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Getting Down to Business: Lessons from the African Peer Review Mechanism

A look at the corporate governance thematic area in the Country Review Reports on Lesotho, Mauritius, Mozambique, South Africa, Tanzania and Zambia

Terence Corrigan

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SAIIA has been working on the APRM since its inception in 2003. The programme has previously undertaken work in 22 African countries, developed an online APRM Toolkit with vital information on the APRM process, produced an extensive body of innovative research on governance and the APRM and has frequently commented on African governance issues in South African and international media. The programme is funded by the Swiss Agency for Development and Cooperation (SDC).

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ABBREVIATIONS AND ACRONYMS

APRM	African Peer Review Mechanism
ADR	alternative dispute resolution
AU	African Union
BEE	black economic empowerment
CRM	Country Review Mission
CRR	Country Review Report
CSAR	Country Self-Assessment Report
EITI	Extractive Industries Transparency Initiative
FDI	foreign direct investment
GDP	gross domestic product
GNI	gross national income
IFC	International Finance Corporation
ILO	International Labour Organization
MSME	micro, small and medium enterprises
NEPAD	New Partnership for Africa's Development
NGO	non-governmental organisation
NPoA	National Programme of Action
OECD	Organisation for Economic Co-operation and Development
SADC	Southern African Development Community
SARS	South African Revenue Service
SME	small and medium enterprises
SOE	state-owned enterprise
TCCIA	Tanzania Chamber of Commerce, Industry and Agriculture
UNCTAD	UN Conference on Trade and Development
WEF	World Economic Forum

EXECUTIVE SUMMARY

The Africa Peer Review Mechanism (APRM) is an initiative aimed at fostering good governance and development in its participating states. As part of its multi-pronged inquiry, it devotes a great deal of attention to investigating corporate governance on the continent. However, thus far corporate governance has attracted less attention than any other area of the APRM.

Focussing on the six Southern African Development Community (SADC) states that have thus far completed their first Country Review Reports (CRRs) – Lesotho, Mauritius, Mozambique, South Africa, Tanzania and Zambia – this report shows that corporate governance can play an important role in driving Africa's development. Central to the continent's future prospects is expanding the scope for productive business activity. This has been taking place in tandem with policy and legal reforms, driving high growth rates in some countries. There remains an imperative to enhance the business environment; Africa needs more businesses, and businesses oriented towards growth as opposed to mere survival.

Corporate governance provides a framework for business sustainability and value creation. For the most part, the APRM shows that these countries have satisfactory legal and institutional frameworks, or are striving to put them in place. However, awareness and application of corporate governance principles is uneven and sometimes poor – although this varies across countries, with South Africa being in many respects exemplary, as opposed to the very rudimentary situation in, for example, Mozambique and Lesotho. The ethical dimension constitutes a major element of the current corporate governance conversation in Africa.

Likewise, company-level governance is highly variable. For the most part, management and ownership are combined. A key problem more sophisticated companies confront in all the countries is the narrow pool of talented, board-capable people. This has produced a raft of problems, such as 'over-boarding', the dominance of close-knit family interests and the exclusion of women.

Recognising and protecting stakeholder relationships remains a work in progress. The 'traditional' shareholder interests are in theory generally reasonably protected, although a lack of shareholder activism and cumbersome avenues of recourse undermine this. The interests of other stakeholders, such as employees and adjacent communities, are gaining increasing recognition, but remain a source of contention.

The specificities of corporate governance to particular niche areas in the African economy – the informal sector, state-owned enterprises (SOEs) and foreign (especially extractive) companies – require particular attention. Each of these is important for Africa's development, but may not fit the corporate governance mould of the classic privately-owned formal sector companies.

The report concludes with an appeal for a principles-based approach to corporate governance. This should be based on recognising the limitations of businesses in Africa, and corporate governance should play a facilitating rather than prescriptive role for them.

CHAPTER 1

INTRODUCTION

> 'A thriving private sector – with new firms entering the market, creating jobs and developing innovative products – contributes to a more prosperous society. Governments play a crucial role in supporting a dynamic ecosystem for firms. They set the rules that establish and clarify property rights, reduce the cost of resolving disputes and increase the predictability of economic transactions. Without good rules that are evenly enforced, entrepreneurs have a harder time starting and growing the small and medium-size firms that are the engines of growth and job creation for most economies around the world.'[1]

This comment from World Bank Group Managing Director Sri Mulyani Indrawati, introducing the latest *Doing Business* report, distils several crucial truisms for all economies: countries' growth paths depend on the success of the businesses operating within them, and these rely on proper systems of regulation and governance. For emerging economies, and for Africa in particular, these are doubly important. If Africa is to sustain and build on the progress it has made in the last decade, it must give priority to expanding the scope for its domestic business activities.

However, while a robust business community is a valuable resource for a country, the past few decades have also provided numerous examples of its capacity to be a liability. Across the world, high-profile cases such as the collapse of Barings Bank in the United Kingdom (UK) in 1995, Enron in the US in 2001 (followed by the related demise of Arthur Anderson in 2002), the exposure of corruption in the Golden Quadrilateral Highway project in India in 2003 (which led to the murder of whistle-blower Satyendra Dubey), accounting scandals in the Japanese Olympus Corporation in 2011 and, closer to home, the Fidentia fraud scandal that rocked South Africa in 2007, have caused enormous losses to investors, employees and the societies and economies with which they interacted. Bad business behaviour is not only bad for society, it is also bad for business. Malfeasance and negligence on the part of some companies have tarnished the image of business as a whole; they have also upset the trust that smooths business transactions.

In other words, in addition to a larger and more competitive business community, Africa needs well-run, ethically sound businesses.

Corporate governance – both as an academic discipline and as a business practice – is a means to deal with the challenges of business behaviour. In the words of one authority, corporate governance is concerned with the 'exercise of power over corporate entities'.[2] In essence, it is a close relation of the broader idea of 'good governance'. Just as countries require well-functioning systems and institutions, so do businesses – not only private but also state-owned enterprises. Partly, this reflects the overall legal and policy environment. Businesses are subject to the laws and policy environments of the countries within which they operate. These are invariably intended to regulate their conduct, and reflect the priorities of the relevant governments or other influential interests.

While adherence to the law is a central pillar of good corporate governance, it is not the only one. Businesses have long faced criticism for engaging in conduct that has explicitly or implicitly violated the trust placed in them. Such conduct may or may not be illegal – and it may not always be possible to determine which is the case – but it can have disastrous consequences. It is notable that one of the key developments in defining good corporate governance (the convening of the Committee on the Financial Aspects of Corporate Governance in the UK in 1991) was prompted by the failures of two apparently healthy corporations. Part of the intention of the committee was to restore trust in the corporate sector, and the recommendations arising from the report it produced[3] – the Cadbury Report – were 'based on compliance with a voluntary code coupled with disclosure, [which] will prove more effective than a statutory code'.[4] It sought to rehabilitate legitimate business through internal and voluntary governance.

In going beyond the strictures of the law, corporate governance is concerned with questions of accountability, responsibility and ethics. Increasingly, businesses are expected to give consideration to the interests and concerns of those not directly associated with them. This applies even when they are not legally compelled to do so. In the years following the Cadbury Report, the stress on shareholder interests (the constituency with which Cadbury was predominantly concerned) began to diversify; the responsibility of businesses towards other stakeholders increasingly began to take centre stage in corporate governance thinking.

This idea of companies having inherent responsibilities to non-shareholder stakeholders has begun to receive growing acceptance. The influential South African King Committee on Corporate Governance has been a key exponent of this. In some respects it has come to rival Cadbury in defining the goals of corporate governance, certainly in South Africa and on the continent as a whole. This was perhaps best articulated in the 1990s through the concept of 'triple bottom line' reporting. Unlike the traditional profit-driven 'bottom line', it encourages companies to measure their activities in terms of their social, environmental and economic outcomes – the triad of 'people, planet, profit'. In its third report in 2009, King called for sustainability to be integrated into companies' reports, underlining its intrinsic importance to their operations:[5]

> It is *unethical* for companies to expect society and future generations to carry the economic, social and environmental costs and burdens of its operations. This triple-context approach recognises the effect of the modern company on society and the natural environment. It acknowledges that companies should act with economic, social and environmental responsibility. A company itself should ensure that its impact on the economy, society and the natural environment is sustainable.

CORPORATE GOVERNANCE BEYOND BUSINESS

Good corporate governance has significant implications for development. It helps to provide a stable, predictable environment within which prudent investment decisions can be taken, and in so doing contributes to wealth and employment creation. Moreover, it increasingly does this with an eye to the longer term, with recent contributions to the discipline proposing good corporate governance as an integral part of an overall programme of sustainability. Finally, it contributes to building a societal consensus on ethics and accountability, which is essential for the durability of healthy, citizen-focussed democracies.

Box 1: Understanding corporate governance[6]

Thinking about corporate governance is grouped into one of a number of conceptual approaches. A brief exposition of three of these approaches highlights some of the important considerations within the discipline. While each of them makes a strong claim as an explanation of corporate governance, they differ in their views on how corporate activities are motivated and the goals of good corporate governance. A general understanding of these approaches can assist in framing the concerns raised in the APRM reports.

The **shareholder value approach** reflects a 'classical' approach to corporate governance, and is associated with the Report of the Cadbury Committee in 1992 and its related Code. Directors of companies act on behalf of companies' shareholders, to whom they owe a primary fiduciary responsibility. The key consideration is generating wealth for and protecting the interests of the shareholders.

The **stakeholder approach**, a version of which is promoted by the Organisation for Economic Co-operation and Development (OECD), goes beyond stewardship in recognising that while the interests of shareholders are directors' central concerns, companies' interests also depend on ensuring that the legitimate interests of non-shareholder stakeholders – surrounding communities, labour constituencies, suppliers, etc. – are taken into account. Directors, in this view, have a responsibility to consider and report on companies' activities as they relate to stakeholders and not only shareholders.

The **stakeholder inclusive** or **stakeholder responsible approach**, well articulated by South Africa's King Committee and gaining increasing recognition across the world and in Africa in particular, demands that directors consider the interests of stakeholders, both within and outside companies, as well as shareholders. In this, it demands a high level of corporate citizenship from companies. Seeing companies as part of the overall social-economic ecosystem, it argues that doing so is an intrinsic part of ensuring their long-term sustainability.

These considerations are the focus of this report. It draws on the reports of the APRM process of six member states of SADC – Lesotho, Mauritius, Mozambique, South Africa, Tanzania and Zambia. Each of these countries is faced with the challenge of economic development, and in undergoing review has had to reflect on its business environment and corporate governance practices. What the APRM has revealed is of great importance to the future of these countries individually, and the continent as a whole. They represent a combination of extremely advanced and extremely underdeveloped corporate governance, struggling with the challenges of driving economic growth and upliftment, and deserve a thorough examination.

CHAPTER 2

CORPORATE GOVERNANCE IN THE APRM

The APRM emerged as an element of the New Partnership for Africa's Development (NEPAD) and was officially launched in March 2003. Although it is debateable how successful the NEPAD initiative has been in framing a new trajectory for the continent, it did mark a forthright recognition of what Africa needed to secure its development. In this regard, its stress on 'good governance' was well received. Perhaps less popular – and in some quarters decidedly less popular – was its assumption of a market economy as the basis for economic development. This implied a vastly improved business environment and expanding business activity on the part of Africa's people. It referred directly to an 'urgent need to create conditions conducive to private sector investments by both domestic and foreign investors'.[7] As opportunities emerged, a growing African business community would capitalise on them. The continent's erstwhile economic statism was, in theory at least, largely discarded. This line of thinking has been carried forward in the

Global Partnership for Effective Development Co-operation in looking to international development beyond the Millennium Development Goals.[8]

In the early NEPAD documents, references to corporate governance were paired with general economic governance. Corporate governance as such was presented largely as a subsidiary project in the continent's economic reform. The NEPAD Framework Document defined this objective as follows: 'To promote throughout the participating countries a set of concrete and time-bound programmes aimed at enhancing the quality of economic and public financial management, as well as corporate governance.'[9]

Box 2: What is the APRM?

The APRM is a process encouraging African societies to analyse their problems, assess their progress towards improved governance and promote effective reform. As of June 2014, 34 countries have joined.

To participate in the process, a country's government signs a Memorandum of Understanding with the continental APRM authorities indicating its willingness to undergo review and its commitment to the process. Domestic institutions are established to facilitate an assessment of governance in the country. The results of this review are incorporated into a Country Self-Assessment Report (CSAR), along with a National Programme of Action (NPoA), the latter being a measure to remedy shortcomings. This is followed by the visit to the country of a Country Review Mission (CRM), a delegation of respected scholars and experts who conduct an independent study of the country and produce their own report. The CRM is led by a member of the Panel of Eminent Persons, which is a small body of highly respected Africans responsible for managing the process across the continent. A draft CRR is submitted to the country by the Panel and its Secretariat for comment, recommendations are put to the participating country, and the country is expected to amend its NPoA accordingly.

Important to note is that the APRM's inquiries are structured around adherence to a set of international and continental standards and codes, which in turn relate to a questionnaire. This questionnaire demands an examination of the country's performance in four broad thematic areas: democracy and political governance; economic governance; socio-economic development; and corporate governance. (The latter is the subject of this report.)

The final CRR is produced by combining the previous ones. It is presented to the Forum of the Heads of State for discussion and final review. This body consists of the leaders of all the participating countries. It tends to convene on the margins of African Union (AU) summits (although not all AU members are participants in the APRM). Once the country has been reviewed by the Forum, it must agree to deal with the various problems that have been identified. Other states undertake to assist the country in its efforts, and to take action if the country does not try to deal with these issues. The country reports annually on progress in implementing the NPoA, and prepares itself for subsequent reviews (which are supposed to occur every five years).

Under the APRM, the Self-Assessment Questionnaire splits corporate governance from economic governance and management, into two separate thematic areas. It is unclear why this was done, but it does make an important political point about the scope of the APRM review. The APRM was not intended solely to be an interrogation of government.[10] Non-governmental spheres of influence – in this case, the private sector – are also expected to submit to review.

More importantly, creating a separate thematic area for corporate governance puts its highly technical and specialised standards and codes into a discrete section. Corporate governance is arguably the most technically specialised area covered by the APRM. However, by its nature it does not engender the same level of attention or understanding among laypeople as political governance or socio-economic development. In practice, the corporate governance thematic area is the least engaged with this section of the process.[11]

This is unfortunate, since an efficient and effective system of corporate governance is a valuable resource for development. The APRM recognises this. In setting out the Codes and Objectives to govern the process, it notes: 'Good corporate governance is about the ethical principles, values and practices that facilitate holding the balance between economic and social goals and between individual and communal goals. The aim is to align as nearly as possible the often diverse interests of individuals, corporations and society within a framework of sound governance and common good.'[12] The CRR on Lesotho adds a rider: 'The emphasis is on accountability, transparency, responsible operations, efficiency and effectiveness.'[13]

It should also be noted that the term 'corporate governance' does not adequately describe the inquiries made in this thematic area. Much of it interrogates matters germane to the overall climate within which businesses operate. The importance of this cannot be underestimated. As NEPAD envisaged, business engagement in Africa is absolutely imperative if the continent is to grow and develop, thereby generating the resources for development.

The range of developmental challenges is likely to be too great for government alone to handle, and too urgent to be left to the incremental improvements brought by economic growth. Business is seen as a repository of resources and expertise, and is therefore expected – implicitly or explicitly – to step in to deal with social and governmental shortcomings that fall far outside its core competence.[14] This poses important questions about the reasonable limits to expectations of what business can achieve (exaggerated expectations are inevitably disappointed), as well as the roles that the continent's governments can play in its economies when these governments' own capacities are stretched.

This report will investigate and discuss what the APRM reports on the participating SADC countries have to say regarding corporate governance. These countries belong to a common bloc but are at different levels of economic development and have different historical experiences. They are simultaneously part of a common economic system (albeit a weak one) and a representation of Africa's diversity. In them, a stylised picture of the issues confronting the continent's business community is visible.

CHAPTER 3

SIX COUNTRIES, SIX ECONOMIES

The six countries under review all face the common challenges of driving the economic development necessary to alleviate their social deficits, and navigating a competitive course in the global economy. In African terms they are a varied group, bearing the imprint of their individual historical trajectories. (Selected indicators are included in Appendix 1 for reference.) On the one hand, Mauritius and South Africa are among Africa's most developed countries, with reasonably mature economies and established, resilient business sectors. Moeletsi Mbeki has commented that this sets them apart from most of the rest of the continent.[15] For them, corporate governance is an immediate and important concern.

Mauritius in particular has experienced steady economic progress since independence in 1968. Prudent but determined government intervention aimed at assisting the private sector and attracting foreign investment has sustained impressive gross domestic product (GDP) growth for decades – over 7% per year on average in the 1970s, over 6% in the 1980s, over 5% in the 1990s and over 4% thereafter.[16] This has enabled significant investment in human development and welfare. Mauritius has been able to use this to manage its ethnically diverse population. Its successes in development are reflected in the fact that it is regarded by the World Bank as an upper-middle-income country, and that it has achieved a 'high' score of 0.737 in the Human Development Index.

In many respects South Africa has a well-developed, diversified economy. In African terms it is a giant. According to the World Bank, its GDP in 2012 stood at a hefty $384 billion. Although the size of its economy was recently overtaken by that of Nigeria (which has recalculated its GDP), it remains the continental leader in terms of the sophistication of its economy and business sector. Sixty of the hundred largest companies in Africa are South African, encompassing fields as diverse as agribusiness, telecommunications, mining, manufacturing, retailing and financial services.[17] (By contrast, the five other countries under review in this report contributed only two companies to the top 100, both of these being Zambian mining operations.) In addition, the five largest banks in Africa are South African.[18]

Despite its wealth and upper-middle-income status South Africa is dogged by poverty, unemployment and yawning income gaps – with a Gini coefficient of 63.1, inequality is among the most extreme in the world. Its economy embodies aspects of the modern post-industrial world as well as bare subsistence level activities, reminiscent of its far poorer African peers. Economic growth since the 1980s has been lacklustre and insufficient to provide opportunities for a growing and frustrated cohort of young people. Overlaid on this is the country's history of racial discrimination. Historically, opportunities for high-level involvement in the economy were restricted to white people. Although this has been changing since the 1980s and particularly since the transition to democracy in the 1990s, the differential economic conditions of the various race groups remain a sore political issue.

Lesotho, occupying a unique geographical and historical position, is intimately tied to the fate of South Africa –in the early 20th century it was widely assumed that Lesotho was one of a number of territories that would ultimately be incorporated into South Africa. Lesotho's economy is small and unevenly developed. A textile industry (which benefits from the US Africa Growth and Opportunity Act) provides some domestic opportunities, as does diamond mining. However, its state budget is heavily dependent on revenue from the Southern African Customs Union, while remittances from Basotho working in South Africa and the sale of water to South Africa provide major sources of income.

Mozambique, Tanzania and Zambia each underwent periods of heavy state domination of their economies – with varying ideological programmes underwriting this – and attendant economic crises. In Mozambique's case, imprudent economic policies were compounded by a devastating civil war that worsened the country's impoverishment. The distortions these economic systems produced are well illustrated by the following comment on Tanzania:[19]

> In Tanzania, President Julius Nyerere tried to build a state-planned economy, a difficult task under any circumstances but even more so in a country that had, at independence in 1961, only sixteen university graduates. Nonetheless, Nyerere nationalised local industry, expropriated foreign businesses, shut down Indian and Arab traders, and tried to replace them all with bureaucrats. For some reason, the bureaucrats proved less adept at putting goods on shelves. Before long, it was hard to buy matches that lit properly in Tanzania. Nyerere favoured price controls. Peasants were obliged to sell grain to the government for as little as a fifth of its value, which was like a supertax on Tanzania's poorest citizens.

Since the 1990s economic growth has gained traction. In the decade from 2000 to 2010, Mozambique's economy grew by an average of 7.8% per year, Tanzania's by 7% and Zambia's by 5.6%.[20] However, the historical retardation means that while a competitive business environment, business community and the attendant business culture are developing, this remains a work in progress.

For these states, a key challenge is to sustain and consolidate economic take-off. They have embraced market-based reforms with varying degrees of enthusiasm. The Tanzania CRR calls this embrace 'half-hearted', and its private sector 'tentative and unambitious'.[21] For these countries, building a strong private sector is crucial, but the private sectors, such as they are, are embryonic.

This economic context is mirrored in their developmental status. The Human Development Index rates each of them as having a low level of human development. Mozambique, with an index score of 0.327, was ranked 185th in the 2013 *Human Development Report* – with a higher ranking than only two other countries (Niger and the Democratic Republic of Congo).

These broad trends are expressed further through the structure of the various economies.

Table 1: Structure of economies: Contribution of economic sectors to GDP, 2010

Country	Share of GDP, 2010								
	Agriculture, total	Industry				Services			
		Mining and utilities	Manufacturing	Construction	Total	Wholesale, retail trade, restaurants and hotels	Transport, storage and communications	Other activities	Total
Lesotho	8.0%	11.0%	18.6%	4.5%	34.1%	8.7%	6.2%	43.0%	57.9%
Mauritius	3.6%	2.2%	18.5%	6.9%	27.5%	18.5%	9.6%	40.7%	68.9%
Mozambique	28.1%	6.4%	14.6%	3.0%	24.0%	16.5%	9.8%	21.5%	47.9%
South Africa	2.5%	12.3%	14.6%	3.8%	30.8%	13.9%	9.1%	43.6%	66.7%
Tanzania	29.4%	5.9%	8.7%	8.5%	23.1%	15.5%	7.5%	24.6%	47.6%
Zambia	19.7%	7.1%	8.8%	20.0%	35.9%	16.8%	3.9%	23.7%	44.5%

Source: Good Governance Africa, *Africa Survey 2013: Africa in Figures*. Johannesburg: Good Governance Africa, 2013, p. 98

Mozambique, Tanzania, Lesotho and Zambia are factor-driven economies – their advantages come from resources and labour pricing. Their economies are disproportionately dependent on primary industries – agriculture and mining in particular – although other activities are also pronounced in some of them, eg, textile manufacturing in Lesotho and construction in Zambia.

Mauritius and South Africa are more developed, efficiency-driven economies.[22] Their advantages depend on better management and organisation of their resources and production inputs. Reflecting a more advanced structure, South Africa and Mauritius derive a greater share of their GDP from the services sector. This primarily reflects financial services, an industry requiring high-level skills. South Africa's large mining sector, while still significant, makes a contribution only one-quarter the size of services – and smaller than that of both manufacturing and tourism. In Mauritius, services are complemented by textile manufacturing and a vibrant tourism industry.

For the region as a whole (Mauritius excepted) the existence of natural resources is simultaneously a potential blessing and a blight. On the one hand, they offer the prospect of investment, and – in theory at least – developing upstream and downstream industries to complement extraction. On the other, there is the danger of the so-called 'resource curse', in terms of which dependence on natural resources discourages broader economic growth (even if it has welfare or consumption benefits).[23] Moeletsi Mbeki makes this argument in reference to the African experience, and calls for the development of robust African entrepreneurship as the solution.[24]

The challenge then, is to move to higher value-added economic processes, which will entail greater entrepreneurialism. The latest *World Investment Report* by the UN Conference on Trade and Development (UNCTAD) notes that as countries develop, they invariably alter the structure of their production. In the contemporary world, this implies linkages into global value chains. Integrating into these, in turn, requires careful policy choices, partnerships with the private sector, and an appreciation of the need for regional integration, among others.[25]

Beyond these overall considerations, these countries all have bifurcated economies. A 'modern' formal sector coexists with a low-value adding, frequently informal and even subsistence sector. How this 'second economy' fits into the economy as a whole, and the prospects that exist for the more ambitious operators in this area to make the transition to the formal sector, are important concerns. In South Africa this is particularly noteworthy, given the size and international competitiveness of its 'first economy'. As its CRR comments: 'The fundamental challenge South Africa faces is how to design a corporate governance system that works for its dual economy and, in the long run, will succeed in bridging the first and second economies and ameliorate the plight of historically disadvantaged groups.'[26]

Finally, examining these economies inevitably runs into difficulties: large gaps exist in what is known about them. The case of small enterprises is instructive. Globally, these are critical to entrepreneurship and employment. In Africa, they are even more so, being the biggest part of the domestic business community. The Zambia CRR puts this challenge into an additional perspective. About 93% of its workforce is estimated to operate in micro or small and medium enterprises (MSMEs). However, the report comments: '[A]lthough most Zambian workers are involved in the MSMEs, little information is available about these businesses.'[27] These gaps are evident across the reports, and are a constant problem in understanding African economies. Until the information deficit is addressed, crafting evidence-based interventions will be an uncertain process.

CHAPTER 4

BUSINESS ENVIRONMENT

As noted in the previous chapter, opening Africa up for business was central to the NEPAD initiative. Whether the APRM can contribute to improving it has been an ongoing point of interest since its early days.[28] It is, however, widely acknowledged that doing business in Africa is challenging, and so changing this remains a strategic priority for the continent.

For a bird's eye view, some of the CRRs – Tanzania, Mauritius and Zambia – reference the annual World Bank/International Finance Corporation (IFC) *Doing Business* index. Though not without its detractors, this is a good standardised measure of how countries stack up alongside one another. Table 2 shows how these six economies rank in terms of ease of doing business. (See Appendix 2 for a more comprehensive presentation of the various elements reviewed by the *Doing Business* reports.)

Table 2: Ease of Doing Business rankings, 2013 and 2014

	2013	2014
Lesotho	139	136
Mauritius	20	20
Mozambique	142	139
South Africa	41	41
Tanzania	136	145
Zambia	90	83

Note: the *Doing Business* Index measures 189 economies. The rankings for 2013 are not the actual positions of these countries in 2013 but represent a 'modelled' position, taking into account the addition of four more economies for the 2014 index.

Source: World Bank and IFC, *Doing Business 2014, Economy Profile: Lesotho*, 2014, p. 5; World Bank and IFC, *Doing Business 2014, Economy Profile: Mauritius*, 2014, p. 5; World Bank and IFC, *Doing Business 2014, Economy Profile: Mozambique*, 2014, p. 5; World Bank and IFC, *Doing Business 2014, Economy Profile: South Africa*, 2014, p. 5; World Bank and IFC, *Doing Business 2014, Economy Profile: Tanzania*, 2014, p. 5; World Bank and IFC, *Doing Business 2014, Economy Profile: Zambia*, 2014, p. 5

These results accord well with the overall picture provided by the CRRs. Mauritius, with a history of stability and generally market-based economics, scores exceptionally well, in line with the findings of the CRR. 'The business environment in Mauritius,' the CRR notes, 'is characterised by openness and a pro-business, outward-looking policy.'[29] In fact, Mauritius has the highest ranking of any member of the AU, higher even than such economic powerhouses as Germany, France and Japan. It is also on an upward curve: the Mauritius CRR notes the findings of the 2009 *Doing Business* Index, which placed it at 24th, which was in turn an improvement on the previous year.[30] Mauritius' economic institutions (public and private) and legal framework appear to function reasonably well and facilitate business.

South Africa is ranked quite respectably, along with other major developing countries. It has a large and sophisticated business community, and has traditionally had a market economy – albeit a highly regulated one and, until the 1980s, one that actively limited the role of black people. Like Mauritius, South Africa's economy has a wide array of fairly solid institutions and a 'largely adequate' regulatory system.[31]

The four less developed economies – Lesotho, Mozambique, Tanzania and Zambia – face the challenge of improving their business environment off a meagre base. As their scores indicate, they are difficult environments but have shown some improvement. Sometimes this has been remarkable in view of the context. Of Mozambique, for example, one commentator noted: 'Mozambique has gone from being a backwater of Marxism to a beacon of common sense; while it is still very poor, it has reduced poverty from 70% to 56% of the population in six years.'[32]

In these countries the legal and policy frameworks, as well as the institutions required for efficient business, are not yet mature. For example, Mozambique, Tanzania and Zambia have each established stock exchanges, but these have relatively few listings. Legal systems are not properly developed to facilitate commercial operations. The Mozambique CRR notes that banks are cautious in their lending due to 'legal and institutional impediments': little capacity exists to enforce debt collection or to collect information on borrowers' creditworthiness.[33] Similarly, the Tanzania CRR comments: 'Although Tanzania's financial markets were modernised over the past 10 years and credit to local enterprise is gradually increasing, these gains were offset by an under-developed legal framework that interferes with regulatory efficiency and trade policies.'[34]

Key issues raised in the various reports include poor infrastructure, inadequate skills and education, limited markets, and lack of credit. These correspond quite well with the inquiries made by the World Economic Forum's (WEF) *Global Competitiveness Report* into the most problematic factors in doing business.

Table 3: Top four problematic factors identified

Country	Issue	Percentage of responses citing …
Lesotho	Access to finance	26.1
	Inadequate infrastructure	15.9
	Inefficient government bureaucracy	13.8
	Corruption	13.7
Mauritius	Inefficient government bureaucracy	18.2
	Insufficient capacity to innovate	12.1
	Corruption	11.3
	Access to finance	10.7

Country	Issue	Percentage of responses citing …
Mozambique	Access to finance	18.4
	Corruption	18.3
	Inefficient government bureaucracy	12.9
	Inadequately educated workforce	10.6
South Africa	Inadequately educated workforce	19.7
	Restrictive labour regulations	19.4
	Inefficient government bureaucracy	19.3
	Corruption	9.7
Tanzania	Access to finance	24.2
	Corruption	16.9
	Inadequate infrastructure	11.5
	Inefficient government bureaucracy	10.2
Zambia	Access to finance	25.1
	Corruption	17.5
	Inadequate infrastructure	9.9
	Tax rates	8.6

Source: Schwab K (ed.), *Global Competitiveness Report 2013–2014*. Geneva: World Economic Forum, 2013, pp. 150, 274, 286, 346, 362, 392

The factors identified closely track the level of development. In Lesotho, Mozambique, Tanzania and Zambia, there is a remarkable consistency in the problems identified: access to finance, corruption, inadequate infrastructure and inefficient bureaucracies, with only Zambia dissenting somewhat on the last issue, and expressing concern about taxes instead. These factors reflect economies trying to build their foundations.

The difficulties confronting South Africa and Mauritius are more diverse: as countries develop, economies' demands become more sophisticated and specific. An inefficient bureaucracy tops Mauritius' problems, followed by an inability to innovate satisfactorily. This suggests that the country's government systems and human capital development may not be able to keep up with what is required to elevate Mauritian business development beyond its already strong growth. In South Africa, by contrast, poor-quality education is a widely acknowledged problem. This is reflected in both local and international competency tests – the latter, in the form of the Trends in International Maths and Science Study, rates South African learners' abilities among the poorest in the world, with particularly serious deficiencies among learners in communities in rural areas and with high levels of poverty.[35] Skills deficits range from basic literacy and numeracy to high-value professional and artisanal skills.[36] As the economy has become increasingly dependent on the services sector, these deficits are growing.

Both South Africa and Mauritius register dissatisfaction with an inefficient government bureaucracy. Each of the other countries, with the exception of Zambia, names the same factor as one of their top four problems. A poorly functioning bureaucracy has extensive implications for market efficiency: regulations may not be properly enforced or even understood. Government oversight is likely to be uneven, creating uncertainty for business and failing to provide the intended protection. It also makes corruption possible. Research by other agencies confirms the concerns about this. Studies conducted by KPMG and the Confederation of Mozambican Business Associations on the business environment in that country report widespread dissatisfaction with the public service.[37] The Mozambique CRR comments: 'Difficulties regarding registration of businesses were mentioned by stakeholders, and that these difficulties are linked to the slow bureaucratic process of issuing of licenses for economic activities. These difficulties were exacerbated by long travel distances to different institutions to complete paper work.'[38]

The most prominent problem in the less developed countries is a lack of finance. While financing is a widespread problem in many economies, particularly for new and aspirant entrepreneurs, the prevalence of this problem in less developed markets reflects the widespread poverty, inadequate savings and undeveloped financial sectors of these countries. A lack of finance is far less important in South Africa and Mauritius, although it did rank among the top four factors in the latter.

Corruption – extensively discussed in the APRM reports – also looms large. Corruption ramps up the costs of business, sometimes even to the extent of making businesses unviable. It may be expressed in demands for bribes to obtain a business licence or health certification or, conversely, may involve paying off the authorities to harass or deny services to competitors. This is a problem in all of the countries.

Inadequate infrastructure – transport networks, water supply, electricity etc. – is named by each of the four less developed countries. This is unsurprising, since building and maintaining infrastructure require resources. Poor infrastructure adds to costs and constrains business activities. For example, where roads are poor, transport costs are high and finding new markets difficult. Interestingly, while this is not listed among South Africa's top four problems, an awareness of the need to upgrade the country's infrastructure has grown in recent years, largely as a result of severe electricity shortages that became prominent in 2006 and after. A multi-trillion rand infrastructure roll-out was announced in 2012.[39]

These impediments should be seen in conjunction with the countries' regulatory systems, colloquially termed 'red tape'. Neither the APRM nor mainstream economic thinking argues in favour of abolishing regulation of business. However, key to maintaining a positive business environment is ensuring that the burdens imposed by regulation are proportionate to their goals, and that they are efficiently and evenly implemented. This is appropriately described as 'better regulation'.

The costs at stake are large. A study in South Africa in 2004 estimated that compliance costs were equivalent to around 6.5% of GDP.[40] Red tape has a particular impact on smaller businesses, and on particular sectors. Thus, while tourism is a sector with great potential for growth and with relatively low barriers for potential entrants, requirements for licences and permissions (especially when poorly administered) retard its growth. Says Mark O'Donnell of the Tourism Council of Zambia: 'Red tape is holding the industry back. There is simply too much and rather than make it easier for people to go into the tourism industry, this is one of the most regulated industries in the country. We need to see licences removed, less government intervention in the industry and for the government to facilitate rather than regulate … the cost of doing business is too high and we have to work towards making our products more affordable so that we attract more people into the country.'[41]

If inefficiencies arise in strategic parts of the regulatory system, they can inflict enormous damage. Two examples from South Africa illustrate this. In the first, the South African Revenue Service (SARS) has justly been praised for improving the country's tax collection. However, it has a far less enviable reputation for addressing administrative problems. Companies finding themselves in a dispute with SARS may be unable to access tax clearance certificates, which are required for many transactions.[42] In the second, South Africa's registry of companies, the Companies and Intellectual Property Commission (formerly the Companies and Intellectual Property Registration Office), has been the target of frequent complaints over shoddy service and inaccurate management of records.[43] Problems at this level can make it impossible for businesses to function, as an error in their registration records can effectively render them legally non-existent.

A related strategic issue is that in countries with statist traditions, numerous agencies impose regulations. These agencies may not intuitively be part of the economic bureaucracy, but their actions can have extensive implications for economies. This means that while the obvious constraints to business can be identified and addressed, 'second-tier' barriers remain. A 2000 study explains:[44]

> Even in countries that have addressed constraints to private investment and exports, significant deterrents remain. In particular, countries with a long history of government intervention and administrative direction over economic decisions typically have complex, overlapping controls beyond those easily identified as constraints on investment or addressed at a macro level by the types of policy reforms mentioned above. The persistence of these 'second-tier' administrative barriers to investment, combined with a lack of institutional capacity in the government agencies responsible for them, often translates into a situation where these mere procedural tasks become major obstacles to investment. Such difficulties can often be overcome only after long delays or with extraordinary payments. This discourages investors, even many who may have made a preliminary decision to commit to a country.

A further common problem is the exclusion of rural areas from development. Difficulties in doing business are multiplied in areas with low population density, large distances and fewer resources. Thus, for example, banking in Zambia[45] and Mozambique[46] is largely an urban phenomenon – with obvious implications for potential entrepreneurs in rural parts seeking finance.

ONGOING ECONOMIC REFORMS

Prof. Mthuli Ncube, chief economist and vice president of the African Development Bank, states: 'We, as Africans, have to accept that a lot needs to be done to make the continent a far more competitive region and one in which doing business will be a lot cheaper and easier than it is now, to enable not only good returns for investors, but also to enable companies themselves to be more competitive.'[47]

What response is required? This is an important question, since governments will want to assist but are limited in the tools available to them: budgets, policy and legislation.

It is also now common cause that there is no fixed and ideal level of market efficiency or regulation to aim for: countries must constantly push to improve on what exists. It is encouraging that this impulse is found among the countries under review. In the case of Mauritius, for example, the CRR notes that the country has actively pursued reforms to make it more attractive to business – for example, in 2007, the Board of Investment and Ministry of Finance and Economic Empowerment established a number of working committees to improve Mauritius' performance in such areas as registering property and obtaining business licences.[48] It also passed the Business Facilitation Act in 2006. This clarified and simplified the procedures for business registration, particularly for small businesses.[49] Lesotho is in the process of simplifying its business procedures through the establishment of 'One Stop Shops', to enable aspirant business owners to process business registrations through one office rather than several – this has cut the timeframe for registrations by several weeks.[50] A similar system has been introduced in Zambia, albeit post-dating the APRM process.[51]

In Mozambique, the one-stop-shop concept ('unique counter') exists in terms of the Commercial Code. However, the CRR notes that it has not achieved its full potential, as clients still need to go to multiple offices to open a business. At present it functions as an information desk.[52]

Reform of the business environment has nevertheless been proceeding apace in Africa. The *Doing Business* series records notable reforms making it easier or more difficult to do business. Data for the past eight reports are presented in Table 4 (these correspond roughly with the period during which the APRM evaluations began to be undertaken in the SADC region).

Table 4: Notable instances of reform to the business environment, 2005/06–2012/13

	Lesotho	Mauritius	Mozambique	South Africa	Tanzania	Zambia
2005/06	2	2	1	1	4	0
2006/07	2	6	3	2	1	0
2007/08	1	3	3	2	0	3
2008/09	0	6	2	1	(1)	1
2009/10	0	1 (1)	1	0	0	3
2010/11	1	1	(1)	3	1	(1)
2011/12	2	2	0	1	1 (2)	1
2012/13	1	3	2	1	2	1

Note: the table records the number of recognisable reforms undertaken each year resulting in business becoming easier or harder. Numbers presented without parentheses reflect reforms making business easier; those in parentheses reflect reforms making business harder.

Source: World Bank and IFC, *Doing Business 2007: How to Reform*, 2006, pp.75–77; World Bank and IFC, *Doing Business 2008*, 2007, pp. 84–85; World Bank and IFC, *Doing Business 2009*, 2008, pp. 82–84; World Bank and IFC, *Doing Business 2010: Reforming Through Difficult Times*, 2009, pp. 99–101; World Bank and IFC, *Doing Business 2011: Making a Difference for Entrepreneurs*, 2010, pp. 139, 143; World Bank and IFC, *Doing Business 2012: Doing Business in a More Transparent World*, 2012, pp. 71–76; World Bank and International Finance Corporation, *Doing Business 2013: Smarter Regulations for Small and Medium-Sized Enterprises*, 2013, pp. 139–140, 142–144; World Bank and IFC, *Doing Business 2014: Understanding Regulations for Small and Medium-Size Enterprises*, 2013, pp. 165, 166–157, 169, 170, 172

What is instantly noticeable is that, by a considerable distance, in this period the country with the most business-friendly economy – Mauritius – is also its most determined reformer. This underlines the point that reform is an ongoing process, not a fixed destination.

The most common reforms – close to one in four of the total – concerned starting businesses. This would appear to reflect a common focus by governments on encouraging people to get into business. Registering property accounted for about 15% of reforms, while reforms regarding paying taxes, trading across borders, getting credit and enforcing contracts each accounted for around one in ten.

However, improvements in the business environment are neither universal nor inevitable. Research on South African small businesses by SBP, a business environment research body, found overwhelmingly that the country's entrepreneurs felt that the environment had become tougher over recent years, and that they expected it to deteriorate further.[53] Over the past two years, mooted and actual legislation – such as the Business Licensing Bill of 2013 (subsequently withdrawn), the Women Empowerment and Gender Equality Act of 2013, the Employment Equity Amendment Act of 2013 and the Mineral and Petroleum Development Amendment Bill of 2013, as well as measures to abridge property protections – stand to have a profoundly intrusive impact on the business environment. All indications are that these measures will make business more difficult.[54] Herman Mashaba, a prominent black South African businessman who launched his business career in 1985 – when discrimination against black people was legislated – recently stated: 'I'm glad I didn't start my business in the new South Africa, because I would not have survived.'[55]

After the 2014 elections, it was announced that South Africa's incoming cabinet would include a ministry dedicated to small business. This represented the outcome of lobbying by the Black Business Council, with the support of some experts – the idea being that a dedicated ministry would be able to drive a policy environment favourable to small and emerging businesses. Others opposed it on the basis that it would 'ghettoise' small business and would lack the influence to achieve the real changes needed, predominantly those in the broader regulatory environment.[56] How this plays out remains to be seen, but an inherent risk is that merely establishing a ministry is viewed as an adequate concession to business. This would simply compound the problem.

While specific to South Africa, this concerning trajectory underlines a more general issue. Governments – and particularly those in countries with extreme developmental challenges – largely see economic activity through the lens of social aspirations. Where government confronts large developmental challenges, as do those in Africa, this is inevitable. However, when this is not tempered with solid analysis it can make for very poor and impractical policy.

Ultimately, policy is a blunt instrument to assist in economic development. While potentially helpful, the damage that poor policy can inflict cannot be underestimated. In many respects, foundational elements such as satisfactory infrastructure and sound administration are more important than policy. As Jacqui Kew, a lecturer at the University of Cape Town College of Accounting and a researcher on the *Global Entrepreneurship Monitor*, noted recently: 'Something like deteriorating transport and lack of electricity will do more harm to entrepreneurial activity than almost any policy can do good. Particularly for small businesses, day-to-day costs are quite considerable, and lack of public services will indirectly increase costs to small businesses, so this would have a direct link to their cost structure.'[57]

Box 3: Improving Africa's business environment

The APRM reports are reasonably consistent in identifying inadequate physical infrastructure and an inhospitable regulatory environment as key problems facing the countries under review. These are also key issues for the continent as a whole. They feature prominently in the various country vision and planning documents, such as Mozambique's *Agenda 2025* and South Africa's *National Development Plan*.

All of these envisage a central role for the private sector, with the state undertaking complementary duties.

Improving countries' road networks, railways, water supply systems and power generation capacities will significantly lower the input costs for investors. This would in turn give African businesses a much-needed competitive boost. Providing a clear and simplified regulatory framework would make entry into and survival in the business world easier, and permit a fuller focus on commercial business as opposed to compliance demands.

Notably, the reports are less concerned with deregulation than with improving regulation. Along with making the environment more conducive to business, there is a recognition of the need to improve implementation capacity.

'The private sector is expected to be the engine of growth. The main role of [g]overnment is to intervene in ways that crowd in private investment, thus encouraging growth that exploits the full potential of our productive capacity. The key business of government is to provide [the] necessary infrastructure platform and set regulatory frameworks that [direct] private efforts and investment in areas that will benefit the widest section of society.'[58]

BUSINESS–STATE RELATIONSHIPS

A healthy spirit of co-operation between government and the private sector is a crucial asset for development. It was seen as important for the NEPAD initiative, and it was in this spirit that the NEPAD Business Foundation was established. This is true for all levels of government and business – from the municipal to the national level.

In terms of local economic development, this is particularly important. As individual businesses, especially smaller ones, do not have the time or expertise to build a relationship with government, a strong chamber movement can be invaluable. Business chambers create a forum to communicate with local authorities about immediate needs and available opportunities. A strategy by the South African Department of Provincial and Local Government (since reformed as the Department of Local Government and Traditional Affairs) makes this important point:[59]

> It is essential that there is proper communication and regular contact between municipalities and organised business and labour. This enables all sides to develop their understanding of

> the dynamics in the local economy and what is required to maintain competitiveness and social cohesion. Participation by Labour and civil society should be encouraged. It is also important for municipalities to be confident in understanding and dealing with business and labour representatives so that negotiations and agreements that are visionary and responsible are concluded.

On the other hand, poor relationships between business and the state aggravate existing problems. For example, in situations where the business environment is already difficult, mutual suspicion can prevent needed reforms: government will believe that business is self-interested, and business that government has no respect for the contributions it makes. The trust that will facilitate respectful discussions of changes is thus absent.

This matter is dealt with head-on in only two CRRs. The Lesotho CRR deals with it explicitly, under the heading 'Public–private sector interface'.[60] It notes that the Lesotho Chamber of Commerce is the key institution here, providing a channel through which business in Lesotho can engage with government (although the emergence of a rival chamber is noted as potentially weakening this arrangement). It is not clear to what extent this has made an impact on the country's development.

The Mauritius CRR looks at the matter in terms of public–private partnerships, proposing this as a practice worthy of emulation elsewhere.[61] This relationship is institutionalised, with the Joint Economic Council representing various parts of the private sector. The report comments: 'Public–private partnerships are essential for the rapid growth, modernisation and industrialisation of Mauritius. These partnerships rely on mutual trust and co-operation, as well as a common vision that addresses the challenges facing the country and highlights the opportunities for developing the country in general and the private sector in particular.'[62]

The South Africa CRR does not address state–business relations in the corporate governance thematic area, but does so in various ways elsewhere. It is touched on in the socio-economic development thematic area, under 'Ownership of the National Development Programme',[63] and in calls for social partnerships to achieve long-term goals.[64] South Africa has a well-established network of business organisations[65] and has tried to institutionalise social partnerships via the National Economic Development and Labour Council, a body intended to partner government with business, labour and the broader community for national development. Particularly under former President Thabo Mbeki, high-level contact between business and government took place through a Big Business Working Group. Strangely, these relationships do not appear to receive much analysis in the CRR.

In the case of Mozambique, Zambia and Tanzania, relations between the state and private sector are not extensively discussed. Some of the institutional forums for such engagement, such as the Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA), were established with government support to provide a voice and support to the private sector (the need for government support to establish the TCCIA being an indication of the very modest reach of the private sector when Tanzania undertook its market-oriented reforms). Others have arisen as initiatives by the private sector itself. The APRM CRRs give no indication as to how close or productive the relationships between the business community and government are.

The limited amount of material in the CRRs should be viewed in relation to work on the subject carried out by other researchers. One study that looked at South Africa, Mauritius and Zambia (as well as Ghana)[66] found good, productive and institutionalised relationships in Mauritius, with the Joint Economic Council playing a key role. The relationships in Zambia were effective, allowing business to get budget and tax proposals into official thinking. This has been done in collaboration with sympathetic and capacitated civil servants. South Africa, however, demonstrated a largely ineffective relationship. In the latter case – concurring with other more specific work – the political sympathies of government are too firmly on the side of the labour constituency to make the institutions work. Both labour and business tend to seek to influence government directly, rather than through the established multilateral institutions.[67] Theuns Eloff, a business activist and recently retired university Vice Chancellor, remarks that business in South Africa faces real hostility from government, signified by new empowerment and affirmative action legislation. There is, in his view, 'a fundamental lack of understanding of the way business works – that there are shareholders and there must be certainty'.[68]

South African political analyst Steven Friedman comments that South Africa's history has engendered a particularly severe degree of mistrust between government and business, and that this compromises serious negotiations and co-operation between them. To move forward this needs to be addressed, either by trying to overcome the 'trust deficit' or by adopting a 'hard-nosed' negotiating strategy that recognises and accepts the lack of trust and does not anticipate any change.[69]

A cautionary comment is that where state–business relationships do exist, they may not necessarily be positive. State–business relationships can depend significantly on individuals' personal or political relationships. This may make co-operation easier, but can also have a negative side. The relationships that exist can manifest themselves in collusion rather than co-operation – where favoured groups benefit from their proximity to government, to the detriment of other constituencies and their competitors.[70] This undermines good corporate governance. The Zambia CRR touches on this in relation to foreign investment in that country, reporting that some stakeholders believed that foreign investors enjoyed state patronage and were granted unreasonable latitude in their operations in the country.[71] In Mozambique, the CRR repeatedly expresses concern about the conflation of the state and ruling party, and notes specifically that this intrudes into business relationships.[72]

Throughout all of the APRM CRR reports, recommendations assume that partnerships are possible. This may not be the case. What can be done? At root, this is a question of mindset. For governments whose historical impulse has favoured socialist or statist development, this is likely to be a difficult and reluctant process. The example of India may be instructive. Essential to its economic take-off in recent decades was a gradual change in attitude on the part of the government, which came to embrace the country's private sector as an ally. This change actually preceded the liberalising institutional reforms in the 1990s.[73]

CHAPTER 5

CORPORATE GOVERNANCE SYSTEMS

The business community in the six countries under review is operating under trying circumstances. The APRM nonetheless requires that it maintain high standards and behaviour. Corporate governance is a new concept, but the reports emphasise that it is a concept rapidly gaining traction.[74] Some of the limited academic research that has been done suggests the same – the stereotype of ungoverned economies is inaccurate.[75]

APRM CORPORATE GOVERNANCE STANDARDS

The APRM is built around adherence to a set of 'standards and codes'. These are international and regional agreements that prescribe the conduct against which countries and their institutions are measured.

Box 4: Standards and codes

The following is a list of the standards and codes identified in the corporate governance thematic area of both the original and revised questionnaire.

- NEPAD Framework Document, AU
- African Charter on Human and Peoples' Rights, AU
- Core Principles of Effective Banking Supervision, the Basel Committee on Banking Supervision
- Labour Codes of the International Labour Organization (ILO)
- Safety and Hygiene Codes of the World Health Organization
- Extractive Industries Transparency Initiative
- International Financial Reporting Standards, International Accounting Standards Board
- International Standards in Auditing, International Federation of Accountants
- Convention on Preventing and Combating Corruption, AU
- Principles of Corporate Governance, OECD
- Principles of Corporate Governance in the Commonwealth, Commonwealth Association for Corporate Governance
- King Code of Governance for South Africa (I, II and III)
- Cadbury Report
- UK Corporate Governance Code
- Guidelines on Corporate Governance of State Owned Enterprises, OECD

- Guidelines for Multinational Enterprises, OECD
- Principles for Enhancing Corporate Governance, Basel Committee on Banking Supervision
- The Equator Principles
- Any other corporate governance principles (local, regional or international).

'The vision of NEPAD is to eradicate poverty and place African countries individually and collectively on the path to sustainable growth and development. This calls for sustainable production and creation of wealth through well-governed and competitive entities whether they are public or private enterprises.'[76]

These cover a wide range of issues: the general principles for ethical behaviour, the roles and responsibilities of boards, the rights of stakeholders, and the special circumstances of SOEs and multinational corporations. They also set global standards for professions with a particular bearing on corporate governance – such as auditing – and the behaviour of institutions such as banks. Together they represent a vast body of global best practice. This is important, both from the point of view of peer learning and because an increasingly integrated and globalised economy demands compatible national standards – although these are not fully recognised globally, as discussed below.

For the most part, the reports show a positive picture in respect of countries' uptake of the codes and standards. Mauritius,[77] South Africa,[78] Tanzania[79] and Zambia[80] have adopted the various standards and codes, with no major identified gaps.

In the case of Lesotho, the CRR notes a number of shortcomings: at the time of the CRM, the Basel II principles on banking supervision had not been adopted,[81] and it had not formally adopted the Core Principles for Securities and Insurance Supervision and Regulations.[82]

In Mozambique, the CRR identifies significant gaps in that country's adoption of the required standards. For example, it notes that 'the recently developed government accounting systems did not take International Accounting Standards/International Standards on Auditing into account'.[83] Also outstanding were compliance with some of the Basel principles.[84] In other areas, such as adhering to the Core Principles for Securities Regulators and Core Principles of Insurance Regulators, Mozambique was working on compliance, although it could not be said to have achieved it.[85] Mozambique's APRM NPoA certainly suggests an intention to align itself with the outstanding codes.[86]

It should be noted that the adoption of international codes is rather more complex than the APRM would seem to imply. Not all countries, including some developed ones, have adopted all of these. The US, for example, has not adopted the International Financial Reporting Standards.

Perhaps the more important question is the extent to which the systems adopted contribute to improved corporate governance. For an illustration of how auditing and reporting is viewed in practice, the *Global Competitiveness Report* of the WEF examines and ranks countries' auditing and reporting standards, based on the opinions of business leaders in each country. These are set out in Table 5.

Table 5: Strength of auditing and reporting standards, 2013/14

	Value	Rank
Lesotho	3.3	136
Mauritius	5.5	24
Mozambique	4.0	111
South Africa	6.7	1
Tanzania	3.7	127
Zambia	4.6	72

Note: The values run from 0 (the worst) to 7 (the best), while the rank indicates where countries feature among the 148 participating.

Source: Schwab K (ed.), *Global Competitiveness Report 2013–2014*. Geneva: World Economic Forum, 2013, pp. 251, 275, 287, 347, 363, 393

The view that emerges from the WEF study is that South Africa's standards are exemplary while those of Mauritius are well regarded. Zambia performs satisfactorily, but Mozambique, Tanzania and Lesotho perform poorly. This tallies well with the APRM's assessment.

CORPORATE GOVERNANCE LEGISLATION

Beyond the standards, commercial and company law imposes non-negotiable legal requirements. These deal with such matters as the procedure for establishing companies, the tax regime, labour legislation and laws applicable to particular sectors – banking, agriculture etc. – which exist in all countries. However, as the discussion of the business environment pointed out, it is crucial that the legislative and regulatory system be an efficient one. In this respect, the CRRs comment on the circumstances of particular countries that are far more widely applicable.

Legislation needs to be kept relevant in order to be effective. Technology or changes to the workings of the global economy can make existing arrangements – perfectly serviceable when they were introduced – obsolete. Legislative and regulatory reform is never complete; it is a process to be managed. Thus, in Lesotho, it is reported that the Companies Bill of 2009 is to replace an archaic 1967 piece of legislation.[87] South Africa's Companies Act (as it existed at the time of the review) was similarly deemed outdated, and it pledged in its NPoA to adopt a new and updated Companies Act.[88] In time, these will also need to be changed.

As well as remaining relevant, legislation must be well designed and properly focussed on its outcome. In this respect, the complexity of economic and financial matters challenges the often-limited capacity of lawmakers and institutions. The Mozambique CRR speaks directly to this, noting that 'legislators lack awareness of international best practice and local experiences. Consequently, weak research has led to poor legislation.'[89] A similar issue, namely a lack of legal expertise, has been observed in Tanzania.[90]

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The so-called 'unintended consequences' of legislation can be very costly. This is not an isolated instance: when South Africa introduced its new Companies Act of 2008, it was severely criticised for failing to take into account the realities of South African business – and for numerous logical and grammatical errors.[91]

Aside from legislation, there is a growing body of corporate governance codes introduced to cover the operations of business as a whole in particular countries, in sectors and in individual businesses. South Africa and Mauritius, and latterly Mozambique,[92] have national corporate governance codes. In Tanzania, a code is being developed.[93] Furthermore, various sectors, institutions and businesses have their own codes.[94]

Unsurprisingly, these are most advanced and widespread in South Africa. In this respect, South Africa stands out. It is not merely an adopter, but a pioneer.[95] The King Code, arising out of the King Committee on Corporate Governance,[96] has received worldwide attention. Of particular significance is that it has helped to entrench the idea that stakeholders (as opposed to only shareholders) have legitimate interests in the operations of companies. The code – most recently King III, which post-dates some of the reviews – has been well received by South African business.[97] It has been influential elsewhere as well, having been taken up by the APRM as a standard and having influenced the Mauritian code – which was written with the assistance of the King Committee's head, Mervyn King.[98] King is assisting with a similar project in Tanzania.[99]

As commented previously, the King Code has made a great contribution in popularising the importance of stakeholders in the overall corporate governance calculus – expressed through the 'triple bottom line' reporting system. In the description of one academic observer, it 'took a stakeholder responsible, rather than shareholder accountable, view of corporate governance'.[100] This approach is also specifically adopted by the APRM.[101]

The King Code is principles-based, not legislated.[102] It follows the 'apply and explain' principle. As such, it is voluntary, although applying it is a requirement for listing on the

Johannesburg Securities Exchange, which gives it institutional force. There is considerable debate about the merits of this approach, or whether a legislated approach would be better.[103] In the US, the Sarbanes-Oxley Act of 2002, a measure aimed at imposing legally binding corporate governance standards on businesses, imposes significant compliance costs. As compliance burdens disproportionately tend to hit smaller businesses, they can have a particularly damaging impact on budding entrepreneurs and on precisely that sector of the economy most likely to generate employment. A system that recognises this, and allows for the flexibility inherent in a principles-based (as opposed to a rules-based) approach, can navigate this problem. (Interestingly, in the Mauritius report, there is a suggestion that Sarbanes-Oxley be studied.)[104]

There is a danger that a stress on compliance – the 'comply or else' principle – can undermine companies' core business. It is vital that corporate government contributes to this core business rather than detract from it. The King III report makes the following comment:[105]

> There is an important argument against the 'comply or else' regime: a 'one size fits all' approach cannot logically be suitable because the types of business carried out by companies vary to such a large degree. The cost of compliance is burdensome, measured both in terms of time and direct cost. Further, the danger is that the board and management may become focused on compliance at the expense of enterprise. It is the duty of the board of a trading enterprise to undertake a measure of risk for reward and to try to improve the economic value of a company. If the board has a focus on compliance, the attention on its ultimate responsibility, namely performance, may be diluted.

This would suggest that the King Code's approach, whatever its deficiencies, is probably the most appropriate for the African environment. The South Africa CRR notes that legislation can in fact detract from the underlying principles behind the code.[106] For Daniel Malan, senior lecturer at Stellenbosch University Business School, this is critical: effective corporate governance hinges on its principles, not on its formalism. A 'tick-box' approach (which may be fostered by coercive legislation) is a poor imitation. The King Code's approach provides a better basis for proper, durable and meaningful corporate governance, which should permeate the totality of companies' activities.[107]

Box 5: The seven characteristics of good corporate governance[108]

In its Second Report (King II), the King Committee sets out the seven characteristics of good corporate governance, namely:

- discipline;
- transparency;
- independence;
- accountability;
- responsibility;
- fairness; and
- social responsibility.

> 'The significance of corporate governance is now widely recognised, both for national development and as part of international financial architecture, as a lever to address the converging interests of competitiveness, corporate citizenship, and social and environmental responsibility.'[109]

CORPORATE GOVERNANCE INSTITUTIONS

Institutions are needed to make these commitments a reality. Both the public and private sectors suffer a lack of capacity – firstly in terms of skills. Deficiencies in the accounting profession are a critical problem, given that their skills are critical for implementing corporate governance regimes. The Tanzania CRR, for example, points to a shortage of accountants.[110] The problem here is one of both insufficient numbers and inadequate educational standards in preparing accountants for the profession.[111] Mauritius[112] and Mozambique[113] have a similar problem.

Another key institution is the judiciary. A robust business environment depends on the ability to enter into enforceable contracts; an area in which the countries under review do not perform optimally. Courts are critical as a final guarantor of contract enforcement, and their existence – and the threat of court action – is a powerful incentive to honour contracts in the first place.[114] Moreover, they are vital for acting against malfeasance, even where corporate governance is understood as a voluntary, principles-based idea.

The judiciary remains a problematic area. In Mozambique, it is weak.[115] While neither the Lesotho nor the Tanzania CRR deals with the judiciary in any detail under corporate governance, their assessments elsewhere are telling. In Lesotho, the judicial system is seemingly overwhelmed and clogged with unresolved cases, some of them many years old.[116] The Tanzania report observes, while discussing corruption, that the country's judiciary is widely regarded as corrupt. It continues: 'In the commercial world, private investors are alleged to take advantage of loopholes in investment laws to financially exploit the economy.'[117]

The South Africa CRR also largely ignores the judiciary as an element of corporate governance, but notes elsewhere – in line with most commentary – that it is generally respected and independent, although it briefly notes 'capacity constraints' among some tiers of the judiciary.[118]

One means to deal with the business consequences of an overburdened courts system is through dedicated commercial courts. Provided they function properly, commercial courts are significant assets, concentrating relevant expertise to expedite the resolution of commercial disputes.[119] In the first decade of the millennium, this was one of the most common innovations in the African business environment.[120] In the Ghanaian case, the reputation of the court (which was established as the brainchild of the former Chief Justice George Kingsley Acquah, rather than as an initiative of government) is such that it has been hailed as a model for others.[121]

Commercial courts, or commercial divisions of courts, exist in some way in five of the six countries. Some problems have been evident in their operation. For example, the Lesotho CRR notes that the commercial court was underutilised.[122] Other research shows that the tardy assignment of support personnel and a dedicated registrar to the Commercial Court of Lesotho contributed to lengthy delays in dealing with cases, but this appears to be improving.[123] In Tanzania, where the commercial court does not hold exclusive jurisdiction over commercial cases, initial evaluations held that its impact was slight,[124] and that while it was generally more efficient than other courts, it was handling only a small amount of cases.[125]

South Africa does not have a dedicated commercial court comparable to that of its peers, and commercial disputes are heard throughout the court system as well as by a number of other institutions with specialised jurisdiction, such as the Competition Tribunal. South Africa does, however, maintain a specialised commercial crimes court. The latter targets crimes involving fairly substantial losses, and involves close co-operation between investigators and prosecutors. It has had a high degree of success in prosecuting crimes, although critics have suggested that this may reflect its 'cherry-picking' its cases.[126]

Although commercial courts are one means to improve the business environment, alternative dispute resolution (ADR) is becoming increasingly common worldwide – and in these six countries. In theory, mediation and arbitration can provide a speedy alternative to court proceedings, and can complement the court system by easing its caseload. However, they may impose additional costs to dispute resolution. Moreover, as one senior Tanzanian jurist has pointed out, they require different skill sets from those traditionally employed by judges and lawyers in litigation-based resolution.[127] A system of ADR should not necessarily be regarded as an easier option.

Business and professional institutions

The institutions working on behalf of business or the various professions are key pillars in the corporate governance architecture and include the various institutes of directors, business chambers and bodies that oversee the conduct of professions. These are important for ensuring that standards of corporate governance and professional integrity are maintained, and that operations are kept current with best global practice. Although operating in different ways – institutes of directors and business chambers depend on their offerings to members to remain relevant, while professional associations provide the qualifications professionals need to work in particular fields – they are repositories of technical expertise and experience in fields where these cannot be substituted. Most importantly, they provide the institutional backing for a corporate governance system that does not rest on legislation.

Institutes of directors are of particular importance. These exist in all of the countries, aside from Lesotho. They provide information on developments in the corporate governance sphere, research and governance code development, and training for directors in corporate governance – including on matters related to corporate integrity.[128] The oldest in the region, South Africa's, is an entirely private organisation. This reflects the relative maturity of its business community and the long-standing recognition of the need for directors to be skilled and supported in their duties. This model is not universal: some countries have established institutes of directors in terms of legislation. This underlines that they acknowledge the importance of developing high-quality directorship skills; establishing state-supported institutes is seen as an investment in the future of the business sector where the sector itself is not yet able to do so.

The absence of an institute of directors in Lesotho is noted in the CRR, along with a recommendation to establish one. An attempt to do so in the past came to nothing.[129] This call has been repeated subsequently as a necessary step towards a meaningful embrace of corporate governance.[130]

The formal adoption of the relevant codes, standards and legislation and the establishment of institutions to oversee them are, however, merely first steps, albeit critical ones. A common problem is that where countries have acceded to or adopted particular standards, implementation lags behind. A good description of this problem is found in the Zambia CRR: 'Zambia has a reasonably adequate legal, regulatory and institutional framework which, if judiciously implemented, would ensure good corporate governance in the public and private sectors.'[131] This is echoed in the Lesotho report, that 'although good corporate governance appears to be embraced in Lesotho to some extent, it remains largely at the policy level rather than at the implementation level'.[132]

The efficacy of organisations promoting corporate governance is difficult to assess. Their existence is a clear necessity. One stakeholder consulted for this report said that while it was possible to punish businesses for bad behaviour, the real difficulty was getting at the culprits at board level. Doing this requires a strongly capacitated institution with an in-depth professional understanding and commitment, such as an institute of directors.[133] The reports are ambiguous as to the efficacy of these organisations. In Zambia, for example, 'the general view was that the professional bodies have generally played a very effective role in enforcing professional standards in Zambia'.[134] In Tanzania, weaknesses in the National Board of Accountants and Auditors compromises adherence to professional standards and corporate governance in that country.[135] The Tanzanian report states: 'The National Board of Accountants and Auditors considerably advanced the accountancy profession in Tanzania. However, the professional education still falls short of international standards, compromising the quality of the professionals in the discipline.'[136] In Mozambique, the Confederation of Economic Associations of Mozambique does not have the resources to service the entire country.[137] The Lesotho Institute of Accountants, that country's key custodian of corporate governance, has 'very limited capacity to carry out its regulatory function and to enforce its code of ethics'.[138]

The problem, however, runs deeper than a failure of implementation. Public awareness of corporate governance matters and the relevant standards, which makes it possible for stakeholders to assert their rights and for companies to understand their responsibilities, is frequently lacking. In Zambia, the CRR notes that while standards and codes had been ratified, 'many Zambians are not aware of this and so could not give valid information on their domestication. In fact, there seems to be a lack of awareness among the public about standards and codes.'[139] In Mozambique awareness is also lacking.[140]

Oddly, despite these observations and frequent recommendations to improve awareness of corporate governance and its underlying standards, there is no analysis of why awareness of the relevant standards is low. That corporate governance is a relatively new concept may be part of the explanation. This probably applies to civil society activists for whom the workings of commercial institutions are at best opaque; and to (some) businesspeople whose concerns about operating under tough conditions distract them from seeing the wider advantages of applying corporate governance principles. Another part of the explanation may be simply ideological, namely the view held by some activists that business is inherently not to be trusted and that only firm and inflexible legislation is a meaningful tool to enforce its good conduct.[141]

IS THE CORPORATE GOVERNANCE ARCHITECTURE WORKING?

Taken together, the overall corporate governance regime may best be described as a work in progress. Commitments and frameworks exist, but for the most part have not become entrenched in the conduct of business. For the standards that Africa has set itself through the APRM, the capacities available are simply not adequate. This is clear from the reports. In Tanzania and Zambia, for example, the authorities lack the technical expertise to enforce compliance where it is legislated.[142] Among businesses, the large majority of which are small, the resources needed to fulfil the technical requirements of some of the accounting and regulatory systems are absent. In Mozambique it is beyond the ability of small businesses to implement an accounting system.[143] Small businesses in Zambia have complained about the costs associated with annual audits,[144] while similar problems exist in Mauritius.[145] Lesotho's CRR notes that there are no simplified accounting guidelines for small businesses, and it recommends that these be developed.[146]

The difficulties and failings in applying corporate governance regimes cannot be divorced from the general difficulties in the business environment as a whole. Corporate governance in the formal sector, to the extent that it demands formal compliance, carries costs. As a more sophisticated business sector emerges, and as governments ramp up the effectiveness with which they operate – both hoped-for outcomes of the APRM – an ever-more effective system of corporate governance will emerge. The challenge is to assist in that process.

CHAPTER 6

COMPANY BOARDS

At the heart of corporate governance, traditionally, is the company board. This is the institution that is responsible for the leadership and accountability of companies. Well-functioning boards represent the owners, or shareholders, in overseeing the conduct of company executives. The hope is that they will ensure good stewardship of the company by those running it on a day-to-day basis. At present, relatively few African businesses are run by boards – most being owner-operated or family-run. However, board-governed companies do exist, and this model of governance is likely to become more prominent as Africa's business sector expands and matures. A consideration of company boards in Africa is therefore warranted.

In an environment where corporate governance rests heavily on self-regulation, company boards have a considerable responsibility. Not only must they ensure compliance with both the law and best practice, and protect the interests of their shareholders, but they also have to carry the burden of the legitimacy of the corporate governance regime. In other words, company boards need to ensure that companies behave in a manner acceptable to society at large. The APRM recognises this by framing its enquiries, in the recently revised questionnaire, under the heading 'Ensuring Effective Leadership and Accountability of Organisations'.[147]

The importance of boards was entrenched on the corporate governance agenda by the Cadbury Report, whose Code of Best Practice deals principally with board structure and responsibilities. Cadbury was a good expression of the shareholder approach to corporate governance and was geared primarily to listed companies; however, it was an extremely important perspective on corporate governance at its time and remains a useful reference to understanding the evolution of corporate governance thinking.

Box 6: Key points of the Cadbury Report's Code of Best Practice

- Boards should meet regularly and exercise proper control over companies.
- Power should be diffused so that no one person is able to act unchecked.
- A balance should be found between executive and non-executive directors.
- Executive directors should be able to exercise real influence, and should bring an independent perspective to the operations of the board.
- Executive directors should be appointed for limited terms – reappointment not being automatic – their remuneration determined by a committee composed principally of non-executive directors.
- Boards have a duty to report truthfully about the state of the company.

'The directors should report that the business is a going concern, with supporting assumptions or qualifications as necessary.'[148]

The key assumptions set out by Cadbury are that checks and balances are necessary for effective boards. It stresses the need for the perspectives of those not directly involved with the running of the company – that is, non-executive directors – and it premises good corporate governance based on a proper flow of information.

Cadbury has to a large degree been eclipsed by the 'stakeholder-responsible' or 'stakeholder inclusive' approach pioneered by King – certainly in South Africa and on the continent as a whole. King, however, also stressed the importance of non-executive directors:[149]

> The non-executive director plays an important role in providing objective judgement independent of management on issues facing the company. Not being involved in the management of the company defines the director as non-executive. Non-executive directors are independent of management on all issues including strategy, performance, sustainability, resources, transformation, diversity, employment equity, standards of conduct and evaluation of performance. The non-executive directors should meet from time to time without the executive directors to consider the performance and actions of executive management.

Seen particularly in light of the more recent stress on non-shareholder interests – as laid out in the King Code – company boards could play an important role in ensuring that the interests of stakeholders other than shareholders are also taken into consideration.

BOARD PERFORMANCE

Both Cadbury and King presuppose that for boards to perform effectively a critical mass of expertise and integrity are available to serve on the boards. The reality worldwide is frequently different.

Table 6 presents the *Global Competitiveness Report's* evaluation of the performance of corporate boards across the countries under review.

Table 6: Efficacy of corporate boards, 2013/14

	Value	Rank
Lesotho	4.1	114
Mauritius	5.0	26
Mozambique	4.1	113
South Africa	6.0	1
Tanzania	4.2	102
Zambia	4.9	41

Note: The values run from 0 (the worst) to 7 (the best), while the rank indicates where countries feature among the 148 participating.

Source: Schwab K (ed.), *Global Competitiveness Report 2013–2014*. Geneva: World Economic Forum, 2013, pp. 251, 275, 287, 347, 363, 393

South Africa's boards are ranked highly – the best in the world. They are followed by boards in Mauritius, with Zambian boards also putting in a strong showing. Boards in Lesotho, Mozambique and Tanzania are not well regarded, being among the bottom third globally.

For the most part, a unitary or 'single-tier' board structure is preferred in the SADC region – both executive and non-executive directors sit on a common board. This is consistent with the 'Anglo-Saxon' approach underlying Cadbury.[150]

Boards are discussed unevenly across the six CRRs – probably reflecting the sophistication of corporate governance in the respective countries. The reports on Lesotho, Mozambique and Tanzania have very little to say, aside from general recommendations to improve the quality of boards, and to be sensitive to the need for an effective mix of skills and gender.[151] These are countries in which the private sector remains small (Lesotho's report includes comments on the board performance of SOEs, which are discussed elsewhere in this report) and corporate governance is embryonic.

Board issues in Mauritius, South Africa and Zambia are dealt with in more detail. Mauritius and South Africa have mature private sectors, while those in Tanzania and Zambia, although much smaller and less developed, are at a stage where these matters are assuming increasing importance.

The key issue highlighted in these CRRs concerns the make-up of boards. In each case, the fundamental issue is related to the relatively small pool of candidates available to fill board positions.

Despite its economic success, problems dog board-level corporate governance in Mauritius. Control of companies tends to be highly concentrated, with a strong emphasis on family ownership. Boards are drawn from a narrow band of people, often related to one another. Arising from the close-knit nature of Mauritian society, particularly its elites, this has been noted elsewhere.[152] This phenomenon can result in conflicts of interest, and can also mean that directors are appointed as a result of connections rather than for the technical competence or general value-add they provide.[153] The CRR also argues that some board members effectively represent majority shareholders to the disadvantage of minority shareholders.[154]

Furthermore, corporate governance codes pertaining to boards are not always followed. A study by Ernst and Young, quoted in the Mauritius CRR, points to a high degree of non-compliance among Mauritian companies: many do not follow the prescriptions of the code regarding the breakdown between executive and non-executive directors and the remuneration of directors.[155] Arguably, where informal bonds and mutual interests are influential in forming boards, and where companies represent a personalised form of wealth rather than a more abstract institutional interest, real intellectual independence is difficult to maintain. Under these circumstances, guidelines for good corporate governance practice are at greater risk of being ignored.

Zambia's situation is similar, albeit in a less developed context. The CRR says that the boards of larger companies are strong, but those of smaller ones are weak. The latter are often composed of friends and family, and therefore have personal links to the business. This can produce conflicts of interest and undermine effective corporate governance.[156]

It should be noted that the concerns expressed in the CRRs about the impact of family relationships in Africa, while not without validity, are also not without their counterpoints. They are concerns that stand firmly in the shareholder approach to corporate governance and are particular to larger, board-governed businesses. The CRRs do not, for the most part, adequately present the nuances of family-owned businesses. Family businesses are an important element in many leading economies, such as Germany. The social bond inherent in them can be an important asset, encouraging long-term thinking. In so doing, they can make a contribution to good corporate governance among the continent's small and emerging businesses.

Of the countries under review, South Africa has the largest and most sophisticated economy, and the best-developed corporate governance thinking. However, its boards are also confronted with the problem of a narrow pool of candidates. Prominent here is the need to diversify corporate South Africa in terms of race and gender.[157] Part of the upshot of this has been the pursuit of particular individuals as potential board members. According to Daniel Malan, this has led to 'over-boarding': some people simply serve on too many boards and cannot give proper attention to all their responsibilities.[158] This is serious issue, since the Companies Act of 2008 makes non-executive directors liable for company malfeasance.

With South Africa being a leader in corporate governance, its boards have to adapt to increasing demands for integrated reporting and engagement with stakeholders beyond their shareholders. This was the subject of recent research by PriceWaterhouseCoopers. Among its findings was that while attempts were being made to move with the times, practises such as integrated reporting were still viewed largely as a compliance-driven process.[159] This situation reproduces what Malan has identified as the weakness at the heart of the country's corporate governance. Boards, he says, may in general be doing a good job, but their focus should turn from compliance to values – 'from conformance to performance'.

The trends discussed here are unique neither to the countries concerned nor to the SADC region. Reflecting on this in the African context, Festus Odoko of the Central Bank of Nigeria comments:[160]

> For board directors to operate optimally there is need for independence. But such independence is often compromised because of the manner of appointment and the way they operate. There are those who are appointed because of their close relationship with the chief executive of the bank and therefore may not be in a position to challenge his decisions. Similarly, there are many directors who do not discharge the functions of their office satisfactorily because they do not have enough time to devote to the operations of the organisation. This situation could arise as a result of several factors. One is that they may be holding directorship in several organisations, thereby limiting their effectiveness in any one of them. Another reason may be that information may be passed to the directors so close to the meeting date that they do not have the time to read and digest the information contained in the papers. Some of the directors are appointed because of the amount of shareholding they have in the company. In such a case, they may lack the expertise necessary to contribute meaningfully to the decisions of the board.

Tackling these issues implies in the first instance greatly expanding the pool of people capable of performing the duties of a director. The various institutes of directors have a key role to play in conducting the necessary training, and it is for this reason that Lesotho has been encouraged to expedite the establishment of its own.

Where diversity is an issue – and gender issues are a concern throughout all of the reports – an instructive point of reference is Norway. In terms of a 2003 law, Norwegian businesses were required to fill 40% of their board positions with women. Failure to comply could, in theory, have led to businesses being closed down, although this does not appear to have happened. Although this law generated heated debate at its inception, it has generally become accepted among Norwegian businesses. Some observers have even argued that it has improved the quality of boards. This is not simply (or perhaps even primarily) a matter of introducing a 'woman's perspective', but because nomination committees improved their scrutiny to find and attract the very best of what was perceived to be a limited pool of candidates. Candidates from hitherto non-traditional careers were nominated, as were candidates from abroad.[161]

However, two important caveats apply. Firstly, Norway is a highly mature, advanced economy and its population is, as a whole, highly educated. The pool of talent is deep and, to the extent that external talent has been recruited, global. Secondly, it has been noted that Norway does not perform particularly well in terms of the involvement of women in executive positions. The increase in women directors has disproportionately been among non-executives. Some executives have said that, when offered a choice between the long process of rising through the corporate hierarchy and being offered a non-executive board position, women tend to opt for the latter. This leaves management and executive directorships as a predominantly male domain.[162] (Notably, Uganda-based corporate governance expert Alison Dillon-Kibirige comments that the Norwegian example may be instructive for Africa: in her experience, there is little resistance in Africa to women serving on boards, but this is practically undermined by gender differentials in education.)[163]

CHAPTER 7

ETHICS

Ethics are central both to corporate governance and to the APRM's approach to corporate governance. Ethics, seen from this perspective, are different from 'conduct' and 'law'.[164] A Mauritian guide for businesses is explicit about this: 'Business Ethics goes beyond simple compliance and respecting the law; it is about written and unwritten codes of principles, values and behaviours, based on the organisation's culture, that govern decisions and actions within an organisation. It is how you make decisions and conduct business.'[165] The chair of the King Committee told South Africa's CRM that it was impossible to 'legislate against dishonesty'.[166]

A central concern of the APRM is the adoption of codes of ethics. These are important tools in that they act as internal standards for the companies that adhere to them – although in practice they are only as effective as the commitment that businesses feel towards them and the extent to which wrongdoers can be held to account.

In Mauritius, codes exist for both the public and the private sectors, and in this it is strongly supported by the private sector through the Joint Economic Council.[167] Mauritius' Code of Corporate Governance suggests that businesses adopt codes of ethics. Three guidelines are proposed.[168]

- Codes should be understandable and easily communicable to all.
- Codes should refer to the laws and regulations relevant to the business's activities.
- Once adopted, businesses should monitor compliance with the codes to ensure ethical practice.

However, the CRR suggests that a blind spot may be discrimination in the plural nature of Mauritian society, which should be addressed in an updated code.[169]

In Lesotho, there are no 'explicit regulations for good business ethical practices', and it is debatable whether businesses do follow ethical guidelines. However, because of the small size of the country and the homogeneity of the population, 'issues like nepotism, conflicts of interest and influence peddling are … complex'.[170] In fact, a good case could be made that in any economy, personal relationships are an inevitable dimension of business. It may not be possible to eliminate their problematic implications – such as nepotism – but understanding the problems they can cause, and managing them ethically, is important.

The report notes that very few companies have codes of ethics; those that do tend to be larger. The Lesotho Textiles Association, representative of one of the economy's most important sectors, has one, but it is not clear that it is being implemented. Smaller enterprises, however, do not have codes of ethics, relying for the most part on personal ethical choices. The Lesotho CRR urges the country to give more attention to ethics, and to instil 'a culture of systematic reference to the codes [of ethics]' that should be adopted.[171]

In Tanzania, support for the promotion of good business ethics is weak and still in its infancy, although some businesses and sectors of the economy have adopted them.[172] The report notes that a number of sectors are commended for their generally high ethical standards, namely fishing, coffee and tea. This is largely because of their foreign markets' sensitivity to ethical matters.[173] This in turn raises interesting questions about harnessing sympathetic public opinion abroad to influence corporate behaviour in Africa – although initiatives of this nature have their critics.

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In Zambia's case, some businesses have codes of ethics, while the Bank of Zambia mandates them for banks. These must be reviewed annually. The Lusaka Stock Exchange also requires them. The Zambian Institute of Directors attempts to provide guidance in formulating codes of ethics. However, elsewhere the private sector is reluctant to adopt such codes because of the possible compliance burden. This is especially the case for smaller businesses, which fear 'the burden of follow through'.[174] In practice, though, there are weaknesses in adherence to the codes that do exist. The CRR concludes that codes of ethics and conduct 'are available but not effectively implemented, monitored and enforced'.[175]

In South Africa, the Johannesburg Securities Exchange Socially Responsible Investment (SRI) Index is of note. It evaluates listed businesses' efforts and provides a guide for investors looking beyond economic factors to make their investment decisions. The South African CRR contains little on ethics – surprisingly so in view of the country's advanced corporate governance regime. It confines itself principally to detailing the mechanisms used to combat corruption. In one respect, it points to a problem that is highly visible in the country while being far from unique to it, namely government procurement.[176]

In South Africa, the abuse of government tenders is estimated to cost some ZAR[177] 25 billion ($2.4 billion) a year.[178] A long-standing and as yet unresolved scandal involving a multi-billion rand arms deal in the 1990s has become a common motif for describing corruption in the country. Outright fraud and corruption are, however, punishable crimes. A more difficult area to deal with is the subtle or possible subversion of tender processes. This may occur, for example, when a company in which a prominent politician or civil servant holds an interest tenders for government contracts. It may not be illegal for such a company to provide its services to government, but there is an ethical problem. At the very least it can cast suspicion on the process. Where the company involves not a politician or civil servant but a close family member, friend or business associate, the situation is even murkier.

These problems extend to party funding, and the link between private (or state-owned) business and party politics. In South Africa, this issue has arisen in the particular form of the ruling party's investment vehicle, Chancellor House, which has held interests in government projects. Most controversial were contracts for upgrading South Africa's electricity generation through Eskom (an SOE), which would see large sums flow to the party via Chancellor House. The chair of Eskom's board also served on the fundraising committee of the ruling African National Congress. A report by the Public Protector found that while the contract was legitimately awarded, a conflict of interest had existed and was not satisfactorily managed.[179]

Dealing with these 'grey areas' through the law may not always be possible or advisable. Rather they require an acute awareness of ethical boundaries, and the importance – on all sides – that these ethical boundaries are observed and are seen to be observed.

In Mozambique, similar problems have arisen. These are spelled out forthrightly, albeit not as part of the corporate governance thematic area. The CRR proposes: 'The Government needs to consider defining an ethical code that will regulate the participation of senior party and government officials and their families in business to avert the corrosive impact of unbridled economic activities on public morality.'[180]

Perhaps more importantly, the Mauritius CRR notes that the private sector has taken the lead in calling for disclosure of political donations. In other words, business is calling for a higher ethical standard in a field that is a major source of corruption across the world.[181] This should be welcomed and emulated.

Seen in perspective, the APRM's focus is arguably unduly restrictive in its concern with 'codes' of ethics. Rather what is needed is a comprehensive 'culture' of ethics. Not only would this obviate some of the problems of compliance but it would also fit well with the principles-based approach to corporate governance recommended by the King Code. If corporate governance principles are well understood and inform the ethical choices that businesspeople must make, there is no reason why the outcome would not match that enabled by formal codes – and be far more manageable to smaller operators.

CHAPTER 8

STAKEHOLDER ENGAGEMENT

Businesses are not islands; they operate within wider societies. This means that stakeholder engagement is important and is growing as stakeholder groups become more informed. Their interests, ie, the interests of society beyond a business's owners, are now increasingly recognised as an object of corporate governance. This is a growing paradigm.[182]

Stakeholder engagement is also arguably the element of corporate governance that attracts most attention outside the business community, since it speaks to the immediate consequences of corporate behaviour – or misbehaviour – on ordinary people, as well as on those with an ownership stake in businesses.

SHAREHOLDERS

A primary and axiomatic responsibility of any company is to its shareholders. This is particularly the case in the 'Anglo-Saxon' legal and cultural tradition. They own it and have invested their resources in the expectation of making a return on this investment.

The annual *Global Competitiveness Report* shows the extent of shareholder protection extended in different countries. Table 7 presents the results for the six SADC states under review.

Table 7: Shareholder protection, 2013

	Value	Rank
Lesotho	5.0	84
Mauritius	7.7	13
Mozambique	6.0	41
South Africa	8.0	10
Tanzania	5.0	84
Zambia	5.3	69

Note: The value reflects a scale from 0 (the worst) to 10 (the best), while the rank positions the countries on a continuum of the 189 participating countries.

Source: Schwab K (ed.), *Global Competitiveness Report 2013–2014*. Geneva: World Economic Forum, 2013, pp. 251, 275, 287, 347, 363, 393

Consonant with the maturity of South Africa's financial and corporate governance regime, it ranks very highly at 10th globally. Mauritius is just a shade behind it. Mozambique performs creditably, while Lesotho, Tanzania and Zambia register a mediocre evaluation, although still among the top half of countries globally.

The various CRRs describe in some detail the provisions for shareholders' rights. In South Africa, shareholders' rights were protected by the then-existing Companies Act, which has since been reinforced by a new Companies Act. In terms of the new Act, minority shareholders are reasonably well protected. In the view of one commercial attorney: 'What the legislatures had in mind when imposing this Act was that they want to force directors and the majority shareholders to consult with minority shareholders to ensure the directors adhere to the standards of conduct that the Act has set for them.'[183]

In Zambia, shareholders' rights are protected by legislation, but lack of knowledge and weak enforcement negate the effectiveness of this. Minority shareholders, for example, can intervene in decision-making processes but seldom do so.[184]

Protection of shareholders' rights in Lesotho was based on an antiquated Companies Act, which, at the time of the report, had not been updated since 1984. The CRR 'noted the inadequacies of the antiquated Companies Act to provide up-to-date and wide protection of shareholder rights'.[185]

Mozambique provides reasonable protection to shareholders. In terms of the Commercial Code, company information must be disclosed to shareholders. However, many companies do not appear to comply with this, which has resulted in aggrieved shareholders turning to the courts.[186] However, adherence to these strictures is somewhat undercut by the limited tradition of shareholding and the country's weak judiciary.[187]

In Mauritius, the Companies Act contains safeguards for investors but there is a lack of shareholder activism. Minority shareholders' interests are protected, but there are some weaknesses. For example, company meetings can go ahead even if shareholders were accidentally not informed. This can undermine particular shareholders' interests.[188]

The Tanzania CRR briefly notes that the country's Companies Act protects shareholders. Aggrieved minority shareholders can seek relief in the courts.[189]

Overall, these legal safeguards are often compromised in practice. A general factor limiting shareholder protections is that shareholders fail to assert their rights. The South Africa CRR notes that shareholder activism is weak, including on the part of institutional investors. Small shareholders also face the problem of having to approach the courts for relief, which is costly and time consuming.[190] A similar situation exists in Mauritius.[191] The reports on Tanzania and Lesotho make the point indirectly, by urging greater awareness of shareholder rights and responsibilities and the establishment of shareholder associations.[192]

Table 8 presents the evaluation of the Global Competitiveness Report as to the protection afforded minority shareholders.

In this respect, South Africa tops the global rankings, followed – again – by Mauritius. Zambia performs strongly, while Lesotho, Mozambique and Tanzania are indifferently ranked.

Table 8: Protection of minority shareholders' interests 2013/14

	Rank	Value
Lesotho	3.5	120
Mauritius	5.2	19
Mozambique	3.7	107
South Africa	6.2	1
Tanzania	3.7	110
Zambia	4.7	37

Note: The values run from 0 (the worst) to 7 (the best), while the rank indicates where countries feature among the 148 participating.

Source: Schwab K (ed.), *Global Competitiveness Report 2013–2014*. Geneva: World Economic Forum, 2013, pp. 251, 275, 287, 347, 363, 393

EMPLOYEES

Employees occupy a particularly important place in the stakeholder hierarchy. This owes much to sensitivities about their 'exploitation', which has been taken up by the ILO through its Decent Work Agenda.

In each of the countries, legislation provides some degree of protection for employees. The precise package of these protections differs from country to country, as does the effectiveness they afford in practice. Each of the countries imposes minimum wages, although these are not necessarily applicable to the whole country and may differ from area to area and from sector to sector.

In Lesotho, workers enjoy the right to unionise and press for their interests. Conditions are improving but some issues remain, such as disputes over sick leave.[193]

Mozambique has legal provisions for labour, but these are sometimes ignored. Unions are weak as a voice for their members (probably a consequence of their lack of independence prior to democratisation and the move to a market economy) and lack the skills to help enforce workers' rights.[194]

In Tanzania, labour legislation exists, granting a full spread of rights, including prohibitions on discrimination on the grounds of race, gender, ethnicity and so on. The CRR states that these legal guarantees are often ignored in practice and that employers do the bare minimum to be compliant. In keeping with the ongoing problem of poor implementation, there is little information available on prosecutions for non-compliance. Freedom of association, in the form of the right to unionise, is legally guaranteed, but there are charges that this too has been ignored, particularly in the export-processing zone in Dar es Salaam. In common with Mozambique, unions remain under the sway of government, which undermines their ability to protect their members' interests.[195]

Zambian law also provides guarantees to employees, but these too are often ignored, with companies often flouting the minimum wage laws, for example.[196] The Zambia CRR's comments sum this up – and could equally be applicable to the observations of CRMs elsewhere:[197]

> The CRM found that although Zambia has adequate legislation in place to safeguard human rights, enforcement of such laws is largely compromised due to a variety of issues. Primary amongst these was the fact that many Zambians were not aware of their human rights, especially rights at the workplace; the high level of unemployment that appeared to discourage those in employment to forgo their rights and just be grateful to be employed in the formal sector; and the government of Zambia seems to prefer giving corporations unlimited rights so as to be regarded as a foreign direct investment country.

Labour matters in Mauritius are approached differently in its CRR. Here, the pro-business orientation of policy leads some stakeholders to believe that Mauritius is hostile to the country's workers.[198] It should, however, be noted that this perspective is not universal. Elsewhere it is argued that Mauritius and its people have benefitted from its economic structure, particularly the ethically run, highly productive textile industry.[199]

The South Africa CRR does not examine employee matters as part of the corporate governance thematic area. This is a significant omission. South Africa's labour legislation is fiercely contested as to whether it is too restrictive, or not restrictive enough. Nevertheless, South Africa has an industrial relations system that has among its objectives safeguarding and improving the position of employees, undergirded by vocal trade unions.

Labour relations in South Africa highlight an important dynamic of engaging with stakeholders. Employees as a group do not necessarily have common interests. 'Engagement' may involve more than the bilateral relations between employees and owners. The interests of different groups may be sharply opposed to one another. In recent years, the Solidarity trade union – whose primary constituency comprises members of the country's racial minorities, particularly white people – has mounted successful challenges to employment practices in various organisations.[200] These practices are viewed by Solidarity as undermining the interests of its supporters; other unions see them as essential to the progress of South Arica's people.

These positions are not easily reconciled. They also embody one of the difficulties of managing diversity, an issue with which the APRM is concerned. These difficulties are an invariable feature of fractious and divided societies; operating in Africa, many businesses will be unable to avoid dealing with them.

Wages, working conditions and workers

Working conditions and wage standards are important matters in their own right and as an element of an economic strategy. The challenge confronting businesses is that their actions may be perfectly legal but nonetheless generate opprobrium as failing to meet particular ethical obligations. Two of the reports – those of Lesotho[201] and Zambia[202] – observe the growing 'casualisation' of work. This has been raised as a concern by unions and labour activists in other countries.[203] Certainly, in social terms, 'casualisation' is likely to produce increased insecurity for employees working under these conditions, as well as lower wages and benefits. On the other hand, Africa's young business communities struggle to deal with tough business and economic climates. Labour contracted for short periods may play an important, if controversial, role in maintaining competitiveness.

Similar considerations relate to wage levels. The Tanzania report states that minimum wages are not 'liveable', and that Tanzanians are 'shockingly underpaid'.[204] It records elsewhere that dissatisfaction exists about different pay scales for nationals and non-nationals, even where the work performed is the same.[205] The implication is that higher wages should be paid. It is not clear whether this would be viable – there is no analysis in

© Graeme Williams / www.mediaclubsouthafrica.com the report as to the feasibility of doing so – but it would probably impose a burden on the country's emerging entrepreneurs.

A key focus of these dynamics is their influence on employment: to what extent do wage rates and employment conditions have an impact on jobs and job creation? The APRM reports engage this matter tentatively and inconsistently. The Tanzania CRR notes: '[There is] a "failure" to pay minimum wages set by Government owning to the need to give due consideration to factors such as productivity, competitiveness and affordability. The failure is also attributed to the desire to have sustainable enterprises that create more jobs, at the end of the day.'[206] The South Africa CRR makes a very similar point.[207]

By contrast, the Zambia CRR comes out unambiguously in favour of higher wages.[208]

> Despite the existence of the legal requirements, some employers choose to underpay their employees and continue to keep such employees [as] casual employees so as to avoid paying them a decent wage, allowances and terminal benefits. Employers are also aware and are taking advantage of the fact that there is very little employment available especially for the youth. It should be noted that cheap labour does not necessarily improve the competitiveness of industries as it leads to lower productivity of human power. It is imperative on the part of government to ensure that its minimum wage laws are fully implemented and enforced as it will increase the living standards of the citizens and contribute meaningfully to the realisation of the Millennium Development Goals.

The different approaches adopted by these reports, and by implication the relevant CRMs, underline the difficulty businesses face in managing their stakeholder relationships. Simply put, there are few easy or uncontroversial trade-offs. Possibly the most promising avenue for dealing with these matters is to be found in heightened productivity – something requiring not merely 'harder work' but also better management and the judicious use of capital equipment (and consequently, something with a price tag attached). The relatively high productivity of Basotho workers has been a major drawcard for Lesotho's textile industry.[209] Hiking productivity receives little attention in the APRM, and deserves a great deal more.

The link between productivity and pay is examined in the Global Competitiveness Report (see Table 9).

None of the countries stands out as exceptional, although Mauritius' performance is fair. South Africa's performance – given the sophistication of its economy and its unemployment problem – is near catastrophic.

Finally, it is not simply the bottom end of the wage continuum that generates concerns. Over the past few years a public debate has developed concerning executive pay. This has become a heated topic in South Africa, given the country's high levels of income inequality.[210] The resentments that inequality generates could be very destabilising, and it has moved onto the agenda of businesspeople themselves. Brand Pretorius, chairman of Absa bank's remuneration committee, recently remarked that the salaries paid to executives were problematic: 'I personally do not think it is sustainable, because it is not just a business issue anymore. It has become a really important and sensitive social issue.'[211]

Table 9: Link between productivity and pay 2013/14

	Value	Rank
Lesotho	3.4	120
Mauritius	4.0	65
Mozambique	2.8	138
South Africa	2.8	142
Tanzania	3.4	117
Zambia	3.7	91

Note: The values run from 0 (the worst) to 7 (the best), while the rank indicates where countries feature among the 148 participating.

Source: Schwab K (ed.), *Global Competitiveness Report 2013–2014*. Geneva: World Economic Forum, 2013, pp. 251, 275, 287, 347, 363, 393

In this context, the frequent references to 'fairness' in the various reports are important. Fairness is an elastic concept; it is not easy to define or measure. This lacks precision, and as such is not an impressive guide for action. Malan, however, argues that it has a definite utility as a philosophical concept that can be kept in mind as a broad consideration, along with economic considerations.

THE COMMUNITY BEYOND THE FACTORY GATE

Corporate governance thinking has come increasingly to hold that businesses are part of the communities in which they exist. Their actions are therefore expected to be calibrated for the benefit of those communities, hence the often-heard term 'corporate citizenship'.

'The community' is a wide-ranging, residual description. What has been interrogated or found to be important in one country may not be so in another. Generally, however, the impression created is that of a business community facing criticism for failing to meet its perceived responsibilities to society adequately. This is especially so in relation to larger companies, particularly foreign-owned companies in the extractive sectors. Thus, the Zambia CRR comments that companies are viewed as having little to do with the communities around them,[212] while that on Tanzania remarks that the mining sector is regarded as excluding 'ordinary Tanzanians'.[213] Surprisingly, the displacement of people to make room for extractive operations receives little attention.

Good environmental stewardship is a key function. It is also a growing public and policy concern, and has found expression at the corporate governance level in various standards. Most notable are the Equator Principles (see Box 7). Africa's population is still significantly dependent on household agriculture, and struggles without basic amenities. The degradation of its existing natural resources is a matter of immediate life and death for many. The reports on Lesotho,[214] Mozambique,[215] South Africa,[216] Tanzania,[217] and Zambia[218] note that environmental legislation is frequently ignored (the Zambia report notes that foreign investors may also be exempted from it.)

In South Africa, the JSE Socially Responsible Investment Index provides a guide for investors as to the level of commitment evidenced by different companies. The effect is meant to be persuasive rather than prescriptive. This initiative has, however, been attacked by activist groups charging that some of the companies included in the Index are in fact major violators of stakeholders' rights.[219]

Box 7: The Equator Principles

The Equator Principles are 10 guidelines for financial institutions. They seek to ensure that projects are undertaken in accordance with due consideration for the environment.
The Principles are:

1 **Review and categorisation**: The environmental impact of proposed projects should be clearly understood.
2 **Environmental and social assessment**: Clients undertaking projects with potentially adverse impacts are required to draw up an assessment of the environmental impact and, where appropriate, on the social impact as well. It should propose measures to mitigate the foreseen negative effects.
3 **Environmental and social standards**: Projects must conform to international and local standards and legislation.
4 **Environmental and social management system and Equator Principles action plan**: Systems must be put in place to ensure that projects meet the appropriate standards.
5 **Stakeholder engagement**: Clients undertaking projects must establish channels for effective and culturally appropriate interaction with stakeholders, such as affected communities.
6 **Grievance mechanism**: Channels must be put in place to enable affected stakeholders, at no cost, to voice complaints about the conduct of the project.
7 **Independent review**: For certain projects, an independent review (not beholden to the client) of the environmental and social impacts must be undertaken.
8 **Covenants**: Clients will undertake to respect the host country's social and environmental laws, and the financial institutions to assist in so doing.
9 **Independent monitoring and reporting**: For certain projects, independent assessors must be appointed to ensure compliance.
10 **Reporting and transparency**: Particular indicators will be made freely available.

'We, the Equator Principles Financial Institutions, have adopted the Equator Principles in order to ensure that the Projects we finance and advise on are developed in a manner that is socially responsible and reflects sound environmental management practices. We recognise the importance of climate change, biodiversity, and human rights, and believe negative impacts on project-affected ecosystems, communities, and the climate should be avoided where possible. If these impacts are unavoidable they should be minimised, mitigated, and/or offset.'[220]

Consumer rights are protected by law in some countries, such as Mauritius[221] and South Africa.[222] In South Africa, the state Competition Commission has brought to book a number of prominent companies for collusive behaviour.

As in the case of shareholders and employees, stakeholder activism is an important driver of stakeholder interests. Unfortunately, this is underexplored in the APRM's corporate governance thematic area. Among the few examples given of this are consumer rights bodies in Zambia, which are an important function in contemporary Africa, in which markets are increasingly exposed to substandard and counterfeit goods.[223] However, across the region, activist voices are also asserting themselves.[224] Not only is this positive for the behaviour of business, but it also entrenches an overall democratic culture.

Another underexplored area is the integration of small domestic businesses into value chains. This is of critical importance, as research in South Africa has shown that such integration and the business opportunities it offers is a most desired change in business dynamics.[225] The Zambia CRR notes:[226]

> Small and medium enterprises [SMEs] have no access to government contracts, especially in the area of procurement. SMEs have long been disadvantaged by the tender process when competing with large enterprises. In addition to this, there are no visible linkages between small scale establishments and large enterprises in support of job creation and small scale industrialisation. Government must encourage SMEs to bid for public contracts and also encourage large enterprises to sub-contract to small scale businesses.

There is some persistence of child labour – the Zambia CRR notes that it takes place on manganese mines[227] – although this is predominantly a phenomenon in subsistence and family enterprises, involving such tasks as tilling and herding.[228]

Encouragingly, the reports show little evidence of intentional, violent or coercive human rights abuses. An exception to this is a note in the Zambia report about the killing of a worker in a Chinese-owned business 'simply because the Zambian employee was demanding his right in the workplace environment'. However, it goes on to admit that the issue has not been described in detail in the CSAR.[229] While allegations against particular operations are made from time to time,[230] the reports suggest that intentional human rights abuses are not representative of behaviour by businesses in these countries.

Corporate social responsibility

Corporate social responsibility (CSR) is a particular species of stakeholder engagement. Traditionally understood as philanthropy, it is increasingly discussed in terms of a necessary element in business operations. The Mauritius CRR spells out the APRM's approach: 'In APRM terminology, CSR is seen as a strategic business objective where businesses care for, and are more involved in, the communities in which they operate.'[231]

In relation to CSR, the reports on Lesotho, Mozambique, Tanzania and Zambia were profoundly different from those on South Africa and Mauritius. Once again, this is evidently linked to the maturity of the business community.

In the less developed countries, CSR – like corporate governance – is a new concept. Governments are understandably eager to encourage it, and in Tanzania a presidential award for CSR in the extractive sector seeks to do so.[232] For the most part it is approached as a type of philanthropy, and is predominantly undertaken by larger businesses,[233] these frequently being foreign investors. While information is sparse, small businesses appear to be far less involved in CSR. Where they are, this tends to involve unstructured donations of money, goods and services to local causes.[234] (It is actually quite possible that many companies and entrepreneurs may be practising CSR without understanding that they are doing so.) Research in Mozambique suggests that many small operators are simply too preoccupied with business survival and navigating a hostile environment to pay much attention to CSR, and often believe that they are in need of assistance rather than having an obligation to society.[235]

The attitudes of recipients of CSR are subdued – it is evidently not making a fundamental impact on people's lives. In Zambia, it is viewed as an incidental activity and largely geared at self-promotion,[236] while in Tanzania some see it as a 'marketing gimmick'.[237] To this, one senior corporate governance practitioner in Tanzania commented: 'CSR is widespread here as I guess it is elsewhere. Regarding whether it is "marketing gimmick or not, that is quite an old question in corporate governance. It is difficult to give a comprehensive answer. Suffice it to say unless you check keenly the strategic documents of those businesses and establish their commitment, it is very difficult to give opinion. Sometimes it is my opinion that instead of having bad intentions, some of our local corporates would not even know the difference between CSR and marketing.'[238]

CSR, unsurprisingly, appears to be most prominent among companies in South Africa and Mauritius. They provide interesting interpretations of the driving forces behind CSR, suggesting that in both cases CSR is propelled by legislation. The Mauritius CRR says that there is 'no legal framework to regulate CSR' in the country.[239] This contradicts information supplied elsewhere in the report that suggests it has in fact the most regulated CSR policy of the countries surveyed. In terms of the Finance Act of 2009, Mauritian companies must contribute 2% of their profits to support approved CSR causes – which may involve supporting a non-governmental organisation, running a programme of their own or implementing a programme under the National Empowerment Foundation. As the Mauritius report notes, business regards it as a tax.[240] Its intentions aside, this is essentially accurate.

The CRR on South Africa links CSR to legislation on black economic empowerment (BEE) and skills development.[241] This legislation attempts to create incentives for CSR (by granting companies undertaking such initiatives preferential access to business contracts).

Both of these reports speak indirectly to a key question: what can be done to encourage CSR? As it contributes to social development, governments are naturally keen to encourage it. In the Mauritian case it is mandatory. In South Africa, the supposed influence of BEE understates the long history – however imperfect – of CSR in South Africa. One of the most venerable CSR instruments is the Anglo American Chairman's Fund, which has been operating since the 1950s. The Urban Foundation, founded in 1976 by businesspeople, was intended to improve the 'quality of life' of South Africa's urban black population, while the National Business Initiative, launched in 1995, was a move on the part of business to contribute to the development of the recently democratised country.

In addition, other research suggests that CSR in these countries is substantively driven by concerns of morality and values – in other words, that business owners and managers feel it is an intrinsically important thing to do. Findings on CSR in South Africa by Trialogue – which put CSI in South Africa at some ZAR 7.8 billion ($735 million) in 2013 – come to this conclusion,[242] as does an earlier study of CSR among small and medium sized businesses.[243] Volunteering staff time is another growing means of CSR.[244] In Mauritius, similar patterns are evident. The CRR notes research that indicates business recognition of the need for social engagement.[245] Moreover, a survey of 100 companies indicated a near-universal participation in CSR, and that the main influences – by a considerable distance – on companies' attitudes towards CSR were their values and culture, followed by management's awareness of social needs. The law ranked third as an influence.[246]

However, ambivalence about CSR was pronounced. Both the South Africa and Mauritius reports quote stakeholders as saying that it is necessary to establish better guidelines, targets and business cases for CSR.[247] In the South Africa report, some stakeholders criticised existing CSR initiatives as not fundamentally addressing South Africa's problems, and for not bridging the divide between the country's developed and undeveloped economies. They wanted it to create employment, open up economic opportunities and provide greater benefits to communities.[248] It may be a fruitful exercise for government to be forthright about what it would like to see happening in the CSR field, without being prescriptive – in this way businesses might better understand what is desired of them, while still making their chosen contributions when they are unable to engage in the activities desired by government. CSR depends, for the most part, on the capabilities of the companies undertaking it and their willingness to do so.

CHAPTER 9

THE INFORMAL SECTOR

An important fault line in the economies under review is that they are split between the formal and informal sectors. The informal sector is estimated to contribute over half of Africa's GDP.[249] For millions of Africans, the informal sector is the only available means of making a living. It should not be underestimated. As a recent analysis found:[250]

> The informal sector represents the dominant share of many sectors across the continent, especially in manufacturing, commerce, finance and mining. Trade-related activities, including street vending, [are] the most common form of activity in Africa's informal sector. The informal sector provides between 50–75% of employment, and 72% of non-agricultural employment, 78% if South Africa is excluded.

Although measuring the informal sector is a fraught endeavour, Table 10 sets out the results of a study by the ILO estimating the contribution of the informal sector to overall non-agricultural employment.[251]

Table 10: Percentage of non-agricultural employment in the informal sector

Lesotho	49.1
Mauritius	9.3
South Africa	17.8
Tanzania	51.7
Zambia	64.6

Note: Mozambique was not included. The figures presented do not include workers employed 'informally'. Overall informal employment is likely to be considerably higher. The report was published in 2012, but the data used for each country was from the latest year for which it had been gathered.

Source: ILO, Department of Statistics, 'Statistical Update on Employment in the Informal Economy', June 2012, p. 11

The CRRs emphasise the dominance of the informal sector, especially among the less developed economies.[252] However, the information deficit is particularly pronounced in this part of the economy. This raises important policy issues. Governments may recognise the informal sector as a means of meeting socio-economic needs, but simultaneously question whether it represents an effective response to those needs.

African countries appear to recognise the inherent importance of the informal sector, while attempting to leverage it to incubate formal sector entrepreneurs. Thus the

Tanzania CRR, for example, observes that Tanzania is attempting to nurture and expand the informal sector.[253] It is also attempting to promote the formalisation of informal businesses.[254] Mozambique is attempting to do likewise, with the 'gradual integration of [the] informal sector into [the] local economy rather than fighting it'.[255]

The Tanzania CRR sets out the barriers to formalisation (which are also applicable elsewhere): the limited awareness and capacity of business owners; restricted access to financial and other services; and a difficult regulatory environment.[256] These are largely mirrored in research on Mozambique.[257]

The business model of informal enterprises is premised on informality. For example, the Mozambique report points to goods being imported and then sold on the informal market. This undercuts formal merchants and domestic producers since informal operators pay no taxes.[258]

The question to be asked is whether formalisation is an advisable course of action. A substantial body of thinking would argue to the contrary. Particularly in Africa, it is less an expression of entrepreneurial zeal than of economic dysfunctions. Those operating informal, survivalist enterprises frequently have no other option. The skills and aptitude needed for the informal economy differ substantially from that needed in the formal sector. A comparative study of formal and informal businesses in South Africa noted: 'The informal sector cannot be regarded as, and will never become, the springboard of successful and productive business development and growth.'[259]

The informal sector is thus an important channel for goods to very poor people (who have few options), but it can be fierce competition for domestic, potentially value-adding entrepreneurs. However, the informal sector has in some circumstances shown itself to be able to link into formal value chains.[260] All of this suggests that very careful thought is required as to how to involve the informal sector in development efforts – neither a dogged commitment to formalisation nor neglect may be positive options. Rather, sensitivity to the multiple roles informal businesses play is needed, and the constraints under which they operate must be considered. Formalisation is a strategy to be pursued only where it can offer advantages for businesses (and not officials). Mozambique's *Agenda 2025* notes wisely: 'Formalisation will be attractive if it is perceived as beneficial, if it is not slow, complex, and/or expensive to achieve. It will also be attractive when operators are sure that if they invest in formalisation, they will have a faster and safer return than they would have if they stayed in the informal sector.'[261]

In this respect, does it make sense to talk about corporate governance for the informal sector? Malan argues that it does, provided it is done on the basis of principles rather than technical compliance. While it is always necessary to be conscious of context and the limits of small businesses' ability to comply with regulations, there is no reason for any business operation not to align itself with established corporate governance values.

CHAPTER 10

FOREIGN INVESTMENT

The lack of a mature business community and inadequate domestic savings makes attracting foreign investment critical for Africa' prospects. This was explicitly recognised by the NEPAD initiative. Foreign investment, not least in extractive industries, has been a major driver of Africa's impressive growth over recent years.

Table 11 provides an overview of the state of foreign investment in each of the six countries.[262]

Table 11: Foreign investment, 2012 ($ millions)

	FDI* flows		FDI stock	
	FDI inflows	**FDI outflows**	**FDI inward**	**FDI outward**
Lesotho	172	37	839	15
Mauritius	361	89	2,944	861
Mozambique	5,218	-9	12,632	15
South Africa	4,572	4,369	138,964	82,367
Tanzania	1,706	0	10,984	0
Zambia	1,066	177	11,994	2,706

* Foreign direct investment.

Source: UNCTAD, *World Investment Report 2013: Global Value Chains and Trade for Development*. New York & Geneva: UN, 2013, pp. 214, 218

South Africa is a significant player, both as an investment destination and as a source of investment. To a lesser extent (owing in part to its size), so is Mauritius. Zambia has a sizeable portfolio of FDI and limited holdings elsewhere. Lesotho, Mozambique and Tanzania are for the most part investment destinations rather than investors.

Foreign investment has, however, not been uncontroversial. Civil society and activists have voiced concerns about the impact of foreign investment (again, specifically the impact of mining).[263] From a corporate governance point of view, the fundamental problem is that corporate governance best practices are not observed.

Stakeholders in Zambia, for example, say that there is a feeling that foreign investors have 'entered the country through State House',[264] and that government extends unduly favourable conditions to them, to the detriment of local people.[265] Foreign mining companies operate under confidential agreements, which enable them to avoid much scrutiny. Despite producing a great deal of pollution, they are exempt from compliance with environmental legislation for extended periods. This places a particularly heavy burden on surrounding communities.[266] Foreign companies are also fingered as favouring employment on a 'casual' basis, so as to avoid the full scope of their social responsibilities.[267]

In Tanzania, similar concerns are evident: the mining industry has been responsible for extensive environmental damage while providing few visible benefits.[268] Its report states: 'The extractive industry (especially gold mining) is considerably the most developed of all the aspects of the private sector. However, the corporate governance record in this sector is characterised by a heavy dominance by big corporations and an exclusion of "ordinary Tanzanians", low tax and royalty revenues, indifference to environmental concerns, and an abuse of both investor incentives and employee rights.'[269]

An African architecture is emerging to deal with these challenges. This includes the African Mining Vision, which seeks to engage the mining industry holistically in an effort to promote development.[270] On the international level, three of the six countries – Mozambique, Tanzania and Zambia – are members of the Extractive Industries Transparency Initiative (EITI), signalling an intention to improve the governance of their

extractive industries. However, some activists feel that the initiative does not go far enough. Some propose extending EITI to cover the utilisation of revenues from natural resources, to document non-monetary payments from companies to governments, and to publish contracts between companies and governments.[271] However, a great deal of work is required for these initiatives to reach their potential. Co-ordination between national, continental and international instruments (and removing duplications) and African capacity for monitoring and engagement are required.[272]

In addition, the Lesotho CRR mentions cultural miscommunication as a problem in the relationship between the Basotho workforce and the (predominantly Asian) business owners in the textile industry.[273] This does not describe an issue unique to foreign investment – it is inherent in diverse societies, and some factory owners in Lesotho have taken out citizenship – but it is one that is likely to be an issue complicating the relationship.

Together, these factors and the grievances (perceived and real) that they describe clearly contribute to the scepticism towards foreign investment in some quarters. In recent years, this scepticism has been focussed on Chinese investment, and resentment of the growing presence of Chinese business interests and businesspeople in Africa.[274] The words of a Zambian woman employed in a Chinese-run retail business sum up the ambivalences and dilemmas facing many Africans: 'Yes, they are giving us jobs, but these are not jobs to help us [improve our lives]. They are jobs to help them make more money. I am paid 350,000 kwacha [$68] every month, and what can you do with that amount? It is like my salary just goes for transport to come here and go home. Zambian employers pay much better, but they are very few, and they only employ very few people … So, there is nothing we can do but work for these same people.'[275]

On another level, foreign businesses often procure from abroad rather than extending opportunities to suppliers in their host countries. Tanzanian President Jakaya Kikwete remarked on this, expressing frustration at companies 'that import goods and services even when the same commodities and services are found locally'.[276]

That said, there is a considerable body of evidence that foreign investment plays an important role in development and poverty alleviation, through injecting capital, introducing new technology and production techniques, and connecting with foreign markets.[277] Research by SAIIA into South African companies doing business in Mozambique concluded that their impact was positive – to the extent of setting new standards in labour and business best practice.[278]

For their part, Chinese entrepreneurs respond to criticism by pointing out that they are simply building competitive operations based on hard work and discipline. This is little different from the manner in which operations function in rapidly growing Asian economies – a strong response in view of the admiration that China's economic growth has attracted elsewhere. Moreover, they too work extremely long hours for little initial reward, living frugally and pushing themselves and their families as hard as they push their workforces.[279]

African countries are becoming more assertive vis-à-vis investors. The Zambia report notes that foreign mining companies will be compelled to list on the Lusaka Stock Exchange. This will allow Zambians to own equity, and will ensure that the companies fall within Zambian regulations.[280]

Finally, the report on South Africa points out that the companies constituting the considerable South African commercial presence on the continent beyond its borders frequently do not apply domestic corporate government standards to their operations elsewhere.[281] For the sustainable development of the continent, this must change, while African countries must insist on these standards from all investors.

Fortunately, there is a growing recognition of the importance of maintaining high corporate governance standards. Sifiso Dabengwa of telecoms group MTN comments: 'It is more challenging in some places than others to keep those principles because corporate governance is not always well understood or practised in many African markets. But for us it is non-negotiable no matter where we are.'[282]

CHAPTER 11

STATE-OWNED ENTERPRISES

SOEs are an important part of many economies across the world. Despite the recognition of the importance of the private sector, they represent important investments and conduct a substantial share of economic activity, and are particularly important for developing countries and those transitioning from socialist or statist economies. From a corporate governance perspective, SOEs are in the first instance companies like any other. They are as prone to failings and non-compliance with legislation as their counterparts in the private sector.[283] Their participation in the corporate governance regime is therefore crucial.

The *Principles for Corporate Governance in the Commonwealth* puts it thus:[284]

> In emerging and transition economies, the main or substantive commercial activity usually rests with the state enterprises. These enterprises often constitute the primary (and sometimes only) customer or supplier on whom an emerging private sector activity may depend. With the emphasis on encouraging the development of small, micro and medium enterprises, this has significant economic consequences. The conduct and efficacy of state enterprises can, therefore, act as a 'driver' of good corporate governance practices in ensuring that this permeates through to an emergent private sector.

African countries restructuring their SOEs may well find that changing the ownership regime does not address their problems. Reforming their corporate governance systems may be more effective.[285]

For the most part, the CRRs focus on the appointment of SOE boards, and on particular difficulties experienced by SOEs. Although government involvement in board selection is inevitable and necessary in SOEs, various checks and balances can be applied to mitigate this and ensure candidates of distinction are appointed.[286] The OECD *Guidelines on Corporate Governance of State Owned Enterprises* is clear that SOE boards should act in the best interests of the entities they control, exercise independent judgement and treat all stakeholders equitably.[287] The more important issue is whether such appointments are geared towards furthering a political agenda, and whether boards are able to operate without political interference once appointed.

Box 8: Guidelines on corporate governance of state-owned enterprises

An extensive set of principles for SOEs, the OECD's Guidelines contains a section outlining the conditions for an effective legal and regulatory framework for SOEs. These are:

- there should be a clear separation between the role of the state as owner, and the state's other roles – such as market regulation – that may influence the environment;

- governments should streamline the legal forms under which SOEs operate;
- where SOEs undertake functions beyond generally accepted norms, this should be clearly mandated by law or regulation and disclosed;
- SOEs should not be exempt from general laws and regulations, and stakeholders – including competitors – should have the right of efficient redress for grievances;
- the legal and regulatory framework should allow for flexibility in SOEs' capital structure to allow them to adjust to changing conditions in the interests of fulfilling their obligations; and
- SOEs should face competitive conditions in accessing finance.

'The legal and regulatory framework for state-owned enterprises should ensure a level playing field in markets where state-owned enterprises and private sector companies compete in order to avoid market distortions.'[288]

A major issue, then, is politically motivated board appointments. These are in the hands of government, and this arrangement can compromise the independence of the boards. This is reported in respect of both Tanzania[289] and Mauritius. The Mauritius CRR comments: 'The CSAR notes that there is widespread recognition that the appointments of directors in SOEs are based on political considerations, as is the case with parastatals. This leads to questionable decisions and claims of political bias in business decisions. The survey respondents also believe that directors often do not have the necessary technical expertise or qualifications for the positions they hold.'[290]

The Lesotho report illustrates the implications of state incapacity for SOEs. Some of these SOEs are said to have gone for years without boards, and there is a pressing need for these to be appointed 'timeously and on merit'.[291] Some entities are simply unable to fulfil their reporting obligations, resulting in available reports being years out of date.[292] Consequently, the true state of these entities may not even be known to their managers or directors.

Among the CRRs, South Africa's experience is most carefully examined. This reflects its long history of SOEs, and the ongoing commitment of its government to them as agents of development. To a large extent, this has been highlighted by the 'Chinese model' of development. Over the past few years, it has become apparent that many policymakers in South Africa, impressed by the growth of China, have looked to China for inspiration to dealing with the country's development challenges.[293] The notion of a growth path driven by the country's SOEs has featured prominently in official thinking, consciously mirroring the Chinese experience.

The South Africa CRR puts forward a generally positive view of South Africa's SOEs. They operate, at least in theory, under corporate governance best practice, commercial legislation and public sector financial legislation. The focus of the report is on the manner in which these entities have been reformed since the 1990s. It praises the strategy adopted by government to introduce market-style management while avoiding outright privatisation. With this altered mandate, and consonant with NEPAD thinking, South Africa's SOEs have sought opportunities and are investing elsewhere in Africa. However, it also says that the 'difficulties experienced by those SOEs that are not playing at optimal levels must be acknowledged and confronted'.[294]

The last point would appear to refer to some of the problems that have dogged South Africa's SOEs. Although generalisations should be avoided – South Africa has over 700 SOEs – high-profile failings have become familiar to South Africans. Ongoing corporate governance deficiencies in South Africa's public broadcaster are illustrated by the repeated reports of conflicts within the organisation's board, and were exposed in a recent report by the Public Protector.[295] The public broadcaster's conduct in the recent elections was widely viewed as slanted in favour of the ruling party[296] – a clear dereliction of its mandate.

In part these issues reflect a basic structural problem. According to William Gumede, of the University of the Witwatersrand, SOE boards have a more complex relationship with their shareholder (government) than is the case with private sector entities. Government may be inclined to bypass boards or to intervene in corporate governance matters.[297] There was also, he noted, 'a lack of clarity over the objectives, mandates and oversight of SOEs. There is often no clearly set-out requirements to be a SOE board, little transparent and objective board recruitment procedures, and no specific procedures for evaluation of the performance of board members.'[298]

In addition, SOEs are subject to both the Companies Act of 2008 and the Public Finance Management Act of 1999, whose provisions with respect to boards are not clearly aligned.[299] These issues have been taken up to some degree via the Presidential Review Committee on State-owned Enterprises. It calls, among other things, for a consolidated SOE Act and more clarity on goals and mandates.[300]

Another part of the problem – in common with the countries described above – is political and ideological in nature. Gumede's analysis refers briefly to the potential politicisation of SOE boards that can arise when political affiliations are given undue

© Graeme Williams / www.mediaclubsouthafrica.com weight.[301] This is contrary to the need to maintain independence from outside pressures. International evidence suggests that consciously limiting political appointments to SOEs enhances their performance.[302]

In this area, an appreciation by government of the importance of corporate governance – in the sense of a principled rather than formulistic, 'tick-box' approach – to SOE performance would be beneficial. They need to acknowledge their responsibilities to all stakeholders, and resist the temptation to view all of these as represented by government. This might enhance an appreciation of what is at stake among those in positions of responsibility. Dillon-Kibirige notes: 'I have seen non-performing political appointees have a change of heart when they realise their reputations may be at risk due to their activities or lack of activity on a Board.'[303]

Box 9: National Programmes of Action

The APRM seeks not only to encourage discussion of countries' problems but also to facilitate their resolution. To this end, countries are required to prepare NPoAs. These seek to address the shortcomings that the APRM process has identified. In respect of corporate governance, proposals are for the most part briefly stated, necessary and sensibly aligned to the countries' difficulties. Reflecting the fact that corporate governance rests on universal principles and best practices, they are also quite consistent across the six reports.

- Adopt and disseminate outstanding standards.[304]
- Improve the enforcement of codes and standards.[305]
- Introduce new or updated legislation to take into account concerns raised in the report.[306]
- Enhance the business environment in terms of market access, improve infrastructure, strengthen institutions, and bolster the capacity of managers.[307]
- Improve business ethics and accountability, and fight corruption.[308]
- Have national developmental priorities inform the behaviour of the private sector.[309]
- Raise awareness of and promote CSR, and the rights of various stakeholders.[310]
- Assist or capacitate citizens, consumers, women and other interest groups to assert their rights.[311]

CHAPTER 12

CONCLUDING OBSERVATIONS

'For business to prosper in the African environment, a number of things will have to be put right. Among them are the implementation of corporate governance standards, including the timely provision of information to investors; a clear separation of interests by executives; strongly enforced independent audit practices; and clear lines of responsibility for corporate leaders.

Greg Mills [312]

If Africa is to step forward and claim its place in the coming years, this will be premised on a veritable economic revolution. With this in mind, the relative absence of corporate governance from the public conversation around the APRM is a shortcoming that needs to be remedied.

Corporate governance speaks not only to the narrow operations of businesses but also to their ability to drive the economic growth and development that is the hope for Africa's future. It is ignored at the continent's peril. A well-conceived and competently administered regime of corporate governance is also the clearest antidote to corporate abuses. Increasingly, business is becoming aware that the standard of its conduct is important to its commercial success – its processes are now factored into the competitiveness of its products. Expectations of ethical conduct are growing, and many companies are stepping up to this challenge.

However, all of this is of little consequence if business is hamstrung in its ability to operate. The CRRs make it clear that the business environment in Southern Africa remains a difficult one. Mauritius is an exception to this, as is South Africa – although a closer look suggests that the evaluation of South Africa may well have been too generous. Entrepreneurs find themselves confronted by difficult physical and social environments, often stifling regulatory systems, and widespread pathologies in the form of corruption and general inefficiency. Add to this the fact that all countries urgently need radically to expand their entrepreneurial communities (and in some cases, to nurture them from a precarious infancy), and there is no room for complacency.

Africa has been fortunate in recent years in being able to depend on revenues from its natural resources. This is not an indefinitely sustainable strategy. It urgently needs a community of value-adding, innovating entrepreneurs to take it forward.

In policy terms, three courses of action are clear. Firstly, better quality inputs – better education, better infrastructure, increased management capacity in government – are critical for long-term sustainability. Secondly, Africa needs a friendlier regulatory environment. Clear, understandable, implementable and impartially enforced regulations are a great asset to any country. They must be conceived with an eye to both curbing undesirable behaviour and facilitating the day-to-day conduct of business. The goal is better regulation rather than deregulation. Rwanda has shown that this is a vital step in honing national competitiveness. This is an international trend: the UK has been running a 'Red Tape Challenge', aimed at reviewing some 21 000 laws and regulations, to determine which might be repealed and which need amending. It is doubly important for Africa.

Thirdly, there is a need to shift mindsets. Fundamentally, it means understanding that business's core role is economic, not social. Employment and development are the collateral benefits of a vibrant business community, not its intrinsic aim. There is nothing shameful about this; the key is to understand how these efforts can be exploited for mutual advantage. Doing so in turn implies developing a good, open and co-operative relationship between business and government, within which trade-offs, compromises and limitations can be discussed.

Building on all of this is a realisation that there are limits to the help that government can provide. The most important recognition is that a law is not always a solution. Absent from the APRM reports is a discussion of regulatory impact assessments. South Africa, Tanzania and Lesotho have adopted them in principle, although their application is uneven. The basic premise of regulatory impact assessments is that before anything is passed into law, it must first be studied to determine the consequences of its real-world application. The unintended consequences or impracticability of a proposed law may well be a warning against proceeding.[313]

This in turn is premised on at least two factors. The first is the availability of high-quality information. Too often this information is not available, and until this is remedied the risk of poor policy is ever-present. The second is that governments must be willing to accept the implications of the evidence. As a recent analysis observed: 'Legitimate concerns may not always lend themselves to resolution by law or regulation. This is an uncomfortable reality for policymakers, but a reality nonetheless.'[314]

The APRM has done a great service by placing the concept of corporate governance into the debate on Africa's future – even if the debate on corporate governance has not yet reached the prominence it deserves. Overall, it is clear that corporate governance is an expanding but uncompleted project on the continent. However, there is a definite interest in taking this project to completion. Assumptions about business in Africa as a freebooting frontier are increasingly inaccurate. African governments that are serious about development, and businesses that are serious about making their investments pay over the long term, understand the importance of corporate governance.

Crucially, corporate governance cannot be limited to concerns around profitability. Profitability is critical and it must figure prominently. However, corporate governance thinking is experiencing a growing recognition of stakeholder interests – even in those countries where this has not previously been a key consideration. As a corporate governance system evolves in Africa, these interests should feature strongly. As the King Committee has argued, the benefits of a proper consideration of stakeholder interests for sustainability, for both businesses and economies as a whole, make this a logical course of action.

Theoretically, a corporate governance architecture is already in place. African countries and their business communities recognise the need to adhere to international standards, even if arguments can be made about how truly 'international' these are. The formalisation is well advanced – the application, however, less so.

The challenges here are multi-pronged. Corporate governance is a new concept and the business community is still substantively in its infancy. It is pioneering both commerce and a regime of internal governance. Businesses struggling to survive and grow in a tough environment can be expected to fail to pay due attention to what may seem peripheral to their immediate interests.

A process of education, in tandem with the hoped-for development of the business community, is the best hope for achieving this. To this end, well-capacitated and independent professional organisations, business chambers and institutes of directors are urgently needed, as is inter-country co-operation.

Strangely, given the pan-African nature of the APRM, little is said about cross-border co-operation on corporate governance. The few comments in the South Africa CRR suggesting the application of the King Code and better CSR by South African companies investing elsewhere in Africa understate the potential of such co-operation. Efforts are being made to address this through the African Corporate Governance Network and the Collaborative Africa Budget Reform Initiative. On a more localised level, there are some instances of co-operation between professional associations in different countries: for example, between the South African Institute of Chartered Accountants and the Lesotho Institute of Accountants.[315] More of this needs to be encouraged, and South Africa's business community – with its world-class expertise in the field, and experience in operating in developing markets – could provide invaluable support to its continental peers. This would, in turn, be well served by partnerships between business and governments.

A major focus in training and capacity building is increasing the pool of accountants. Their skills are foundational for good corporate governance. However, the key to an effective corporate governance regime is to see it in terms of its principles rather than regulation. Principles, above all, need to inform and contextualise laws and regulations. This is particularly important given the developmental conjuncture in Africa. In developing economies, which lack the large established domestic companies that might provide leadership and have large informal sectors and a heavy dependence on foreign investment, there is a need for a regime that takes into account the specificities of individual societies. Thus, for example, while concessionary policies in pursuit of investment have a place, they must be carefully structured to ensure that key corporate governance principles such as transparency and accountability are adhered to.

Most importantly, as Africa's economies and business communities mature, corporate governance must be seen to work for them; more as a facilitator than as a restraint.

Box 10: Postscript: An African corporate governance?

The APRM process is underwritten by a broad pragmatic and philosophical understanding that for Africa to progress and prosper, the continent must find durable, home-grown answers to the issues that confront it. As the somewhat overused phrasing has it, African solutions for African problems. However, if corporate governance is an idea with universal application, does it make sense to talk about a distinctly African corporate governance?

A substantial body of opinion would regard this view as uncontroversial. While the understanding of corporate governance in sub-Saharan Africa – South Africa excluded – is underdeveloped, studies on other parts of the world have demonstrated important variations across societies. One of the more commonly mentioned variations is associated with the 'Anglo-Saxon' tradition and the European 'continental' tradition respectively. In the former, a common-law tradition and strong attachment to free market economics has revolved corporate governance around shareholder interests, while in the latter, a civil law tradition and prominent social democratic impulse has historically made the interests of stakeholders more prominent – as in the German principle of Mitbestimmung (co-determination), which obliges companies to include labour interests on their boards.[316]

Beyond the political and legal traditions are cultural norms. As one commentator, writing on India, put it:[317]

> The structures, institutions, and legal framework of corporate governance are developed and administered by individuals whose behaviours are shaped by social and personal concepts of hope, ambition, greed, fear, uncertainty, and hubris, as well as by the social ethos. This makes national cultures a dominant influence on corporate governance.

Thinking on corporate governance increasingly recognises that the intersection of legal, political and cultural factors combine to produce the particular strain of corporate governance that emerges in any given context. In Asia, for example, the prominence of family-owned businesses and the Confucian tradition[318] raise the importance of familial relationships and hierarchy in this part of the world – with corresponding implications, for good and ill, for corporate governance in these economies. Appeals have been made in Africa for corporate governance to be conceptualised around its own cultural frameworks and economic context.[319]

A few matters are relevant here. Africa's private sector outside South Africa is small and underdeveloped. There are few large companies, and entrepreneurs tend to expand laterally – establishing small operations in different sectors rather than growing existing operations in size and complexity.[320] Much of the continent's business is informal, family ownership is substantial and personal relationships are vital.

From a cultural perspective, Africa's traditions stress the importance of the wider community. This is recognised in the 2009 King Report. Together with the continent's developmental deficits, this places a raft of expectations on the continent's business community. Dillon-Kibirige makes the following observation:[321]

> Traditional African culture is an important differentiator in the continent's corporate governance. In South Africa, it is called Ubuntu; it has different names in other parts of Africa. It means relationships are very important, and their management is a fundamental part of governance. Also in many African countries outside SA there are few listed companies so you are dealing with companies that do not have the pressure of investors as it exists elsewhere. They are not therefore forced into the compliance approach (a 'tick box' approach) to corporate governance. They can apply corporate governance tools in the best long-term interest of the companies.

One of the other problems we have in the shareholder-based approach is the assumption that if you follow this approach you will get access to finance. This is not true, as many Africans have discovered. Access to finance is a side effect and only happens if a company is performing and looks like it will be sustainable when a provider of finance does its due diligence. Good governance tends to improve company performance, which should be sustainable in the long term, hence this makes them more attractive. However, this is not just tick-boxing a corporate governance list, but actually embracing those corporate governance practices that are appropriate to a company that may eventually make it more attractive to capital providers.

Africa's circumstances, therefore, impose severe challenges. In the context of the APRM, these are magnified by the aim to do things according to global best practice. A striving for best practice demands that, as Africa builds its corporate governance architecture, it avoids any assumptions of cultural essentialism. As a recent report on Asian business in *The Economist* observed, successful Asian companies are consolidating themselves by acknowledging their weaknesses and drawing on the experiences of Western companies to upgrade their corporate governance.[322] Africa will need to do likewise.

APPENDIX 1

Socio-economic status: Selected indicators						
	Lesotho	**Mauritius**	**Mozambique**	**South Africa**	**Tanzania**	**Zambia**
Human development status	**Low**	**High**	**Low**	**Medium**	**Low**	**Low**
Human Development Index, 2012 (value)	0.461	0.737	0.327	0.629	0.476	0.448
Human Development Index, 2012 (world ranking, total 187 countries)	158	80	185	121	152	163
Population (millions), 2012	2	1.3	25	51	48	14
Population annual average growth, 2000–2012	0.8%	0.7%	2.7%	1.3%	2.8%	2.8%
Population age composition, % 0–14 years, 2012	37%	20%	45%	30%	45%	47%
Life expectancy at birth, years, 2012	48.7	73.5	50.7	53.4	58.9	49.4
Expected years of schooling, 2011 (or most recent available)	9.6	13.6	9.2	13.1	9.1	8.5
Income Gini Coefficient, 2000–2010	52.5	N/A	45.7	63.1	37.6	54.6
Income status [a]	**Lower-middle income**	**Upper-middle income**	**Low income**	**Upper-middle income**	**Low income**	**Lower-middle income**
Gross national income per capita, Atlas Method [b] (current $)	1 380	8 570	510	7 460	570	1 350
Gross domestic product (current $)	2.4bn	10.5bn	14.2bn	384.3bn	28.2bn	20.6bn
Average economic growth rate, real GDP, 1980–1990	3.7%	6.2%	-1.5%	1.4%	2.4%	1.4%
Average economic growth rate, real GDP, 1990–2000	4.0%	5.1%	7.2%	2.1%	4.0%	0.4%
Average economic growth rate, real GDP, 2000–2010	3.7%	4.2%	7.8%	3.9%	7.0%	5.6%
Economic growth rate, real GDP, 2011	4.2%	4.1%	7.1%	3.1%	6.4%	6.6%
Economic growth rate, real GDP, 2012	4.0%	3.1%	7.5%	2.5%	6.8%	5.8%

a Low-income economies are those with a gross national income (GNI) per capita of $1,035 or less in 2012; middle-income economies have a GNI per capita of more than $1,035 but less than $12,616; high-income economies have a GNI per capita of $12,616 or more. Lower-middle-income and upper-middle-income economies are separated at a GNI per capita of $4,085.

b The Atlas Method is a World Bank methodology for converting currencies to US dollars.

Source: World Bank, *World Development Report 2014 – Risk and Opportunity: Managing Risk for Opportunity*. Washington DC: World Bank, 2013, pp. 296–298; UNDP, *Human Development Report 2013 – The Rise of the South: Human Progress in a Diverse World*. New York: UNDP, 2013, pp. 145–146, 153–154; Good Governance Africa, *Africa Survey 2013: Africa in Figures*. Johannesburg: Good Governance Africa, 2013, p. 83

APPENDIX 2

Ease of Doing Business Indicators, 2014						
	Lesotho	**Mauritius**	**Mozambique**	**South Africa**	**Tanzania**	**Zambia**
Ease of doing business	**136**	**20**	**139**	**41**	**145**	**83**
Starting a business	89	19	95	64	119	45
Procedures	7	5	9	5	9	5
Time (days)	29.0	6.0	13.0	19.0	26.0	6.5
Cost (% of income per capita)	11.4	3.6	18.7	0.3	27.7	26.8
Paid-in minimum capital (% of income per capita)	0.0	0.0	0.0	0.0	0.0	0.0
Dealing with construction permits (rank)	145	123	77	26	177	57
Procedures (number)	11	16	12	16	19	11
Time (days)	330.0	248.0	130.0	78.0	206.0	124.0
Cost (% of income per capita)	832.6	27.4	257.6	9.9	490.9	198.5
Getting electricity (rank)	136	48	171	150	102	152
Procedures (number)	5	4	7	5	4	6
Time (days)	125	84	107	226	109	117
Cost (% of income per capita)	1 991.8	281.1	2857.7	1 432.1	1 690.6	955.8
Registering property (rank)	88	65	152	99	146	102
Procedures (number)	4	4	8	7	8	5
Time (days)	43.0	15.0	39.0	23.0	68.0	45.0
Cost (% of property value)	8.7	10.6	7.7	6.1	4.5	8.6
Getting credit (rank)	159	42	130	28	130	13
Strength of Legal Rights Index (0–10)	6	6	3	7	7	9
Depth of Credit Information Index (0-6)	0	6	4	6	0	5
Public registry coverage (% of adults)	0.0	69.2	4.3	0.0	0.0	0.0
Private bureau coverage (% of adults)	0.0	0.0	0.0	55.6	0.0	12.0

Protecting investors (rank)	98	12	52	10	98	80
Extent of Disclosure Index (0–10)	3	6	5	8	3	3
Extent of Director Liability Index (0–10)	4	8	4	8	4	6
Ease of Shareholder Suits Index (0–10)	8	9	9	8	8	7
Strength of Investor Protection Index (0–10)	5.0	7.7	6.0	8.0	5.0	5.3
Paying taxes (rank)	101	13	129	24	141	68
Payments (number per year)	33	8	37	7	48	38
Time (hours per year)	324	152	230	200	176	183
Trading across borders (rank)	144	12	131	106	139	163
Documents to export (number)	7	4	7	5	7	7
Time to export (days)	31	10	21	16	18	44
Cost to export ($ per container)	1 695	675	1 100	1 705	1090	2 765
Documents to impart ($ per container)	7	5	9	6	11	8
Time to import (days)	33	10	25	21	31	49
Cost to import ($ per container)	1 945	710	1 600	1 980	1 615	3 560
Enforcing contracts (rank)	144	54	145	80	42	120
Time (days)	615	529	950	600	515	611
Cost (% of claim)	31.3	25.0	119.0	33.2	14.3	38.7
Procedures (number)	41	35	30	29	38	35
Resolving insolvency (rank)	104	61	148	82	134	73
Time (years)	2.6	1.7	5.0	2.0	3.0	2.4
Cost (% of estate)	20	15	9	18	22	9
Outcome (0 as piecemeal sale and 1 as going concern)	0	0	0	0	0	0
Recovery rate (cents on the dollar)	28.6	41.0	16.6	35.5	21.4	37.1

Source: World Bank and IFC, *Doing Business 2014*, *Economy Profile: Lesotho*, 2014, pp. 5, 10–13; World Bank and IFC, *Doing Business 2014*, *Economy Profile: Mauritius*, 2014, pp. 5, 10–13; World Bank and IFC, *Doing Business 2014*, *Economy Profile: Mozambique*, 2014, pp. 5, 10–13; World Bank and IFC, *Doing Business 2014, Economy Profile: South Africa*, 2014, pp. 5, 10–13; World Bank and IFC, *Doing Business 2014, Economy Profile: Tanzania*, 2014, pp. 5, 10–13; World Bank and IFC, *Doing Business 2014, Economy Profile: Zambia*, 2014, pp. 5, 10–13

ENDNOTES

1 World Bank and IFC (International Finance Corporation), *Doing Business 2014: Understanding Regulations for Small and Medium-Size Enterprises*, 2013, p. v.

2 Tricker B, *Corporate Governance: Principles, Policies and Practices*, 2nd ed. Oxford: Oxford University Press, 2011, p. 29.

3 See Committee on the Financial Aspects of Corporate Governance, *Report of the Committee on the Financial Aspects of Corporate Governance*. The Committee on the Financial Aspects of Corporate Governance and Gee and Co. Ltd., 1992. Better known as the *Cadbury Report*, it was an enormously influential document for corporate governance best practice, and one of the APRM's Standards.

4 See The Cadbury Archive, http://www.jbs.cam.ac.uk/cadbury/report/. See also Arcot SR & VG Bruno, 'In Letter but not in Spirit: Corporate Governance in the UK', May 2006, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=819784#PaperDownload.

5 Institute of Directors of Southern Africa and King Committee, *King Report on Governance for South Africa*, 2009, p. 17.

6 This is based on a series of exchanges with Uganda-based corporate governance expert Alison Dillon-Kibirige.

7 OAU (Organisation of African Unity), *Nepad Framework Document*, 2001, p. 37, para. 145.

8 At the Global Partnership for Effective Development Co-operation meeting in Mexico City in April 2014, engagement with the private sector received extensive attention. Its website comments: 'There is no longer a question of whether business can affect development. The question is how to ensure business has a stronger positive impact on driving progress.' See http://effectivecooperation.org/hlm2014/.

9 OAU, *op. cit.*, p. 19, para. 88.

10 This is an important point to make. NEPAD and the APRM proposed greater openness in governance, to which the conduct of governments would be central. In theory, governments could be embarrassed by the airing of their misconduct. The organisation of the process at both national and continental level ensures that governments do, however, remain structurally dominant in the process. Over the years, SAIIA has interacted with many influential figures in the APRM at both continental and country level, and it is broadly accepted that APRM is largely a 'government process' – but one in which institutions other than governments can have a decisive role.

11 By way of illustration: the term 'corporate governance' does not even appear in the indexes of two important book-length studies of the APRM: Gruzd S (ed.), *Grappling with Governance: Perspectives on the African Peer Review Mechanism*. Johannesburg: Fanele and SAIIA (South African Institute of International Affairs), 2010; and Masterson G *et al.* (eds), *Peering the Peers: Civil Society and the African Peer Review Mechanism*. Johannesburg: EISA (Electoral Institute of South Africa), 2010.

12 AU (African Union), *Objectives, Standards, Criteria and indicators for the African Peer Review Mechanism*, 9 March 2003, p. 20.

13 Panel of Eminent Persons, APRM, *Country Review Report (CRR) of the Kingdom of Lesotho*, APRM Secretariat, June 2010, p. 134.

14 A small but telling example was an initiative a few years ago by fast food outlets in Johannesburg – the commercial heart of South Africa – to repair potholes. See Brkic B, 'Johannesburg, where the extra-crispy chicken crossed the road', *Daily Maverick*, 11 March 2010, http://www.dailymaverick.co.za/article/2010-03-11-johannesburg-where-the-extra-crispy-chicken-crossed-the-road/#.U4Q90ZUaKB0.

15 Mbeki M, *Architects of Poverty: Why African Capitalism Needs Changing*. Johannesburg: Picador Africa, 2009.

16 Good Governance Africa, *Africa Survey 2013: Africa in Figures*. Johannesburg: Good Governance Africa, 2013, p. 83.

17 'Top 500 companies in Africa', *The Africa Report*, http://www.theafricareport.com/top-500-companies-in-africa-2013.html.

18 'Top 200 banks in Africa', *The Africa Report*, http://www.theafricareport.com/Top-200-Banks/top-200-banks-2013.html.

19 Guest R, *The Shackled Continent*. Basingstoke and Oxford: Pan Books, 2005, pp. 46–47.

20 Good Governance Africa, *op. cit.*, p. 83.

21 Panel of Eminent Persons, APRM, *Country Review Report (CRR) of the United Republic of Tanzania*, APRM Secretariat, January 2013, p. 139.

22 Schwab K (ed.), *Global Competitiveness Report 2013–2014*. Geneva: World Economic Forum, 2013, p. 11.

23 See, for example, Sachs JD & AM Warner, 'Natural Resource Abundance and Economic Growth', Working Paper 5398, NBER (National Bureau of Economic Research), December 1995.

24 Mbeki M, *op. cit*.

25 UNCTAD (UN Conference on Trade and Development), *World Investment Report 2013*. New York and Geneva: United Nations, 2013, pp. 177–178.

26 Panel of Eminent Persons, APRM, *Country Review Report (CRR) of the Republic of South Africa*, APRM Secretariat, May 2007, p. 159.

27 Panel of Eminent Persons, APRM, *Country Review Report (CRR) of the Republic of Zambia*, APRM Secretariat, January 2013, p. 191.

28 Nnadozie E *et al.*, 'NEPAD's APRM and the Investment Climate in Africa', in Besada H & N Grobbelaar (eds), *Business in Africa Policy Handbook – Corporate South Africa and the Region – The Key To Unlocking the Potential of Africa's Private Sector?* Johannesburg: SAIIA, 2007, pp. 169–200.

29 Panel of Eminent Persons, APRM, *Country Review Report (CRR) of the Republic of Mauritius*, APRM Secretariat, July 2010, p. 243.

30 *Ibid.*, p. 243.

31 South Africa CRR, *op. cit.*, p. 170.

32 Calderisi R, *The Trouble with Africa: Why Foreign Aid Isn't Working*. New Haven and London: Yale University Press, 2007, p. 219.

33 Panel of Eminent Persons, APRM, *Country Review Report (CRR) of the Republic of Mozambique*, APRM Secretariat, June 2009, p. 208.

34 Tanzania CRR, *op. cit.*, p. 147.

35 Human Sciences Research Council, *Highlights from TIMSS 2011: The South African Perspective*, December 2012, http://www.hsrc.ac.za/uploads/pageContent/2929/TIMSSHighlights2012Dec7final.pdf; Nkosi B, 'SA schools at rock bottom in international assessments', *Mail &*

Guardian Online, 11 December 2012, http://mg.co.za/article/2012-12-11-studies-reveal-performance-gap-between-rural-and-urban-pupils.

36 SBP, *Priming the Soil*, Headline Report of the SME Growth Index, 2011.

37 Mozambique News Agency, 'Many businesses dissatisfied with public administration', Clubofmozamabique.com, 3 March 2013, http://www.clubofmozambique.com/solutions1/sectionnews.php?secao=business&id=27839&tipo=one.

38 Mozambique CRR, *op. cit.*, p. 206.

39 Isa M, 'Infrastructure spend to be R4-trillion over 15 Years, says Zuma', *Business Day*, 19 October 2012, http://www.bdlive.co.za/economy/2012/10/19/infrastructure-spend-to-be-r4-trillion-over-15-years-says-zuma.

40 SBP, *Counting the Cost of Red Tape for Business in South Africa*, November 2004.

41 Chulu K, 'O'Donell tips government over tourism development', *The Post* (Lusaka), 3 August 2010, http://www.postzambia.com/post-read_article.php?articleId=12270&post_reply=1&comments_threshold=0&comments_reply_threadId=19197&comments_offset=0&thread_sort_mode=commentDate_asc&comments_per_page=20&comments_grandParentId=0&comments_parentId=19197&thread_style=commentStyle_plain.

42 This has been written about extensively by SBP, a South African business environment research organisation. See SBP, 'Current State of Legislation in South Africa: A Country Over-Regulated and Under-Governed?', SBP Issue Alert, August 2012; SBP, 'Developing a New Path for South Africa's SMEs', SBP Issue Paper 1, 2013.

43 South Africa CRR, *op. cit.*, p. 213; Czernowalow M, 'Cipro collapse?', *iWeek*, 28 July 2010, http://www.iweek.co.za/On-the-cover/Cipro-collapse?/.

44 Emery JJ *et al.*, *Administrative Barriers to Foreign Investment: Reducing Red Tape In Africa*, Occasional Paper 14. Washington DC: elibrary, World Bank, FIAS (Foreign Investment Advisory Service), 2000, p. 4.

45 Zambia CRR, *op. cit.*, pp. 194–195.

46 Mozambique CRR, *op. cit.*, pp. 208–209.

47 Games D, *Business in Africa: Corporate Insights*. Johannesburg: Penguin, 2013, p. xvi.

48 Mauritius CRR, *op. cit.*, p. 246.

49 *Ibid.*, p. 244.

50 Lesotho CRR, *op. cit.*, p. 138.

51 Nsakanya J, 'Business environment news: Business registration', *The ZACCI Journal*, 2, 3, December 2013, pp. 7–8.

52 Mozambique CRR, *op. cit.*, pp. 195, 206.

53 SBP, *Easier, Harder for Small Business in South Africa*, Headline Report of the SME Growth Index, 2013.

54 These cover a wide range of issues, and as individual measures have been extensively commented on. For a comprehensive overview and critique, see Jeffery A, 'Delivering on 'radical' change, if not on growth or jobs', *@Liberty*, 5, 2014, 26 March 2014.

55 'Where will the rainbow end?', *The Economist*, 3 May 2014, http://www.economist.com/news/middle-east-and-africa/21601533-south-africa-better-place-1994-it-going-wrong.

56 'Do we need a ministry for SMEs?', *Your Business*, 21 February 2013, http://www.bizmag.co.za/do-we-need-a-ministry-of-entrepreneurship/; Jones G, 'SMMEs in dire straits', *Financial Mail*, 13 June 2013, http://www.financialmail.co.za/fm/CoverStory/2013/06/13/smmes-in-dire-straits; Bisseker C, 'SMEs: stop the failure rate', *Financial Mail*, 15 May 2014, http://www.financialmail.co.za/features/2014/05/15/smes-stop-the-failure-rate; Mashaba H, 'SME ministry will worsen

red tape', *Business Day*, 15 April 2014, http://www.bdlive.co.za/opinion/2014/04/15/sme-ministry-will-worsen-red-tape; Heistein P, 'Let's hope ministry for SMEs is just election talk', *Business Report*, 24 April 2014, http://www.iol.co.za/business/opinion/columnists/let-s-hope-ministry-for-smes-is-just-election-talk-1.1679530#.U4RUp5UaJjo; SACCI, 'SACCI comments on new government', Media Release, 26 May 2014, http://www.sacci.org.za/index.php?option=com_content&view=article&id=665:sacci-comments-on-new-government-press-release&catid=9:press-office&Itemid=40; Hartley R, 'Goodbye Trevor, hello Ebrahim', *The Times*, 27 May 2014.

57 Dodds C, 'Western Cape versus the rest: How true is the DA claim to be the best?', *Saturday Star*, 26 April 2014.

58 Lesotho, *National Strategic Development Plan 2012/13 – 2016/17: Growth and Development Strategic Framework*, Government of Lesotho, 2012, p. 37.

59 South Africa, Department of Provincial and Local Government, *Stimulating and Developing Sustainable Local Economies: National Framework for Local Economic Development (LED) in South Africa (2006–2011)*. Government of South Africa, 2006, p. 25.

60 Lesotho CRR, *op. cit*., p. 152.

61 Mauritius CRR, *op. cit*., pp. 243–245.

62 *Ibid*., p. 245.

63 South Africa CRR, *op. cit*., pp. 235–236.

64 *Ibid*., p. 247.

65 South Africa's private sector has, however, struggled to find a combined voice. An attempt to unite various bodies into one organisation, Business Unity South Africa, was frustrated by the departure of groups claiming to represent the unique interests of businesses owned by black people. The latter group subsequently set up a separate body named the Black Business Council.

66 Te Velde DW & A Leftwich, 'State–Business Relations and Economic Growth in sub-Saharan Africa: A Review of Case Studies in Ghana, Mauritius, South Africa and Zambia', IPPG (Research Programme Consortium for Improving Institutions for Pro-Poor Growth), July 2010.

67 This point has been noted elsewhere. Richard Calland – commentator and legal academic – notes that business in South Africa enjoys (or did at that point) 'access to power, if not direct influence'. He goes on to recount a conversation with a corporate executive about lobbying. His counterpart remarked: 'You know, the thing is, if we want real access to power, then our CEO will simply call the president. And you know what? The president always takes the call.' See Calland R, *Anatomy of South Africa: Who Holds the Power*. Cape Town: Zebra, 2006, p. 269.

68 Barron C, 'Why business and the ANC fell out of love', *Sunday Times Business Times*, 30 March 2014.

69 Friedman S, 'Take trust deficit seriously if you want to talk', *Business Day*, 21 May 2014.

70 Even where they appear to benefit the country as a whole, they are likely to be viewed with suspicion by some, notably labour unions.

71 Zambia CRR, *op. cit*., p. 214.

72 Mozambique CRR, *op. cit*., pp. 280–281.

73 Kohli A, 'Politics of economic growth in India, 1980–2005, Part I: The 1980s', *Economic and Political Weekly*, 1 April 2006, pp. 1251–1259; Kohli A, 'Politics of economic growth in India, 1980–2005, Part II: The 1990s and beyond', *Economic and Political Weekly*, 8 April 2006, pp. 1361–1370.

74 Mozambique CRR, *op. cit*., p. 194; Zambia CRR, *op. cit*., p. 183; Tanzania CRR, *op. cit*., p. 162.

75 See for example, Chabuka CM, *Corporate Governance Best Practice: A Case Study of Copperbelt Privately-Owned Mining Establishments*, MBA thesis, Copperbelt University School of Business, March 2008; Chililo BE, *An Assessment of Corporate Governance for Listed and Non-Listed Companies on the Lusaka Stock Exchange*, MBA thesis, Copperbelt University School of Business, March 2009.

76 African Union and Nepad, *Country Self-Assessment for the African Peer Review Mechanism*, 2003, p. 60.

77 Mauritius CRR, *op. cit.*, pp. 239–242.

78 South Africa CRR, *op. cit.*, pp. 159–166.

79 Tanzania CRR, *op. cit.*, pp. 140–142.

80 Zambia CRR, *op. cit.*, pp. 185–187.

81 Lesotho CRR, *op. cit.*, p. 141. It should be noted that Basel II has now been largely superseded by Basel III.

82 *Ibid.*, p. 142.

83 Mozambique CRR, *op. cit.*, pp. 196, 241.

84 *Ibid.*, pp. 241–242.

85 *Ibid.*, pp. 244–246.

86 *Ibid.*, p. 483.

87 Lesotho CRR, *op. cit.*, p. 151.

88 South Africa CRR, *op. cit.*, pp. 159, 318.

89 Mozambique CRR, *op. cit.*, p. 250.

90 IFC & World Bank, *Better Regulation for Growth: Governance Frameworks and Tools for Effective Regulatory Review, Regulatory Capacity Review of Tanzania*, 2010, p. 16.

91 Rawoot I, 'Companies Act farce', *Mail & Guardian*, 7 April 2010, http://mg.co.za/article/2010-04-07-companies-act-farce.

92 'Mozambican businesspeople now have Corporate Governance Code', *Macauhub*, 1 July 2011, http://www.macauhub.com.mo/en/2011/07/01/mozambican-businesspeople-now-have-corporate-governance-code/.

93 Email from senior Tanzanian Corporate Governance practitioner, 16 May 2014.

94 South Africa CRR, *op. cit.*, p. 198.

95 Armstrong P *et al.*, *Corporate Governance: South Africa, a Pioneer in Africa*, Global Best Practice series, SAIIA, 2005.

96 This was established by South Africa's Institute of Directors in the early 1990s as the country was re-entering the international business world, after a period of partial isolation.

97 Jansen Van Vuuren C & J Schulschenk, *Perceptions and Practice of King III in South African Companies*, Albert Luthuli Centre for Responsible Leadership and Institute of Directors in Southern Africa, March 2013.

98 Committee on Corporate Governance, *The Report on Corporate Governance for Mauritius*, 1st ed., revised, April 2004, p. 1.

99 Institute of Directors in Tanzania, *About the Institute of Directors in Tanzania*, undated brochure.

100 Tricker, *op. cit.*, p. 131.

101 APRM & AU, *Revised Country Self-Assessment Questionnaire for the African Peer Review Mechanism*, APRM Secretariat, 2012, p. 44.

102 South Africa CRR, *op. cit.*, p. 160.

103 *Ibid.*, pp. 160–161.

104 Mauritius CRR, *op. cit.*, p. 22.

105 Institute of Directors of Southern Africa and King Committee, *King Report on Governance for South Africa* (3rd report), 2009, p. 4.
106 South Africa CRR, *op. cit*., p. 161.
107 Telephone interview with Daniel Malan, 12 May 2014.
108 Institute of Directors of Southern Africa and King Committee, *King Report on Corporate Governance for South Africa* (2nd report), 2002, pp. 11–12.
109 *Ibid*. p. 15.
110 Tanzania CRR, *op. cit*., p. 162.
111 *Ibid*., pp. 162, 168.
112 Mauritius CRR, *op. cit*., p. 282.
113 Mozambique CRR, *op. cit*., p. 221.
114 Bigsten A *et al*., 'Contract Flexibility and Dispute Resolution in African Manufacturing', CSAE (Centre for the Study of African Economies), August 1999, http://www.csae.ox.ac.uk/workingpapers/pdfs/9920text.pdf; Messick RE, 'What Governments Can Do to Facilitate the Enforcement of Contracts', Paper prepared for Reforming the Business Environment: From Assessing Problems to Measuring Results, Cairo, Egypt, 28 November – 1 December 2005.
115 Mozambique CRR, *op. cit*., pp. 218, 221.
116 Lesotho CRR, *op. cit*., p. 224.
117 Tanzania CRR, *op. cit*., p. 132.
118 South Africa CRR, *op. cit*., pp. 99–101.
119 The legal notice establishing a commercial court in Uganda puts it very well: 'It has been decided to establish, a Commercial Court capable of delivering to the commercial community an efficient, expeditious and cost-effective mode of adjudicating disputes that affect directly and significantly the economic, commercial and financial life in Uganda.' Republic of Uganda, The Constitution (Commercial Court) (Practice) Directions, 1996, http://iclass.iuea.ac.ug/intranet/E-books/LAW/all%20laws%20of%20uganda/STATUTORY%20INSTRUMENTS/Const_SI_6.pdf.
120 World Bank and IFC, *Doing Business 2009*, p. 52.
121 Cofie S, 'Ghana – Establishment of the Commercial Court', *Smart Lessons in Advisory Services*, IFC, December 2007.
122 Lesotho CRR, *op. cit*., p. 165.
123 Pholo M, 'Lesotho: Justice Sector and the Rule of Law: A Review by AfriMAP and the Open Society Initiative for Southern Africa', Open Society Initiative for Southern Africa, March 2013, p. 34, http://www.afrimap.org/english/images/report/AfriMAP%20Lesotho%20Justice%20Main%20web-FINAL.pdf.
124 Finnegan DL, 'Judicial Reform and Commercial Justice: The Experience of Tanzania's Commercial Court', background paper prepared for the World Development Report, 2005.
125 Russ H, *Role of Judicial and Legal Sector Reforms in Business Environment Reform Programmes – a Tanzanian Case Study*, paper prepared for the Africa Consultative Conference, Donor Committee for Enterprise Development, Accra, Ghana, 5–7 November 2007, http://www.businessenvironment.org/dyn/be/docs/152/Russ.pdf.
126 Altbeker A, *Justice through Specialisation? The Case of the Specialised Commercial Crime Court*, Monograph 76, ISS (Institute for Security Studies), 1 January 2003, http://www.issafrica.org/publications/monographs/monograph-76-justice-through-specialisation-the-case-of-the-specialised-commercial-crime-court-antony-altbeker; Radebe K, 'Technically, crime doesn't pay', *Moneyweb*, 4 June 2013, http://www.moneyweb.co.za/moneyweb-corporate-governance/technically-crime-doesnt-pay.

127 Makaramba RV, 'Commercial Disputes Resolution in Tanzania: Challenges and Prospects', paper presented at the Roundtable Discussion on Ten Years of the Commercial Division of the High Court of Tanzania Commercial Disputes Resolution in the Wake of Global Economy Recession, Paradise City Hotel Benjamin Mkapa Towers, Dar es Salaam, 8 October 2009, p. 14.
128 Mauritius CRR, *op. cit*., p. 274; Mozambique CRR, *op. cit*., p. 217; South Africa CRR, *op. cit*., p. 198; Tanzania CRR, *op. cit*., p. 161.
129 Lesotho CRR, *op. cit*., p. 139.
130 Mpaki B, 'Call for National Code on Corporate Governance', *Public Eye*, 31 May 2013, http://publiceye.co.ls/?p=2498.
131 Zambia CRR, *op. cit*., p. 184.
132 Lesotho CRR, *op. cit*., p. 166.
133 Email from Senior Corporate Governance Practitioner, Tanzania, 22 May 2014.
134 Zambia CRR, *op. cit*., p. 208.
135 Tanzania CRR, *op. cit*., pp. 140, 160.
136 *Ibid*., p. 162.
137 Mozambique CRR, *op. cit*., p. 194.
138 Lesotho CRR, *op. cit*., p. 167.
139 Zambia CRR, *op. cit*., p. 187.
140 Mozambique CRR, *op. cit*., p. 250.
141 This attitude is firmly held in South Africa by the largest union federation – the Congress of South African Trade Unions (Cosatu), which describes its ideological outlook as 'Marxist-Leninist' and sees as its 'long-term revolutionary goal' the creation of a communist society. Cosatu has substantial research and lobbying capacity, and is an influential participant in numerous civil society initiatives (despite its somewhat contradictory simultaneous alliance with the country's ruling party), and its influence here has helped to make 'leftist' or 'progressive' positions on economic questions a veritable default for much of South Africa's civil society. On a personal note, this author conducted numerous workshops with civil society activists around Africa during his time as a SAIIA staff member. Although often people of a high intellect and unquestionably committed to their various causes, it was his impression that their understanding of economic questions was invariably moralistic and lacked nuance. On one occasion, a workshop participant active in the field of corruption prevention repeatedly described businesspeople as 'infestors'.
142 Tanzania CRR, *op. cit*., p. 158; Zambia CRR, *op. cit*., pp. 185, 190.
143 Mozambique CRR, *op. cit*., pp. 221, 282.
144 Zambia CRR, *op. cit*., p. 227.
145 Mauritius CRR, *op. cit*., p. 241.
146 Lesotho CRR, *op. cit*., pp. 140, 144.
147 APRM, *Revised Country Self-Assessment Questionnaire for the African Peer Review Mechanism*, 2012, p. 55.
148 Committee on the Financial Aspects of Corporate Governance, *Report of the Committee on the Financial Aspects of Corporate Governance*, The Committee on the Financial Aspects of Corporate Governance and Gee and Co. Ltd., 1992, p. 42, para. 5.22 (a).
149 *King Report on Corporate Governance for South Africa* (3rd report), 2009, Annex 2.3.
150 This is in contrast to the 'two-tier' board structure, in which executive and non-executive directors sit separately.
151 Mozambique CRR, *op. cit*., p. 227.

152 Herbert R & S Gruzd, *The African Peer Review Mechanism: Lessons from the Pioneers*. Johannesburg: SAIIA, 2007, p. 248.
153 Mauritius CRR, *op. cit*., p. 281.
154 *Ibid*., p. 281.
155 *Ibid*., pp. 283–284.
156 Zambia CRR, *op. cit*., p. 227.
157 South Africa CRR, *op. cit*., pp. 212–213.
158 Telephone interview with Daniel Malan, 12 May 2014.
159 PriceWaterhouseCoopers, *Non-Executive Directors' Practice and Fees Report, South Africa*, January 2014.
160 Odoko F, 'Corporate governance in banks: The role of the board of directors', *Wama Bulletin*, September 2009, p. 5.
161 See, for example, Dowling S, 'Women on board: Norway's experience shows compulsory quotas work', *Spiegel Online International*, 8 July 2010, http://www.spiegel.de/international/business/women-on-board-norway-s-experience-shows-compulsory-quotas-work-a-705209.html; Solsvik T & G Fouche, 'Norway's gender quota law has made boards more professional: State fund boss', *Reuters*, 30 September 2013, http://www.reuters.com/article/2013/09/30/us-nordic-investment-fund-idUSBRE98T0LM20130930.
162 Milne R, 'Déjà-vu in Norway over EU's women quotas', *Financial Times*, 23 October 2012, http://www.ft.com/cms/s/0/13eb95be-1d1f-11e2-a17f-00144feabdc0.html.
163 Email from Alison Dillon-Kibirige, 20 June 2014.
164 It should be noted that the reports themselves seem somewhat confused as to the distinction in their treatment of the information.
165 Mauritius Institute of Directors, *An Ethics Guide for Boards*, Directors' Forum Publication No. 2, p. 4.
166 South Africa CRR, *op. cit*., p. 208.
167 Mauritius CRR, *op. cit*., pp. 263–265, 269–270.
168 *Ibid*., p. 264.
169 *Ibid*., p. 257.
170 Lesotho CRR, *op. cit*., pp. 160–161.
171 *Ibid*., p. 161.
172 Tanzania CRR, *op. cit*., pp. 161–163.
173 *Ibid*., p. 163.
174 Zambia CRR, *op. cit*., pp. 214, 206–207, 212.
175 *Ibid*., p. 216.
176 South Africa CRR, *op. cit*., pp. 200–202.
177 Three-letter currency code for the South African rand.
178 'Poor hurt most by dodgy procurement', Corruption Watch, 5 April 2013, http://www.corruptionwatch.org.za/content/poor-hurt-most-dodgy-procurement.
179 Public Protector of South Africa, *Report on an Investigation into an Allegation of Improper Conduct by the former Chairperson of the Board of Directors of Eskom Holdings Ltd, Mr V Moosa, Relating to the Awarding of a Contract*, Report No. 30 of 2008/09, 18 February 2009.
180 Mozambique CRR, *op. cit*., p. 50.
181 Mauritius CRR, *op. cit*., p. 358.
182 Rossouw GJ, 'Business ethics and corporate governance in Africa', *Business and Society*, 44, 1, March 2005, p. 97. Note that stakeholder interests have a longer pedigree in the 'continental'

tradition – in Germany, for example – than in the 'Anglo-Saxon' tradition. However, the growing recognition of the importance of stakeholders as seen in the King Code is not simply an adoption of the former; it is subtly different, with an emphasis on issues of sustainability.

183 Mohamed F, 'Dramatic changes in minority shareholder rights', *CNBCAfrica.com*, 18 October 2013, http://www.cnbcafrica.com/news/financial/2013/09/10/minority-shareholder-rights-explained-under-new-safrican-companies-act/.

184 Zambia CRR, *op. cit.*, pp. 217–218.

185 Lesotho CRR, *op. cit.*, pp. 138, 165.

186 Mozambique CRR, *op. cit.*, p. 195.

187 *Ibid.*, p. 220.

188 Mauritius CRR, *op. cit.*, pp. 271–274.

189 Tanzania CRR, *op. cit.*, p. 164.

190 South Africa CRR, *op. cit.*, pp. 201, 205–207.

191 Mauritius CRR, *op. cit.*, pp. 272–274.

192 Tanzania CRR, *op. cit.*, p. 169; Lesotho CRR, *op. cit.*, p. 166.

193 Lesotho CRR, *op. cit.*, p. 156.

194 Mozambique CRR, *op. cit.*, pp. 222, 224.

195 Tanzania CRR, *op. cit.*, pp. 149–156.

196 Zambia CRR, *op. cit.*, p. 202.

197 *Ibid.*, p. 201.

198 Mauritius CRR, *op. cit.*, p. 275.

199 Russell M, 'Mauritius apparel sector faces up to challenges', *Just Style*, 22 May 2014, http://www.just-style.com/analysis/mauritius-apparel-sector-faces-up-to-challenges_id121724.aspx.

200 At the time of writing, Solidarity announced that it was fighting some 34 court cases – against government departments and state-owned enterprises – where it alleged that members of minority race groups were disadvantaged. A Solidarity official said: 'The state sets the pace in South Africa. If the state implements an unlawful practice, the private sector will follow suit and soon it will be applied so widely that the unlawful practice becomes lawful.' See Gernetzky K, 'Solidarity to fight 34 more affirmative action court cases', *Business Day*, 20 March 2014, http://www.bdlive.co.za/national/labour/2014/03/20/solidarity-to-fight-34-more-affirmative-action-court-cases.

201 Lesotho CRR, *op. cit.*, p. 159.

202 Zambia CRR, *op. cit.*, p. 214.

203 Bodibe O, *The Extent and Effects of Casualisation in Southern Africa: Analysis of Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe*, Research Report for the Danish Federation of Workers, National Economic Development and Labour Institute, November 2006.

204 Tanzania CRR, *op. cit.*, p. 157.

205 *Ibid.*, p. 151.

206 *Ibid.*, p. 151.

207 South Africa CRR, *op. cit.*, p. 190.

208 Zambia CRR, *op. cit.*, p. 203.

209 Riley TA, 'Africa can compete! The miracle of tiny Lesotho – Sub-Saharan Africa's largest garment exporter', *Smart Lessons*, IFC, November 2010.

210 Massie K *et al.*, *Executive Salaries in South Africa: Who Should Have a Say on Pay?* Auckland Park: Jacana, 2014.

211 Barron C, 'Something's got to give on CEO pay', *Sunday Times Business Times*, 18 May 2014.
212 Zambia CRR, *op. cit.*, p. 199.
213 Tanzania CRR, *op. cit.*, p. 139.
214 Lesotho CRR, *op. cit.*, pp. 156–157.
215 Mozambique CRR, *op. cit.*, pp. 225–226.
216 South Africa CRR, *op. cit.*, p. 194.
217 Tanzania CRR, *op. cit.*, pp. 154, 158.
218 Zambia CRR, *op. cit.*, pp. 199, 203.
219 Crotty A, 'JSE's socially responsible index "greenwash" – NGOs', *Business Report*, 29 November 2013, http://www.iol.co.za/business/news/jse-s-socially-responsible-index-greenwash-ngos-1.1614130#.U4XIYpUaJhg.
220 'The Equator Principles III', Equator Principles Secretariat, June 2013, p. 2.
221 Mauritius CRR, *op. cit.*, p. 275.
222 South Africa CRR, *op. cit.*, pp. 208–209.
223 Zambia CRR, *op. cit.*, p. 220.
224 Interestingly, the Zambia report expresses concern about the casualisation of labour. This issue has been energetically pursued by the Jesuit Centre for Theological Reflection, a respected civil society group.
225 SBP, *Easier, Harder for Small Business in South Africa*, Headline Report of the SME Growth Index, 2013.
226 Zambia CRR, *op. cit.*, p. 226.
227 *Ibid.*, p. 202.
228 Lesotho CRR, *op. cit.*, p. 159; Tanzania CRR, *op. cit.*, p. 155.
229 Zambia CRR, *op. cit.*, p. 187.
230 Allegations have been made against security officers employed by Barrick Gold in Tanzania, for example. See Glynn T, 'There's death in them thar pits', *The Dominion*, 5 July 2006, http://www.dominionpaper.ca/features/2006/07/05/there_is_d.html.
231 Mauritius CRR, *op. cit.*, p. 258.
232 GIZ (Deutsche Gesellschaft fur Internationale Zusammenarbeit), *Shaping Corporate Social Responsibility in sub-Saharan Africa: Guidance Notes from a Mapping Survey*, 2012, p. 203.
233 Lesotho CRR, *op. cit.*, p. 157; Mozambique CRR, *op. cit.*, p. 273; Tanzania CRR, *op. cit.*, p. 154.
234 GIZ, *op. cit.*, p. 207.
235 Royal Norwegian Embassy, *Corporate Social Responsibility Profile: Mozambique*, 2009, p. 5; See also p. 122.
236 Zambia CRR, *op. cit.*, p. 203.
237 Tanzania CRR, *op. cit.*, p. 157.
238 Email from Senior Corporate Governance Practitioner, Tanzania, 22 May 2014.
239 Mauritius CRR, *op. cit.*, pp. 20, 256.
240 *Ibid.*, p. 259.
241 South Africa CRR, *op. cit.*, p. 187.
242 Trialogue, Launch of the CSI Handbook 16th edition presentation, December 2013, http://csimatters.co.za/wp-content/uploads/2013/12/CSI-in-SA-16th-edition-launch-2013-12-04.pdf.
243 Jeppeson S *et al.*, 'Corporate social responsibility and competitiveness for SMEs in developing countries: South Africa and Vietnam', *Focales*, November 2012.
244 GIZ, *op. cit.*, p. 192.
245 Mauritius CRR, *op. cit.*, p. 258.

246 Kassen H & TD Juwaheer, '*Perspectives on CSR from Mauritius – an emerging economy'*, Third International Conference on International Studies (ICIS 2010), Hotel Istana, Kuala Lumpur, 1–2 December 2010.

247 Mauritius CRR, *op. cit*., p. 259; South Africa CRR, *op. cit*., p. 188.

248 South Africa CRR, *op. cit*., pp. 191–192.

249 Ncube M, 'Recognising Africa's informal sector', AfDB Blog, 27 March 2013, http://www.afdb.org/en/blogs/afdb-championing-inclusive-growth-across-africa/post/recognizing-africas-informal-sector-11645/.

250 Sparks DL & ST Barnett, 'The informal sector in sub-Saharan Africa: Out of the shadows to foster sustainable development and equity', *International Business and Economics Research Journal*, 9, 5, May 2010, pp. 1–2.

251 ILO, Department of Statistics, 'Statistical Update on Employment in the Informal Economy', June 2012.

252 Lesotho CRR, *op. cit*., p. 145; Mozambique CRR, *op. cit*., p. 161; Tanzania CRR, *op. cit*., p. 143; Zambia CRR, *op. cit*., p. 190.

253 Tanzania CRR, *op. cit*., p. 166.

254 *Ibid*., p. 254.

255 Mozambique CRR, *op. cit*., pp. 205, 247.

256 Tanzania CRR, *op. cit*., p. 115.

257 Krause M *et al*., *Formalisation and Business Development in Mozambique: How Important Are Regulations*, German Development Institute, 2010.

258 Mozambique CRR, *op. cit*., p. 219. The author can attest to having seen this on a visit to Maputo; containers of used clothing – some of it reportedly intended as donations – were sold off to informal traders who then sold the clothing. Since they incurred virtually no overheads and the clothes were extremely cheap, these traders proved extremely tough competition for formal sector merchants and manufacturers.

259 Ligthelm AA, 'Confusion about entrepreneurship? Formal versus informal small businesses', *Southern African Business Review*, 17, 3, 2013, p. 73.

260 Cheng LL & G Gereffi, 'The informal economy in East Asian development', *International Journal of Urban and Regional Research*, 18, 2, June 1994, pp. 194–219. South African futurist Clem Sunter, in his book *Pretoria will Provide and Other Myths*, which aimed to present a set of cardinal ideas for South Africa's future stability and prosperity, included a chapter challenging the view that 'the informal sector is peripheral'. See Sunter C, *Pretoria will Provide and Other Myths*. Cape Town: Tafelberg, 1993.

261 Committee of Counsellors, *Agenda 2025: the Nation's Vision and Strategies*, Republic of Mozambique, 2003, p. 109.

262 UNCTAD, *World Investment Report 2013*, pp. 214, 218.

263 Curtiss M & T Lissu, *A Golden Opportunity: How Tanzania Is Failing to Benefit from Gold Mining*, 2nd ed., Christian Council of Tanzania, National Council of Muslims in Tanzania, Tanzania Episcopal Conference, October 2008; CSPR (Civil Society for Poverty Reduction), 'Impact Assessment of Mining Activities and the Economic Benefits for the Poor in Luapula', CSPR, July 2011; Bench Marks Foundation, 'Coping with Unsustainability', Policy Gap 7, October 2013.

264 Zambia CRR, *op. cit*., p. 214.

265 *Ibid*., p. 201.

266 *Ibid*., p. 225.

267 *Ibid*., p. 244.

268 Tanzania CRR, *op. cit*., pp. 147–148.

269 *Ibid*., p. 139.

270 See http://www.africaminingvision.org/index.htm.

271 Gqaba I, 'A Boom for Whom? Mozambique's Natural Gas and the New Development Opportunity', Occasional Paper 151. Johannesburg: SAIIA, August 2013, pp. 19–20.

272 Bello O, 'Africa's Extractive Governance Architecture: Lessons to Inform a Shifting Agenda', Policy Briefing 90. Johannesburg: SAIIA, May 2014.

273 Lesotho CRR, *op. cit*., p. 161.

274 See, for example, Bearak B, 'Zambia uneasily balances Chinese investment and workers' resentment', *New York Times*, 20 November 2010, http://www.nytimes.com/2010/11/21/world/africa/21zambia.html?pagewanted=all; 'Trying to pull together', *The Economist*, 20 April 2011, http://www.economist.com/node/18586448; Versi A, 'Culture clash: Africa's lukewarm welcome for the Chinese', *Global: The International Briefing, 2014* (otherwise undated), http://www.global-briefing.org/2014/01/culture-clash-africas-lukewarm-welcome-for-the-chinese/.

275 'Increasing hostility towards Chinese traders', *IRIN*, 7 September 2012, http://www.irinnews.org/report/96266/southern-africa-increasing-hostility-towards-chinese-traders.

276 Tanzania CRR, *op. cit*., p. 165.

277 Klein M *et al*., *Foreign Direct Investment and Poverty Alleviation*. World Bank Publications, 2001; Moss TJ *et al*., 'Is Africa's Skepticism of Foreign Capital Justified? Evidence from East African Firm Survey Data', Working Paper No. 41, Centre for Global Development, June 2004.

278 Grobelaar N, '"Every Continent needs an America": The Experiences of South African Firms Doing Business in Mozambique', Business in Africa Research Project, Report No. 2. Johannesburg: SAIIA, 2004, pp. 63–74.

279 'Trying to pull together', *The Economist,* 20 April 2011, http://www.economist.com/node/18586448.

280 Zambia CRR, *op. cit*., p. 213.

281 South Africa CRR, *op. cit*., p. 202.

282 Games D, *op. cit*., p. 184.

283 For example, South Africa's electricity utility, Eskom, has been fingered for poor environmental management and criticised for its handling of the country's tight power situation. See, for example, Vecchiatto P, 'Eskom's bad record on environment "worrying"', *Business Day,* 23 November 2012, http://www.bdlive.co.za/national/science/2012/11/23/eskoms-bad-record-on-environment-worrying; Blaine S, 'Eskom says some power stations still do not pass air-quality tests', *Business Day,* 3 April 2014, http://www.bdlive.co.za/national/science/2014/04/03/eskom-says-some-power-stations-still-do-not-pass-air-quality-tests; Slabbert A, 'Eskom: Regulator not buying the excuses', *Moneyweb,* 16 March 2014, http://www.moneyweb.co.za/moneyweb-south-africa/eskom-regulator-not-buying-the-excuses.

284 Commonwealth Association for Corporate Governance, *Principles for Corporate Governance in the Commonwealth*, 1999.

285 Rossouw GJ, *op. cit*., p. 96.

286 OECD, Working Party on State Ownership and Privatisation Practices, *Board of Directors of State-Owned Enterprises: An Overview of National Practices.* 2012, pp. 16–24, http://search.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/CA/SOPP(2012)1/FINAL&docLanguage=En.

287 OECD, *Guidelines on Corporate Governance of State-Owned Enterprises*. Paris: OECD, 2005.

288 *Ibid*., p. 12.

289 Tanzania CRR, *op. cit*., pp. 160, 168.

290 Mauritius CRR, *op. cit*., p. 279.

291 Lesotho CRR, *op. cit*., p. 138.

292 *Ibid*., p. 169.

293 Naidoo S *et al*., 'State of the Nation: Zuma adopts Chinese model', *Mail & Guardian Online,* 3 February 2012, http://mg.co.za/article/2012-02-03-zuma-adopts-chinese-model/; Conway-Smith E, 'China: South Africa's latest role model', *Global Post*, 10 February 2012, http://www.globalpost.com/dispatch/news/regions/africa/south-africa/120209/china-south-africas-latest-role-model.

294 South Africa CRR, *op. cit*., pp. 181–184.

295 Public Protector of South Africa, *'When Governance and Ethics Fail': A Report on an Investigation into Allegations of Maladministration, Systemic Corporate Governance Deficiencies, Abuse of Power and the irregular Appointment of Mr Hlaudi Motsoeneng by the South African Broadcasting Corporation*, Report No. 23 of 2013/14, February 2014.

296 This included a public call by the Chair of the Board for South Africans to support the ruling party, and evident attempts to avoid airing opposition party adverts. An editorial in *City Press* captured the cynical response to this with a headline 'Here lies the #SABC – RIP' (*City Press*, 20 April 2014).

297 Gumede W, 'South African State-Owned Enterprises: Boards, Executives and Recruitment, Report to the South African Presidential Review Committee on State-Owned Enterprises', June 2012, p. 11.

298 *Ibid*., p. 23.

299 *Ibid*., p. 24.

300 Presidential Review Committee on State-owned Enterprises, *Growing the Economy – Bridging the Gap*, 2013.

301 Gumede W, *op. cit*., pp. 50–51. The issue at hand is the policy of South Africa's ruling party to 'deploy' loyalists to these institutions. This has been criticised as being counter-constitutional, as being a form of patronage, and as prioritising political loyalties over skills. Moreover, as the ruling party is not monolithic, factional squabbles can intrude into state institutions, to the detriment of their functionality.

302 Gumede W, *op. cit*., p. 57.

303 Email from Alison Dillon-Kibirige, 20 June 2014.

304 Mozambique CRR, *op. cit*., pp. 483, 486; Lesotho CRR, *op. cit*., p. 301; Tanzania CRR, *op. cit*., p. 326; Zambia CRR, *op. cit*., pp. 328, 329.

305 Mauritius CRR, *op. cit*., p. 461.

306 South Africa CRR, *op. cit*., pp. 218, 319; Mozambique CRR, *op. cit*., pp. 483, 489; Lesotho CRR, *op. cit*., pp. 301–302.

307 Mozambique CRR, *op. cit*., pp. 483–484, 488–494; Lesotho CRR, *op. cit*., pp. 303–305; Tanzania CRR, *op. cit*., pp. 336–337; Zambia CRR, *op. cit*., pp. 328–331.

308 Mozambique CRR, *op. cit*., pp. 484, 485, 494–502, 505–506; Lesotho CRR, *op. cit*., pp. 306–308, 309–312; Tanzania CRR, *op. cit*., pp. 337–339; Mauritius CRR, *op. cit*., pp. 463–468; Zambia CRR, *op. cit*., p. 331.

309 South Africa CRR, *op. cit*., pp. 318, 320.

310 Mozambique CRR, *op. cit*., pp. 484, 503; Lesotho CRR, *op. cit*., pp. 306, 309; Zambia CRR, *op. cit*., p. 334.

311 South Africa CRR, *op. cit.*, pp. 318, 320–323; Tanzania CRR, *op. cit.*, pp. 340–341; Zambia CRR, *op. cit.*, p. 334.

312 Mills G, *Poverty to Prosperity: Globalisation, Good Governance and African Recovery*. Cape Town and Johannesburg: Tafelberg and SAIIA, 2002, pp. 245–246.

313 For a discussion of the importance of regulatory impact assessments in the South African context see SBP, *Towards Better Regulation: RIA and Stakeholder Consultation: A roundtable discussion on the new Companies Act and its Business Rescue Provisions*, July 2010.

314 SBP, 'Current State of Legislation in South Africa: A Country Over-Regulated and Under-Governed?', SBP Issue Alert, August 2012, p. 12.

315 South African institute of Chartered Accountants, 'South African chartered accountants work with Lesotho to grow the profession', Media Release, May 2011, https://www.saica.co.za/News/NewsArticlesandPressmediareleases/tabid/695/itemid/2951/language/en-ZA/Default.aspx.

316 Page R, 'Co-determination in Germany – A Beginner's Guide', *Arbeitspapier 33*, Hans Böckler Stiftung, June 2009.

317 Kar P, 'Culture and corporate governance principles in India: Reconcilable clashes?', *Private Sector Opinion*, 23, 10 October 2011, p. 6.

318 *Ibid.*, p. 16; Tricker, *op. cit.*, pp. 162, 447–448.

319 APRM and UNECA, 'Promoting the APRM Codes and Standards on Corporate Governance in Southern Africa', November 2013, p. 5, http://www.uneca.org/sites/default/files/uploads/background_paper-final_draft.pdf; Mulili BM, 'Corporate governance practices in developing countries: The case for Kenya', *International Journal of Business Administration*, 2, 1, February 2011, p. 22.

320 'Parallel players', *The Economist*, 23 June 2012, http://www.economist.com/node/21557373.

321 Email from Alison Dillon-Kibirige, 6 June 2014.

322 'Avoiding the dinosaur trap', *The Economist*, 31 May 2014, pp. 9–13; 'One world', *The Economist*, 31 May 2014, p. 40.

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