apartheid eras, the structure of government; as well as the Constitution and the principles enshrined therein.	Signed 3/10/1994	DOJCD

Protocols and Agreements Related to the African Union

The Department of Foreign Affairs has provided the following list of agreements that are relevant for economic governance and management in the African Union.²

Date signed	Country	Title
1991/06/03	Multilateral	Treaty establishing the African Economic Community (Abuja Treaty). RSA acceded: 25/6/2001.
2000/07/11	Multilateral	Constitutive Act of the African Union. RSA ratified 23.4.2001.
2001/03/02	Multilateral	Protocol to the Treaty establishing the African Economic Community relating to the Pan African Parliament. RSA ratified: 3/7/2002.
2003/07/11	Multilateral	The African Convention on Preventing and Combating Corruption. RSA ratified: 11/11/2005
2003/07/11	Multilateral	Protocol of the Court of Justice of the African Union. RSA ratified: 17/12/2004

Protocols and Agreements Related to SADC

The Department of Foreign Affairs has provided the following table that lists the protocols and agreements that South Africa has with SADC.³

Date signed	Country	Title
1992/08/17	Multilateral	Treaty of the Southern African Development Community. RSA acceded: 29/8/1994 (SADC).

² DFA, General commentary with regard to the APRM Questionnaire by the Department of Foreign Affairs: Regional Section, 2006, pp. 1-6.

³ DFA, General commentary with regard to the APRM Questionnaire by the Department of Foreign Affairs: SADC List Section, 2006, pp. 1-3.

Appendix A: Laws, Codes and Standards

1995/08/28	Multilateral	Protocol on Shared Watercourse Systems in the Southern African Development Community (SADC) Region. RSA ratified: 26/11/1997
1996/08/24	Multilateral	Protocol on Combating Illicit Drug Trafficking in the Southern African Development Community (SADC) Region. RSA Ratified: 22/7/1998 Entered into force 20/3/1999.
1996/08/24	Multilateral	Protocol on Energy in the Southern African Development Community (SADC) region. RSA ratified: 29/4/1999
1996/08/24	Multilateral	Protocol on Trade in the Southern African Development Community (SADC) Region. RSA ratified: 24/12/1999.
1996/08/24	Multilateral	Protocol on Transport, Communications and Meteorology in the Southern African Development Community (SADC) Region. RSA ratified: 24/12/1997
1997/09/08	Multilateral	Charter of the Regional Tourism Organisation of Southern Africa (RETOSA) (SADC). Entered into force: 8/9/1997.
1997/09/08	Multilateral	Protocol on Education and Training in the Southern African Development Community. (SADC) RSA ratified: 14/5/1999.
1997/09/08	Multilateral	Protocol on Mining in the Southern African Development Community (SADC). RSA ratified: 29/4/1999.
1997/09/25	EU	Financing Agreement between the Government of the Republic of South Africa and the European Community concerning Participation by South Africa in the SADC Regional Food Security Training Programme. Rider 1- 29/3/2000.
1997/10/01	Multilateral	Agreement in respect of Co-operation and Mutual Assistance in the Field of Crime Combating. (SADC). RSA ratified: 9/7/1998.
1999/08/18	Multilateral	Protocol on Health in the Southern African Development Community (SADC). RSA ratified: 4/7/2000 (GG 21409 dd 28/7/2000).
1999/08/18	Multilateral	Protocol on Wildlife Conservation and Law Enforcement in the Southern African Development Community. (SADC) RSA ratified: 31/10/2003. Entered into force: 30/11/2003
1999/12/10	EU	Financing Agreement concerning Support for the SADC Finance and Investment Protocol (FISCU). Entered into force: 10/12/1999.
2000/02/03	EU	Financing Agreement between the Government of the Republic of South Africa and the European Community concerning SADC Regional Monitoring, Control and Surveillance of Fishing Activities Programme. Entered into force: 3/2/2000.

2000/06/06	EU	Financing Agreement concerning SADC Regional Drug Control Programme. Entered into force: 6/6/2000.
2000/08/07	Multilateral	Revised Protocol on Shared Watercourses in the Southern African Development Community. (SADC) RSA ratified: 8/1/2002
2000/11/15	EU	Financing Agreement concerning EU-SADC Investment Promotion Programme. Entered into force: 15/11/2000.
2001/01/23	EU	Financing Agreement concerning Regional Support for an Expanded Multisectoral Response to HIV/Aids in the SADC Region. Entered into force: 23/1/2001.
2001/08/14	Multilateral	Agreement amending the Treaty of the Southern African Development Community (SADC).
2001/08/14	Multilateral	Protocol against Corruption. (SADC) RSA ratified: 15/5/2003
2001/08/14	Multilateral	Protocol on Culture, Information and Sport. (SADC) RSA ratified: 30/3/2004.
2001/08/14	Multilateral	Protocol on Fisheries. (SADC) RSA ratified: 24/7/2003.
2001/08/14	Multilateral	Protocol on Politics, Defence and Security Co-operation. (SADC) RSA ratified: 6/8/2003.
2002/10/03	Multilateral	Protocol on Extradition. (SADC) RSA ratified 1/6/2003.
2002/10/03	Multilateral	Protocol on Forestry. (SADC) RSA ratified: 24/11/2003.
2002/10/03	Multilateral	Protocol on Mutual Legal Assistance. (SADC) RSA ratified: 16/6/2003
2003/08/01	Multilateral	Memorandum of Understanding on Regional Projects and Programmes funded from the European Programme for Reconstruction and Development (EPRD).
2004/11/26	Multilateral	Memorandum of Understanding concerning the Implementation of Phase 2 of the SADC Hydrological Cycle Observing System: Consolidation and Expansion of SADC-HYCOS. Entered into force: 26/11/2004.

Standards and Codes to Which South Africa is Committed

Below is a list of the standards and codes with a bearing on economic governance to which, according to the Department of Foreign Affairs, South Africa is party.⁴

⁴ DFA, *General commentary with regard to the APRM Questionnaire by the Department of Foreign Affairs: Standards and Codes Section*, 2006, pp. 4-6.

- Nepad Framework Document (2001) Signature/ratification not required. RSA one of the five initiating states of Nepad.
- Constitutive Act of the African Union (2000) Ratified 23.4.2001
- Code of Good Practices on Fiscal Transparency
- Guidelines for Public Debt Management
- International Standards in Auditing
- International Accounting Standards
- Code of Good Practices on Transparency in Monetary and Financial Affairs
- Principles for Payment Systems
- Core Principles for Security and Insurance Supervision and Regulations
- Core Principles for Effective Banking Supervision
- African Union Conventions on Preventing and Combating Corruption. RSA signed 16.03.2004 and ratified 11.11.2005
- Abuja Treaty establishing the African Economic Community (1991). RSA acceded 25.6.2001
- Best Practices for Budget Transparency
- Principles of Corporate Governance (international and national)
- Relevant Treaties, Conventions and Protocols of Regional Economic Communities **See also SADC and other treaties listed above.**

According to Annex B of the National Treasury's input to the APRM,

South Africa has subjected itself to external reviews under the following standards and codes of relevance to the National Treasury:

- Code on Good Practice on Fiscal Transparency
- Guidelines for Public Debt Management
- International Standards in Auditing
- International Accounting Standards
- Principles for Payment Systems
- Core Principles for Security and Insurance Supervision and Regulations
- Core Principles for Security and Insurance Supervision and Regulations
- Special Data Dissemination Standard

There is also evidence that relevant Standards and Codes have been used as guidelines in the formulation of national policy frameworks and are consistently and continuously informing further improvements to the South African legislative environment and efforts to enhance the efficiency of policy implementation. With few exceptions, South Africa is compliant with most of the core principles established by these codes and standards, and has in some cases, such as Public Debt Management, been adopted by the standard setting agencies as a case study.⁵

⁵ An Input by the National Treasury to the Self-Assessment Report for the African Peer Review Mechanism, Annex B, p. 27.

Legislation related to Economic Governance and Management⁶

Regulation and supervision of banking and credit services

- Banks Act No. 94 of 1990, as amended by the Banks Amendment Act, No. 19 of 2003.
- Mutual Banks Act, No. 124 of 1993, as amended by the Mutual Banks Amendment Act, No. 54 of 1999.
- Bills of Exchange Act, No. 34 of 1964, as amended by the Bills of Exchange Amendment Act, No. 56 of 2000.
- National Payment System Act, No. 78 of 1998, as amended by the National Payment System Amendment Act, No. 22 of 2004.
- Financial Institutions (Investment of Funds) Act, No. 39 of 1984⁷.
- Financial Institutions (Protection of Funds) Act, No. 28 of 2001.

Regulation and supervision of insurance and related services

- Long-term Insurance Act, No. 52 of 1998.
- Short-term Insurance Act, No. 53 of 1998.
- Pensions Funds Act, No. 24 of 1956, as amended by the Pension Funds Amendment Act, No. 65 of 2001.
- Closed Pension Fund Act, No. 197 of 1993, as amended by the Closed Pension Fund Amendment Act, No. 41 of 1999.
- Friendly Societies Act, No. 25 of 1956.
- Medical Schemes Act, No. 131 of 1998.

Regulation and supervision of investment services

- Financial Markets Control Act, No. 55 of 1995, as amended by the Financial Markets Control Amendment Act, No. 40 of 1999.
- Stock Exchanges Control Act, No. 1 of 1985, as amended by the Stock Exchange Amendment Act, No. 40 of 2001.
- Insider Trading Act, No. 135 of 1998.
- Custody and Administration of Securities Act, No. 85 of 1992.
- Unit Trusts Control Act, No. 54 of 1981, as amended by the Unit Trusts Control Amendment Act, No. 12 of 1998.
- Participation Bonds Act, No. 55 of 1981.
- Collective Investment Schemes Control Act, No. 45 of 2002.
- Financial Advisory and Intermediary Services Act, No. 37 of 2002.

⁶ Parliament report, pp. 7-8. Bills were removed from this list, as they do not have the force of law.

⁷ The Act was amended by the financial services Bill [B6-2000].

Other relevant legislation

- Financial Intelligence Centre Act, No. 38 of 2001.
- Financial Services Ombud Schemes Act, No. 37 of 2004.
- Public Finance Management Act, No. 1 of 1999, as amended by Act No. 29 of 1999.
- Competition Act, No. 89 of 1998, as amended by Act No. 39 of 2000.
- Public Investment Corporation Act, No. 23 of 2004.
- National Payment System Amendment Act, No 22 of 2004.
- Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.

APPENDIX B

Authorities Responsible for Financial Regulation and Supervision¹

The South African Reserve Bank

The Reserve Bank was established and operates in terms of the South African Reserve Bank Act, 1989, and the South African Reserve Bank Amendment Act, 2000. The Bank regards its primary goal in the South African economic system as “the achievement and maintenance of financial stability.” The Bank deems it essential that South Africa has a growing economy based on the principles of a market system, private and social initiative, effective competition and social fairness. It recognises, in the performance of its duties, the need to pursue balanced economic policies that enhance both development and growth.

The Financial Services Board (FSB)

The FSB is a unique independent institution established by statute to oversee the South African non-banking financial services industry in the public interest. The FSB’s mission is to promote sound and efficient financial institutions and services, together with mechanisms for investor protection in the markets it supervises.

South African Financial Sector Forum

The Forum is a directory or links to directories of registered banks, banking associations, development banks and related organisations that maintain a presence in South Africa.

The Banking Association of South Africa

The Banking Association of South Africa (formerly the Banking Council) is the representative voice of banking in South Africa. Its membership includes foreign, retail, merchant, investment and commercial banks. Its role is to establish and maintain the best possible platform on which the banking groups can do competitive, profitable and responsible banking. Comments and submissions on regulatory changes, legislation, consumer concerns and policy documents, as well as research and study into best international practice, are core strategic activities of the Association.

Ombudsman for Banking Services (OBS)

The OBS provides consumers and banks with a quick resolution to banking related complaints. This service is free to consumers. The OBS is an independent and impartial body that reports to the Board of the OBS, not to the banks.

The Banking Sector Education and Training Authority (BANKSETA)

¹ Parliament report, pp. 9-14. Note that parliament merely described these bodies, and did not evaluate their effectiveness.

BANKSETA supports and develops the level of current and future skills needed in the banking sector by providing sector grants for the development of priority skills.

The Institute of Bankers in South Africa

The Institute of Bankers in South Africa aims to build capacity within the industry. Through a council of senior executives, it remains in touch with industry needs. Focus groups at different levels within the industry enable it to access the needs for new programmes as well as ensure the continuing relevance of existing curricula and diplomas. The Institute is part of a worldwide association and is a founding member of the Alliance of African Institutes of Bankers.

The South African Institute of Financial Markets

The primary objective of the Institute of Financial Markets is to enhance the professionalism of participants in the financial markets industry. The activities of the Institute include, among others, providing a facility to improve and evaluate the ability of market participants, assisting the South African financial markets in setting minimum "fit and proper" standards, promoting ethical behaviour for market participants, and enforcing membership quality by setting industry entrance standards and devising and applying a code of conduct for members.

The Financial Planning Institute (FPI)

The FPI is a representative, professional institute for testing, protecting, developing and maintaining standards of competence and ethics of persons engaged in personal financial planning. The FPI is responsible for promoting the competence and ethics of its professional members to clients who require personal financial advice. The FPI is authorised to issue the Certified Financial Planner (CFP) licence to its professionally qualified members.

The Ombudsman for Financial Services

The Ombudsman for Financial Services was established in an effort to protect consumers from misleading or inappropriate financial services advice. It was established as a result of section 20 of the Financial Advisory and Intermediary Services Act, No. 37 of 2002.

The JSE Securities Exchange (JSE)

The JSE Securities Exchange, formerly the Johannesburg Stock Exchange, is the only equities exchange in South Africa. The exchange fulfils its main function, namely the raising of primary capital, by re-channelling cash resources into productive economic activity.

The South African Futures Exchange (SAFEX)

The JSE-owned SAFEX is the exchange for trading listed futures and options on futures contracts. SAFEX seeks to provide a secure and efficient market for trading derivatives in South Africa.

The Bond Exchange of South Africa (BESA)

BESA is an independent financial exchange, operating under an annual licence granted by the country's securities market regulator, the Financial Services Board. BESA is responsible for regulating the debt securities market in South Africa. Debt securities are issued by central and local government, public enterprises and major corporations. The debt securities listed by BESA are fixed interest-bearing bonds with a single redemption date; fixed interest-bearing bonds with multiple redemption dates; zero coupon bonds; and variable interest rate bonds. Almost 250 bonds, issued by over 30 different borrowers with a nominal value of R420 billion, are listed. About 80% of all listed securities are bonds issued by the South African Government.

Southern African Venture Capital and Private Equity Association

Some of the objectives of the Association are to promote the venture capital and private equity profession in Southern Africa, to represent the profession at the national and international level, and to develop and stimulate professional and transactional venture capital and private equity investments throughout Southern Africa

Association of Collective Investments (ACI)

ACI represents all collective investments (e.g. unit trusts) in management companies. ACI provides, among others, unit trust classification, a unit trust directory, performance statistics, news and events, codes of practice, information on the industry, and education.

Public Investment Commissioners (PIC)

The Public Investment Commissioners Act aims to corporatise the activities of the PIC and register the company as an investment manager regulated by the Financial Services Board. The PIC handles more than R300bn in mainly government employees' pension funds.

Linked Investment Service Providers' Association (LISPA)

The objectives of LISPA² are to advance and promote the image and reputation of members; to make representations to all regulatory authorities who are vested with the responsibility for regulating any activity in which members or any of them engage; to make representations with regard to all laws and regulations which affect any activity in which members engage; and to act as the representative body of members.

Life Offices' Association of South Africa (LOA)

The LOA is an association of registered long-term insurance companies conducting business in South Africa. It is a forum where member offices can interact to promote their interests and the interests of

² A Linked Investment Service Provider (LISP) is a financial institution, which packages, distributes and administers a broad range of unit trust based investments spanning voluntary to retirement planning products.

current and future stakeholders. The LOA seeks to promote a better understanding of life insurance among the general population of the country; it represents the industry and its policyholders in negotiations with the authorities; and it is in the name of the LOA that South African life insurers regulate their industry.

The Life Under-Writers Association of South Africa (LUASA)

LUASA aims to raise the status and advance the profession of life assurance intermediaries and thereby protect the public they serve. They provide information and news relating to insurance.

The South African Insurance Association (SAIA)

SAIA promotes the short-term insurance industry in order to create awareness and understanding of the industry, and to add value to all stakeholders. SAIA represents almost all of the short-term insurance companies and is authorised to negotiate on their behalf.

The core functions of SAIA are to represent its members' interests to the public in a proactive manner; to represent its members' interests to Government at all levels; to provide a forum for discussion of common interests in the short-term insurance industry; to facilitate information flow among its members; to interact with all associations operating within the insurance industry, both locally and abroad; and to set appropriate technical standards for the industry.

The Insurance Sector Education and Training Authority (INSETA)

INSETA promotes and represents the training and development interests of the insurance and related financial services sector of the economy in terms of the skills development legislation. INSETA aims to provide quality skills development for sustainable business growth. INSETA represents the following constituents within the insurance sector: Short-term insurance, life insurance, insurance and pension funding, risk management, health care benefits administration, unit trusts, funeral insurance, reinsurance, pension funding and activities auxiliary to financial intermediation.

The Ombudsman for Short-Term Insurance

The purpose of the Ombudsman for Short-Term Insurance is to resolve disputes between members and insured consumers in an independent, impartial, cost-effective, efficient, informal and fair way.

The Ombudsman for Long-Term Insurance

The office of the Ombudsman for Long-Term Insurance mediates in disputes between subscribing members of the long-term insurance industry and policyholders regarding insurance contracts.

The Financial Services Board – The Pension Funds Adjudicator

The office of the Pension Funds Adjudicator investigates and decides complaints lodged in terms of the Pension Funds Act. The word “Pension Fund” in the Act includes a Provident Fund and Retirement Annuity Fund.

The Financial Intelligence Centre (FIC)

The FIC is a government agency receiving financial information from “accountable institutions,” which are a range of mainly financial institutions that have a responsibility to report to the FIC in terms of the Financial Intelligence Centre Act, 2001. It was established to combat money-laundering.

National Treasury

The purpose of National Treasury is to promote reconstruction and development to deliver rising standards of living for all by ensuring sound public finances and an efficient and equitable use of resources.

The Department of Trade and Industry (the dti)

The dti’s vision is to create a vibrant economy, characterised by growth, employment and equity, built on the full potential of all South African citizens.

The Micro-Enterprise Alliance (MEA)

The MEA is a membership association of South African organisations and individuals working in the field of micro-enterprise development. The formation of the MEA was an organic response to shared needs by institutions in the field. The membership of the MEA is wide-ranging in scope, capacity and geographic distribution. The membership includes very small, under-resourced NGOs based in townships and rural areas, established NGOs, private companies, provincial development corporations, large and small banks.

The Micro Finance Regulatory Council (MFRC)

The primary aim of the MFRC is the promotion of the money-lending industry so as to allow for sustainable growth in the industry and to serve legitimate unserved credit needs. The MFRC has been established in accordance with the Usury Act Exemption Notice of 1 June 1999 and has been recognised as the official and single regulator of all money lending transactions falling within the scope of the Usury Act Exemption Notice.

The Competition Commission

The Competition Commission is a statutory body constituted in terms of the Competition Act, No. 89 of 1998, to investigate, control and evaluate restrictive business practices, abuse of dominant positions and mergers in order to achieve equity and efficiency in the South African economy.

The South African Institute of Chartered Accountants (SAICA)

SAICA is the pre-eminent accountancy body in South Africa. It has established itself as one of the leading Institutes in the world, playing its part in a highly dynamic business sector. It provides a wide range of support services to its members enabling them to play a key role in developing the rapidly changing South African economy.

APPENDIX C

The figures in the table below were supplied by the Reserve Bank and appeared in the North West Province's Provincial Consultative Report.¹

Average trend in inflation over the past five years:		1999/2000 = 6.9% 2000/2001 = 7.8% 2001/2002 = 6.6% 2002/2003 = 9.8% 2003/2004 = 5.6% 2004/2005 = 4.1%
Real GDP growth per capita over the past 5 years: Real rate has improved from 0.2% to 2.2% per year.		1999 = 0.2% 2000 = 2.1% 2001 = 0.8% 2002 = 1.7% 2003 = 1.2% 2004 = 2.2%
Debt servicing ratio to revenue, share of domestic debt to total debt, total debt to exports, total debt to GDP: Debt as a percentage of GDP has reduced dramatically, from 50% in 1994 to about 38% in 2005.		
Debt servicing ratio to revenue:		1999/2000 = 22.2% 2000/2001 = 21.5% 2001/2002 = 19.1% 2002/2003 = 16.7% 2003/2004 = 15.4% 2004/2005 = 14.0%
Share of domestic debt to total debt:		1999/2000 = 91.0% 2000/2001 = 88.0% 2001/2002 = 76.1% 2002/2003 = 76.0% 2003/2004 = 82.5% 2004/2005 = 85.3%
Total debt to exports:		1999/2000 = 2.5% 2000/2001 = 2.0% 2001/2002 = 1.8% 2002/2003 = 1.6% 2003/2004 = 1.8% 2004/2005 = 1.8%
Total debt to GDP:		1999/2000 = 46.6% 2000/2001 = 43.9% 2001/2002 = 43.9% 2002/2003 = 38.8% 2003/2004 = 37.0%

¹ APRM North West Province Provincial Consultative Report, pp. 33-35.

Appendix C: Macroeconomic Statistics

		2004/2005 = 36.1%
Fiscal deficit to GDP: Down from 10% in 1994 to 1% in 2005.		1999/2000 = 2.1% 2000/2001 = 1.9% 2001/2002 = 1.4% 2002/2003 = 1.1% 2003/2004 = 2.3% 2004/2005 = 1.5%
Share of fiscal deficit financed by the Central Bank over the past 5 years: Bonds and external loans finance all national government debt, with none financed by the SARB.		Zero
Share of total budget allocated to social sectors:		1999/2000 = 60.5% 2000/2001 = 59.4% 2001/2002 = 57.3% 2002/2003 = 57.4% 2003/2004 = 58.6% 2004/2005 = 59.2%
Credit to both private and public sectors over the past 5 year: Credit was reduced to public sector due to lower budget deficits.		1999/2000 = R35.2 Billion 2000/2001 = R40.0 Billion 2001/2002 = R29.8 Billion 2002/2003 = R42.8 Billion 2003/2004 = R57.5 Billion 2004/2005 = R30.0 Billion
Credit to the private sector:		1999/2000 = R540.0 Billion 2000/2001 = R591.7 Billion 2001/2002 = R673.8 Billion 2002/2003 = R786.7 Billion 2003/2004 = R846.6 Billion 2004/2005 = R988.5 Billion

APPENDIX D

South African Trade Statistics

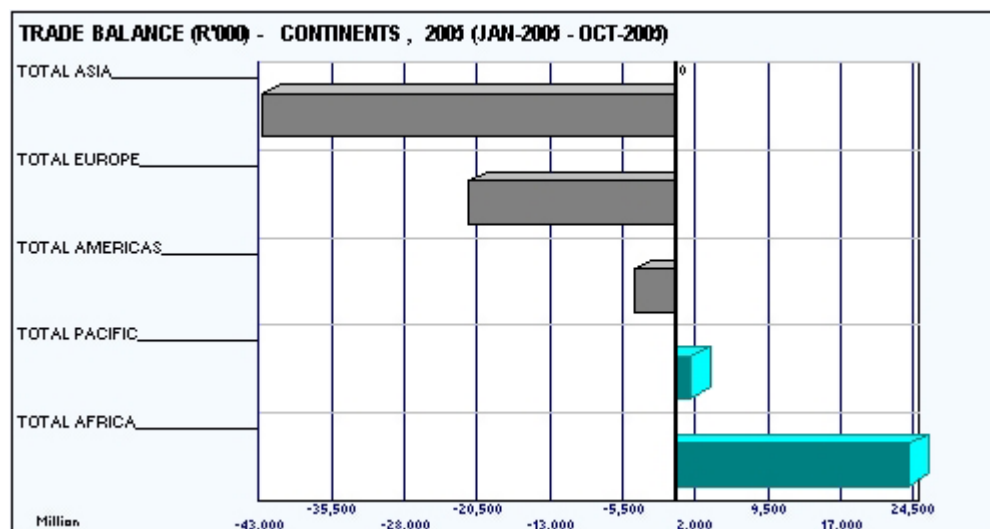
Preliminary Statement of Trade Statistics for the Republic of South Africa as released by the Commissioner for the South African Revenue Service						
Methodology Progressive figures comparing the month with the corresponding month of the previous year	Import and export figures are unaudited figures obtained from declarations made by importers and exporters of goods. The figures cover all good imported and exported during the reporting month to and from South Africa. Cursory checks of the figures are made prior to publication thereof, to try and eliminate as many capturing errors as possible. Comparisons are made with audited figures					
Period	January – December 2004/ January – December 2005					
Table A : Totals in millions of rand according to World Zones and ships and aircraft stores						
World Zones	Imports			Exports		
	Dec 04	Dec 05	%	Dec 04	Dec 05	%
Africa	13201.55	17250.64	31	38343.76	46135.93	20
Europe	128568.20	139564.70	9	102106.42	116895.34	14
America	39391.73	43670.05	11	36499.44	38345.89	5
Asia	114714.58	139308.89	21	72346.40	86403.65	19
Oceania	8137.66	8346.94	3	7328.18	9878.13	35
Other unclassified goods	732.07	1041.82	42	35417.61	29448.36	-17
Ships / Aircraft stores	0.00	0.00	0	36.86	300.72	716
Grand total	304745.79	349183.04	15%	292078.67	327408.02	12%

Source: StatsSA

Preliminary Trade Statistics: Progressive, RSA January - December / January - December 2005

South African Trade by CONTINENTS (Rand '000)											
CONTINENTS	EXPORT (R'000)					Rank		Proportion 2005		Annual Growth	
Name	OCT-2005	2005	2004	2003	2002	'05	'04	%Total	Cum.	2005-2004	
TOTAL EUROPE	9,335,837	96,494,905	102,970,148	92,020,491	105,699,737	1	1	39.2%	39.2%	12.5%	
TOTAL ASIA	6,315,081	71,995,043	73,200,280	65,178,196	67,412,717	2	2	29.2%	68.4%	18.0%	
TOTAL AFRICA	4,019,925	38,129,665	39,037,276	39,000,803	44,580,615	3	3	15.5%	83.9%	17.2%	
TOTAL AMERICAS	2,923,127	31,134,239	36,571,593	34,162,785	42,936,076	4	4	12.6%	96.6%	2.2%	
TOTAL PACIFIC	767,406	8,402,325	7,922,196	6,332,008	5,767,365	5	5	3.4%	100%	27.3%	
Total CONTINENTS	23,361,377	246,156,178	259,701,493	236,694,284	266,396,511	6	1	100.0%	100%	13.7%	
SHIP STORES	120,982	1,473,718	1,799,027	3,995,434	5,223,352					-1.7%	
UNALLOCATED	2,553,381	23,242,106	34,615,748	34,984,939	42,484,431					-19.4%	
GRAND TOTAL	26,035,739	270,872,002	296,116,268	275,674,656	314,104,294					9.8%	
South African Trade by CONTINENTS (Rand '000)											
CONTINENTS	IMPORT (R'000)					R a n k		Proportion 2005		Annual Growth	
Name	OCT-2005	2005	2004	2003	2002	'05	'04	%Total	Cum.	2005-2004	
TOTAL EUROPE	11,546,031	117,821,747	129,398,336	116,597,468	123,902,091	1	1	40.8%	40.8%	9.3%	
TOTAL ASIA	14,498,510	114,749,268	114,806,845	89,131,487	88,109,497	2	2	39.7%	80.5%	19.9%	
TOTAL AMERICAS	3,626,140	35,505,050	40,158,370	36,436,472	43,536,528	3	3	12.3%	92.8%	6.1%	
TOTAL AFRICA	849,705	14,043,415	13,000,078	8,217,671	9,937,967	4	4	4.9%	97.6%	29.6%	
TOTAL PACIFIC	895,599	6,906,524	8,118,987	6,765,024	8,422,988	5	5	2.4%	100%	2.1%	
Total CONTINENTS	31,415,985	289,026,005	305,482,616	257,148,122	273,909,072	6	1	100%	100%	13.5%	
UNALLOCATED	107,148	941,334	269,999	201,203	73,086					318.4%	
GRAND TOTAL	31,523,133	289,967,339	305,752,616	257,349,325	273,982,158					13.8%	
South African Trade by CONTINENTS (Rand '000)											
CONTINENTS	TRADE BALANCE (R'000) (R'000)					R a n k					
Name	OCT-2005	2005	2004	2003	2002	'05	'04				
TOTAL AFRICA	3,170,220	24,086,250	26,037,199	30,783,133	34,642,648	1	1				
TOTAL PACIFIC	-128,193	1,495,801	-196,791	-433,016	-2,655,623	2	2				
TOTAL AMERICAS	-703,013	-4,370,811	-3,586,777	-2,273,687	-600,452	3	3				
TOTAL EUROPE	-2,210,194	-21,326,842	-26,428,189	-24,576,977	-18,202,354	4	4				
TOTAL ASIA	-8,183,429	-42,754,225	-41,606,566	-23,953,291	-20,696,780	5	5				
Total CONTINENTS	-8,054,608	-42,869,827	-45,781,123	-20,453,838	-7,512,561	6	6				
SHIP STORES	120,982	1,473,718	1,799,027	3,995,434	5,223,352						
UNALLOCATED	2,446,234	22,300,772	34,345,749	34,783,736	42,411,344						
GRAND TOTAL	-5,487,393	-19,095,337	-9,636,347	18,325,332	40,122,135						

Source: the dti



Source: the dti

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