

# APPENDIX II

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## COMMENTS FROM THE GOVERNMENT OF SOUTH AFRICA ON THE REPORT



# SOUTH AFRICA'S RESPONSE TO THE APRM COUNTRY REVIEW REPORT

2 May 2007



## INTRODUCTION

1. The South African Government welcomes the final version of APRM Country Review Report No. 4, the Country Review Report, Republic of South Africa (hereinafter referred to as the Report) and commends the Country Review Mission for a positive Report. Members of the CRM worked tirelessly and engaged with South Africa in a constructive dialogue conducted in the true spirit of Peer Review.
2. This process and the lessons learnt are invaluable for strengthening the African Peer Review Mechanism in the future.
3. The Report acknowledges the huge strides made by South Africa in transforming the country into a vibrant democracy with one of the most progressive Constitutions in the world which guarantees civil and socio-economic rights.
4. The Report recognises South Africa's economic achievements over the last 12 years and the opportunities provided by the country's first world economic and physical infrastructure and the fact that it has the largest and most sophisticated economy in Africa. The existence of sound, transparent and predictable economic policies is commended and South Africa's technological positioning that enables it to compete in the global market is validated.
5. The Report notes that the country is ranked among the best performers in corporate governance in emerging markets, with a robust legal system which ensures lawful protection of property rights and intellectual property rights. The regulatory framework provides an enabling environment for economic activity in the country. Human and labour rights are protected while women are strongly represented in the public sector. Several credible institutions such as the Public Investment Corporation, the Industrial Development Corporation (IDC) exist alongside a number of well known multinational institutions and world class universities. Self-sufficiency in development financing has also been achieved.
6. The Report identified eighteen South African best practices worthy of emulation. They include Cooperative Governance, popular participatory governance practices, Batho Pele, Multi-Purpose Community Centres, the highly consultative Budget Formulation Process, achievements of the South African Revenue Services, the Johannesburg Securities Exchange, the JSE and Triple Bottom Line Reporting, the Mzansi Account for the unbanked, the Financial Service Charter, the King Reports, self-reliance in development funding, provision of basic needs and socio-economic rights and the successful promotion of gender equality in the public sphere.
7. The Report praised South Africa for methodological innovations developed in the course of implementing the APRM. These included shortening the questionnaire and its translation into all languages, inviting research institutions to participate as partners, the validation process of the 2nd National Conference, involvement of civil society through

the SA ECOSOC chapter, the establishment of Provincial Governing Councils, the role of Community Development Workers in enhancing popular participation in the APRM process, the use of outside broadcasts, the APRM song and blitzes in taxi ranks and major street corners to popularise the APRM process. To this we add the importance of using the Gender-Disability-Children-Youth sensitive lens in undertaking country reviews.

8. The Report points to major challenges which the country must address in order to maintain the momentum of post-Apartheid reconstruction, development and economic growth. Many of these challenges have been recognized in the Discussion Document on Macro-Social Trends in South Africa<sup>45</sup>. This report depicts major trends that require attention and national effort, not only by government but by society as a whole. Effective partnerships to speedily improve the material and social conditions of all South Africans and to improve social cohesion are identified as critical. In line with the APRM Country Self-Assessment Report and the Report, emphasis is placed on the need to address the tension between a market-based economic system premised on tough competition, and the desire to build a caring egalitarian society. This challenge is not solely a matter of creating social values, but also impacts on public policy and the imperative of building a developmental state.
9. South Africa shares the view that the “primary purpose of the APRM is to foster the adoption of policies, and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental integration through sharing of experiences and reinforcement of successful and best practice”.

## **NATIONAL OWNERSHIP OF THE APRM**

10. The notion of fostering the “adoption of policies and practices” points to the importance of dialogue in translating the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance (the Declaration) into a viable set of policies and practices for implementation based on the Review process. This process of dialogue must be duly diligent of national sovereignty and national ownership of the socio-economic developmental agenda as well as of measures already in place to implement the values, codes and standards contained in the Declaration.
11. The Memorandum of Understanding on the APRM “... commits participating Member States to, among others: contribute to funding the APRM, facilitate the development of the national Programme of Action, sharing best practices, support each other in capacity building and exercise of constructive peer dialogue and persuasion”.
12. The essence of “constructive peer dialogue and persuasion” is that peers engage with the Country Self Assessment Report (CSAR) and the Programme of Action (POA), and agree on priorities based on the CSAR for inclusion into a POA.

<sup>45</sup> A Nation in the Making: A Discussion Document on Macro-Social Trends in South Africa, The Presidency Republic of South Africa, 2006.



13. The challenge of “constructive peer ... persuasion” is that it involves a delicate balance between respect for national integrity and sovereignty, alternate paths to socio-economic development, the Declaration and a country's own chosen trajectory.
14. A peer review by definition also implies a collegial relationship where the peers agree to disagree in an atmosphere of mutual respect.
15. The South African Government is highly supportive of the African Peer Review Mechanism and believes it will play an important role in African development. The APRM is integral to the total work of the African Union and to the specific programmes of NEPAD. Indeed, Africa's development is now primarily in the hands of Africa and the capacity must be built to ensure that this objective is achieved. This requires an independence of thought and a confidence in Africa's capacity. The resources and support of the developed economies will be required as will more equitable multilateral trading and investment systems. However, in the partnerships that are built, Africa must participate as an equal.
16. The essential basis of this equality is that the prime definition of the problems to be solved and the solutions thereto must originate within the democratic structures of African Nations. This does not preclude advice and technical support from the world community but it does require a reflective process within African deliberative councils to reach uniquely African conclusions and solutions.
17. There are a number of important implications that emanate from this analytical starting point that underpin key aspects of the South African response. These include the importance of building reliable data to avoid the dangers of ideological constructs, the need for consistent characterisations of the state and democracy that are free from ideological or theoretical paradigms imported from different situations, the need for rigour in attributing causality and the imperative of a thorough consideration of country-specific historical legacies and their effects.
18. The political economy of each African country needs to be located within its own historical context in order to identify the extent of the obstacles to growth and development. The uncritical use of theoretical or policy positions that have essentially been developed in very different historical situations in the developed economies may undermine this approach.
19. South Africa's progress cannot easily be measured against current developments in other African economies or developed economies. The effects of an extensive colonisation by colonial powers and the deep-seated structural effects of that colonisation and its acute form in the Apartheid era have to be profoundly understood in order to measure the unprecedented changes that have been achieved in the last 12 years. However, it also follows that such deep structural problems cannot be resolved in a matter of one or two decades.

20. The Report endorses this overall approach and notes that:

The mandate of the APRM is to ensure that the policies and practices of participating countries conform to values, principles, codes and standards enshrined in the Declaration on Democracy, Political, Economic and Corporate Governance. This commonly agreed instrument for self-monitoring has at its epicentre the dissemination of best practices and rectification of underlying deficiencies in governance and socio-economic development processes among AU member States. The framework is aimed at encouraging and building responsible leadership through a self-assessment process, constructive peer dialogue and the sharing of information and common experiences in order to reinforce successful and exemplary practices among African countries.

21. A central question is: How is the mandate of the APRM realized in practice? South Africa understands that the values, principles, forms of governance, expressions of democracy, characterizations of the state and their formal constitutional expressions are country-specific and conjunctural. They emerge out of specific historical experiences, different forms of struggle and unique paths taken for socio-economic and political development. A country analysis has therefore to be a historically contingent analysis. It has to take into account the specificity of the pre-colonial, colonial and neo-colonial social formations from which the form of the nation state is derived. The organizational and institutional expressions of democracy and of the state will therefore naturally vary from country to country.

22. These varied expressions create challenges for the evaluation, measurement and benchmarking of one state against another. What forms of methodology are privileged and why? How are problematics arrived at? How is cause and effect assigned? How are issues, conceptions, programmes, practices and outcomes juxtaposed? How is data presented and weighted? How are the various ideological predispositions of different reviewers and authors expressed and mediated in the review process as writing itself is not a neutral endeavour? Embedded in discourse are ideological and value-laden propositions.

23. This raises a critical point that is integral to the whole APRM process: the evidential basis for assessments. South Africa believes that the process of interaction and consultation that occurred in the South African Review provides an excellent start. The issue is therefore not one of process but of what statistics and analysis is used.

24. A key part of the NEPAD process is to build up reliable policy information in the form of vital statistics, financial accounting and national accounts. It is acknowledged that the reliability of statistics in Africa is low. South Africa recognizes that improvement is required in its statistical processes in a number of areas. These weaknesses stem from the deep structural problems. Certainly in South Africa there are very few reliable time series when it comes to statistics.





25. Statistical series often assume a momentum and life of their own. This makes them particularly susceptible to their articulation within specific constructs. The risk is that general perceptions, often essentially racist, about the hopelessness of the African situation are all too easily confirmed by statistical constructs that have a very tangential relationship to the actual universe.
26. The South African response to the Report is therefore informed by the following fundamental beliefs:
- A profound support for the APRM and absolute commitment to its sustained success.
  - The starting point of analysis and evaluation must be the concrete historical situation a country finds itself in and not any external benchmark.
  - Policies and programmes must be measured against the founding charter of the AU and the specific programmes of NEPAD and not any specific economic model or theory.
  - One of the greatest challenges is to develop reliable statistics that reflect reality and avoid the citation of unreliable statistics.
  - The need to provide continuous constructive feedback in order to improve reviews in the future.

## **METHODOLOGICAL AND CONCEPTUAL ISSUES**

27. Accordingly, in discussions with members of the APR Panel, South Africa raised a number of methodological and conceptual issues that found expression in the Report.
28. The first is to ensure that credible and legitimate data sets are used both in the Country Self-Assessment Report (CSAR) and in the Report.
29. The second associated methodological issue is the tendency to make broad sweeping claims which are not substantiated and are contradicted by data claims in other sections of the Report. The following are some examples:
- i. Government has put in a lot of effort in delivering social services in education and health, including HIV/AIDS. However, in most cases, challenges still remain and are even growing... (p. 18<sup>1</sup>);
  - ii. While post-apartheid South Africa is imbued with a vibrant political democracy, it is nevertheless a democracy under severe socio-economic stress (paragraph 6); and
  - iii. Paradoxical as it may seem, there has been a steady increase in the levels of unemployment in South Africa despite a modest increase in job creation during the past decade. Unemployment has climbed inexorably, reaching 28.2 per cent of the country's economically active population by September 2005. The likelihood of being employed in South Africa is still heavily influenced by race, geographic location, gender and levels of skill (paragraph 888, p. 274).

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<sup>1</sup> Now page 17



30. There are methodological problems with the manner in which unemployment in South Africa is captured in the Report. Paragraph 6 of the Report notes that “Urban migration ... has exacerbated the problem of squatters. Consequently, enormous squatter encampments have developed, particularly in and around Johannesburg and Cape Town. Most of these squatters, as well as nearly one half of the adult African population nationwide, cannot find work within the formal sector of the economy”. Paragraph 3.91 states that “If the unemployment problem had been mainly cyclical, macroeconomic policies would have provided a relief during these past 12 years. Because it is structural, however, it requires a totally different approach to reorientate South Africa progressively into a development state (paragraph 3.91, p. 20). And paragraph 888 noted above reiterates the structural as opposed to the cyclical nature of unemployment in South Africa.
31. The examples cited above embody a number of methodological issues. Firstly, what is the base year that is being used to measure increases or even decreases in unemployment levels in South Africa? Secondly there is a contradictory set of claims in the sentence. On the one hand there is a claim that there has been “been a steady increase in levels of unemployment” and on the other hand a conclusion is drawn that the increase has been “inexorable”. Thirdly when does a steady increase in unemployment actually become an inexorable climb? Fourth how is the figure noting that “ ... nearly one half of the adult African population nationwide, cannot find work within the formal sector of the economy” arrived at? There are, therefore, issues of data, issues of emphases and issues of causality and conclusion that are all questionable.
32. Another example is found on p. 226 (paragraph 697):
- This means that, despite sound fiscal and monetary policies in the past decade, the state of the South African economy has not significantly improved in terms of poverty and unemployment reduction. Real per capita income decreased and past socio-economic inequalities have largely remained unchanged.
- Once again the conclusion is that “the state of the South African economy has not significantly improved in terms of alleviating poverty and unemployment...” (p. 226, paragraph 697). This is contradicted by another claim that “poverty has grown and become more visible in recent’ years” (p. 243<sup>2</sup>, paragraph 769). All this despite data cited in the Report that shows huge increases in social expenditure, with 10 million South Africans now receiving various forms of social grants all aimed at poverty alleviation. So what is the Report telling the reader? Has poverty increased (over what time frame and using what measure?); has there been no significant improvement (suggesting that it may not actually have increased but it has not improved) or has the developmental state’s anti-poverty initiatives actually resulted in decreases in the levels of poverty as claimed in a number of recent academic studies?
33. Another example of the need for more sound evidential based conclusions is seen in the following example on education:

<sup>2</sup> Now page 242





During provincial consultations, however, several stakeholders asserted that some schools have refused admission to children because of their inability to pay school fees. For a country whose development progress is being hindered by lack of skills, a lot more should be done to ensure that children and youth, regardless of financial status, are able to obtain a primary education. (p. 250, paragraph 796)

Certainly more needs to be done to integrate children and youth from impoverished backgrounds into the school system. But the above does not assist in any way. The reference to “several stakeholders” needs clarity – how many stakeholders? In how many provinces were these issues raised? The suggestion that “some schools have refused admission to children” also needs to be disaggregated. How many schools, which schools and how large is the problem – not just in terms of the number of schools but also the number of learners involved? Effective policy and strategic interventions to ensure inclusion and overcome forms of exclusion require adequate data. Anecdotes while important in terms of a first level alert are not sufficient to develop policy and interventions.

34. Another example of broad sweeping claims is to be found in paragraph 702 (p. 227) of the Report:

It is, therefore, obvious that the dichotomous relationship between growth and socio-economic development, now passé as it is, is a false one. Sustainable development is not possible in a country where most of the people are malnourished, disease-ridden and illiterate.

Is the Report suggesting that South Africa is a country where the majority of the people are malnourished, diseased and illiterate? Is it also suggested that the developmental state in South Africa is incapable of undertaking a programme of sustainable development designed to reduce socio-economic inequalities?

35. Thirdly scattered throughout the report are the problematic juxtaposition of causal relations. Why for example would the authors suggest that proportional representation leads to lack of accountability, or that floor-crossing poses a problem for democracy which must be tempered with increased pluralism (paragraphs 135 & 136, p. 85)? A textual reading of the Report also highlights instances of conflation where it is not readily apparent where the commentary of respondents ends and where the analysis of what is being said begins. This conflation of anecdote and analysis can pose concerns with respect to conclusions that are arrived at. How is the veracity and reliability of the claims by respondents verified and then used? Why are the claims of only some respondents included and others not?
36. Fourthly, the methodological starting point in line with the APRM mandate has to be the country's own unique socio-political economic and historical conjuncture. Despite the numerous references to the apartheid past in the text, there appears to be an underestimation of the overriding legacy left by three and a half centuries of colonialism, racism, oppression and apartheid. Of equal concern is the apparent underestimation of the full extent to which



the developmental state in South Africa has in fact moved swiftly and decisively to improve the quality of life of the majority of citizens in a relatively short period of 12 years.

37. The APRM process must not be undermined by inconsistent methodological approaches that call into question the very philosophical underpinnings of the product and in so doing undermine the credibility of the peer Review process itself. Consistency of methodological approach can only enhance the efficacy of the Peer Review process.

## **HISTORICAL LEGACY AND THE DEVELOPMENTAL STATE**

38. The history of apartheid is the history of the white minority using state power and state repression to oppress, suppress and exploit the masses of the Black population of South Africa. Colonialism of a special type including white minority rule resulted in racial discrimination, racial segregation, concentration of wealth in the hands of the white minority, the concentration of the land mass and its surface and sub-surface riches in the hands of the white minority, occupational segregation and classification and unequal access to the labour market. Huge and glaring income disparities and immensely unequal access to the valued goods and services in South Africa were further consequences of the unique form which colonialism took. Any governance review of South Africa needs to at the very outset and throughout the review process foreground this history and legacy.
39. With respect to poverty, unemployment and inequality generally, the Report notes that “despite South Africa’s status as a middle income country, poverty and inequality are still widespread and manifest themselves in high rates of unemployment, land hunger and lack of access to basic human needs. In both urban and rural areas, the majority of South Africa’s population continues to experience conditions of severe deprivation and squalor. A significant number of South African households continue to be poor, or are vulnerable to being poor”. (p 21). Poverty under apartheid was hidden by the racial bifurcation of the nation state into “South Africa” and the Bantustans where the vast majority of the impoverished black people lived. Influx controls as well as residential segregation and migrant labour legislation ensured that white South Africa’s rates of poverty were very low. An analysis of poverty in post 1994 South Africa has to be cognizant of this reality and of the reality of statistical manipulation of demographic data under apartheid.
40. Such an analysis also needs to continually emphasise that the first democratically elected government in the history of South Africa not only inherited this legacy but had a moral, political and constitutional obligation to deal in the most forceful way with the legacy. Such a review also needs to be fully seized of the reality that colonialism and apartheid had over three and a half centuries to entrench the legacy of monumental inequality which the United Nations described as “a crime against humanity”. On the other hand, democracy in South Africa is only 12 years old and the developmental state has had less than a decade and a half to undertake wide ranging socio-political and economic transformation and deal with improving the quality of life of the vast majority of Black people in South Africa. Against this backdrop the socio-economic and political gains as well as the significant





strides made in improving the quality of life of the vast majority of life is without precedent on the continent.

41. The measure of democracy and good governance in post apartheid South Africa is inseparable from the struggle to eradicate the legacy of apartheid and the continual struggle against racism, sexism and other forms of discrimination. Democracy in South Africa is about formal equality related to fundamental freedoms to worship, to free association and freedom of thought. But democracy and the developmental state must also address the history of systemic racial discrimination and provide an alternative that goes beyond a simple notion of protecting individual rights. Socio-economic rights, also, must be equally respected and furthered.
42. In the context of creating a better life for all South Africans, especially those who are the most marginalised and impoverished, promoting diversity and promoting social cohesion, the South African government has to intervene to promote real potential for equality. Within a democratic and developmental discourse, the state's commitment to equality of opportunity ensures that all members of society are provided with the opportunity to secure the valued goods and services free from discrimination. And that can only be done structurally, and with resolve.
43. Promoting equality of opportunity means engaging in transformation. It means the enactment of legislation to overcome barriers to labour market entry and to upward mobility for the historically disadvantaged masses of South Africa. It means implementing public policies aimed directly at poverty eradication and the strengthening of the second economy – and raising the capacity of the state at all levels to boost delivery to the people of South Africa.
44. Though the Constitution does not use the word “transformation” the spirit and the intent of the Constitution compels the developmental state in South Africa to engage in transformation of society, the economy and the institutions of governance and administration. This is what a genuine commitment to diversity requires. This more profound conception of the intricate relationships between democracy, freedoms and the role of the state places a special onus on elected officials who have been given a mandate to eradicate the legacy of apartheid and transform the country into one that is non racist and non sexist.
45. In 1994 the first democratically elected government of South Africa consciously decided to eschew the minimalist state that was in vogue at the time and instead, consistent with its commitment to equality and social justice embraced the developmental state which has as its primary objectives, eradicating poverty and unemployment, closing the gaps between the first and second economies, dealing with underdevelopment while recognising that post apartheid South Africa would need to be integrated more fully into the global economy. Over the past 12 years South Africa has gone through an intensive period of socio-economic and political transformation.

46. Developmental states are conjunctural configurations whose routes and approaches are contingent on national history and the choices made by citizens and leaders. There are many examples of the developmental state, including Germany under the Marshall Plan, post-colonial Uganda, and the “Asian tigers” (South Korea, Singapore, Taiwan and Hong Kong). In a developmental state government leads a strong, concerted drive for economic growth, ensuring the mobilisation of national resources towards development goals.
47. A central task of developmental states in the contemporary period centres on wealth creation and distribution and social protection in an era of globalisation. It is crucial for the State to maintain or increase its expansionary fiscal and social protection strategies while maintaining the imperatives of managed liberalisation, increased openness to trade, investment, financial flows, exposure to capital mobility, conformity with international agreements that require the State to open its markets to foreign trade and the elimination of subsidies.
48. In the case of South Africa, there was a need to articulate and affirm a clear role for the developmental state in the fight to eradicate poverty, unemployment and underdevelopment. The developmental state, operating in an environment of democracy and political stability has to deal with market related and market induced inequalities, provide equality of opportunity to all citizens, work to develop social cohesion; promote peace and stability regionally and globally, promote sustainable growth and development, ensure ecological and environmental sustainability, and deal with the legacy of apartheid which included an economy in a shambles, a society racially polarized by apartheid and immense material deprivation of the majority of black people in South Africa. The South African developmental state also had to usher in a democratic Constitution, create a climate of respect for human rights, overturn apartheid legislation, bring in new legislation that was in conformity with the Constitution and undertake a massive and continuous transformation project. These development goals of the state are informed by its ideological character which also informs the nature of the state-society relationship (the People’s Contract). The ideological basis also gives state’s institutional and administrative characteristics their coherence (the channels of political participation, the popular forms of participation and consultation, the separation of powers, the distribution and use of political power, the relations between and among Departments and the form of democracy and the party political system). In this sense South Africa sees a mutually reinforcing relationship between democracy and its institutional and administrative arrangements and the developmental state and its goals and objectives.
49. The achievements of the developmental state must be measured by its capacity to promote shared sustainable (employment generating) development and growth in an environment which respects and nurtures democracy and the institutions of democracy. In South Africa, the achievements of the developmental state must be measured against the legacy of apartheid which the first democratically elected government inherited in 1994. This legacy included immense material deprivation of the vast majority of South Africans, racialised poverty, racial segregation, a huge unequal division of land, wealth and income based on





race, and legalised, institutionalised and systemic racial discrimination in all walks of life.

50. The ANC Government has committed itself to an ongoing transformation project of building a developmental state that promotes popular participation, accountability and an active informed and empowered citizenry while respecting and engendering a culture of human rights.
51. The particular form democracy takes in South Africa is characterised by citizen engagement (participatory democracy) and an active state (the developmental state) which encourages participation while simultaneously using state resources to promote social justice, the development of social and physical infrastructure and greater sharing of the fruits of economic growth in an environment of macro-economic and political stability. The Report points to co-operative governance as a best practice and notes that “the makers of the constitution avoided the path of low-intensity democracy and opted for a cooperative state with three spheres of government and separation of powers between the executive, the legislature and the judiciary” (p. 6 paragraph 3.5; p. 50<sup>3</sup>, paragraph 2).
52. South Africa is a multi-party democratic state in which all the elements of formal democracy are enshrined in the highest law of the land – the Constitution, including the right to hold office, to vote, the enumeration of fundamental freedoms, the enumeration of basic rights, including social rights, the separation of powers, co-operative governance, respect for the rule of law and the holding of free and fair elections. The ruling party has political legitimacy and credibility because it is based on the will of the majority of the voters and it came to office through free and fair elections.
53. The Report points to a number of best practices that enhance popular participation in the democratic process beyond the casting of the ballot. These practices strengthen and embed democracy in the political culture of South Africa and include:
  - “Cooperative Governance, a process of institutionalised contestation to be undertaken sympathetically and productively as a generalised means of first resort in resolving conflicts, especially those of a jurisdictional nature;
  - Popular participatory governance through izimbizo, which constitute face-to-face interaction and engagement between senior government officials from all spheres of government – national, provincial, and local – and the public;
  - Taking the Parliament to the people, an outreach programme whereby the parliament and provincial legislatures go to the ground and interact with members of the communities and listen to their concerns, needs and aspirations;
  - Batho Pele, essentially a Citizens Charter, based on the traditional Sesotho adage, meaning ‘people first’. It ensures that the people are sufficiently informed about the governance processes, the functions of the various ministries and departments, those in charge and what to expect from them; and
  - Multi-Purpose Community Centres, is a one stop, integrated community development

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centre designed to provide information and a wide range of services to communities in an integrated and coordinated way.”

54. In South Africa, politics is rooted in a People’s Contract (the Election Manifesto of the African National Congress) and is tested regularly through these forums of dialogue and engagement with the people in both the processes of governance and in the debate about South Africa’s national development objectives. Popular participation and citizen engagement is an ongoing and permanent feature of the political landscape in South Africa and they are actively encouraged.
55. Omano Edigheji<sup>46</sup> among others notes that the democratic developmental state embodies the principles (and practices) of electoral democracy and ensures citizen participation “... in the development and governance processes”. Edigheji also notes that the developmental state is one that “can also foster economic growth and development”, has clearly defined “socio-economic objectives that require state intervention” (including poverty reduction and eradication, social justice, reduction in income and asset gaps between rich and poor); and places a premium on “...its institutional and organisational ... structures that enable it to promote and achieve better economic performance.”<sup>47</sup>
56. The developmental state is conjunctural. It is not an ideal typical construct that exists in the same form in different places in different time periods. It is historically contingent. A key feature of developmental states is that their accumulative and legitimation functions are performed in tandem to simultaneously stimulate sustainable growth and reduce market generated inequalities. The developmental state is distinguished by its social objectives as well as the institutional arrangements that facilitate state intervention in the market (to deal with market generated inequalities), to utilise the country’s resources for social and infrastructural growth and development.
57. In the case of the South African developmental state, the “autonomy” of the state from the major contending social classes in society derives from state-society relations embedded in a “People’s Contract” that involves participation, dialogue, engagement and accountability by all the social forces in society.
58. There are examples of developmental states that are more authoritarian and less democratic but in the case of South Africa, popular participation, political inclusion and representation are essential to the theory and practice of the South African developmental state.
59. The developmental state is defined by its objectives and commitments. Its success has to be measured by the degree to which it has achieved its objectives and national development goals. The end goal of generating economic growth and promoting social development are normative ideals to which all developmental states aspire. The developmental state in form and function is not constitutive of the social formation as a whole. The state is a condensation of social forces that functions through a set of political and institutional arrangements that have a public purpose including shared sustainable employment generating growth.

<sup>46</sup> Omano Edigheji, (May 2005), A Democratic Developmental State in Africa? A concept paper. Centre for Policy Studies, Research Report 2005.

<sup>47</sup> Ibid., pp. 6-7.

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60. South Africa contends that the apartheid state has been fundamentally transformed. Its balkanised apparatuses inherited from apartheid have been amalgamated into a new public service underpinned, by constitutional values and principles which include transparency and accountability, developmental orientation, equity and representivity. Similarly, key elements of the “strategic policy framework” identified by the Panel (as well as many others) including a People’s Contract, economic empowerment, Batho Pele and popular participation are key practices of the South African developmental state.
61. The Report does acknowledge the tremendous strides made since 1994: “Improved economic performance, coupled with the advent of democratic, people-centred governance, has enabled hitherto unfathomable improvement in people’s material and social conditions. The widespread availability of social services and grants has resulted in the reduction of absolute poverty” (p10, paragraph 3.29). This assessment points to a purposeful South African developmental state committed to social justice making demonstrable progress in the achievement of its goals.
62. The characterizations of the South African state, democracy, polity, economy and their institutional expressions are inconsistent across the Report. These are ideological constructs. There is no objective theory of knowledge or social science untainted by ideology. Characterisations of the state and its practices being “based on European post-World War II models” (paragraph 890, p. 274) as post-conflict (paragraph 97, p. 76) and developmental all carry with them ideological influences which are not always consistent with one another. It is also not evident how the conclusion can be drawn that “While post-apartheid South Africa is imbued with a vibrant political democracy, it is nevertheless a democracy under severe socio-economic stress” (paragraph 6, p. 51<sup>4</sup>)
63. Sections of the Report were written by different authors and this approach has an impact on the Report. This is evident in the contradictory formulations on the same issue in different sections of the Report. These contradictory formulations are reflective of the differing ideological predispositions of the authors. As has been argued, Social Science is not a “neutral” science and embedded in analysis and in recommendations are value judgements informed by implicit and explicit ideologies. To suggest that social scientists are not value neutral is not at all to suggest that they are unprofessional or lack credibility.

## **MACRO-ECONOMIC POLICY AND DEVELOPMENT**

64. In December 1997 the 50th National Conference of the African National Congress held in Mafikeng adopted a definitive resolution on economic policy. This resolution included a clause that read:

Conference reaffirms that our macroeconomic framework policies must be directed to advancing the RDP [Reconstruction and Development Programme]. We are not pursuing macro balances for their own sake, but to create the conditions for sustainable growth, development and reconstruction. The strategy for Growth, Employment and Redistribution

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<sup>4</sup> Now page 52



(GEAR) is aimed at giving effect to the realisation of the RDP through the maintenance of macro balances and elaborates a set of mutually reinforcing policy instruments.

65. The Report asserts that although GEAR “did not completely depart from earlier government policy but committed government to accelerating aspects of existing policy through macro-economic stabilisation.” (paragraph 283, p. 123<sup>5</sup>) The Report goes on to state that “many of the gains expected from the adoption of the measures did not materialize as GEAR failed to effectively attain many of its goals.” (paragraph 284, p. 124<sup>6</sup>)
66. Gear was announced to bring greater stability to investment decisions by reducing the budget deficit and inflation to more sustainable levels. It was expected that this would be good for economic growth, investment, employment and poverty reduction. This indeed has been the case. It may be true that Gear was optimistic about when its targets would be met, but it needs to be recognized that the targets themselves were indicative. Macroeconomic forecasting for more than a one-year period cannot be absolutely precise. The value of such exercises is that the targets and logic of how the economic variables fit together portray a viable trajectory or path for the economy.
67. The Report’s argument that while “GEAR helped ensure macro-economic stability and thereby enhanced South Africa’s international status” while doing “little to redress the sharp social economic inequalities in South Africa,” is problematic. From 1996 to 2000, spending on public services fell by 4.5 per cent in real terms, but since 2000, public spending has increased by over 60 percent in real terms. The fiscal consolidation of the late 1990s has provided the resources to significantly accelerate the implementation of the RDP.
68. The Report goes on to argue that while “Government has restored and maintained macro-economic stability...unqualified reliance on market forces and macroeconomic management does not necessarily ameliorate the poverty and unemployment situation.” (paragraph 287, p. 124<sup>7</sup>) This is a clear example of the methodological flaws of the Report and illustrates the ideological predispositions of a particular reviewer. It is not clear whose experience is being referred to here. Indeed even subjective analysis needs to conform to minimum standards of evidence. It is inappropriate to suggest that the South African Government has advocated an “unqualified reliance on market forces” because the country’s markets are indeed regulated and systems are in place to address a variety of market externalities.
69. An honest appraisal of South Africa’s socio-economic trajectory over the past decade would lead to the conclusion that the relationship between the RDP and GEAR has served South Africa well. The key measure is in the quantity and quality of public services South Africa has been able to render. There are no contradictions between GEAR and the RDP. Both programmes, macro-economic stabilization and socio-economic interventions are driven by the developmental state and are mutually reinforcing in their realization of the objectives of the developmental state. South Africa is acutely conscious that the most effective anti-poverty strategy is one that focuses on employment generating growth. The recommendation

<sup>5</sup> Now page 122

<sup>6</sup> Now page 122-123

<sup>7</sup> Now page 123





that South Africa “Develop a long-term strategic plan that exploits the nexus of growth, employment, poverty reduction, income and wealth redistribution, and systematically reduces social grants while emphasising empowerment and considering sustainability issues,” (paragraph 786, p. 246<sup>8</sup>) is firmly in keeping with the current shared growth strategy under ASGISA.

70. The Report certainly takes cognisance of ASGISA. However, more recognition needs to be given that the emphasis on the growth targets in ASGISA were developed after a rigorous assessment of prevailing and future national, regional and global growth prospects over the next decade. The targets established are designed to enable the country to halve poverty and unemployment by 2014. In this sense, ASGISA is already designed to exploit “the nexus of growth, employment, poverty reduction, income and wealth redistribution” (ibid).
71. The history of democratic South Africa is the history of transformation and socio-economic and political transformation. Since 1994 economic growth rates have soared, South Africa is in the longest period of sustained economic growth in its history, poverty levels have declined, the black middle strata has increased dramatically in size, government expenditure on education, health care, water, electrification and affordable housing, has increased. In all respects South Africa has, for the past 12 years already embarked on what the APR Panel has recommended – namely “...a rigorous transformation process to accelerate socio-economic development in order to achieve sustainable development and the alleviation of poverty” (paragraph 3.86, p. 19<sup>9</sup>).
72. As the CSAR notes, South Africa’s developmental strategy is both informed and challenged by the legacy of apartheid and the forms of socio-economic inequalities it engendered. The Report therefore correctly identifies the racial legacy as among the key challenges confronting the country. However, to describe race relations as remaining brittle and sensitive (p. 4, paragraph 2.5, p. 31), contradicts the assertions made elsewhere of the need to remove the remaining “vestiges of racism.” (p. 27<sup>10</sup>, paragraph 3.133, p. 80, paragraph 117) The Report states that:

“Race relations remain brittle and sensitive. South Africans from different racial groups hold widely divergent views on key policy questions and on the nature of the problems confronting the country. Many whites, coloureds and Indians feel alienated and marginalised. Some black people, on the other hand, feel that too little has changed, as many white people still have the best jobs and lifestyles, which does not reflect the grand vision of a new South Africa.” (paragraph 68, p. 67<sup>11</sup>)

Apart from methodological issues relating to questions of how perceptions of marginalisation and alienation are measured, it is not clear what “some black people” and “many whites, coloureds and Indians” really mean. While some elements of the minorities fear that the Government is not doing enough to assure the cultural, education and language rights guaranteed by the Constitution, this is not a dominant trend or feature of democratic

<sup>8</sup> Now page 247

<sup>9</sup> Now page 18

<sup>10</sup> Now page 26

<sup>11</sup> Now page 66

contestation. Moreover, the Report does note that a Chapter 9 Institution known as the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Commission) has been established to promote respect for and further the protection of the rights of cultural, religious and linguistic communities. The CRL Commission as a Chapter 9 Institution is an independent institution which is subject only to the Constitution and the law and therefore has the required mandate to deal with the fears of minorities in this regard.

73. The Report captures the current status and level of South Africa's involvement in the regional economic integration agenda very well. As a key stakeholder in the process of economic development and integration, South Africa has accepted the responsibility of driving economic integration in Southern Africa, as this is a central element of South Africa's economic and foreign policy. One of the main objectives for South Africa under the SADC Protocol on Trade is to liberalise trade in the region so that the economies of the region could benefit and grow. However, South Africa's approach to the region has always been more developmental than narrowly mercantilist. The economic strategy in the region is guided by the principle of asymmetry whereby bigger concessions in trade and economic dealings are extended to partners in the region. This strategy is also in line with the NEPAD framework and emphasises the importance of partnerships on the continent.
74. Overall there is general agreement with the broad recommendation in the Report that "If South Africa is to make continued and sustained progress towards a united, non-racial, non-sexist and democratic society in its Second Decade of Freedom, it needs a major intervention: to reinforce the consolidation of democracy with measures aimed at integrating all of society into a growing economy.. This will require, among other things: identifying a grand vision uniting all and defining a shared approach by all segments of the Rainbow society, such that the individual and collective human potential of the nation can come to full fruition; managing diversity; reconstructing and democratising the economy in order to cope with the challenge of structural unemployment and pervasive poverty; and initiating a radical overhaul of the machinery of government, especially at local government level, to unlock current delivery logjams." (paragraph 69, p. 68<sup>12</sup>)
75. What is essential to reiterate is that the critical building blocks of just such an approach are already extant in current government policy, in the government Programme of Action and in the public articulation of this vision by the President of the country. The fight against poverty, unemployment and underdevelopment remain the three critical challenges in South Africa and this fight is intimately linked to nurturing the vision of a non-racial, non-sexist, prosperous and democratic South Africa in which the fruits of growth and prosperity are shared more equitably, and in which the gaps between the first and the second economies, and between rich and poor are narrowed. This is the transformative agenda of the developmental stated embedded in the Constitution of South Africa.
76. The Report's concerns around black economic empowerment are noted. However to blame the implementation of BEE for problems "of the general lack of skills in the public sector"

<sup>12</sup> Now page 67





(paragraph 229, p. 109<sup>13</sup>) is both simplistic and misleading. The Report notes that “the acute shortage of skills, especially of financial expertise, is affecting the government’s capacity to manage programme spending and social service delivery.” (paragraph 3.41, p.12<sup>14</sup>) Without denying the impact of skills shortages on service delivery the lack of capacity and attendant skills shortages need to be understood in their historical context. Education and human resources development under apartheid were guided by the principles of racial discrimination and ensuring a steady supply of cheap semi and unskilled black labour. Under apartheid there was occupational segregation based on race. “Bantu education” which was singularly responsible for the “mis-education” and lack of skills and capacity development of the overwhelming majority of the Black population, and there was serious inequitable funding of education on the basis of race. It should be no surprise that the post-apartheid developmental state inherits a labour force that needs its skills and capacity enhanced. It is too simplistic to talk of skills shortages and capacity constraints in an historical vacuum and to argue that skills are developed overnight. In addition because of globalization the global division of labour has increased global mobility and voluntary migration of labour. In the search for sectoral global skills, developed nations are at an advantage and are able to “poach” valued skills from developing countries and thereby exacerbate skills shortages in the latter. South Africa is not immune to this poaching.

77. What is encouraging is that the Report also fully acknowledges the need for the development and implementation of Broad Based BEE in order to deracialise and grow the country’s economy. It also recognises the positive impact that BEE has had on the economy. The fundamental challenge of broadening BEE to ensure more than a handful of individuals are enriched is accepted, but it is important to note that there has been a movement away from a narrow approach focusing on ownership to include inter alia a greater emphasis on employment equity, support to small medium and micro businesses, procurement support and the need for corporate social investment programmes.

## **CONCEPTUAL ISSUES AND MATTERS OF FORMULATION**

### **Political Governance and Democracy**

#### **The Truth and Reconciliation Commission**

78. The Report notes on pp. 58-62 (paragraphs 41-46) a number of issues relating to the implementation of the TRC Recommendations. While there have been challenges in the implementation of the TRC findings, substantial progress has been made. The TRC Unit in the Department of Justice and Constitutional development is finalising a report on Government’s Progress in implementing the TRC Recommendations. The report will be tabled in Parliament in 2007. The approach taken was to ensure the twin objectives of reconciliation and post-apartheid community socio-economic development and not of individual forms of compensation.

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<sup>13</sup> Now page 108

<sup>14</sup> Now page 11

79. The historical context and trajectory of local government transformation in South Africa, post-1994, is unique compared with other countries. Nowhere in the world has such an ambitious exercise of transforming over 1200 racially based local authorities to 283 inclusive, non-racial and democratic municipalities been undertaken within such a short time frame.
80. The Constitutional principle of cooperative governance lays the basis for hands-on engagement with, and support to, local government. This principle allows for the active support, monitoring and intervention by national and provincial government in the affairs of local government. A preliminary assessment of this hands-on approach (2004–2006), has demonstrated great responsiveness from the private sector and key organs of state, a general appreciation from the municipalities targeted and the actual resolution of critical and tangible problems at a local level. These lessons led to a decision in January 2006 to mainstream this hands-on approach into the core business of national and provincial government to benefit all 283 municipalities over the next 5 years. A key aim is to ensure seamless and integrated government and service delivery.
81. Thus the hands-on support approach to local government is consistent with the principle of cooperative governance and the objective of establishing a developmental state in South Africa. It has also being recognized that this approach must impact on the way in which national and provincial government and the state in general, are configured and capacitated. Various assessments at national and provincial levels of government are pointing to key challenges of capacity strengthening and restructuring within and across all three spheres of government.

### **Top-down versus Community-driven service delivery**

82. The Constitutional system of cooperative government entrenches the integrity and distinctiveness of the sphere of local government and in its inter-relationship with national and provincial government. Subsequent policy and legislation further define and clarify the nature of developmental local government. The unique and progressive elements of the local government system include the manner in which municipalities are legally defined to include communities, the mandatory requirements for integrated development planning and participation of communities in local governance, performance management and service delivery. Each of these legislative provisions is complemented by extensive programmes and appropriate instruments of fiscal and financial support to municipalities.
83. The implementation of key national service delivery programmes is also informed by the principle of cooperative governance. This principle has been further strengthened by framework legislation on Intergovernmental Relations. In terms of this legislation, intergovernmental structures are established across all three levels of government, which enables the provision of targeted support, monitoring and interactive dialogue on service delivery across government. All of this is further reinforced by the mandatory provision for municipalities to involve communities in key areas of service delivery and local governance.





84. Through various legislative provisions and programmatic support interventions, mechanisms for community participation are firmly in place and this finds principal expression through the establishment of ward committees. The objectives of these provisions and interventions are aimed at building inclusivity in local areas, strengthening the capability of communities and stakeholders to monitor the performance of elected local representatives and also to build community and citizen capability to participate in matters of local governance, service delivery and development. The recently gazetted Performance Management regulations for all municipalities and also the recently adopted Local Government Anti-Corruption Strategy will both go a long way in addressing the concerns related to poor local governance and inadequate performance oversight measures. The latter strategy outlines key roles and responsibilities for local stakeholders and communities.

### **Local Government is not a passive, subordinate sphere of Government (p. 71, paragraph 78)**

85. South Africa is a single sovereign unitary state comprised of three spheres of government, which are inter-dependent, interrelated and distinct. The principles of cooperative government further define key elements of the relationship between national, provincial and local government.

86. Chapter 3 of the Constitution spells out the status, objects, duties and broad architecture of local government in the overall system of government. Subsequent local government legislation and the local government transformation processes and interventions since 1994 in particular have sought to reinforce and mainstream the centrality and importance of the local sphere in the business of government as a whole. The latest example of this is the 5 Year Local Government Strategic Agenda that was adopted by the national Cabinet and Premiers of all provinces.

87. Therefore constitutionally, politically and based on the practical evidence of local government transformation in recent years, the trajectory of local government has been one of affirming, strengthening and mainstreaming its status and role in the overall system of government.

88. The APR Panel has appeared to have misread the relationship between the three spheres of government in South Africa. In particular the notion that local government is passive and subordinate is not borne out by the reality of governance in South Africa and is another example of the methodological problems of the report where assertions are made on the basis of an undefined number of respondents (many, some). The Report (paragraph 78, p. 71) notes that "...many stakeholders continue to perceive it [local government] as a passive and subordinate sphere of government." There also appears to be a fetishization of "the local" arising out of post-modernist conceptions of participatory democracy which lack an understanding of the relationship between a national vision and how it finds expression at the local level.

89. Paragraph 76 (p. 70) identifies a series of risks associated with strengthening local capacity, including "strengthening local bosses, accepting high levels of inefficiencies, legitimising exclusion of local minorities and ignoring, if not encouraging perverse local practices." This



sentence along with the assertion that “Experiences elsewhere have demonstrated that direct intervention by the central government in building local capacity hardly ever comes to an end and often ends up in recentralisation,” raise some profound and conceptual issues. Where are these experiences? Did they occur in similar constitutional contexts? How do we square off South Africa’s conception of cooperative governance with the Panel’s notion of a decision-making process that operates on the principles of “democratic centralism” (paragraph 76, p. 70)? It is not clear whether the Panel is referring to South Africa when it talks about democratic centralism or whether it is alerting South Africa to the dangers inherent in a system of democratic centralism.

### **Proportional Representation**

90. The Report noted that “some stakeholders also called for a reconsideration of the van Zyl Slabbert Commission recommendations...” (paragraph 134, p. 85). On the basis of this, the APR recommends to South Africa that: “In the light of experiences gained thus far, rethink and innovate the proportional representation system to ensure the development and consolidation of constitutional democracy is not hindered. In this regard, there is indeed a need for reconsideration of the Van Zyl Slabbert Commission’s recommendations to combine party lists with a district-based electoral system at all levels of government.” (paragraph 152, p. 90) South Africa notes this, but the review is still under consideration on the premise that proportional representation itself is a form of democracy that lends itself to the representation of historically disadvantaged groups. There is nothing to suggest that it is less democratic than other systems of representation.

### **Crime**

91. According to the Report, “Stakeholders also pointed out that the alarming rate of crime across South Africa”, (p. 95, paragraph 173). Although it is true that crime poses a serious challenge in South Africa, an impression should not be created that the Government is not taking steps to curb it. In addition to a number of current initiatives, the Justice, Crime Prevention and Safety (JCPS) Cluster and Government Communications are working with the private sector and other stakeholders to formulate a National Anti Crime Campaign focused on community mobilisation and improving popular partnership with the criminal justice system. Community police forums are expected to play a key role in this campaign which is aimed at strengthening society’s hand in the fight against crime.

### **Affirmative Action and Capacity Challenges**

92. It is acknowledged that despite the progress made in strengthening institutions and regulatory frameworks, service delivery challenges remain. Capacity shortages are particularly apparent at local government level, but Project Consolidate is responding to these by strengthening the commitment of national and provincial government, as well as other public and private sector institutions, to support local government. While experts are deployed to local government to assist in addressing some of the backlogs, longer-term





measures aimed at building capacity at local level are also being taken. Accountability challenges at the local level are being addressed through a combination of capacity building for councillors and municipal managers and regulatory measures such as performance management systems for municipal managers.

93. South Africa disagrees with Report's contention that affirmative action is the cause of the skills shortages in the South African civil service. The paucity of education offered the majority of people in this country under apartheid is the primary cause of the dearth of skills. It is true in some instances that people have left the public service as they were at odds with the spirit of transformation in the country. Some may have left the country for the same reason, but those who remain are committed to creating a better life for all. It is true that many middle and senior managers leave the public service for the private sector (paragraph 229, p. 109<sup>15</sup>); however, by the same token, thanks in part to the near market-related remuneration packages on offer, one quarter of new appointees to the Senior Management Service are from outside the public service. The Joint Initiative for Priority Skills Acquisition (JIPSA), spearheaded by the Deputy President, includes initiatives aimed at attracting back skilled people who have moved overseas.
94. Recently the Department of Public Service and Administration (DPSA) conducted a Personnel Expenditure Review, aimed at discerning trends and identifying needs regarding public service remuneration, and the need to recognise the contribution of professionals in the public service (doctors, nurses, engineers etc) was identified as critical to attracting and retaining these skills. The remuneration policy, which proposes dual career paths for certain professions, allows professionals to be paid management salaries without being managers. The APR Panel recommendation that South Africa should create the necessary incentives for attracting qualified talents to the public service is thus being addressed. However, it is acknowledged that that a comprehensive strategy for skills development and retention in the public sector, as recommended by the Panel, is required.

### **Batho Pele and Service Delivery Improvement and Integration**

95. Batho Pele has been successful as the rallying point for service delivery improvements in the public service. Currently steps are being taken to cascade the precepts of Batho Pele to the local government level, as part of a broader initiative to establish a Single Public Service consisting of all three spheres of government. The aim of the Single Public Service is two-fold: to facilitate mobility of skills within national, provincial and local government; and to facilitate the integration of service delivery for citizen convenience. Good progress is being made, and the Constitution is not perceived as an obstacle. The Batho Pele initiative is being strengthened this year through a focus on the development of Service Delivery Improvement Plans by departments, which ought to help address the fundamental issues underlying poor service delivery.
96. South Africa is justly proud of its achievements in integrating service delivery, broadening access to services and increasing public participation in policy-making and monitoring and evaluation of service delivery. These include the Multi-Purpose Community Centres,

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<sup>15</sup> Now page 108

the Batho Pele Gateway portal, the Community Development Worker Programme and the Presidential Izimbizo Programme, amongst others. Public participation at the local level is effectively entrenched through the Integrated Development Plan (IDP) process, which develops a five-year strategic plan for each municipality. It is true that challenges have been experienced in the harmonisation of planning at local, provincial (Provincial Growth and Development Strategies) and national (National Spatial Development Perspective) levels, but this is being proactively addressed through a programme led by the Presidency.

## Corruption

97. The Report identifies corruption as a cross-cutting issue and also deals with corruption in Chapter 7 where other cross-cutting issues are raised. This indeed makes sense as corruption is a thread found in all thematic areas. The APRM Secretariat may well consider amplifying the base questionnaire to deal with corruption in this manner rather than the current approach of disaggregating the corruption discussion. It may be that the questionnaire was intended to explore corruption in various sectors; it has successfully done so, but it may be advisable to present findings (whether self-assessment or country review processes) in future reviews in other countries and South Africa in the cross-cutting format.
98. The Report highlights the following as areas where attention needs to be given to fight corruption:
- Private funding of political parties
  - Post-public sector employment regulation
  - Bribery of foreign public officials by South African business persons
  - Improving the coordination and roles of the different anti-corruption bodies
  - Strengthening the capacity and independence of the different anti-corruption bodies
  - Promotion of the knowledge and application of key legislation in the anti-corruption framework, particularly access to information and protection of whistleblowers. (paragraph 940, p. 284<sup>16</sup>)
99. The above areas, with the exception of the bribery of foreign public officials are being addressed in the Public Service Anti-corruption Strategy, the resolutions of the 2nd National Anti-corruption Summit and the National Anti-corruption Programme. The issue of bribery of foreign public officials is a relatively newly emerging challenge.
100. The involvement of South African businesses in the bribery of foreign public officials did not emerge as an issue of major concern during the country self-assessment. The issue was highlighted 6 November 2006 when the Bribe Payers' Index of Transparency International was released. This does not detract, however, from the fact that the Prevention and Combating of Corrupt Activities Act of 2004 criminalises such practices where they exist.
101. The steps that have been taken to deal with the bribery of foreign officials are as follows:
- In January 2002 the Cabinet adopted the Public Service Anti-corruption Strategy that amongst other objectives required legislation to be developed that establish offences related to the bribery of public officials.

<sup>16</sup> Now page 283





- The adoption of the above strategy was followed by the tabling of draft legislation dealing with criminalising acts of corruption. This draft legislation evolved into the Prevention and Combating of Corrupt Activities Act of 2004.
- Section 5 of the Prevention and Combating of Corrupt Activities Act of 2004 specifically criminalises acts involving the bribery of foreign officials.
- In order to promote the understanding of the above legislation, the Government together with the Business and Civil Society sectors in the National Anti-corruption Forum has developed a guide on understanding the Act. This guide has a specific section dealing with bribery of foreign officials and is being used as an educational tool.
- South Africa has acceded to the Working Group on Bribery and the OECD Convention on the Bribery of Foreign Officials in International Business Transactions. The legal process for accession has been completed. This process included a technical evaluation by the OECD of the legislative framework dealing with corruption.

102. The following additional steps have been taken in the current financial year:-

- The National Anti-corruption Forum has set aside R3 million to launch an educational and awareness campaign on South Africa's anti-corruption framework and this campaign will target the Business sector and bribery of foreign officials. This campaign commenced in the first quarter of 2007.
- As part of the assessment of the impact of the national anti-corruption framework being undertaken at present, 2 000 businesses were surveyed during March 2007 to assess the impact of corruption in this sector, including doing business in other countries. This assessment should guide further steps to be taken to curb bribery of foreign officials.

## **Xenophobia and Racism**

103. The Report refers to the “brutality and detention” of foreigners, particularly of African descent when they come to South Africa (p. 287<sup>17</sup>, paragraph 956). The Report fails, however, to specify whether the reference is to foreigners who enter the country legally or illegally. In the case of illegal migrants, South African law enforcement agencies (like any law enforcement agency in any country) would be expected to detain them and subsequently deport them to their country of origin. The assertion that illegal immigrants are subjected to brutal and inhuman treatment is strongly disputed. During the visit of the CRM to the Lindela Repatriation Centre, it was clearly indicated that a system of 24-hour surveillance close circuit television has been installed covering the entire perimeter, grounds and buildings of the facility. Allegations of abuse and treatment can be dealt with by viewing the footage of the surveillance equipment.
104. The South African Government is a signatory to both the UN and OAU conventions on Refugees and allows all asylum seekers to remain in the country until their status is determined. None of these asylum seekers may be detained or deported.
105. South Africa shares the view that more needs to be done to fight xenophobia. The South African Government is committed to fighting and educating society against all forms of discrimination and prejudice.

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<sup>17</sup> Now page 286

## Economic Governance and Management


### The Role of Parliament in the Budgetary Process

106. Despite acknowledging as best practice a highly consultative budgetary process, the Report suggests that Parliament be given the right to play an even stronger role in the budget process, and offers “an alternative framework” in paragraph 364 on page 145<sup>18</sup>. South Africa has chosen a constitutional system that separates the executive and the legislative processes, and South Africa’s Parliamentary system (even with proportional representation) is closer to a Westminster model (where the executive initiates legislation and proposes the budget) than the US system (where the legislature plays a strong role in legislation and the budget). Indeed during the Constitution drafting process, a conscious decision was taken to avoid mechanisms that would allow the budget to be blocked and undermine the national imperatives of the developmental state.
107. The role of Parliament in the budget process covers a wide area, of budget preparation, budget implementation and post-budget evaluation. While it may be acknowledged that Parliamentary oversight over the budget process is weak (3.39 in the Executive Summary, p. 11; paragraph 365, p. 145<sup>19</sup>), the critical question is: What stops Parliament from exercising its current powers more vigorously?
108. The innovations introduced into the budgetary process provide Parliament with the opportunity to make meaningful strategic choices on the priorities informing a budget. South Africa’s highly transparent budgetary process includes the tabling of three year budgets (even though appropriation bills are for one year only), to enable Parliament to make recommendations on future budgets (by commenting on the two outer years when the three year budget is presented).
109. South Africa accepts that Parliament must be empowered to exercise its oversight function with respect to money bills. Parliamentary oversight is also important for the implementation of the budget, and that the executive provides quarterly financial reports during the financial year and annual reports within 6 to 7 months of the end of each financial year. It is for Parliament, to exercise such oversight functions, and to do so vigorously.
110. Many of the budget reforms undertaken by government have empowered Parliament to monitor the implementation of the budget, and to hold government responsible for performance. South Africa is encouraged by the recognition that this is identified as a best-practice.
111. One of the successes of the budget reforms is that government departments and entities submit annual reports with audited financial statements within 7 months from the end of a financial year. Almost all departments comply with this provision. Where departments are late, or fail to submit, the legislature and executive have strong powers to enforce compliance and disciplinary and other sanctions against accounting officers who fail to comply.

<sup>18</sup> Now page 143

<sup>19</sup> Now page 144



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112. South Africa does not have a fiscal management problem at an aggregate level (p. 147<sup>20</sup>, paragraph 372). The fiscal aggregates are managed very well. Expenditure growth is tightly managed; hence we have not only reduced the deficit, but are projecting a surplus.
113. In terms of transparency and accountability, South Africa produces high quality budget documents and reports on actual revenue collection and expenditure every quarter with parliament holding hearings on the reports every time they are released. Service delivery information is regularly published in departmental annual reports and in publications such as the Inter Governmental Fiscal Review. All of these are tabled and discussed in parliament, and are also placed on government websites.
114. It is true that there are variations in performance. Provinces and national government are generally ahead of municipalities, perhaps only because they have not been through similar transformation processes. The Auditor General periodically unearths several financial management rather than fiscal management issues, which are published and publicly discussed.

## **Corporate Governance**

### **Regional Integration**

115. There have been a number of developments that have taken place since the CRM visit. These need to be taken into account when looking at the analysis and recommendations of the Report. The recent 2006 Extraordinary Summit of SADC which was held in Midrand in South Africa took a resolution to ensure effective implementation of Regional Indicative Strategic Development Plan (RISDP). The Summit also reaffirmed its commitment to regional economic development and underlined the need to mobilise resources in order to address issues of infrastructure, food security and other supply side challenges within the SADC region. The Summit noted that it is through the development of supportive infrastructure that regional trade potential can be harnessed to the benefit of the people of the region. The Summit thus recognised the need for complementary instruments and policies to support regional economic integration for achieving high and sustainable economic growth and development in order to eradicate poverty. The Summit urged Member States to formulate policies to forge convergence of the SADC economies, which forms the basis for real economic integration.
116. The statement that rules of origin continue to help protect SA producers (p. 154<sup>21</sup>, paragraph 399) should be put in context. Rules of origin are certainly generic to most regional and free trade agreements. In general, the SADC rules of origin are very liberal compared to other free trade agreements in the world.
117. The Trade Development and Cooperation Agreement (TDCA) will come under review and Botswana, Lesotho, Namibia and Swaziland (BNLS) will participate in the review

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<sup>20</sup> Now page 146

<sup>21</sup> Now page 153



(pp. 155-156<sup>w</sup>, paragraph 404) to ensure that concerns and needs for all key parties are taken into account in reviewing the new TDCA. The 2002 South African Customs Union (SACU) agreement ensures that no member state can negotiate a trade agreement without the consent of other member states. BLNS countries are de facto members and participate in the review of the TDCA as observers.

118. The impact of tariff reduction on fiscal revenue (p. 155<sup>22</sup>, paragraph 404) has to be put in perspective. A general expectation is for fiscal revenue to decrease with tariff liberalization. The reality in SACU has been different for the BLNS countries as revenue has tended to increase due to the structure of the revenue sharing formula, accelerating imports at lower but non-zero rated level and due to the growth of the South African economy. Secondly, dumping is dealt with by International Trade Administration Commission of South Africa (ITAC) on a SACU wide basis. In future, this will become the responsibility of the SACU Tariff Board.
119. While South Africa has liberalized its economy (p. 156<sup>23</sup>, paragraph 406), a balance needs to be struck between protection of key infant industries and an open economy to ensure ability of these industries to compete in the global economy. South Africa has met all its targets in terms of liberalization targets within the SADC region in terms of the Trade Protocol. South Africa always sees and operates as a partner in both the region and the continent with its African counterparts and ensures that its economic dominance is used to the benefit of all countries. This is clear in the role it assumes in representing the continent's interests in multilateral forums. It has also opened up its market within the SADC region to ensure that SADC member states are able to export to the South African economy thus enhancing their economic growth. It is not clear what is meant when saying that SA should align its trade policies with those of SADC countries (p. 156<sup>24</sup>, paragraph 407.) South Africa's trade policies in any free trade agreement will always need to balance the specific to the needs of the SA economy with alignment of the other member states.
120. Regarding the trade imbalance with the region (p. 156<sup>25</sup>, paragraph 408), it should be recognised that SA has completely liberalised tariffs on imports from SADC and that the capacity to supply the SA market competitively is the responsibility of the SADC countries. More than 50% of total SADC exports to SA take place in only three categories: minerals; fuels and oils; and precious stones.

## Socio-Economic Development

121. Globally, but even more specifically in South Africa and on the continent, empirical evidence has demonstrated that on its own, economic growth is insufficient to eradicate poverty and effectively address challenges of gender imbalances and social cohesion. It is acknowledged that in and of itself, the South African Government's social transfer programme (p. 243<sup>26-27</sup>, Paragraph 769 and 772) will be unable to address poverty in a developmental

<sup>22</sup> Now page 154

<sup>23</sup> Now page 154

<sup>24</sup> Now pages 154 - 155

<sup>25</sup> Now page 155

<sup>26-27</sup> Now page 242-243





and sustainable manner. The empowerment of women, capacity building and partnerships with civil society are all critical elements of the construction of a developmental state. More targeted programmes for women's empowerment will help strengthen the current gains visible in progressive legislative and policy frameworks, as well as the prevailing momentum from pro-women campaigns. South Africa is acutely aware of the need to balance the immediate need for poverty alleviation with the long term goal of poverty eradication. With this in mind South Africa recognizes that the most effective poverty eradication campaign is an employment generating sustainable growth and redistribution strategy.

122. Chapter 6 of the Report refers to the fact that South Africa, even with the impressive progress made, continues to be characterized by gross social inequalities. It is in this context that the absence of a consensus on definitions and measurements of poverty, must catalyze a sense of urgency and pro-activity that binds all stakeholders through the Country Plan of Action.
123. The Report further notes that Government has put in a lot of effort in delivering social services in education and health, including HIV and AIDS. However, challenges still remain and are even growing, making it difficult for the country to tackle the critical mass of social development issues with the needed level of effectiveness and efficiency. It is acknowledged that much more needs to be done to ensure that:
  - Women and youth gain greater access to credit through the micro-finance schemes currently in existence;
  - All sectors of society are empowered to participate in South Africa's development process. These include rural communities, women, youth, and the physically challenged;
  - Collaborative and constructive partnerships between government at all levels and critical segments of civil society are improved;
  - The public is sensitized to international and regional instruments affecting the social development sector and facilitate the implementation of all the codes and standards including the passing of relevant legislation;
  - Institutional and human capacity weaknesses are addressed through a comprehensive capacity building and skill development policy to ensure that the human and institutional dimensions of self-reliance and self-sustaining development are strengthened; and
  - The National Development Agency's (NDA) role in donor resources mobilisation and coordination, as well as capacity building is clarified.

## **HIV and AIDS**

124. South Africa recognises the importance of structural factors that drive pandemic. Underdevelopment, poverty and associated challenges of literacy, poor access to basic services and information as well as poor health systems, are critical contributors to the progression to AIDS. Poverty as well as the low status of women are risk factors for both HIV infection and AIDS. South Africa recognises the importance of developing a comprehensive, holistic approach to the pandemic.

125. There is recognition in the Report that the impact of poverty exacerbates for HIV and AIDS. This theme needs to be reflected throughout the report. The relation between poverty and HIV and AIDS needs to be recognized. This position underscores the importance of dealing with the social determinants of diseases like HIV and AIDS and TB.
126. Paragraph 314 (p. 132<sup>28</sup>) refers to the effectiveness of government policies and programmes. It needs to be acknowledged that the country has one of the most comprehensive plans to deal with HIV and AIDS. Underdevelopment affecting populations most at risk makes it difficult to realize the ambitious targets outlined in these policies and plans. The fundamental problem is not the inadequacy of these policies and programmes but the structural environment within which they are implemented. It is necessary to develop policies in order to deal with all factors that put South Africans at risk of HIV infections. The reference in paragraph 314 to an increase in the number of AIDS orphans is problematic in that there is no such thing as AIDS orphans and those orphans whose parents have died from AIDS ought not to be stigmatised by the use of such labels. It should also be noted that South Africa's social security system does discriminate against orphans on the basis of causality.
127. The provision of Anti-Retroviral treatment (ART) is an important element of this response, but it needs to be emphasized that the comprehensive response will only be sustainable if there is a decline in the rate of HIV infections. South Africa needs to systematically address all the drivers of the pandemic. The accelerated HIV and AIDS prevention strategy that seeks to improve on the "Abstain, Be-faithful and Condomise" messages, scale up health sector prevention programmes and develop community level capacities is absolutely critical. Prevention must remain at the heart of the national response to HIV and AIDS.
128. The national response to the provision of ART must be seen in the context of the need to deal with the socio-economic legacy of apartheid.
129. The need for stronger collaboration between government, civil society and development partners (p. 256, paragraph 819) is strongly endorsed.
130. Progress reporting on the expansion of access to ART needs to be in the context of a five-year programme that started in 2004. South Africa is now about mid-way in the implementation of the programme and there are approximately 250,000 people on ART. Not all of the estimated people in need are known because of low testing rates due to stigma, as well as challenges with the health system.
131. The rate of the growth appears to be slower than it was in the period from 1990-2000 (p. 282<sup>29</sup>, paragraph 929). All South Africans would like to see a complete reversal in the rate of growth.
132. Treatment is a vital element of South Africa's comprehensive response to the pandemic. It cannot however be seen as the main issue in managing HIV and AIDS (p. 282<sup>30</sup>, paragraph

<sup>28</sup> Now page 131

<sup>29</sup> Now page 281

<sup>30</sup> Now page 281-282





931). This would not constitute a sustainable and effective approach, critical and necessary as it is. Prevention remains pivotal to the national response to HIV and AIDS.

## Education

133. A key challenge identified in the Report (pp. 31-32<sup>31</sup>) is that “the education system fails to deliver the skills and competencies needed.” There is indeed a skills shortage, but much of this was inherited from the deliberate under-development of people under apartheid. A new National Curriculum has been developed, which does deliver the requisite skills and competencies, while Colleges have been recapitalised and offer high level, industry designed, skills programmes. While skills have been a problem, this matter is certainly receiving significant attention and resources.

## CONCLUSION

134. In conclusion, South Africa would like to once again take this opportunity to thank the members of the Panel for their hard work and dedication. South Africa is heartened by the spirit of co-operation that is found throughout the Report. It is in the spirit of peer review that we engaged with the Report in the manner that we have.
135. The Report in its entirety allows for a full engagement on questions about the relationship between market driven globalisation and issues of the common good, democracy, democratic citizenship and environmental sustainability.
136. The articulation in the Report of the critical challenges facing South Africa is welcomed. South Africa agrees that the critical challenges we face include poverty, unemployment, underdevelopment, violence against women and children, sustaining current employment generating growth strategy, narrowing the gaps between the first and the second economies and narrowing the wealth, income and asset gaps between the poor and the wealthy.
137. South Africa is equally cognizant of the need to ensure that the Peer Review Process does lead to entrenching democracy, accountability, transparency, and good governance in South Africa, in the region and in the continent.
138. South Africa is equally conscious of the need to develop a progressive agenda for South Africa, Africa and globally. Such an agenda needs to be comprehensive and must include interventions in the socio-economic and political domains. It must be inclusive and address challenges faced by societies in the South, particularly in Africa as well as the North. It is an agenda that needs to be built on three fundamental pillars: Firstly, forging a people’s contract between state and citizens. Secondly, a sustained re-entry of the state into social programmes and land reforms that positively impact on the socio-economic well being of people. Thirdly, economic reciprocity based on equitable trade and trading policies between and among nation states of the developing and developed world that redress the legacy of underdevelopment.

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<sup>31</sup> Now page 30-31

139. South Africa's approach to development is one which allows the state to play a developmental role in achieving economic and social justice development goals. This means that the developmental state has to play a more central role in social investment, in the strengthening of society's social infrastructure. The state must be active in the areas of land reform, social, economic and political transformation. The economic development models introduced after World War II, in Europe and Asia, quite clearly showed us that states should be proactive in creating and implementing economic programmes if they are to succeed in developing their economies.
140. Developmental states cannot shy away from the use of public funds to provide investment and other resources required by the economy to reach the required levels of development. Economic development models should not focus on fast economic growth as an end in itself, but rather the goal should be that of poverty eradication, and human and social development.
141. There must be a commitment to a people's contract. This means that progressives have to engage in a systematic and continuous manner with the masses. State and society are committed to the eradication of socio-economic injustices. A progressive agenda on development has to address the structural reproduction of race, gender, class and regional and global inequalities. It has to be firmly rooted in the traditions of social justice. In this sense democracy is an essential prerequisite for a robust developmental state.
142. The developmental state is not a neutral bystander which only observes the negative effects of market forces on countries, communities, families and individuals. The developmental state has an obligation to intervene and invest in social housing, anti-poverty programs, education, health and social welfare programmes.
143. Finally, South Africa is of the view that there is a need to continually strengthen the Peer Review Process and to develop common understandings and benchmarks, and ways of assessing and integrating information. The strengthening of the APRM is essential to the developmental trajectory of Africa and the emergence of a common set of objectives linked among other things to the eradication of poverty and underdevelopment and the creation of inclusive non-racist non-sexist democratic and prosperous societies and countries.

