HOW CAN AFRICA ATTRACT FOREIGN DIRECT INVESTMENT, WITH SPECIFIC REFERENCE TO AN INVESTMENT STRATEGY WITHIN AFRICA

by

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Examination Copy
DECLARATION

I declare that, “How can Africa attract Foreign Direct Investment, with specific reference to Multinational Corporations and Private Investment?” is my own work and that all the sources I have used or quoted have been indicated and acknowledged by means of complete references.

FULL NAME ___________________________ DATE ________________

SIGNED _______________________________
DEDICATION

Dedicated to my mother and family.
### LIST OF ACRONYMS AND ABBREVIATIONS

(in alphabetical order)

<table>
<thead>
<tr>
<th>Acronym</th>
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<tr>
<td>AGOA</td>
<td>African Growth and Opportunity Act</td>
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<td>ANC</td>
<td>African National Congress</td>
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<td>APRM</td>
<td>African Peer Review Mechanism</td>
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<td>AU</td>
<td>African Union</td>
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<td>EU</td>
<td>European Union</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>MNC</td>
<td>Multinational Corporation</td>
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<td>NEPAD</td>
<td>New Partnership for Africa’s Development</td>
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<td>PCF</td>
<td>Private Capital Flows</td>
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<td>PE</td>
<td>Poverty Alleviation</td>
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<td>RO</td>
<td>Regional Organisations</td>
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<td>SA</td>
<td>South Africa</td>
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<td>SADC</td>
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<td>SD</td>
<td>Sustainable Development</td>
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<td>TDCA</td>
<td>Trade Development, Co-Operation Agreement</td>
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<td>TICAD</td>
<td>Tokyo Internation Conference on African Development</td>
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<tr>
<td>TNC</td>
<td>Transnational Corporation</td>
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<td>UNCTAD</td>
<td>United Nation Conference for Trade and Development</td>
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<td>USA</td>
<td>United States of America</td>
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<td>UWC</td>
<td>University of the Western Cape</td>
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<td>WBG</td>
<td>World Bank Group</td>
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<td>WEF</td>
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To my mom and family. Thank you for your support.
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CHAPTER 1

1. INTRODUCTION

1.1 Aims of the Study

In pursuit of its principal goals of achieving poverty alleviation, economic freedom and an equilibrium with its trading partners, Africa seeks redress with regards to investment flows in the world. This research will investigate the extent to which Foreign Direct Investment, with reference to multinational corporations and private investment, has a profound effect on the growth of Africa.

1.2 Problem Statement

The issue of Foreign Direct Investment has elicited increasing international attention in recent times, mainly because of the growing awareness of the economic exploitation of millions of Africans. Some of the leaders of the African continent, along with their governments, have equally placed the lack of Foreign Direct Investment high on their agendas. This awareness has generated sustained debates within governments, international organisations and the private sector, to try and formulate policies aimed at addressing the problem regarding the lack of FDI.

Foreign Direct Investment has a clear and distinct effect on Africa and its economies; it therefore should be seen as the most positive approach that should be followed to address the problems listed below. The dominant debates around Africa are those concerning poverty alleviation, sustainable development, infrastructure development and economic stability. The lack of a collaborative approach within Africa with reference to economic integration, and the effects FDI has with specific reference to world investment flows and the role of rating agencies, places Africa in a negative position. International organizations such as the World Bank, International Monetary Fund and the World Trade Organisation have made it their mission to help the African continent cope with the
problems Africa will be facing in the 21st century. Assistance has been forthcoming, but not at the rate with which Africa is able to deal with globalisation and trade liberalisation.

This research therefore proposes that attracting Foreign Direct Investment (FDI) with reference to multinational corporations and private investment should be Africa’s main task at hand. Coupled with the need to attract FDI, Africa has to create a positive atmosphere for luring foreign investors. Africa’s New Partnership for Africa’s Development (NEPAD) should be seen as the plan to resurrect Africa out of the desperate position in which it finds itself. In keeping with fundamental international values, the principles that govern international trade and free market economies should be extended to the African continent.

1.3 Significance of the Study

To combat poverty alleviation and to achieve a better life for all in the African continent is the goal that should be achieved. FDI is one of the key elements to all developing countries. The lack of FDI is clearly visible in Africa. Africa needs to develop an integrated plan so that it can become more sustainable and self-reliant.

Attracting FDI is the key to growth in Africa. Investors will invest in a country with the clear purpose of optimum profits. The position in Africa is no different and the lack or failure to attract FDI can be ascribed to a number of factors, namely; the ability to lure multinational corporations and private investors, industry is still predominantly state owned and corruption in the various governments departments are but a few of those factors that can be mentioned here. Capital flows around the world seem to flow around Africa, not into Africa. The problems faced with multinational corporations and private investment is one of transfer of technology, protecting intellectual property and payment of taxes. In most countries around the world, it is expected of a corporation or a private person who does business in a particular country to pay taxes. MNC’s and private investors argue that the tax rate in Africa is to high and that investing in Africa would not be of any benefit. Regarding the transfer of technology, the position is not favorable for
the African continent. The protection of intellectual property is key to MNC’s and private investors because they believe that by protecting their brand, they would have control over a certain market. A need to find solutions in addressing the above problems is of vital importance if the true benefit of FDI is to be achieved. The drive to lure investors is one of Africa’s priorities at this stage in its history.

However, the quest for solutions has rarely emphasised the need for a holistic approach, which takes into account the linkages between FDI and economic integration on the African continent. Consistent with the international approach towards developing countries with regards to FDI, a consistent drive from some African leaders to attract FDI is clearly visible. The lack of FDI and the intrinsic problems Africa faces are key areas of this study. The study will therefore constitute a significant contribution in this regard.

1.4 Methodology

The method employed to undertake this research is by way of literature review. Reliance will therefore be placed on relevant primary and secondary sources relating to trade, investment. This includes treaties, articles, books, declarations and Internet sources. The research will make use of data and statistics compiled by the Southern African Development Community and the United Nation’s Conference for Trade and Development, as well as the World Investment Report.

1.5 Overview of the Chapters

Chapter 1 is the introduction and sets out the context of the research, identifies the problems and outlines the methodology.

Chapter 2 focuses on poverty, FDI, rating agencies and the flow of FDI in the world. The link between Foreign Direct Investment and Regulation in the world is looked at with the central objective of bringing investment law into the scheme.
Chapter 3 outlines Africa’s strategy with regards to investment and the advancement of economic freedom. The AU along with NEPAD is also central to our study. This chapter also identify the importance of a collaborative approach within Africa, coupled with economic integration as central to the objective of achieving economic freedom. Multilateral and bilateral agreements between Africa and ‘its’ Western and Eastern partners are looked at. This chapter extends this analysis to regional organisations and the partnerships forged with developed nations towards the achievement of self-sustainability. This chapter is ended off with a discussion on African Peer Review Mechanism (APRM) and the effects it has on the African continent.

Chapter 4 discusses the recommendations and conclusions of this thesis. Emphasis will be given to two countries, South Africa and Angola, in this regard. The reason for choosing these countries is significant in this paper, because the potential both countries have to grow insofar FDI is concerned is huge. South Africa is a country with a very diverse economy, for example; mining, agriculture, banking and manufacturing industry. South Africa offers allot to Africa and the international world regarding investment opportunities. Angola on the other hand is a country that was locked in a civil war for the past two decades and with its vast natural resources, the country has the potential of growing into one of the largest economies in Africa. Angola has great deal to offer Africa and the international community insofar as investment opportunities is concerned.
CHAPTER 2

INTRODUCTION

The position regarding FDI is of the utmost importance for the African continent. When we talk of FDI it is important to note that Africa is one continent of many that is interested in acquiring a larger share of FDI. As we will later see, the position in Africa is not favourable when it comes to FDI. To enable Africa to attract a more favourable distribution of FDI, we therefore propose a collaborative approach within Africa and to be more specific, an approach of economic integration. These approaches will be explored in more detail in chapter 3. Economic integration is the economic tool to attract FDI. We can approach this position from many sides, but our focus will research the lack of FDI Africa is receiving.

Africa needs to create an investment friendly environment. Contrary to what the developed world is saying about Africa, the continent has not been able to create an investment friendly environment and play a significant role or make a positive contribution to the world’s economy. This paper will try to focus particularly on the developments that shape economic developments as well as the processes in attracting FDI in the world. Africa through the African Union (AU), New Partnership for Africa’s Development (NEPAD) and the African Peer Review Mechanism (APRM) will attempt to deal with the shortcomings of the continent in relation to FDI. The legacy of colonialism has placed Africa in an unenviable position of trying to regain its pride from its past colonial masters. Kodo ¹ states that,

Africa has had the unfailing support of the Non-Aligned Countries in its struggle to attain international sovereignty. In spite of the efforts of men such as Patrice Lumumba, Kwame Nkrumah, Nasser and Murtala Mohammed to change the international order and promote real independence for an autonomous Africa, our continent has remained largely a pawn in the hands of the superpowers that dominate the international scene.

¹ - 1996, 245
The strive to promote real independence in Africa is exacerbated by the lack of community involvement. The lack of community involvement can be ascribed to a number of reasons including the following: lack of resources, be they financial or technical, corruption within the different government departments, bureaucratic red tape around projects and the difficulty of empowering communities to become self-sufficient. Elliot\(^2\) says, "Poverty is a symptom of people not having the power to control the resources on which they depend". This is a profound statement within the African context and the developing world. This position is intolerable and the need for change has now become a very important factor within the developing world and in particular Africa.

The role of communities in achieving the desired results is important, as without community involvement it is not possible to attain infrastructure development and the social programmes as set out by the various governments. The focus of this research is geared towards addressing the needs of the community with the emphasis firmly placed on attracting FDI. As is suggested by Lai\(^3\),

Research in recent decades has greatly improved the understanding of the behaviour of international investors and the determinants of foreign investment in locations. Yet, for investors with a long-term perspective, the weak infrastructure base in Africa could actually represent significant opportunities. Indeed, it is estimated that Africa requires US$18 billion investment in infrastructure per year during this year during this decade.

The multitude of problems within the African continent can be solved. Nkuhlu\(^4\) says,

I don’t need to emphasise that Africa is not a poor continent in terms of resources, raise the levels of trust, build conducive conditions for economic growth and development, and accelerate economic integration through policy reform and increased investment in infrastructure.

The role players determining Africa’s future should keep in mind that only through positive dialogue and active participation in the various processes will determine the success of the continent. Processes like, NEPAD, APRM and the AU will determine the future success of the African continent. To eradicate poverty, to combat the spread of the HIV/AIDS, to provide peace and security for its citizens, creating and environment for

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\(^2\) 1999, 100  
\(^3\) 2001, 7-8  
\(^4\) 2002, 2
sustainable development and provide a climate for trade, investment and technology to flourish, Africa has to attract FDI.

Firstly, to achieve this we will have to focus on world investment trends as well as rating agencies and the effects it has on the African continent. We will also look at FDI and the regulation of MNCs.

2.1 World Investment Trends

Investment trends around the world are uneven. Investors around the world, be it multinational corporations or private investors, invest in countries where they can receive optimum profit. Investment has surpassed trade as the number one commodity in the world. Previously, trade links were seen as the main component of boosting a countries growth domestic product (GDP). This trend has changed and the fact that so many countries are now signing bilateral agreements where investment related measures are key to the agreements. The United Nations Economic and Social Council\(^5\) states:

In the area of private international financial flows, there have been rapid increases in foreign direct investment over the past 10 years. Global FDI outflows reached $800 billion in 1999. The globalisation of investment and production is in part a result of changes in national policy frameworks. For some developing countries, particularly middle-income countries, private financial flows are the largest source of external finance for sustainable development.

Development in the field of investment has been slow, and Elliott\(^6\) believes,

“That the African continent has a small and declining relative share of multinational investment and as such could be suggested to be only loosely connected or even excluded from the world economy”.

The question is how much Foreign Direct Investment (FDI) does Africa receive? Williams\(^7\) says the following about the flow of FDI:

Global flows of Foreign Direct Investment (FDI) soared by 18% in 2000 to a record $1,270bn, but FDI inflows to Africa, including South Africa slumped, bringing down the continent’s already low share in world FDI inflows to below 1%. The decline in Africa’s FDI last year, from $10.5bn to $1.1bn, contrasts sharply with a $2.2bn rise in 1999, and marks the first major drop since mid 1990’s.

\(^5\) - 2001, 12
\(^6\) - 1999, 27
\(^7\) - 2002, 24
These statistics are very real, and the fact that Africa only received 1% of world FDI should be of great concern to the African leaders.

To whom or to what can we attribute the small and declining share of lack of FDI? Multinational corporations and private investors predominantly invest in those African countries that are able to provide them with the necessary confidence and profits. This confirms a clear and distinct understanding about the world trading system: investors act on sentiment and stability within a country. Africa has yet to find the right ingredients to mend its history of poverty alleviation, unemployment, disease and many social problems with that of attracting FDI. The lack of FDI is further amplified by, Tromp\(^8\), when he says,

Between 1990 and 1998 Foreign Direct Investment (FDI) increased by up to 60% in Asia and Latin America, with almost no growth in Sub-Saharan Africa. The effect on human capital has been profound and in Southern Africa alone there are 76 million people living below the poverty line, about 40% of the population.

It is further argued by Elliot\(^9\) that,

Foreign Direct Investment (FDI), made by private companies overseas, is the major driving force of economic globalisation. A good part of such investment abroad are concentrated in the hands of large trans-national corporations. Although the share of inward investment to developing countries rose slightly in the early 1990's, it continues to go to a very limited number of countries.

The imbalance Africa faces with FDI and economic growth, compared to that of other developing nations, is alarming. As stated by Hazelhurst\(^10\),

In terms of FDI inflows, China ranked second at US$53bn, after Luxembourg with $126bn. FDI in Africa, however, declined by 41%, the steepest fall in the developing world. FDI represents about one-third of the GDP of developing countries, so it is a potent driver of economic growth and a powerful antidote to poverty.

The position relating to FDI in Africa has not been positive in relation to private and MNC investors. There are a variety of reasons why Africa does not attract FDI. Some

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8 - 2001, 7
9 - 1999, 27
10 - 2003, 29
would argue that Africa does not have the technical know-how; some would suggest that Africa’s political culture of coups and political unrest does not warrant the trust and belief required to invest in a continent like Africa. According to Lai\textsuperscript{11}:

In the case of Africa, investment in African territories by the enterprises located in another economy is not new. Such investments were heavily concentrated in the primary sectors of agriculture and mining with the principal purpose of supplying farming products and industrial materials to the developed countries.

With the inception of the NEPAD process, Africa is planning to turn its history of being a raw-material supplier into becoming a manufacturing continent. However, not all African countries have an abundance of natural wealth. In addition, some African states that have the natural wealth are not always able to turn their natural wealth into manufactured products. It is very important to note that the world economy is made up of many factors that can contribute to a country’s success or failure with regards to FDI. It is incumbent on most countries to create an investment friendly environment and in particular, the African countries to attract FDI.

The link between investment and political developments within a country is significant insofar as the attracting of FDI is concerned. Bodie et al\textsuperscript{12} believe that,

The presence of these political considerations adds a dimension of risk to foreign investment beyond the purely economic. Of course, political developments can be positive as well, for example, the end of regional conflicts can portend great growth for local economies. Political developments offer significant opportunities to make or lose money.

To be able to understand the problems faced by the African continent in relation to FDI, we need to understand the world trading system. The fact that FDI is not easily accessible is an indication that the African continent is viewed as a liability and for this reason, investment flows around the world has not been kind to the African continent. There are surely a number of factors such as that could be mentioned as to why the African continent has not been successful in attracting the needed FDI to ‘its’ shores. Blaming the African continent for not attracting enough FDI would not be fair. Blame

\textsuperscript{11} - 2001, 1
\textsuperscript{12} - 1999, 504-505
should also be placed at the feet of the developed nation in as far as not investing in the developing world and in particular Africa.

### 2.1.1 Africa’s new approach

The realities facing the African people are quite daunting. NEPAD says African economies are vulnerable because of their dependence on primary production and resource-based sectors, and on their narrow export bases. There is an urgent need to diversify production, and the logical starting point is to harness Africa’s natural resource base. Value-added cost in agri-processing and mineral beneficiation must be increased and a broader capital-good sector developed through a strategy of economic diversification based on intersectoral linkages. Governments should remove constraints on business activity and encourage the creative talents of African entrepreneurs\(^{15}\).

The will to achieve FDI and the importance thereof can only be achieved by true commitment from all the people of Africa. The United States Agency for International Development (USAID)\(^{14}\) argues as follows:

> That through greater openness and sound governance, reforms that raise the level of economic freedom-low-income developing countries can gain access to global product and capital markets, and many have already done so. Elements of successful reform programs include achieving macroeconomic stability, liberalising the trade regime, strengthening the role of the private sector in the economy and establishing the rule of law.

Africa is a continent of vast natural resources and the wealth these resources can generate for the continent is huge. The Foundation for Democracy in Africa\(^ {15}\), explains that,

> “Nearly 80% of the strategic minerals we need originate in Africa. An estimated 97% of the world's platinum is from Africa, as well as 90% of the cobalt, 80% of the chromium, 64% of the manganese, half the world's gold reserves and as much as a third of all uranium”.

Clearly, Africans are not able to turn their natural resources into a final product that will determine a higher price for their goods. Africa exports these raw materials to developed

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\(^{13}\) - NEPAD: Section 153  
\(^{14}\) - 2001, 7-8  
\(^{15}\) - 2003, 1
countries, to be returned later to be sold to them as a final product. This is one of those problems to which priority must be given. As noted by Ngowi 16,

Africa has enormous untapped potential and hidden growth reserves. For example, the continent is home to the world’s largest reserves of a number of strategic minerals, including gold, diamond, platinum, cobalt and chromium. The mining and petroleum sectors have, for this reason, great potential for attracting more FDI in the region if appropriate steps are taken.

Africans need to be able to negotiate smarter deals with their peers. Emphasis should be directed at those skills’ shortages that are required for Africa. Thus, the transfer of technical know-how is an essential ingredient for future successes.

The framework in terms of NEPAD for change is clear, but the effectiveness of these frameworks are questionable. Regarding the effective implementation of these frameworks, Africa would have to develop to such an extent that it could compete with the rest of the world. Transformation of an economy can only be achieved through equal status in trade, technology and investment. To ensure equal status in trade, technology and investment, the arguments would have to be realistic; Africa would never be able to compete in its present state and would have to improve. Investment is required to improve the present state of the African economy and billions of dollars is needed, but not to the extent that Africa loses its identity to the world. MNCs are needed as well as private investors, with the emphasis on partnerships and a 50% equity base.

2.1.2 Different types of Investment

Kafele-Kale17 argues that,

Developing countries have used their investment codes to compete for scarce foreign and domestic investment, with varying results. However, exclusive reliance on investment incentives as the bait to lure FDI into the host country may be misplaced. The incentives contained in an investment regime provide only a partial and somewhat distorted image of what that country’s investment environment is. Common sense suggests, and lawyers who represent prospective foreign investors will surely concur, that other factors extraneous to the legal regime on FDI contribute significantly in shaping the environment for FDI.

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16 - 2001, 14
17 - 1992, 29
Kafele-Kale’s argument is ten years old, so the question arises as to how relevant is it in the context of Africa today? Over the past 10 years, Africa has gone through many changes, some good and some bad. In the context of our research the above author is correct in saying that Africa needs to change in relation to FDI. Although the flow of FDI has increased over the past 10 years, Africa still receives less than 5% of world FDI. Loungani et al.\(^\text{18}\) argues that,

> "FDI is viewed as ‘good cholesterol’ because it can confer the benefits enumerated earlier. An additional benefit is that FDI is thought to be ‘bolted down and cannot leave so easily at the first sign of trouble’. Unlike short-term debt, direct investments in a country are immediately repriced in the event of a crisis".

Duru\(^\text{19}\) argues that one way in which FDI can be improved is by deregulation:

> When we talk of foreign investment, it does not necessarily mean that inward flowing capital is core investment in privatised state enterprises. Indeed, most foreign investors are interested in privatisation only to the extent that it ensures a liberalised, level-playing field whereby the states becomes an impartial participant.

Deregulation is important, but to relax an economy or to leave it to be swallowed up by big enterprises is not a cut-and-dried decision for African governments to make. A partial relaxation of a country’s laws should be taken into consideration, with a view to the advancement of attracting FDI and to promote privatisation.

However, Jhunjhunwala, in turn,\(^\text{20}\) argues against FDI when he says that,

> The long-term effects of foreign investment including FDI are negative. When large-scale foreign investment comes into a developing country, the law of diminishing return sets in. The domestic rate of profits declines along with those of foreign investors. At such time, the growth in domestic capital would have been less than if foreign investment had not come in at all.

Jhunjhunwala\(^\text{21}\) argues for, “Portfolio investment, that is better than direct investments from the psychological standpoint. They strengthen domestic companies while direct investments compete with them and weaken them”. The position in Africa is somewhat peculiar, because the African continent only attracts a fraction of FDI in the world.

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\(^{18}\) - 2001, 3  
\(^{19}\) - 2001, 1  
\(^{20}\) - 2003, 1  
\(^{21}\) - 2000, 1
There are clear signs of progress being made in the field of investment, and if there is any doubt about attracting FDI with luring MNCs and private investors to the continent, it must surely be dispelled. Suttle\textsuperscript{22} believes that,

> The increased reliance on FDI is generally positive for developing countries, since FDI, investors tend to be committed for the long haul and are better able than debt holders to tolerate near term adversity. Many governments that previously borrowed abroad are instead borrowing domestically, on shorter maturities. While this reduces their foreign exchange risk, the shorter-term debt increases the risk from local interest rate fluctuations and the reluctance of local investors to roll over exposures at times of stress.

The approach of Suttle is commendable. FDI has its benefits and its drawbacks, but what is needed in Africa is the influx thereof. NEPAD proposes the importance of FDI for the African continent. We will be looking at the NEPAD process in Chapter 3 of this research. Coupled with the need to attract FDI, it is important that all Africans see the need to participate in all the new processes. Africans need to buy into the process of attracting FDI and luring MNCs and private investors to the continent, and the only way in which these objectives are going to be achieved, is by way of information.

### 2.2 Rating Agencies

Rating agencies rate a country’s bonds. As defined by Bodie et al.\textsuperscript{23}, “A bond is a security that is issued in connection with a borrowing arrangement. The arrangement obligates the issuer to make specified payments to the bondholder on specified dates”. In the world trading system we find different types of bonds. The ones commonly used by investors are Treasury Bonds and Notes, and Corporate Bonds. These are the bonds that would be rated by the rating agencies. Rating agencies have become an important link between countries and investors, whether multinational or private. The indexes of these rating agencies have been the guide to a country’s economy. Many rating agencies have become household names for investors around the world. The role that these rating agencies play is very important. The rating agencies do measure the bond’s default risk,

\textsuperscript{22} - 2003, 3
\textsuperscript{23} - 1999, 401
which in turn, would provide valuable information to an investor regarding a bond grading. Grading is described by Bodie et al.\textsuperscript{24} as follow;

That rating agencies provide financial information on firms as well as quality ratings of large corporate and municipal bond issues. Each firm assigns letter grades to the bonds of corporations and municipalities to reflect their assessment of the safety of the bond issue. The top rating is AAA or Aaa. Moody’s modifies each rating class with a 1, 2 or 3 suffix (e.g. Aaa1, Aaa2, Aaa3) to provide a finer graduation of ratings. The other agencies use a+ or a- modification. Those rated BBB or above (S&P, Duff & Phelps, Fitch) or Baa and above (Moody’s) are considered investment grade bonds, whereas lower rated bonds are classified as speculative grade or junk bonds.

There are a number of these agencies in existence, namely Moody’s Investor Services, Standard & Poor’s Corporation, Duff & Phelps, and Fitch Investors Services. Rating agencies have become very important, as well as dangerous, within the world trading system. It would somehow be unthinkable to imagine our world without rating agencies. The importance is undeniable, but these rating agencies have caused many developing countries to go bankrupt.

The two most respected rating agencies in the world are Standard & Poor’s (S&P) and Moody’s. Standard & Poor’s has been an investment analyst for the past 140 years. Standard & Poor’s is one of the most highly rated companies amongst investors around the world. Investor’s will always consult the S&P indexes to establish the different ratings of bonds within a particular country.\textsuperscript{26}

Moody’s has been in existence for the past 100 years. Moody’s has become one of the world’s most respected rating agencies. As noted in Moody’s Investor Services’ website the company’s manual provided information and statistics on stocks and bonds of financial institutions, government agencies, manufacturing, mining, utilities and food

\textsuperscript{24} - 1999, 408
\textsuperscript{25} - 2003, 1: Has been in existence for the past 140 years and is the pre-eminent global provider of independent highly valued data, valuation, analysis and opinion and is still delivering.
\textsuperscript{26} - 2003, 1: In the May 12\textsuperscript{th} issue, The Wall Street Journal posted the 2003 “Best on the Street Analyst Survey”. Standard & Poor ranked among the top equity research firms included in the survey, and 14 of the equity analysts were highlighted for their exemplary stock-picking acumen. Standard & Poor’s was also voted “Best Credit Rated Agency” by Global Investor magazine in February 2003
companies. Moody’s also covers nearly 100% of the United States bond market. Moody’s Investor Service is a company that not only provides a service in the United States, but also in Africa, Europe and the Far East. Rating agencies have become an important link between countries and investors, whether multinational or private.

2.2.1 Effects of these Ratings on Africa

Investment trends are further influenced by the importance attached to and influence exercised by rating agencies. Credit ratings are almost non-existent on the African continent as only a handful of countries hold credit ratings, for example; Ghana, South Africa, Botswana, Senegal, Tunisia, Egypt and Morocco. Moody’s opened an office in South Africa in 2002\. In view of the importance attached to these ratings by MNCs, FDI in Africa is fairly low. Wiggins points out that,

Over the past decade, increasing numbers of countries, especially in the ‘emerging markets’, have been assigned credit ratings and have issued debt in the international capital markets. But very few of these countries have been African. The UN Development Programme (UNDP) has partnered with Standard & Poor’s (S&P) to help arrange credit ratings for Sub-Saharan African countries.

It is very encouraging to note that the UNDP, along with S&P, has established a culture of credit ratings within Africa. The encouraging news is that Ghana, as stated by Roberts,

Was awarded a credit rating for the first time yesterday under a new plan aimed at giving developing countries access to the international capital markets by Standard & Poor’s; the largest agency had assigned a long-term sovereign rating of B+, four notches below investment grade”.

It could be argued that the rating was quite low but, as the financial sector in Africa is so poor, the rating is welcomed. It is argued by Wiggins, that

“The United Nations is now encouraging more African countries to be rated so they can attract more private investment and rely less on public funding. Africa has always been reliant on international loans, project investments, funding specific projects and many more, other than FDI”.

\[27\text{ - 2003, 1} \]
\[28\text{ - 2003, 45} \]
\[29\text{ - 2003, 45} \]
\[30\text{ - 2003, 45} \]
The world trading system is reliant on rating agencies and accordingly that Africa needs to conform to this standard.

As stated by Wiggins\textsuperscript{31},

"Credit analysts said the ratings would help attract investors, but they would still want to examine governments financial closely. As more African countries receive credit ratings they could provide a new alternative for investors looking for riskier emerging-market debt paying high rates of interest".

The outlook for Africa is looking brighter, but the lack of responsible leadership and goal focus will result in a failure to attract investors and perpetuate the flight of millions of Africans who live in poverty to regions they perceive to offer better opportunities. As is observed by Irvine\textsuperscript{32}

"Securities rating agencies have come under heavy criticism for failing to predict the Asian currency crisis and to adjust their ratings accordingly. Investors contend that they would not have bought the bonds had the rating agencies done their job well and given the bank a rating reflective of its country’s economic conditions".

Investors around the world follow the ratings of a country, which is rated by S&P or Moody’s, to be able to gauge the value and the strength of the economy. As we can clearly see above, investors follow blindly. They would almost never question the rating of a certain country’s economy or, to be more specific, the bond market. Sender\textsuperscript{33} places the problem into context when he says,

\begin{quote}
It is becoming increasingly common in financial circles in Asia to question the judgement of Moody’s Investors Service. Asian companies and governments feel that this ratings agency, one of the oldest and most respected, has been responsible for exacerbating the crisis in the region with frequent and often large down grades of sovereign and corporate debts. Similarly, investors are also expressing concern about rating agencies. They feel that agencies are now fallible and that their decisions are often unpredictable and difficult to understand.
\end{quote}

\textsuperscript{31} - 2003, 45
\textsuperscript{32} - 1998, 51
\textsuperscript{33} - 1998, 10
Rating agencies have become powerful enterprises, as we can see from their actions around the world. To use an example, in a Pravdor 34 article it is stated that, “The creditors of Russia have caused a commotion. They panicked about Moody’s confirmed intention to raise Russia’s rating by adding two points to it. The creditors sent a letter to the rating agency asking the experts not to make a hasty decision”. This is surely not a healthy situation in our world today, because it would not be in the best interest of the world community if rating agencies are seen to be the masters of a countries economy.

The position in Africa is somewhat different. Economies around the continent are not as sophisticated as are those in the Far East and Europe. One African country that can be equated with those in the Far East is South Africa (SA). The effects of the Asian crisis had a negative impact on the African economy. The SA economy has not gone untouched during this crisis period in the Far East. The SA economy has shown signs of recovery and held its nerve during the crisis period. The strength can be augmented by further ratings.

A financial correspondent, writing in the Mail & Guardian 35, believes that,

A country’s ratings reflect how risky it is perceived to be by international investors. Many large institutional investors are not allowed to invest in countries, which fall below investment grade ratings. South Africa has an investment grade rating from Moody’s, but not from the other big international rating agency, Standard & Poor’s. An upgrade from S&P would hopefully lead to increased foreign investment in the country.

The influence of rating agencies is even more concerning when considered that they wield such a lot of power around the world. A very important factor that must be considered is the fact that these agencies are based in the United States of America (USA). They are also registered companies within the USA. They are not regulated within the other countries around the world, and this is surely a matter for debate and concern. Rating agencies have no responsibility towards a country they only provide independent investor news.

34 - 2003, 1
35 - 2003, 1
2.3 Foreign Direct Investment (FDI) and Regulation

The link between FDI and regulation is very important. It is important insofar as it protects the capital, which Multinational Corporations (MNCs) and private investors invest in different parts of the world. As stated by Qureshi\textsuperscript{36},

International investment law concerns itself with the direct and indirect investment of foreign property abroad. Its principal participants involve the capital exporting States, the capital importing States and the private foreign investors. The main issues include market liberalisation, standards of domestic treatment (specifically investment protection), development and dispute settlement. It is fundamentally underpinned by a development dimension. The legal regime, such as it is, is controversial and non-specific at the level of General International Law, and mainly bilateral at the level of treaty practice. There is no comprehensive international legal framework governing the international law of investment.

The regulatory framework proposed for MNCs should also include private investors. It would only be possible to determine a private investor by way of capital origination. It is important to note that when we talk of FDI we are not just referring to MNCs, but we are also looking at private investors. The regulation that relates to private investors is governed by the host country in which, the money is being invested. The relation between private investor and MNCs is very close, but the nature of operation is completely different. Drabek et al\textsuperscript{37} suggest the following in this regard: “Why do we focus on FDI? The answer is very simple – FDI has become an increasingly more important factor of economic growth. This is reflected in the trend over the last several years as countries have increased reliance on FDI”. There is a clear and distinct feature to FDI, it largely flows to the developed world. The flow of FDI is a problem. It becomes a problem when the developing world only sees a fraction of it.

We will be focussing on bilateral agreements with specific reference to MNCs. There are no uniform rules in the world when it comes to FDI. FDI is primarily governed by bilateral agreements between states. World institutions such as the United Nations (UN), World Trade Organisation (WTO), World Bank Group (WBG) and the International

\textsuperscript{36} - 1999, 369-370
\textsuperscript{37} - 2001, 5

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Monetary Fund (IMF) have all been instrumental in creating law for investment-related measures. The focus on FDI is within the framework of this research and limited to MNCs.

However, these bilateral agreements are not the only means in which FDI is regulated. It is also important to note that MNCs plays a very important role in the policy-making decisions of a country. There is no direct evidence in this regard, but countries often draft legislation that encourage MNCs to operate freely in the country. The Trade Union Advisory Committee (TUAC)\textsuperscript{38} says that,

The role of multinational enterprises (MNEs) is becoming more central in government policy making at both the national and international level. Their number has risen from 7 000 in the early 1970’s to around 39 000 in 1995, with around 270 000 foreign affiliates. Just 1\% of firms account for 50\% of global FDI and 95\% originates in developed countries. It is estimated by UNCTAD that ½ of all trade consists of intra-firm transactions. A significant development since 1992 has been the growth in FDI in non-OECD countries. The expected adoption of a new legally enforceable Multinational Agreement on Investment (MAI) in 1997, and its opening up to non-OECD participants, will add momentum to this process.

Accordingly, the effect of MNCs in national economies is hard to ignore. Countries are often subjected to rigorous business practices by these MNCs. We somehow detect a 'clan' behaviour from these MNCs when one of them is exposed for one or other corrupt business practice. Blonigen et al\textsuperscript{39} believes that,

In the past two decades, globalisation of firms' operations has significantly included Foreign Direct Investment (FDI) activity. The existence of networking effects in trade presents the question of whether such an effect can be documented with respect to FDI, since the informational and legal uncertainties associated with expansion into foreign countries through FDI are not unlike those firms encounter when expanding through trade. Unlike with trade, FDI is almost exclusively the domain of larger firms.

The problem with MNCs are twofold, on the one hand MNCs are good for a particular country insofar as 'it' provides the needed employment and taxes and on the other hand

\textsuperscript{38} - 2003, 1
\textsuperscript{39} - 2002, 3
MNCs abuse the situation to their advantage, because countries are reliant on these MNCs investing in their economies. This is a very serious and problematic situation that is ongoing in the world. The World Development Movement (WDM)\textsuperscript{40} says:

In some cases investors move to the Third World precisely because they can get away with bad practices prohibited elsewhere. Some governments are unwilling to regulate multinationals. A downward spiral is occurring where Third World governments are pressured to reduce standards in order to compete for foreign investment. Other governments are unable to stand up to the powerful multinationals to enforce their own legislation.

This is one argument that will not be won by enforced laws. There would surely be arguments for or against MNCs, but the harsh reality is that they are here to stay. The only way to curb these MNCs is to regulate the economy to such an extent that they operate within the policy framework set within the country in which they are operating. The WDM\textsuperscript{41} states that,

Foreign investment, particularly from multinational corporations, must deliver the maximum benefits to all stakeholders – particularly the poor – while inflicting the minimum costs. Potentially, multinational corporations have much to offer people in the Third World, but their operations have actually made things worse. A realistic and considered look at the roles of both governments and international institutions in regulating multinationals is long overdue.

\textbf{2.3.1 The Regulation of Multinational Corporations (MNC’s)}

Let us focus our attention on how MNCs are regulated or what measures are in place to regulate these types of investors. Our focus will be confined to the OECD guidelines, which are the preferred guidelines on MNCs. The introduction to the OECD guidelines\textsuperscript{42} states:

While many businesses have developed their own codes of conduct in recent years, the OECD Guidelines are the only multilaterally endorsed and comprehensive code that governments are committed to promoting. The Guidelines express the shared values of the governments of countries

\textsuperscript{40} - 1999, 1-2
\textsuperscript{41} - 1991, 1
\textsuperscript{42} - 2000, 5
that are the source of most of the world’s direct investment flows and home to most multinational enterprises. They apply to business operations worldwide.

As mentioned above, we will look at the OECD guidelines, but not in its entirety. We will only focus on certain sections, namely bribery and taxation that would impact heavily on the developing world and within the context of this research in particular Africa. The reason for choosing bribery and taxation is significant in the context of Africa because the continent is labelled as one that encourage these practices. This label is surely unfounded, but history speaks for itself, Africa has not done enough to convince the developed world that these practices do not exist. Furthermore, taxation is also one of those areas that is given priority to, because the tax rate, it is argued by investors that it is considerably high on the African continent. There is no suggestion that the whole document does not have substance or lack in certain areas; we are merely trying to point to certain key areas. The Guidelines state in their general policies that enterprises should always take into account established policies in the countries in which they operate and consider the views of the stakeholders.\footnote{\textsuperscript{43} - OECD : Section II}

Enterprises are also encouraged to contribute to economic, social and environmental progress with a view to achieving sustainable development\footnote{\textsuperscript{44} - OECD : Section II (1)}; support and uphold good corporate governance principles, develop and apply good corporate governance principles, and apply good corporate governance practices\footnote{\textsuperscript{45} - OECD : Section II (6)}; encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with Guidelines\footnote{\textsuperscript{46} - OECD : Section II (10)}; and abstain from any improper involvement in local political activities\footnote{\textsuperscript{47} - OECD : Section II (11)}. One of the key areas to address would be the combating of bribery. This is a very difficult area to control and the business practices followed by a corporation would determine its true ethical behaviour. The Guideline describing the combating of bribery as follows: enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or
retain business or other improper advantage. This is an area of business that is almost impossible to control.

In this regard, enterprises are encouraged not to offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment, to ensure that remuneration of agents is appropriate and for legitimate services only, and to enhance the transparency of their activities in the fight against bribery and extortion. It would be difficult to assess the extent of the bribery and corruption of these MNCs. These guidelines had already been published in 2000. The Guidelines also focus on taxation with reference to MNCs. It is suggested that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations.

We should not lose sight of the fact that these are merely guidelines and not laws. They have become laws in some countries around the world. The WDM proposes the following in this regard:

A regulatory framework, rather than a single international agreement. The framework should be built on the following: An International Investment Agreement promoting quality investment and core standards for corporate responsibility; Regulation by specialist bodies such as the WHO; National development strategies to promote pro-poor growth; Domestic legislation holding companies to account for their operations overseas and ‘self-regulation’ by corporations promoting best practice.

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48 - OECD: Section VI
49 - OECD: Section VI (1)
50 - OECD: Section VI (2)
51 - OECD: Section VI (3)
52 - OECD: Section X
53 - 1999, 2
The world of investment primarily consists of Bilateral Investment Treaties (BITs) between states. The World Bank Group’s International Convention on the Settlement of Investment Disputes (ICSID) \(^{54}\) says the following in relation to BITs:

It is however only since the late 1980’s that BITs have come to be universally accepted instruments for the promotion and legal protection of foreign investments. The investments and investors covered by it, virtually all bilateral investment treaties cover four substantive areas; admission, treatment, expropriation and the settlement of disputes.

In 1996, during the Singapore round of discussions between the Ministers of Trade of the various countries belonging to the WTO, proposals for a multilateral framework were mooted for investment, as they were for trade.

Masiwa et al \(^{55}\) quote Dr Boodhoo, who says,

Prior to the 1\(^{st}\) WTO Ministerial Meeting held in Singapore in 1996, a number of developed countries made forceful moves to include in the meeting’s agenda negotiations for a Multilateral Agreement on Investment (MAI) at the level of the WTO. The proponents, of the MAI argued that, worldwide there are a number of barriers that exist preventing foreign investors to enter the host countries freely. MAI would, according to them remove these barriers and allow a smooth flow of investment. The International Chamber of Commerce (ICC) \(^{56}\) argues that,

The WTO must agree to multilateral rules governing investment export of the Doha round and said they would boost investment in the developing world. This investment rules must be decided when WTO ministers meet in Cancun in September to launch the 2\(^{nd}\) phase of the Doha round trade liberalisation negotiations. The aim would be to increase the quantity of investment, encourage its efficiency and create a level playing field for developing countries seeking to boost inward investment that underpin their economic growth.

There are those who are against a multilateral framework for investment. The WDM \(^{57}\) says, “The EU’s proposal for a ‘GATS-style’ approach to investment negotiations means that, once a basic framework has been set-up, liberalisation is likely to take on a country-

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\(^{54}\) - 2003, 1: Of the over 1100 treaties that are listed in the present publication, more than 800 have been concluded since 1987, by a growing number of countries.

\(^{55}\) - 2002, 68

\(^{56}\) - 2003, 1

\(^{57}\) - 2003, 1
by-country ‘request offer’ bilateral basis. Developing countries will be just as isolated in a bilateral process inside the WTO as they are in a bilateral negotiation outside the WTO". A multilateral framework can result in some developing countries loosing large sums of financial resources that were meant for social projects. The WDM \textsuperscript{58} stated that,

The Africa Group of WTO members released a communiqué stating that the ‘Singapore Issues’ (i.e. the new issues including investment) are, ‘not within WTO competence in developing multilateral rules’ that Members are not convinced that negotiations in these areas would deliver benefits to African countries.

It is further suggested by Singh \textsuperscript{59} that, "The MIA’s one-size-fits-all strategy is ill-conceived because WTO members are at different stages of development. What is good for capital-exporting Japan may not be good for capital-importing Bangladesh. Investment is a much more politically sensitive issue than trade”. The status quo was maintained as far as investment law is concerned in the world. The Cancun meeting never touched on the Singapore issues. For now, BITs govern investment law around the world and between states.

The road ahead is going to be interesting, because the developed world wants a uniform approach to investment law. There is a division between the developed and the developing world regarding investment law. The division runs deep, and it would only be resolved if both parties makes concessions. Somehow, whatever route is chosen, the developing world would be better off than having MAI. The developing world has not developed ‘its’ technical capacity in the field of investment and the technical nature of the field requires a country to be able to deal with the complex requirements of the field. For example, banking requirements and laws protecting investments. The situation in Africa is not so easy, many countries on the African continent is not able to deal with the requirements set down by MAI. When it comes to investment Africa still has to do allot in this regard.

\textsuperscript{58} - 2003,1
\textsuperscript{59} - 2003, 13

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In our next chapter, we will look at how Africa is attracting Foreign Direct Investment (FDI). The African approach to FDI is very important for future growth in Africa. Furthermore, we will focus on regional organisations, inter-trade relations and cross-border agreements. The African Union (AU), the New Partnership for Africa’s Development (NEPAD) and the Peer Review will be the cornerstones of the discussion. Economic integration is key to Africa’s quest for attracting FDI.
CHAPTER 3

3. Africa’s Investment Strategy

The position in Africa in as far as attracting FDI is of great concern. There is no unified investment strategy when it comes to FDI in the continent. FDI trends have a negative impact on the African continent and the need for an investment strategy has become important. To a large extent, emphasis has now been placed on the African Union (AU), the New Partnership for Africa’s Development (NEPAD) and the African Peer Review Mechanism (APRM) to create a joint investment strategy for Africa.

African leaders speak of poverty alleviation, sustainable development, fighting the HIV/AIDS epidemic and many other social problems, but how is this possible considering the lack of financial resources? Clearly, FDI should be seen as the means of addressing the above problems. To use an example, we will look at the International Chamber of Commerce (ICC)\(^{60}\) article, which states,

> Locational markers in many firms, and investment advisers of TNCs, have been slow to changing economic realities in many countries of Africa. Investment conditions until the early 1990’s discouraged companies from setting up shop in African States, especially as some companies themselves subjected to expropriation when political winds changed. The 1990’s, regulatory and other reforms have been introduced by a national government to make their economies more attractive to foreign investors. The regulatory conditions established in many African countries are on par with other developing countries.

To achieve positive FDI, Africa will have to address social problems, poverty alleviation and attract more FDI to its shores. There is a clear sense of newfound belief in the African continent. This is evident with the inception of the AU, NEPAD and APRM.

The NEPAD document\(^ {61}\) states,

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60 - 2003, 1-2  
61 - NEPAD: Section 183
“A critical dimension of Africans taking responsibility for the continent’s destiny is the need to negotiate a new relationship with their development partners. The manner in which development assistance is delivered in itself creates serious problems for developing countries. The need to negotiate with, and account separately for, donors supporting the same sector or programme is both cumbersome and inefficient. Also, the tying of development assistance generates further inefficiencies. The appeal is for a new relationship that takes the country programmes as a point of departure”.

The above illustrates that there is a legitimate focus on turning the fortunes of Africa around. It would somehow be presumptuous to think that results could be achieved over a short space of time. This is not so, as with any new process there will be failure, but the main thrust is that of endurance and the leaders along with the people of the continent must determine the successes. Africans do not believe in themselves; they have always relied upon their past colonial masters to help them create or formulate laws within the continent. Africans have always seen themselves as inferior to developed nations. The position has changed to such an extent that Africans now, for the first time ever, have created and enacted laws that would be inherently African. There is no suggestion that the intellectual capital of the developed nations is not needed, but the time is ripe for Africa to start creating and plotting its own future.

Many countries are classified as ‘least-developed’ countries (LDC) in Africa. The result is that the economic conditions in these LDC’s are not an ideal position to start off from. There are only a handful of countries in Africa that can be compared economically with a developed country. Unfortunately, this is the present situation in Africa and there is no way of escaping this reality, however this does not detract from the fact that Africa still needs to attract FDI. This would suggest that Africa will have to devise a strategy to attract FDI.

Simon\textsuperscript{62} suggests the following strategies with regards to LDC’s and the inflow of FDI to Africa:

\textsuperscript{62} - 1999, 6
Investment promotion strategies have to be more proactive, must use modern information and communication technology and have to focus on financing proactive strategy based on the country’s comparative advantages, targeting sectors and investors, marketing of the country and aftercare services: using modern information technology; information on investment opportunities and internet (links on international providers like MIGA:IPANET to own home pages); Financing; importance of governments; IPA budgets: OECD countries US$2 million, transitional countries US$0.7 million, developing countries US$1.5 million, LDC’s only US$285,000 involving the local private sector and foreign investors, expatriates and networks.

The list of strategies is quite substantial, and it would be to the advantage of Africa, as a whole, to seek to address these technical requirements.

We will now focus our attention on the African Union (AU) and the New Partnership for Africa’s Development (NEPAD). The AU and NEPAD is key, because Africans had pinned their hopes on these new processes to attract FDI. The AU and NEPAD is also the vehicle through which Africans see poverty alleviation, unemployment, infrastructure development and other social programmes will be taken care of. The perception towards FDI in Africa should change; we live in a global village where everything we do in our world is interlinked. Africans will have to convince the world that Africa is apart of the global village and that the continent can make a meaningful contribution to the world economy.

3.1 African Union (AU)

The Constitutive Act of the African Union (AU) was adopted on the 11 July, 2000. The AU has now replaced the Organisation of African Unity (OAU). The AU has similar institutions to that of the European Union (EU). Halfliger\(^{63}\) says that,

> According to the founding documents, within two years the AU is to be given an African Commission analogous to the European Commission in Brussels. To be created at the same time are an African Central Bank, a court along the lines of the European Court of Justice in Luxembourg, and an African parliament. Thus the AU has been conceived as uniquely blatant copy of the EU.

\(^{63}\) - 2002, 1

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The African Union (AU) departed considerably from the narrow conception of cooperation pursued by its predecessor and proposes a comprehensive plan of action. The economic objectives include: to accelerate the political and socio-economic integration of the continent\textsuperscript{64}, and to promote democratic principles and institutions, popular participation and good governance\textsuperscript{65}, to establish the necessary conditions which enable the continent to play its rightful role in the global economy and international negotiations\textsuperscript{66}, to promote sustainable development at the economic, social and cultural levels as well as the integration of African economies\textsuperscript{67} and to co-ordinate and harmonise policies between existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union\textsuperscript{68}.

The Constitutive Act does not propose certain guidelines as to how Foreign Direct Investment (FDI) is going to be attained, but rather creates certain institutions to deal with FDI. As stated in the Constitutive Act\textsuperscript{69},

\textbf{"We, Heads of State and Government of the Member States of the Organisation of African Unity (OAU) are convinced of the need to accelerate the process of implementing the Treaty establishing the African Economic Community in order to promote the socio-economic development of Africa and to face more effectively the challenges posed by globalisation".}

Ngwenya\textsuperscript{70} says,

\textbf{"The big challenge for the realisation of the African Union is to have massive investments in physical infrastructure such as highways, railways, telecommunications, energy and the social sectors including education".}

There is a newfound belief amongst the African leaders that the continent should be restored to its rightful place within the world arena.

\textsuperscript{64} - Constitutive Act: art 3 (c)
\textsuperscript{65} - Constitutive Act: art 3 (g)
\textsuperscript{66} - Constitutive Act: art 3 (i)
\textsuperscript{67} - Constitutive Act: art 3 (j)
\textsuperscript{68} - Constitutive Act: art 3 (l)
\textsuperscript{69} - 2000, 1-2
\textsuperscript{70} - 2001, 1
Mbeki \(^{71}\) describes the AU as follows,

"The AU is a political entity combining politics, economy, military affairs and culture as one, ultimately aimed at unifying currency and achieving free transit of personnel and goods".

The objectives and goals are clear, but are they achievable in a continent that only attracts about 1% to 5% of world FDI? This is true, but enough optimism is there for the AU to work, and it must work. The AU does not stand in isolation; it is flanked the NEPAD.

As Mbeki\(^{72}\) states,

The AU is the primary organisation that unites the people of Africa. NEPAD is its socio-economic development programme. Accordingly, NEPAD is not an organisation separate from, and independent of, the AU. It has been authorised by the AU in all its elements, including the Peer Review Mechanism.

This is why we should simultaneously look at the other two processes, namely NEPAD and APRM as vehicles for attracting FDI, with specific reference to multinational corporations and private investors. Africa’s need for FDI has been clearly illustrated as well as the factors that would help bring about change on this issue.

### 3.2 New Partnership for Africa’s Development and Foreign Direct Investment

It is well known around the world that Africa has now devised a new recovery plan. This plan is known as the New Partnership for Africa’s Development (NEPAD). NEPAD is the birth of two plans that went before it, namely the New African Initiative (NAI) and the Omega Plan. The NEPAD document states that, “The new partnership for Africa’s Development is a pledge by African leaders, based on a common union and a firm and shared conviction that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development and, at the same time, to participate actively in the world economy and body

\(^{71}\) - 2003, 1

\(^{72}\) - 2003, 45
politic. The programme is anchored on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world” 73.

Kudjoe 74 believes that,

The aims and objectives of NEPAD are to eradicate poverty in Africa and to place African countries, both individually and collectively, on the path towards sustainable growth and development, so as to halt the marginalisation of Africa in the globalisation process.

The NEPAD policy framework consists of eight chapters: Chapters 1 and 8 are respectively an introduction and a conclusion. Chapters 1 and 2 explore Africa in today’s world, chapter 3 looks at the role of the African leaders, chapter 4 is an appeal to the African people, chapter 5 relates to the strategy for sustainable development, chapter 6 is on the new Global Partnership, and chapter 7 focuses on the implementation process of NEPAD. The World Bank Development Committee 75 claims,

We are committed to the implementation of these strategies and partnerships, such as NEPAD, as part of the scaling up of activities that is necessary for implementing the Monetary Consensus and to meet the Millennium Development Goals.

NEPAD is an initiative to create a new Africa, one that is free of poverty, wars, and economic instability, and to give Africans back the pride and dignity that they so richly deserve. At present this is a working draft to cope with the challenges that are placed before it by globalisation and trade liberalisation. The NEPAD process is not fully functional yet, but certain key areas within the document have been operational. The areas of importance are wide and this suggests that the NEPAD process will be phased in gradually.

73 - NEPAD: Section 1
74 - 2002, 46
75 - 2002, 1
3.2.1 Economic impact of NEPAD

The NEPAD process is driven towards economic development within Africa. The NEPAD document has also outlined the achievements of the plan. The NEPAD document states that the world has entered the new millennium in the midst of an economic revolution. This revolution could provide both the context and the means for Africa's rejuvenation. While globalisation has increased the cost of Africa's ability to compete, it holds the advantages of an effectively managed integration to present the best prospects for future economic prosperity and poverty reduction.\(^76\).

It is clear that some African leaders have accepted their responsibility to Africa and its problems. African interests, coupled with national interests, are at the forefront of the new African revolution. Mbeki\(^77\) recognises the uniqueness of African problems when he says,

> The New Partnership is unique in African history in that African leaders have pledged to co-operate and be accountable to one another and to their people in terms of the development strategy, plans and delivery of programmes. For the first time perhaps, an implementation strategy exists led by the leaders and not simply delegated to officials, so that genuine progress can be made.

This is a very bold and profound comment to make in the context of Africa. Clearly, there is a need to accelerate the goals and objectives set out in the NEPAD document. According to Pretorius et al.\(^78\),

> NEPAD is based on a three-pronged strategy creating the preconditions for development, addressing priority issues and mobilising resources. Regional co-operation and integration in Africa is also a precondition in that it will create the opportunity for increased trade and investment as well as improve international competitiveness through the pooling of African Resources.

In obtaining these goals, the NEPAD document indicates that, to achieve the estimated 7% annual growth rate needed to meet the International Development Goals (IDGs) –

\(^{76}\) NEPAD: Section 1  
\(^{77}\) 2002, 6  
\(^{78}\) 2002, 6
particularly the goal of reducing by half the proportion of Africans living in poverty by the year 2015, Africa needs to fill an annual resource gap of 12% of its Gross Domestic Product (GDP), that is US$64 billion. This will require increased domestic savings, as well as improvements in the public revenue collection systems. However, the bulk of the needed resources will have to be obtained from outside the continent. It would be foolish of us to suggest that these targets are not achievable.

The NEPAD document states that a significant proportion of their domestic savings is lost to African countries as a result of capital flight. This situation can only be reversed if African economies become attractive locations for residents to hold their wealth. Therefore, there is also an urgent need to create conditions conducive to private sector investments by both domestic and foreign investors. At closer inspection, the NEPAD document says that it is necessary to increase private capital flows to Africa as an essential component of a sustainable long-term approach to filling the resource gap.

The NEPAD document also attempts to highlight key areas of importance. These priorities are: to address investor’s perception of Africa as a ‘high-risk’ continent, especially with regard to security of property rights, regulatory frameworks and markets; the implementation of a Public-Private Partnership (PPP) capacity building programme through the African Development Bank (ADB) and other regional development institutions; to assist national and sub-national governments in structuring and regulating transactions in the provision of infrastructural and social services; and to promote the deepening of financial markets within countries, as well as cross-border harmonisation and integration, via the Financial Market Integration Task Force, which will focus on the legislative and regulatory environment for the financial system.

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79 - NEPAD: Section 144  
80 - NEPAD: Section 145  
81 - NEPAD: Section 150  
82 - NEPAD: Section 51 (c)
3.2.2 Critique against the NEPAD document

The NEPAD process has also not been without its fair share of criticism. One of the fiercest critics of the NEPAD process is Vale\(^{83}\), who indicates that,

> It is very difficult for people to grapple with big ideas in an age of big ideas. Since the end of the Cold War, there has been proliferation of templates to organise the world, for example, globalisation. The ‘new world order’ was once used as an organising principle to counter the East West view. NEPAD assumes that the idea of states in Africa is completely settled, that there are non-contested identities for analysis and the operation of politics based on national sovereignty.

The viewpoint is somewhat overstated, but further critique relates to the structure of the document, one critic being Tandon\(^{84}\):

> Having perused the document in its totality it is difficult to escape the conclusion that NEPAD is really two documents in one. There is very little either logical or ontological link between the two parts. While the diagnostic section is partly reflective on a generally radical epistemology, the prescriptive part is almost entirely from the textbook neo-liberal orthodoxy.

Africa’s position is highlighted by what Touray\(^{85}\) says with regards to structural adjustment programs:

> After decades of Structural Adjustment Programs in the developing world, what is the development situation of its member countries? For Africa its debt has increased from $80 billion in 1993 to over $300 billion in the late 1990’s. For the developing world it was about $1,341 billion at the end of 1990’s. For NEPAD to be sure to be saved from the web of western nations it is better to rely on our own resources. This must start with individual nations, first then extended to NEPAD.

The problem referred to above is one where Africa was under pressure to introduce structural adjustment programs to their respective economies by the International Monetary Fund (IMF). The debate around the NEPAD process and FDI is still raging, but our focus is directed at how to attract FDI. It is fair to critique any process, but the

\(^{83}\) - 2002, 1
\(^{84}\) - 2002, 2
\(^{85}\) - 2002, 3-4
NEPAD process has not been tested. NEPAD is in its infancy stage and we need to see it grow, whether it be good or bad.

3.2.3 The Impact of NEPAD on FDI.

The question is how has NEPAD faired thus far? Mbeki \(^{86}\) claimed, “NEPAD would use strong political leadership to speed up regulatory reforms and also negotiations between African countries”. Dlamini \(^{87}\) sees the NEPAD process as dual reward for Africa, when he says, “NEPAD, in the final analysis, can and must benefit donors and recipients alike. That is partly why Britain, Japan, Canada, the United States and the European Union are rallying behind NEPAD which, inter alia, seeks to provide new solutions to the continent’s old problems”.

In an Africa News Service \(^{98}\) article it is suggested that,

In order to achieve African economic success, there must be a symbolic process in which investors are willing to invest, while recipients are prepared to create the enabling environment for investment. Many African countries are taking steps in order to achieve the good governance necessary for sustainable levels of economic growth and development.

Some examples of big business views on NEPAD follow. In a World Economic Forum \(^{89}\) article, Haiko Alfeld states, “The window of opportunity presented by the NEPAD is matched by an unprecedented global commitment to fight against poverty and for equality. There has never been a better time for Africa to restate its case, louder than ever, that it is ready for change and open for business”.

\(^{86}\) - 2002, 1
\(^{87}\) - 2002, 1
\(^{98}\) - 2002, 1
\(^{89}\) - 2002, 1
Ayisi Matatiani, Chief Executive Officer of Gallum Capital Partners in Kenya,\(^{90}\) says that,

"Many businesses wanted to embrace NEPAD but there is not yet a good interconnection between governments and businesses on the issue. The media need to help sell the NEPAD programme – this is currently only happening in South Africa and Nigeria. He pointed to a lack of funding, and to the misconception that the NEPAD would bring US$64 billion into Africa in immediate financial rewards".

As mentioned above, investment is a key focus, and the fact that big business in the different parts of the continent is seeing the advantages of the NEPAD process at work is encouraging. The NEPAD process does not go without its fair share of criticism, but for Africa as a recovery plan it is important that the process continues. It is important to note that NEPAD, propose a more collaborative approach in Africa.

The proposed method of collaboration is economic integration. The NEPAD process sees economic integration as the method or should we say the missing ingredient that Africa was lacking for the past century. When we refer to economic integration, we are also referring to regional integration. Regionalism is one of the methods employed by NEPAD to further economic integration. As we will see later, NEPAD sees regionalism as an important facet for the success of the plan.

### 3.2.4 Collaboration in Africa

Africa is facing a multitude of issues, for example, alleviation poverty, corruption, drug trafficking, unemployment, appropriation of intellectual property and many more. Addressing the lack of Foreign Direct Investment (FDI) and achieving or dealing with the issues raised above, Africa will have to work at a pace faster than ever before. The world has become a ‘micro-macro’ globalisation industry, this term is related to the impact globalisation and trade liberalisation, have on the world’s economy. Africa is still struggling to find its feet when dealing with globalisation and trade liberalisation.

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\(^{90}\) - 2003, 1

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Kodo\textsuperscript{91} describes this as follows:

Before African Independence, the continent was integrated into the economic system of the colonial powers and enjoyed a good economic and social situation with regard to the needs of the people. Furthermore, African economies remained bound to the economic framework of the ex-colonial powers for which they continued to be a source of raw materials and markets for manufactured goods.

This is true, because Africa has yet to find a solution to the difficulties of turning raw materials into finished goods. Growth is determined by a number of factors; one such factor is exports and imports. Africa has always been seen as an exporter, hence its lack of growth. The lack of exports has cost the African continent dearly. A clearer understanding of the problem will be highlighted in this chapter below.

Africa was never able to advance its course when it comes to the economic regime of the world. The position had not improved over the past decade and the continent is struggling to make an impact on the world economy and attracting FDI. What then is hindering Africa’s progress in relation to growth? As Abedeji\textsuperscript{92} states:

The traditional ‘blunt instruments’ of the International Monetary Fund (IMF), recommended macroeconomic stabilisation policy money and credit restraint, devaluations, and liberalisation, all pursued within a fairly short space of time, cannot be expected to be very effective in the typical African Country.

The situation in Africa has deteriorated to such proportions that many countries are now bankrupt. The position is illuminated by, Abedeji\textsuperscript{93}:

“Since 1978 a number of African countries have worked out structural adjustment and stabilisation programmes with the IMF and the World Bank (WB) to redress the deterioration of their external payments position. A major limitation of these adjustment programmes has been mixed, as they have not been addressed. The medium or long-term nature of the structural problem of African economies continues”.

\textsuperscript{91} - 1996, 250
\textsuperscript{92} - 1999, 278
\textsuperscript{93} - 1996, 284
The problems are furthermore amplified by the food crisis in the Southern African region in 2002. The question is, will Africa ever shed its inherent tag of a developing continent? Many authors have addressed these issues over the last two centuries. We believe that to have a collaborative approach within Africa is very important for the future growth of this continent. Africa with its long history of third-world status should change. President Joaquin Chissanno\textsuperscript{94} says that,

SADC’s main emphasis in the new millennium is to foster peace, stability and greater co-operation amongst the countries in the region and to steer member countries towards a stronger economic community. However, we view with concern that economic growth is insufficient to reduce poverty in the community. For that purpose a growth rate of at least 6% is required in the SADC region. Trade liberalisation cannot be viewed in isolation. It has to be related to investment flow both within the region and from outside the region. Regional integration will prepare us for global competition.

There are plenty of opportunities to increase intra SADC trade and to invest in the region.

The above suggestion is an ideal platform for regional economic integration in Africa. The issue will be addressed below. Forging partnership is and should be the cornerstone of Africa’s economic future. The lack of partnership is a huge problem currently.

3.2.5 Economic Integration

One of the problems in Africa is economic integration. Africa will have to forge closer ties as far as economic integration is concerned. It is suggested by the Economic Commission for Africa (ECA)\textsuperscript{95} that, “Economic integration is seen as a key component to Africa meeting its development goals and becoming an effective partner in the global economy”. African countries do not trade internally, but outside of the African continent. Todaro\textsuperscript{96} believes that,

Integration provides the opportunity for industries that have not yet been established as well as for those that have to take advantage of economies of large-scale production made possible by expanded markets. Integration therefore needs to be viewed as a mechanism to encourage a rational division

\textsuperscript{94} - 2000, 1-2
\textsuperscript{95} - 2002, 32
\textsuperscript{96} - 2000, 523
of labour among a group of countries, each of which is too small to benefit from such a division by itself.

It has now become a reality within Africa that closer co-operation with regards to trade, technology and investment will boost the outlook of the continent. The continent is very fragmented in this way of its dealing with complex issues such as trade, technology and investment. Todaro\textsuperscript{97} says,\footnote{\textsuperscript{97} - 2000, 523}

Prospects for the future are much more positive. As trade becomes increasingly globalised, even the largest industrialised nations now realise that they cannot go it alone. In Europe, a single economic market became a reality at the end of 1992, as all internal trade barriers were removed. Now the European Union has a single currency, requiring close monetary co-ordination and in effect creating the largest economic entity in the world. The size of the European Union (EU) compared to that of Africa is vast. The EU has 15 member states, whereby the AU has 53 member states. It has become quite evident as to why the EU is doing so well.

Their main focus is Union economic integration, which has gone a long way in creating the size of the market. EU member states are compelled to trade with their own member states, before they trade outside of the EU. The AU was built on the same model as that of the EU. To derive the same benefits as those of the EU, the AU has to follow the same path as the EU with regards to economic integration.

Accordingly, countries should co-operate with each other and the need for economic integration is enhanced, because of globalisation and trade liberalisation. These phrases create a problem within the African context, even though many believe that this is a positive development. The problem is created by the size of the African economy in relation to that of its trading partners. The developed nations have made great strides in the fields of trade, technology and investment and with the effect that the African continent was left behind. This may be so, but if the main aim is to impart knowledge and the transfer of skills and technology the African continent has to forge closer ties with the developed nations. However, the path of economic integration will work in
Africa. Africa has now established an AU and the NEPAD to create an environment for economic integration to flourish.

### 3.3 Types of Regional Organisations

The World Trade Organisation (WTO)\(^ {98}\) identifies for example the following Regional Organisation:

> "The European Union, the North American Free Trade Agreement, the Association of Southeast Asian Nations, and the South Asian Association for Regional Co-operation, the Common Market of the South (Mercosur), and the Australia – New Zealand Closer Economic Relations agreement".

Countries around the world have opted for different models to suit their economies. These different models are free-trade areas, regional organisations and custom unions.

Dam\(^ {99}\), (Article XXIV of GATT) describes a custom’s union as follows:

> A Customs Union shall be understood to mean the substitutions of a single customs territory for two or more customs territories, so that duties\(^ {100}\) and other restrictive regulations of commerce (except where necessary, those permitted under Article XI, XII, XIII, XV and XX) are eliminated with respect to substantially all the trade in products originated in such territories\(^ {101}\) and subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the trade of territories not included in the union\(^ {102}\).

A free trade area shall be understood to mean a group of two or more custom’s territories in which the duties and other restrictive regulations of commerce (except where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated

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\(^{98}\) - 2001, 1  
\(^{99}\) - Gatt: Section 8  
\(^{100}\) - Gatt : Section 8 (b)  
\(^{101}\) - Gatt: Section 8 (a) (1)  
\(^{102}\) - Gatt : Section 8 (a) (2)
and substantially all the trade between the constituent territories in products in such territories are eliminated \(^{103}\).

These trading blocks have developed a strong sense of unity amongst themselves so that they can position themselves to deal with the impact of globalisation and trade liberalisation. The creation of free trade areas and custom unions has led to the abolishment of tariffs between the member states that enter into such agreements. The effect of this is that smaller economies benefit from these types of agreements. The problem with these types of agreements is that tariffs are not totally abolished: they are still in place for those countries that do not form part of the agreement.

Kiely et al\(^{104}\) say, “The European Union (EU) and the North American Free Trade Agreement (NAFTA), among others, could be said to represent an important step up the ladder from national to regional and eventually global free market economy”.

Let us deal with NAFTA, which consists of Canada, Mexico and the United States of America, as an example of a free-trade area. Trebilcock\(^ {105}\) observes,

Both the National Treatment and Most Favoured Nation principles are adopted. Performance requirements of foreign investors are generally prohibited. A NAFTA member may not expropriate investments of NAFTA investor except for a public purpose and on payment of compensation reflecting fair market value. Canada has reserved the right to continue reviewing foreign investments above a $150 million threshold as provided in FTA.

We will now focus our attention on regional organisations in Africa. We will limit our discussion to the Southern African Development Community and concentrate on its functionality. Regional organisations have been around for decades on the African continent and the manner in which it has been operating is questionable. There will

\(^{103}\) - Gatt: Section 8 (b)  
\(^{104}\) - 1998, 51  
\(^{105}\) - 1999, 42
surely be arguments on both sides, but what is looked at, is the need for these regional organisations to become more effective.

3.3.1 African Regionalism

Africans, along with the rest of the world have seen regionalism as one of the core ingredients to economic integration. A number of regional organisations were established without having the desired effects of economic integration and economic prosperity. The importance of regionalism is described by NEPAD as follows: most African countries are small, both in terms of population and per capita incomes; Owing to limited markets, they do not offer attractive returns to potential investors, while progress is diversifying production and export is retarded. This limits investments in essential infrastructure that depends on economies of scale for viability.¹⁰⁶

These economic conditions points to the need for African countries to pool their resources and enhance regional development and economic integration on the continent, in order to improve international competitiveness. The five sub-regional economic groupings of the continent must therefore be strengthened¹⁰⁷. To mention some African regional organisations: the Arab Maghreb Union (AMU), Common Market for Eastern and Southern Africa (COMESA), Southern African Customs Union (SACU), Economic Community of Central Africa States (ECCAS) and the Economic Community of West African States (ECOWAS).

To use the Southern African Development Community (SADC) as an example, SADC is a custom’s union with 14 members. In contrast to NAFTA, SADC’s articles are much broader. There are no concrete rules of law governing the community. The position in

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¹⁰⁶ - NEPAD: Section 90
¹⁰⁷ - NEPAD: Section 91
SADC is that member states are not intrusted with the aims and objectives of the community. SADC advocates will argue that the community is operating smoothly, but that is not true because the community has not shown its worth yet. Ramsamy\textsuperscript{108} maintains that,

Enhancing the volume and productivity of investment is key in bringing about accelerated economic growth. The goal of increasing investments could be pursued to good effect if systematic support is provided to the private sector so it can mobilise resources and become the main engine of economic growth.

In creating so many regional organisations, the position is that Africa has overindulged in forming regional organisations. These organisations have become ‘talk shops’ and are not effective. Abedeji\textsuperscript{109} describes the situation as follows:

Compared to other developing regions, the growth performance of the African region has not been favourable. Africa is particularly susceptible to external shocks and, of all regions, its economies respond fairly slowly to world economic recovery. The impact of the drought, which ravaged the continent during this period, was accentuated by the collapse in commodity prices and falling external demand.

Abedeji’s position could be deemed to be outdated; it is clear that Africa has not moved forward quickly enough to deal with pressures of globalisation and trade liberalisation. This then re-enforces the argument that Africa’s regional organisations have not been effective. There might be arguments to show success, but the harsh realities are that there is nothing to show in relation to MNC and attracting FDI on the side of the African continent. Regional organisations have become powerful entities in our world. They are almost unavoidable, but Africa should have a more focussed approach to regionalism.

\textbf{3.3.2 Agreements / Partnerships}

The emphasis on agreements and partnerships are crucial to our research. Africans had entered into agreements and partnerships, but the continent had not fully benefited from

\textsuperscript{108} - 2000, 7 : Deputy Executive Secretary, SADC
\textsuperscript{109} - 1996, 257
these agreements and partnerships. It would not have been a problem if Africa were on equal footing in relation to Foreign Direct Investment (FDI) with industrial nations.

It has become the cornerstone of Africa’s NEPAD initiative that the various partnerships between Africa and the industrialised countries on the one hand, and multilateral institutions on the other, should be nurtured and encouraged. Some of the partnerships with industrialised countries include, among others, the UN’s New Agenda for the Development of Africa in the 1990’s; the Africa-Europe Summit’s Cairo Plan of Action; the World Bank-led Strategic Partnership with Africa; the IMF-led PRSPS; the Japanese-led Tokyo Agenda for Action; the AGOA of the United States; and the ECA-led Global Compact with Africa. The objectives are to rationalise these partnerships and to ensure that real benefits flow from them.\(^{110}\)

Regarding partnerships with MNC, thus far, only a handful of African countries have enjoyed the benefits of entering into agreements or partnership with multinational corporations. Some of these African countries are: South Africa, Angola, Nigeria and Algeria. Algeria, Nigeria and Angola have attracted FDI from the huge oil companies. These countries have large natural resources of crude oil. The Shell Corporation has a stake in the Nigerian crude oil industry, and British Petroleum (BP) has a huge share in the Angolan crude oil industry. The governments of the respective countries have not looked elsewhere or, should we say, concentrated on a different source of income.

These partnerships are reliant upon mineral and fuel resources, but the African population is largely dependent on agricultural products. This industry has not shown any growth; this could be attributed to droughts and the subsidies that the developed countries give to their farmers. Privatisation has also been slow, because governments are mainly reliant on the revenue of the natural resource. This situation is clearly a problem, because a country should not only be reliant on natural resources, therefore the need to look elsewhere is important and FDI would be the ideal resource.

\(^{110}\) - NEPAD: Section 184
Trebilcock et al\textsuperscript{111} give us an overview of the three countries that practice agricultural discrimination against developing countries. They then go on to say:

What is certainly true is that the Common Agricultural Policy (CAP) went from a programme that affected trade by keeping foreign producers out of the EU market to one that, made it increasingly difficult for foreign producers to sell their agricultural products in third country market. The United States now pays to farmers the difference between the price they can get on the market and a target price based on a formula that reflects the revenue farmers need to break even. Japan’s domestic market for agricultural products is one of the most protected in the world. This would suggest that African farmers do not stand a chance of entering the markets of the developed world without any form of an agreement or partnership. Agreements between African and developed nations were concluded, but most of them were skewed, because the African market was too small to compete with that of the developed world.

There are three agreements of note: the Trade, Development and Co-operation Agreement (TDCA) between the European Union (EU) and South Africa, African Growth and Opportunity Act between Africa and the United States and the Tokyo International Conference on African Development (TICAD). We will focus on these two agreements in depth, as example of addressing the problems of FDI.

3.3.2.1 European Union and South Africa (EUSA)

The TDCA agreement was merely a cementing of the trade relations between South Africa and the EU. As noted in the TDCA document\textsuperscript{112}, “Trade between the EU and SA is estimated at about 18 billion euros a year. The EU is SA’s main trading and investment partner, accounting for over 40% of its imports, nearly 40% of its imports and over 70% of foreign direct investment”.

\textsuperscript{111} - 1999, 255-256
\textsuperscript{112} - 1999, 7
South Africa (SA) and the European Union (EU) entered into an agreement and this agreement is known as the Trade, Development and Co-operation Agreement (TDCA). Nielson, the EU Commissioner for development, describes the agreement as follows:

"In March 1999, after 4 years of long and sometimes difficult discussions, the EU and South Africa concluded negotiations on an historic Trade and Partnership Agreement to boost bilateral trade, development and political co-operation for the 21st century".\textsuperscript{113}

This agreement covers a wide spectrum of fields, such as a provision for a free-trade area; financial assistance and development; trade-related issues; economic co-operation; social and cultural co-operation and political dialogue. This agreement can be described as the most ambitious and successful ever negotiated between the parties other than in a developed country. South African chief negotiator, Elias Links\textsuperscript{114}, argues as follows regarding the TDCA agreement:

"Securing a partnership with the EU, which is more defined and deliberate, was an important part of our motivation for this agreement. Obtaining market access was certainly important for us in both industrial and agricultural sectors and we have done well in these areas".

The South African market, compared to that of the EU, is quite vast in size. If we accept that the agreement is there to benefit both parties, it would help if we can make sense of the ‘new Africa’ vision. This agreement was concluded before Africa embarked on its new road ahead for Africa’s reconstruction. It has been argued that a bilateral agreement is purely of national interest. South Africa’s first priority is to its citizens, then to its neighbours, and then to Africa at large. This particular argument is one that is followed by many African states.

We believe the order of priority should be: a) Africa b) region, and c) national interest. This would instil a culture of Africanism, and the new processes embarked upon will surely succeed. There is no argument against the TDCA, but future bilateral agreements must be looked at. The TDCA hold lots of challenges for both contracting parties, as is

\textsuperscript{113} 1999, 3
\textsuperscript{114} 1999, 13

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stated in the agreement\textsuperscript{115}: “EU: full liberalisation of 95\% of imports from SA by end of transitional period of 10 years. SA: full liberalisation of 86\% of imports from EU by end of transitional period of 12 years”. The TDCA agreement has proved to be a great success. Both parties are seeing the benefits of the agreement. Wray\textsuperscript{116} says in this regard, “In 2000, the first year of the free trade agreement, South African exports shot up 35\%. EU exports to South Africa also grew over the period”.

The challenge for South Africa is to sustain the TDCA agreement, against the backdrop of all the continent’s problems. The European Commission\textsuperscript{117}, proposed that,

The European Community Investment Partners, ECIP, is a global financial instrument made available to South Africa since 1994. Since the inclusion of South Africa into the ECIP, the Commission has approved 58 applications for a total amount of Euro 9.6 million. 27 of the 58 actions financed have led to the creation of 19 EU-local private Joint Ventures in SA involving Euro 67.4 million and the creation of over 1000 jobs.

There is no argument against the fact that the TDCA is one agreement that holds economic and social growth development high on its agenda. There are clearly no losers here but, with closer inspection, it would be difficult to ignore the fact that South Africa is a member of SADC. An agreement of this magnitude should have been with the SADC, rather than one individual country. The benefits derived from this agreement are centered on the success of one country. We believe that this should be opened to all other members of SADC and the agreement should be used as a blueprint for future agreements into which African regional organisations are going to enter into.

3.3.2.2 African Growth and Opportunity Act (AGOA)

The African Growth and Opportunity Act (AGOA) can be described as one of the most significant partnership agreements entered into between the United States (US) and Sub-Saharan African states. The significance is that the agreement or partnership is not just

\textsuperscript{115} - 1999, 7
\textsuperscript{116} - 2002, 5
\textsuperscript{117} - 2000 – 2002, 16

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an agreement on paper; it is an Act passed by the US legislature. This is not just tangible, but it is real and the fact that for the first time ever the US is now obligated to perform on legislation it passed on Africa.

AGOA has gone through many changes over the past three years. In 2000, AGOA was launched; since then the AGOA II was launched with its amendments, and now there is AGOA III. The heartening fact is that the NEPAD document has seen the need to include AGOA into its broad agenda, as mentioned in the NEPAD document under section 184. The opening remarks of the AGOA Act\textsuperscript{118} state that it aims: “To authorise a new trade and investment policy for Sub-Saharan Africa, expand track benefits to the countries in the Caribbean Basin, renew the generalised system of preferences and re-authorise the trade adjustment assistance programs”.

The President of Uganda, Yoweri K. Museveni\textsuperscript{119}, “Noted what the effects AGOA has had by offering duty-free market access for African goods to those countries that work toward fiscal reform. Before 2000, African countries battled to enter the largest market on the continent. There was always some or other problem, ranging from policy directives to product quality”. We do acknowledge the fact that the EU is the largest market in the world now, surpassing even the US market. Bloxham\textsuperscript{120} says,

“As the first-ever trade pact with the continent, AGOA seeks to spur African nations’ export sectors by providing duty- and quota-free entry of African goods into the U.S. market. It is intended to prompt African governments to make their countries more attractive to U.S. investments”.

Museveni\textsuperscript{121}, one of Africa’s most respected leaders, says the following with regards to AGOA:

I have always been an ardent supporter of the AGOA. Enacted in 2000, and improved last year, this historic initiative lifted duties and quotas from essentially all Sub-Saharan Africa’s exports to the

\textsuperscript{118} - 2001, 1
\textsuperscript{119} - 2003, 1
\textsuperscript{120} - 2003, 3
\textsuperscript{121} - 2003, 3
US. With AGOA, America said it was time for the rich nations to end the hypocrisy of keeping us dependent on their aid, while denying us access to their markets.

The creation of AGOA has increased the optimism for Africa’s future success. It would almost be impossible to predict the road ahead.

Fisher-Thompson\(^ {122}\) reports that:

> “Frazer told 500 officials, businesspersons and journalists gathered at the Mayflower Hotel to inaugurate the ‘AGOA III Action Committee’, while celebrating the third anniversary of the Act that AGOA has become the centrepiece of our economic policy towards Africa”.

### 3.3.2.2.1 Opportunities under AGOA

We will focus our attention on the AGOA Act in more detail, and the opportunities. AGOA proposes an Overseas Private Investment Corporation Initiatives to oversee future investments between the parties. To facilitate the various initiatives, the following processes have been suggested:

(i) Initiation of Funds. It is the sense of the Congress that the Overseas Private Investment Corporation should exercise the authority it has to initiate an equity fund or equity funds in support of projects in the countries in Sub-Saharan Africa\(^ {123}\). A certain structure and certain types of funds are proposed\(^ {124}\). Each structure should be managed as a partnership and managed by professional private-sector fund managers\(^ {125}\), and every fund should be capitalised with a combination of private equity capital, which is not guaranteed by the Corporation\(^ {126}\).

\(^{122}\) - 2003, I

\(^{123}\) - AGOA: Section 123 (a)

\(^{124}\) - AGOA: Section 123 (b)

\(^{125}\) - AGOA: Section 123 (b)

\(^{126}\) - AGOA: Section 123 (b) (2)
(ii) One or more of the funds, with combined assets of up to $500,000,000 should be used in support of infrastructure projects\textsuperscript{127}, to provide support in particular to women entrepreneurs as well as to expand opportunities for women and maximise employment opportunities for poor individuals\textsuperscript{128}.

(iii) Export-Import Bank initiatives are proposed by the Congress and it is suggested that the Board of Directors of the Bank shall continue to take comprehensive measures, consistent with the credit standards otherwise required by law, to promote the expansion of the Bank’s financial commitments\textsuperscript{129}.

The creation of the three institutions mentioned above underpins the commitment the US has to the development of Africa. The creation of an Export-Import Bank is significant insofar as the relationship between multinational corporations and private investors goes. There is no excuse not to do business in Africa, in particular in Sub-Saharan Africa. The countries benefiting from AGOA should use this as a platform to resurrect their own national economies. AGOA is also an impetus for the AU and NEPAD.

One of the most significant aspects of AGOA is the fact that it is incorporated into existing legislation. The fact that AGOA is a new Act in itself creates challenges, and many complex issues would derive from it. Somehow, this has been avoided by the US. For example, Section 233 of the Foreign Assistance Act of 1961 was amended, thus becoming section 233 (e) of the said Act, by adding at the end the following\textsuperscript{130}:

"Investment Advisory Council – The board shall take prompt measures to increase loan, guarantee, insurance programs and financial commitments of the Corporation in Sub-Saharan Africa".

\textsuperscript{127} AGOA: Section 123 (b) (3)
\textsuperscript{128} AGOA: Section 123 (b) (4)
\textsuperscript{129} AGOA: Section 123 (b) (9)
\textsuperscript{130} AGOA: Section 123 (c) (1)
The comforting thought is to know that the US has relaxed its policies on Africa. This is particularly directed at the economic policy. Arguments for the US Agenda are that economic and trade conditions around the world are changing. World markets are getting smaller and, because the African markets are so underdeveloped, the US has come to realise that it must increase its market share in Africa. Bloxham\textsuperscript{131} says the following on AGOA:

In what he termed his “most radical proposal” to enhance AGOA, Kemp advocated that all profits on all investment on the continent of Africa be repatriated tax free for 20 years to encourage investment in Africa. He also suggested, as part of an AGOA II Bill, that the United States enter into bilateral free trade agreements with every single country in Africa that is willing to do so.

There is no clear proof that such free trade agreements were indeed concluded with every single country in Africa. It must be stated that the mere fact that this position was taken by the United States government, is in itself a radical shift in economic policy towards Africa. This could be true, but what is of great importance is the fact that Africa is being given a chance to prove to the world that it can compete against the developed world. With the advent of AGOA, trade and investment between the US and Sub-Saharan states has improved. Feldman\textsuperscript{132} says:

If the usual stock transaction is excluded, FDI flows to Sub-Saharan Africa were little changed from their historic low levels, despite increased investment, activity in a number of African countries due to AGOA trade preferences. The United States was the leading provider of FDI in the period 1996 – 2000, with 5.8% above the position at year end 2000, as a surge of petroleum investments in Equatorial Guinea and a smaller increase in Nigeria offset declines in South Africa and Angola.

We would like to make it clear that AGOA is not fully operative as yet. For now, there are only a few products that make it into the US market; textiles and some agricultural products, to mention but a few.

\textsuperscript{131} - 2003, 1
\textsuperscript{132} - 2003, 15
3.3.2.3 Tokyo International Conference on African Development

African leaders have also expressed their interest in forging relations with countries of the South. This point is captured in the NEPAD document\textsuperscript{133}, which states that, “Africa is committed to the development and strengthening of South-South partnership”. This idea has become a reality. Africa entered into a partnership agreement with Asian nations in 1993. This agreement is known as the Tokyo International Conference on African Development (TICAD). The TICAD document\textsuperscript{134} reads, “We, the participants of the Tokyo International Conference on African Development (TICAD), consisting of African countries and Africa’s development partners, declare with one voice our continued dedication of Africa towards a new era of prosperity”.

TICAD has become an important factor in Africa’s economic growth or failure. Clearly, emphasis is placed on building partnerships across the world. To this extent, the TICAD agenda has been extended to TICAD II, which was adopted in 2000. TICAD II\textsuperscript{135} states that,

Ownership and partnership are the underlying principles of the agenda for action. These principles are embodied in the Cairo Agenda for Action for the economic and social development of Africa. They have also been endorsed in the 1996 strategy of the Development Assistance Committee of the OECD for “Shaping the 21\textsuperscript{st} Century: The contribution of Development Co-operation”, TICAD-II provides, therefore, an opportunity to reflect on the implementation in Africa of this strategy, concentrating efforts on achieving specific and measurable goals based on African priorities, as endorsed in various international fora.

3.3.3 Inter African Investments: Forging Closer Ties between African States

\textsuperscript{133} - NEPAD: Section 182
\textsuperscript{134} - 1993, 1
\textsuperscript{135} - TICAD II: Section 8

52
Inter-African Investments is closely related to the availability of FDI. The encouraging thought is the fact that African leaders have acknowledged these requirements, by placing them in the NEPAD document: To work with African leaders to encourage investment in Africa by the private sector in developed countries, including the establishment of insurance schemes and financial instruments that will help lower risk premiums on investment in Africa; to ensure that the World Bank and other multilateral development finance institutions participate as investors in the key economic infrastructure projects, in order to facilitate and secure private sector participation\textsuperscript{136}.

The NEPAD document has identified many energy, transport, telecommunication and water projects that are crucial to Africa’s integrated development. It is the view of the initiating Presidents that, unless the issue of infrastructural development is addressed on a planned basis that is linked to regionally integrated development, the renewal process of the continent will not take off\textsuperscript{137}.

In terms of the TICAD II document, and the adoption in 1980 of the Lagos Plan of Action, African countries have emphasised regional co-operation and integration as important tools for pursuing their development. In an increasingly integrated world, sub-regional and regional groupings provide higher visibility to global investors, promote cross-border trade and investment, and reduce production and marketing costs\textsuperscript{138}. The effects of regional integration can be far reaching. It is further suggested by the African Economic Community (AEC)\textsuperscript{139} that, “Through co-operation and integration, regional planning frameworks and trading blocks make more efficient use of the collective capital labour and natural resources of Member States that otherwise would have been prevented from being optimally utilised by individual States”.

\textsuperscript{136} - NEPAD: Section 193
\textsuperscript{137} - NEPAD: Section 194
\textsuperscript{138} - TICAD II: Section 12
\textsuperscript{139} - 1998, 85
There is a clear need for an investment and co-operation strategy within Africa. To mention an example of co-operation and integration, in an Energy Information Administration (EIA) article\textsuperscript{140} the following is stated:

In 2001, the combined GDP for Southern Africa was estimated at $173.8 billion. Total regional exports, including intra-regional exports, were $48.5 billion in 2001. Southern Africa had a $5.3 billion trade surplus in 2001. The region’s major export commodities were energy products (oil and coal) and various minerals including diamonds, gold and copper.

The statistics quoted are not significant, because Africans have not realised the true potential of regional integration. For example, the EIA article states that, “South Africa is the continent’s largest net oil importer”\textsuperscript{141}. If this is true, then where is South Africa importing its oil from? It is surely not Africa. There could be many factors associated with this example, but the truth is that valuable FDI leaves the shores of the continent. Africans, at large, need to decide where they want to do business. It would be beneficial to become motivated and argue for intra-African trade, but Africans are not trading with each other.

Some of the shortcomings regarding intra-African trade is highlighted by Hafliger. He places the need for integration into question; firstly, trade with goods is the economic foundation of all moves toward integration and, in Abidjan, you find canned goods from the EU, but hardly any from Kenya\textsuperscript{142}. Furthermore, the realities of the African position are very real. Let us not dream about a glorious future of honey and gold, but let us rather start thinking of plans to resurrect our national economies. Hafliger points out yet another scenario\textsuperscript{143}:

Prior to important steps in EU integration, economists calculate the anticipated growth spurts in percentages of GDP. Improved competition, synergies, gains in efficiency, niche markets – all phenomena only to be achieved in large market areas – are thus seen to have an impact. But Africa is not sufficiently developed for such effects to take hold.

\textsuperscript{140} - 2002, 2
\textsuperscript{141} - 2002, 3
\textsuperscript{142} - 2002, 1-2
\textsuperscript{143} - 2002, 2
We believe that we will find our answer in regionalism. It has been proven over time that if you operate or work in small groups you are able to achieve a lot. At a WEF Summit, Takawira\textsuperscript{144} said,

Regional institutions like SADAC, COMESA, ECOWAS and, NEPAD offer a unique window which Africa's political and business leaders must grasp, because opportunities don't last forever. We need to start doing simple things and demonstrate quick wings and both speed and scale can be delivered by starting at the regional level.

This point is further argued by Muchanga\textsuperscript{145}, in a NEF article whose view is as follows: "Regional economic zones such as Growth Triangles, Spatul Development Initiatives, Transfrontier Parks and Development corridors are key to this process and offer opportunities to the private sector, which can play a key role". In an Asia-Africa Intelligence Wire article \textsuperscript{146} it is stated that, "South Africa Afri'uhuru Investment Company's plans to set up a multi-million-dollar sunflowers and mango processing plant in Kenya's Rift Valley province have reportedly met a cool reception from the National Reconstruction Ministry, which is under the office of the Vice-President".

This is the type of investment needed to boost the African economy. A further highlight is the fact that Kenya is allowing a South African company to do business in that country. But what is disturbing about this position is that the application is not received with joy. The question is why would this be so? The newly elected government gave its full support to the NEPAD process. It would be sad if this African company loses out to a European or American company. Practices like this would set Africa back if an African company does not receive the go-ahead. It is time that Africans start to realise one single fact: time is against Africa and the longer the continent waits, the harder it will be to achieve the eradication of poverty, corruption and many other social problems.

\textsuperscript{144} - 2002, 1
\textsuperscript{145} - 2002, 1
\textsuperscript{146} - 2003, 1
3.4 Peer Review

Co-operation between the member states in Africa is an integral part for the success of the continent. Furthermore, African leaders have now pledged their commitment to the new processes, namely AU and NEPAD. They have also opened themselves to be reviewed. This review is known as peer review, which is, in this case, known as the African Peer Review Mechanism (APRM). In an Africa News Service article regarding APRM\textsuperscript{147}, it is argued that,

The most innovative dimension if NEPAD is the creation of the African Peer Review Mechanism. African governments have established their own monitoring mechanism to produce more acceptable ways of ensuring compliance with nationally, regionally and internationally accepted norms of political, economic and corporate governance.

It must also be stated that the APRM is voluntary, and States are not compelled to sign the declaration of intent that is to be reviewed. Mbeki\textsuperscript{148} states that, “We believe it would be fundamentally wrong and contrary to the rule of law to treat the observance of statutory requirements about political governance as voluntary. I mention this in the context of the voluntary nature of accession to the NEPAD APRM system”. The problem with this argument is that states can ‘opt in or opt out’ at any given time. We will discuss this phrase at length under point 3.4.2 below.

3.4.1 Definition of African Peer Review Mechanism (APRM)

APRM finds its origins in the New Partnership for Africa’s Development (NEPAD). The NEPAD document, under the heading Heads of State Implementation Committee, gives us an outline of APRM when it states that the functions of the Implementation Committee will consist of identifying strategic issues that need to be researched, planned and managed at continental level; setting up mechanisms for reviewing progress in the achievement of mutually agreed targets and compliance with mutually agreed standards;

\textsuperscript{147} - 2002, 1
\textsuperscript{148} - 2003, 1
reviewing progress in the implementation of past decisions; and taking appropriate steps to address problems and delays\textsuperscript{149}.

From what has been stated above we can clearly see that APRM is wide and lacks content. In a \textit{Africa News Service} article it is suggested by Mphahlwa\textsuperscript{150} that,

It was the duty of experts there to suggest to the conference ministers that they review the content of NEPAD’s African Peer Review Mechanism (APRM). The APRM, whereby African governments establish their own monitoring system that ensures compliance with internationally accepted governance norms, is considered one of the most innovative aspects of NEPAD.

To establish the monitoring system is contrary to the ethos of NEPAD and the AU. At the World Economic Forum (WEF) the President of Zambia, Levy Mwanawasa\textsuperscript{151}, argued that,

Peer Review should not be about isolation. “When you do that, it is punishment even on those you are trying to protect. You must allow continuing dialogue if a member of state goes astray”. Asked by Sebastian whether the Peer Review system would have teeth, Erwin said African Union meetings in July will attempt to adopt guidelines on how to prevent and handle breakdowns. “The process might take us ahead of other areas of the world”. The mechanism will be outside governments and have a tremendously positive effect. “It will cause governments to perform well that will be its teeth”, he said.

The views of some African leaders are not in line with the new objectives that need to be achieved. There is no concrete view, let alone a suggestion of what is to follow. For the South African Minister of Trade & Industry to suggest that APRM stands outside governments is ludicrous. The AU and NEPAD is built on the premise of good governance, and how is this going to be achieved with the lack of commitment on the side of governments? Regarding the commitment of governments, Kadalie\textsuperscript{153} feels that,

Peers should consist of true democrats, experts of good governance, whose task would be to admit or reject those who fail to subscribe to NEPAD’s “democracy and political governance initiative”. The panel, according to NEPAD will consist of “persons of high moral structure and demonstrated commitment to the ideals of Pan Africanism.

\textsuperscript{149} - NEPAD: Section 201
\textsuperscript{150} - 2002, 1
\textsuperscript{151} - 2002, 2-3
In his weekly newsletter on the African National Congress (ANC) website, ANC Today, the SA President, Thabo Mbeki\textsuperscript{152}, argues that,

Our continent’s determination to ensure that this happens was demonstrated last week by the convening, in Cape Town, of the first meeting of the Panel of Eminent Persons of the African Peer Review Mechanism. Meeting together for the first time to conduct a comprehensive study of their responsibilities, these outstanding African men and women communicated the strong message that they were fully committed to discharge the responsibilities Africa had put on their shoulders. They understood and accepted the seriousness of the challenge they face, to ensure that they help our continent to address the critically important issues of good political, economic and corporate governance.

The Heads of State Implementation Committee appointed the committee, which is charged under NEPAD to review states. Only 14 out of 53 Member states had acceded to the APRM.

### 3.4.2 Legal Framework of African Peer Review Mechanism (APRM)

The APRM is given a legal framework under NEPAD. It has been widely accepted that APRM will focus on internationally accepted norms such as corporate governance, and political and economic compliance with international standards. Machinchick\textsuperscript{153} explains that the,

Mandate of the African Peer Review Mechanism is to “encourage participating states in ensuring that the policies and practices of participating states conform to agreed political, economic and corporate governance values, codes and standards, and achieve mutually agreed objectives in socio-economic development”, thus far only Algeria, Republic of Congo, Ethiopia, Ghana, Kenya, Mozambique, Nigeria, Rwanda, South Africa and Uganda have signed the Memorandum of Understanding (MOU).

The position has improved, with four more countries signing the Memorandum of Understanding (MOU). This would then see the start of the APRM committee reviewing

\textsuperscript{152} - 2002, 1
\textsuperscript{153} - 2003, 1-2
the 14-member states. As stated by Machinchick,\(^{154}\) "The African Peer Review Mechanism will start to be operational once one fifth of the members of the African Union (AU), a parallel political organisation, sign the document". The position thus far is still confusing! As we have learnt thus far, AU and NEPAD run side by side. The AU constitution has been enacted by all 53-member states on the African continent. The question is was NEPAD adopted by all 53-member states?

For the purposes of this research we will proceed with the understanding that the NEPAD document was enacted by all 53-member states. Why take this as a pretext? It is important in the light of accountability. As stated in a Business Source Premier\(^{155}\) article, "The initiative aims at an ambitious annual investment of 64 billion US dollars to achieve a 7% economic growth in Africa for the next 15 years and reduce the number of people living in poverty by half by 2015". It is further suggested, in an Africa News Service article\(^{156}\) by Canadian Trade Minister, Pierre Pettigrew, that peer review is conditional on financial support and that, "The US$6 billion is conditional on all NEPAD elements, of which good governance is part, and peer review is part of that. We recognise that NEPAD is the only initiative on the horizon that offers the hope of attracting significant international engagement in support of Africa". The large sums of money required to kick-start the NEPAD process is supposed to come from the G8 nations. For an investor to invest in any country or project there need to be some guarantees. Thus far, Africa has not done well in securing the money to start with the NEPAD process. What seems to be the problem?

To illustrate this with an example, we will be looking at the Zimbabwean crisis as a point of departure. Africa is not in the same position as that of the EU. Take, for example, the debacle with the Euro: some EU states voted against the accession to the Euro, whereas some accepted it. The fact that only 14 African states acceded to the APRM is a sign of failure. African states do not have the luxury of choosing an, ‘opt in or opt out’

\(^{154}\) - 2003, I
\(^{155}\) - 2003, I
\(^{156}\) - 2002, I
approach. We believe in an all or nothing approach, which is surely the best approach for Africa at this stage.

Many will argue against this view, but Africans must decide what is important or of top priority. Unity is one thing, but the true test is before it; the crisis in Zimbabwe has raised a number of questions relating to APRM. Beinart\textsuperscript{157} argues:

\begin{quote}
But, whatever the reason, Mbeki’s pro-Mugabe policy is making a mockery of his vision for the continent. The European Union, the likely source of much of the NEPAD aid Mbeki hopes to procure, has already implied that it considers Zimbabwe a test of African leader’s seriousness about democracy.
\end{quote}

The approach from African leaders is one of quiet diplomacy or engaging the Zimbabwean government behind closed doors. There is a need to achieve growth faster than we think. Attracting FDI is an optimum achievement, but with no firm position as to how to deal with the Zimbabwean crisis, Africa has created the impression that perhaps it is not to be trusted with ‘our money’. We would like to believe that Africans walk with integrity and honesty, but their actions say something different. FDI is driven by perception, not by one country’s ability to reduce its inflation. Africans must believe in AU, NEPAD and APRM.

We propose the following as a legal framework for the APRM process: respect the rule of law; respect basic human rights; allow free political association; ensure equality of opportunity; guarantee free and fair elections; ensure independence of the media and judiciary; respect the trias politica; hold democratic elections; impose transparent fiscal, budgetary and monetary policies; encourage states to harmonise their laws; and to have open and transparent reports of all member states. Kadalie\textsuperscript{158} suggests similar standards that must be followed in this regard.

\textsuperscript{157} - 2003, 6
\textsuperscript{158} - 2002, 2
In our next chapter we will be concerned with African countries' achievements thus far, with reference to FDI and focussing in particular on two countries: South Africa and Angola. The reason for choosing these countries will be discussed below. We will also summarise what has been stated above, in our conclusion. We will also look at making certain recommendations regarding our research.
CHAPTER 4

4. African Countries

It is important for African countries to attract Foreign Direct Investment (FDI). Africa has always been seen as an investment liability and not an investor safe haven. It is clear that Africa has to take charge of its own future and in relation to FDI, has to indicate that it wants to be independent and self-reliant. As discussed in Chapter 3, the different processes that have been embarked upon over the last five years have now become a reality.

Co-operation in the related fields of trade, investment and technology is almost non-existent in Africa. For example, trade between African states with reference to exports and imports are largely centred around developed countries. This is but a factor as to why Africa’s GDP is so low and why FDI and the luring of MNCs and private investors to its shores cannot be obtained. The slowdown in the world economy is not helping Africa’s development cause. Lai\textsuperscript{159} says the following with regards to African countries progress in attracting FDI and making their national economies more attractive to multinational corporations and private investors:

Since the mid-1980’s, Africa has entered into a new era of relationship with international investors. Nearly all African countries have taken steps to reform and liberalise their economic management system. A majority of African countries have revised or promulgated new investment regulations. For example, Namibia passed the Foreign Investment Act in 1990; Ethiopia has revised its 1992 Investment Code twice and Egypt enacted a new Investment Incentives and Guarantees Law in 1997.

The purpose for the creation of these investment laws is to attract foreign investors and to provide incentives for countries to invest; however, these laws never achieved their objectives. Kuropatwa\textsuperscript{160} advances the following argument in this regard:

FDI in Africa has increased only a little in recent years. Locational decision makers in many firms, and investment advisors of TNCs, have been slow to see the changing economic realities in many

\textsuperscript{159} - 2001, 2
\textsuperscript{160} - 2003, 1
countries of Africa. Political events in a number of African countries have for a long time discouraged foreign direct investors.

There is no hard and fast rule when it comes to investment. Basic principles apply, and the trading environment should be conducive to trade. The fear of investing in Africa can be described as an attempt by the developed world, not to do business in Africa. For example, how does a civil war in Sierra Leone affect the Namibian economy? Typically, this argument would be placed before African leaders when they question the developed world about their commitment to Africa. In a World Economic Forum article\(^\text{161}\) it is argued that,

Institutional frameworks and capacity building have been neglected components of governance development. This could complement the importance attached to proper macro-economic management by sovereign governments, the weighting of which has become even more important recently.

The economic landscape is changing around the world. We now find that a country like China, a communist state, demanded its rightful place in the world trading system and in the World Trade Organisation (WTO). The irony about this situation is that a country with a dismal human right’s record is now the country with the fastest growing economy in the world. China also attracts a huge slice of the FDI allocation. The question is, what must Africa do to be noticed? The World Economic Forum\(^\text{162}\) reports that,

Global FDI has increased four-fold during the 1990’s to a staggering sum of some $850 billion. There has been a steady decline over the past two years. CEO’s are less tolerant of risk in emerging markets than in developed countries and pointed out that 49% have less risk tolerance while 38% maintain their current risk tolerance. Investors perceive Africa as the most risky region in the world returning a 77% risk profile as compared to South-East Asia, which shared a 35% profile. Interestingly though that those who have invested in Africa have met higher profitability targets as compared to that of South-East Asia.

\(^{161}\) - 2001, 1
\(^{162}\) - 2000, 1
Investment risk or higher profitability, as per quote is true; but how does Africa secure a fair share of FDI? Africa suffers from an identity crisis, because it always waits for approval from the developed world. Africa does not need an approval rating from either the US or Europe. In an ICC article\textsuperscript{163}, the African position is placed before us:

The great majority of countries have substantially improved their FDI regulatory frameworks. Many more countries now allow profits to be repatriated freely and tax incentives and similar inducements to foreign investors. Many African countries have investment promotion agencies (IPA’s) to assist these investors.

Why conform to world standards if you are seen to have a 77% risk factor? There will be equal arguments on both sides, but one factor that supports the position in favour of uniformity is that it creates an opportunity for favourable attention. Views from captains of industry will be looked at in this regard. These views are captured in an ICC article\textsuperscript{164}:

Hans Kupratwa, Director, Vodafone Group International, believes that private investors rather than governments are developing mobile telecommunications in Africa. The market is promising as cellular services are an excellent alternative to overstretched fixed networks that is in place in many countries. Vodafone places huge emphasis on political stability in making investment decisions and is also concentrating on developing its mobile telecoms businesses in Egypt, Uganda and South Africa. Phil Mats, Group Managing Director, Royal Dutch / Shell Group of Companies says that, partnership, economic investment and long-term commitment lie at the heart of the Dutch / Shell Group’s approach to business in Africa. I believe that business can deliver African investment but more needs to be done to create the economic, social and political environment in which companies can flourish and succeed.

We will now turn our attention to arguably the most dominant economy on the African continent, South Africa (SA). The SA economy can be compared to some developed nations economies. The SA economy has been growing, but not fast enough to keep abreast with the world economy. The SA economy is diverse and the leaders of the country have made it their goal to achieve a higher FDI share in the world.

\textsuperscript{163} - 1999, 2
\textsuperscript{164} - 1999, 4-5
4.1 South Africa (SA)

The South African position in relation to Foreign Direct Investment (FDI) is totally different to that of the rest of Africa. SA is sometimes described as a quasi-developed nation, indicating that SA has one foot in the developed world and the other in the developing world. This does not detract from the fact that SA needs FDI. The luring of private investors and multinational corporations is one of SA’s main goals.

The Department of Trade and Industry ascribes this difference in the following way\textsuperscript{165}:

“South Africa today is one of the most sophisticated and promising emerging markets globally. The unique combination of a highly developed first-world economic infrastructure and a huge emergent market economy has given rise to a strong entrepreneurial and dynamic investment environment”.

South Africa’s position is quite unique within Africa and the world. The way in which SA is conducting business can be hailed as a success story within Africa. There is no doubt that SA can become one of Africa’s and the world’s leading economies. Some of the social impediments are a high crime rate, the HIV/AIDS epidemic and unemployment. These are currently the key factors that hamper SA growth. Segal\textsuperscript{166} says that SA

Has a limited market in a region where political conflict is rising and a local economy where the business labour and regulatory environment are still politicised. Investors remain bothered by crime and corruption, productivity and efficiency, labour relations and policy, taxation, skills shortages and governance issues that affect transaction costs.

The SA government has always argued for more FDI, but not the total allocation for which it was hoping. Some of the fiercest critics of the SA government have made it clear that it is not the lack of FDI, but the lack of acting decisively in certain policy areas, domestically as well as internationally. \textit{The Banker}\textsuperscript{167} published an article, which said,
The current GDP increase of around 3% is certainly not enough to dent unemployment of over 35%. President Thabo Mbeki’s pursuit of alternative AIDS remedies and of a policy of quiet diplomacy towards fellow President Robert Mugabe in neighbouring Zimbabwe is misguided. High crime rates are undoubtedly a deterrent to investment. Labour laws could be more flexible and there should be less tinkering with the exact racial composition of the workforce. Privatisation should be speeded up. But it is absurd to suggest that the solution lies in FDI. This is because the South African market is not interesting enough to attract them.

A critique against The Banker’s argument is as follows: the issues are valid, but not to the extent that is proposed. There is a clear need to act decisively but, nevertheless, the position in SA, Africa, and the rest of the world is not rigid. Investors often state that a country does not conform to a standard, but history says differently regarding investor’s behaviour. Their primary objective is optimal profit, at a cost to the developing country. It should be noted that very little is said about the high crime rates in the US or the corporate fraud that has plagued that country. Yet, the economy of the US appears to be stable. Concerning SA ability to attract FDI, President, Thabo Mbeki\(^{168}\), points out that,

> As many commentators have observed the lower interest rates are good both for the investor and the consumer. They enable investors to borrow money at a lower cost, thus encouraging further investment in the economy. And as we all know, the higher rates of economic growth and development that we all seek cannot take place without such investment.

Coupled with the need to attract FDI, SA has been appreciative of the role of law in creating a positive environment for foreign investors. The position in SA regarding its laws on investment is very complicated. There is no single law on foreign investment. The regulation of MNCs finds its home in the Companies Act 61 of 1973 and the Tax Act 58 of 1962. Foreign investors have many incentives; of which we will focus on taxation. The tax rate on companies was reduced from 35% to 30% in the 2002 tax year. This was promising because foreign investors could now get a better return on their investment. The SADC Review\(^{169}\) states as follows, with regards to foreign investment, “A foreign investment grant will be given to overseas companies investing in new machinery and equipment to establish new projects in RSA. The incentives and foreign investment grant

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\(^{168}\) - 2003, 1  
\(^{169}\) - 2002, 290
are tax exempted”. The Companies Act that regulates MNCs must be looked at seriously. The present legal situation does not reflect SA position as one of the leading nation in Africa. The inaccessibility of South Africa’s investment laws is problematic. It does not help to have laws if you are unable to locate them. For example, if a foreign investor wants to invest in SA, where does he look? He will look at the different websites provided, but he will not be able to establish what the legislative position will be if he wants to invest in SA. There is a serious problem in the SA approach towards FDI laws, and it needs to be addressed. This could be one of the reasons why investors do not invest in SA. SA prides itself on its systems, but it fails to appreciate the need for simplicity in the system it wished to entrench.

The SA government has ensured that it meets the standard requirements for FDI. This is indicated in the United Nations Conference on Trade and Development (UNCTAD) World Investment Report (WIR - 2002). The report encapsulates the following (it should also be stated that the report only covers selected years and the averages on FDI): SA’s position in relation to FDI improved tremendously over the past five years, with regards to inward investment; outward investment however has not been excellent\(^{170}\). The report also listed the number of transnational corporations (TNC) in the economy (2044) and parent companies based in the economy (941)\(^{171}\). Reference to investment related treaties are made between 1998 and 2000 SA signed bilateral investment treaties (BIT’s) with 28 different countries and during the period 1995 – 2001, SA concluded double taxation treaties (DTT’s) with 25 countries\(^{172}\).

It is very difficult to evaluate this report on face value. There is no doubt that UNCTAD used all the necessary resources and information in compiling it. We will only focus on one aspect of the report. Only 941 companies in SA belong to South Africans, compared to the 2044 foreign owned TNCs. This is not a healthy position, insofar as valuable

\(^{170}\) - WIR: 2002, 1
\(^{171}\) - WIR: 2002, 2
\(^{172}\) - WIR: 2002, 2
financial capital is leaving the shores of the country. For example, two thirds of profits after tax generated in South Africa leave the country as a result of the imbalance of the ownership of business. Attracting FDI by luring MNCs and foreign investors to your shores is one thing, but the ultimate goal is to empower the country and its people.

Segal illuminates the point\textsuperscript{173}, when he says,

SA can ill afford this. The country’s poor savings rate has dropped from an annual average 19% of GDP over 1989 – 1993 to 16% in 1994 – 1998 and was 14% in 1998. This implies substantial foreign investment is needed if the targets set out in governments macro-economic growth, employment and redistribution (GEAR) programme are to be met. SA is becoming more dependent on net inflows of capital from the rest of the world, which renders the economy even more vulnerable to net capital outflows.

The SA economy is diverse in nature, but reliant upon large deposits of natural resources similar to Angola. In some areas the country ranks first in certain types of mineral reserves; for example, in gold, chrome ore and alumii-silicates. This reliance must surely change, as natural wealth is exhaustive. This concept is articulated by the DTI\textsuperscript{174}:

SA’s Anglo Gold is the world’s largest producer of gold. The platinum group of metals overtook gold as the largest single export commodity. The beneficiation of minerals before export has only recently attracted large investments, but it is becoming a major growth area as export earnings from gold and other minerals in unprocessed form wane.

One of the many aspects indicating this diversity is the banking system. SA has the largest banks in Africa. These banks have been around for more than 50 years. The DTI\textsuperscript{175} claims that, “South Africa’s formal banks comply with international banking standards and offer one of the most sophisticated banking systems in the world. Customers have online, real-time, nation-wide access to bank accounts 24 hours a day, 365 days a year”.

It is further stated by Du Mhango\textsuperscript{176} that,

\textsuperscript{173} - 1999, 2
\textsuperscript{174} - 2002, 2
\textsuperscript{175} - 2003, 3
\textsuperscript{176} - 2003, 2
From an economic point of view, South Africa would appear to be a viable investment destination. Government was committed to the basic principles of fiscal and monetary discipline. There had been a fundamental shift in the approach to trade and industrial policy from an inward orientation to an outward orientated approach focusing on achieving international competitiveness.

Another factor to consider is corporate governance. After the WorldCom and the Enron scandals in the US, the world has become quite mindful of and persistent about corporate governance. It must be stated that in 2002, SA appointed a commission of enquiry to probe corporate governance in SA. This commission was known as the King Commission of Enquiry on corporate governance in SA.

Some of the highlights of the King Commission are as follows:

- Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals: the aim is to align as nearly as possible the interests of individuals, corporations and society. More than 84% of the more than 200 global institutional investors, together representing more than US$3 trillion in assets, indicated a willingness to pay a premium for the shares of a well-governed company over a considered poorly governed, but with a comparable financial record and; Current legislation does not require specific disclosures to be made on ethical matters. There is a case for the adoption of measures similar to the US Federal Sentencing Guidelines appropriately adapted for the South African situation. In this regard, the Public Finance Management Act should be studied for an example of reporting ethical and disciplinary matters in the public sector.

This report was completed, although it may not have had an effect on investors, it is a key element for attracting FDI. It is suggested that this report be made available to the rest of Africa through its regional organisations. We believe that SA is on track when it comes to FDI and attracting multinational corporations as well as private investors. It is problematic when a country can do nothing about world markets and conditions influencing world markets. Katzenellenbogen reported that,

Foreign Direct Investment in SA slumped to 10% of its 2001 levels last year, a much more dramatic drop than globally, where it slowed 21% in the same period. Much of the decline in foreign direct

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177 - King Report: 2002, 6
178 - King Report: 2002, 12
179 - King Report: 2002, 43
180 - 2003, 1
investment in SA was a decline in mergers and acquisitions (M&A). Three factors are likely to lead the recovery—expanded investment in minerals exploration, free-trade initiatives and privatisation programmes.

This is the general position in SA, but it is also the overall position for Africa. The consensus amongst Western nations is that Africa's success is measured by those countries who's economies is seen to be open and practice the principals of democracy, such as Nigeria. It should not be the case, but we live in a global village with all kinds of factors influencing the markets. SA has done well thus far, but to achieve the desired results of attracting FDI should be the countries optimal goal.

We will focus on another dominant economy, namely Angola. Angola has been plagued by civil wars for the past two decades, and has one of the largest oil reserves on the African continent, next to Nigeria. Angola is the country with unique advantages and disadvantages. The economic and social advantages a country can derive from having such a large oil reserve, is endless. On the other side of these advantages is the fact that these advantages can be a disadvantage, insofar as the distribution of the wealth derived from this large oil reserve is concerned, this is but one factor. The distribution of the wealth is very important insofar as the country is concerned, because Angola will have to change the legacy of poverty and unemployment around. We will now be looking at this country in more depth.

4.2 Angola

Angola, a previous Portuguese colony, gained its independence in 1975 and continues to have a history of civil war. In the *Free Online Dictionary*\(^{181}\) an entry on Angola states that,

\[\text{In 1994, a peace accord between the government and UNITA was signed. A government of national unity was installed in April 1999, but serious fighting resumed in late 1998. The death of UNITA leader, Jonas Savimbi in 2002 and a subsequent cease-fire, bode well for the country.}\]

\(^{181}\) - 2003, 4
The aftermath of this war has placed a huge economic burden on the present government. The rebuilding process of Angola has left its leaders wondering how they are going to achieve this huge task before them. The Angolan leaders would have to turn the countries fortunes around, by instilling a culture of economic prosperity other than fighting a war that will produce no winners. It is documented in the Free Online Dictionary\textsuperscript{182} that, 

\begin{quote}
Angola is an economy in disarray because of a quarter century of nearly continuous warfare. Subsistence agriculture provides the main livelihood for 85\% of the population. Oil production and the supporting activities are vital to the economy, contributing about 45\% to GDP and 90\% of exports. While Angola made progress in bringing inflation down further, from over 300\% in 2000 to about 100\% in 2001, the government has failed to make sufficient progress on reforms recommended by the IMF, such as increasing foreign exchange reserves and promoting greater transparency in government spending.
\end{quote}

Our research is focussed on FDI, multinational corporations, as well as private investment in Africa. Angola should be commended for their efforts thus far, in creating laws that makes the country more attractive to investors. We need not remind the government that they should have certain priorities. The position of the IMF is really unfair. They are fully aware of the fact that Angola is a country with a long history of civil war, so why do they (IMF) see fit to impose their programme of structural adjustment on the country? It is hard to understand why the IMF would do so; maybe it is because the country has the ability to become one of Africa’s leading economic nations. This could be true, because Angola is a country rich in mineral wealth.

Another entry in the Free Online Dictionary\textsuperscript{183} forecasts that, “Angola’s GDP could be among the world’s fastest growing in 2002, if oil production from the Grassol field, which begun production in December, reaches 200,000 barrels per day as expected”. For this reason the IMF has imposed certain conditionalities in Angola. It would be fair to say that the IMF has good intentions, but the conditions placed on the country are sometimes unachievable and may result in creating the impression of mismanagement.

\textsuperscript{182} - 2003, 4
\textsuperscript{183} - 2003, 4
Let us now focus our attention on the Angolan economy, with particular reference to FDI and how the country is achieving this goal. It has become evident that the Angolan government is on a reconstruction and development drive to heal the past ills of the country. Fisher-Thompson\textsuperscript{184} quotes President Dos Santos of Angola in this regard,

President Dos Santos said, You know I’m trying to move this country from a centrally-planned, government owned, regulated economy into one that is an open, free market economy. That is my big challenge. But the part of the puzzle I don’t have … is the private sector. I’ve got a few entrepreneurs … and the big oil companies … but I don’t have a middle class cadre of business people that will ultimately drive my economy. That’s what I need.

For a President of a country to call for assistance is very commendable. The Angolan President also stresses the need to develop the economy. The economic results thus far are surely the effect of the civil war. We can make no solid conclusion from ‘may be’s’ or ‘what if’s’, but we need to ask the question, what would Angola have looked like without a civil war? We will never be able to answer this question; history must speak for itself. The Angolan President, Jose Eduardo dos Santos, as quoted by the Angolan Foreign Investment Institute (AFII)\textsuperscript{185}, says, “Let us make an effort to attract foreign investment and stimulate internal investment. We have to increase internal savings and investments with savings”. This would be an important component for economic growth and social stability in any country. The Angolan government quickly realised that if it did not focus its attention on FDI, its plans to resurrect Angola would not succeed. Another factor of note is the fact that Angola is able to ask for help.

The assistance is coming in different forms; for example, as stated in the Angolan Foreign Investment Institute, the Chinese Ambassador to Angola stated that China is interested in contributing to the country’s infrastructure, which had been damaged by war\textsuperscript{186}; the Japanese Government is funding the construction of three primary schools in Cecop, Quinhentas A compounds, and in the Viena district outside Luanda city\textsuperscript{187}; and

\textsuperscript{184} - 2003, 1
\textsuperscript{185} - 2002, 5
\textsuperscript{186} - 2002, 9
\textsuperscript{187} - 2002, 1
the European Union (EU) spent over 1,5 million US Dollars this year on water production and supply to Cacula, Lubango and Quinleagues districts in Angola’s southern Huila Province\textsuperscript{188}.

It is quite clear that Angola is going through a rebuilding process and the country is not short of help. The whole aspect of economic development can only be realised if the country is free of war and social instability. Since 2002, the country had seen relatively calm periods. It was noted earlier, under this heading, that the President of Angola stated that most industrial corporations have been nationalised by the State. This could possibly be a reason why the country does not attract FDI. The State sees the need to have its hands on the countries institutions and assets at a time of war. This is not common to Angola only, but many developed States have acted like this, before and after a war.

The United Nations Conference on Trade and Development (UNCTAD) World Investment Report (WIR) (the report will only be focussed upon in certain areas, for example, Foreign Direct Investment, and inward and outward flow thereof) states that between the years 1997 – 2001, on average, an annual $1 119 90 investment was made; however, the country only had inward investment and failed to produce outward investment\textsuperscript{189}. In relation to corporations, only two are local corporations and 23 foreign affiliates are located in the economy\textsuperscript{190}. We believe that the war is over now and the time has come for the country to step out into the global village and face its peers. Angola is very fortunate insofar as the country can rely heavily on its natural resources.

In relation to Angola’s investment strategy, let us now focus our attention on the country’s investment law. The foreign investment law of Angola (the Act) contains nothing different to those of a first-world country. The Act makes provision for all sectors; it covers general provisions, rights and obligations, contracts, taxes and the enforceability of a contract. The only problem with the Angolan investment law is that it

\textsuperscript{188} - 2002, 14
\textsuperscript{189} - WIR: 2002, 1
\textsuperscript{190} - WIR: 2002, 2
could not be utilised because of the civil war. In a closer inspection of the Act we will highlight certain key points that complement this research.

The Act defines the different types of investors as: foreign investor – any non-resident individual or entity, regardless of their nationality\(^{191}\); national investor\(^{192}\); and competent body - the body referred to in Article 49 of the present law. The body mentioned here is the Foreign Investment Bureau, which was established to monitor foreign investment as well as to ensure that policy around foreign investment is implemented, promoted and coordinated\(^{193}\).

Some of the main concerns of multinational corporations and foreign investors are the dangers of expropriation and the difficulty of enforcing the contract within the African legal systems. How does Angola deal with these complex issues? The rights and guarantees of foreign investors shall be guaranteed rights, stemming from the ownership of the resources invested\(^{194}\), dividends or profit distributions after the deduction of legally mandated withholdings and taxes due\(^{195}\), proceeds of the sale of investments, including gains\(^{196}\) and any amounts which may be owing to them\(^{197}\).

As far as expropriations are concerned, it is believed that this would only be done in exceptional circumstances, for reasons considered to be of great public interest, and the State will ensure rapid, fair and effective indemnification. This would suggest that the Angolan investment law conforms to international standards\(^{198}\).

\(^{191}\) Foreign Investment Law: Art. 4 (b)
\(^{192}\) Foreign Investment Law: Art. 4 (c)
\(^{193}\) Foreign Investment Law: Art.49
\(^{194}\) Foreign Investment Law: Art 8 (2)
\(^{195}\) Foreign Investment Law: Art 8 (2) (a)
\(^{196}\) Foreign Investment Law: Art 8 (2) (d)
\(^{197}\) Foreign Investment Law: Art 8 (2) (c)
\(^{198}\) Foreign Investment Law: Art 8 (3)
We believe that the Angolan investment legislation has a unique feature in it. The fact that the labour force is acknowledged in an investment law bodes well for the people of Angola. Regarding the employment of Angolan workers, the Angolan investment law says that they should be guaranteed the necessary professional training and social benefits, identical to those of the foreign workers businesses employ\(^{199}\) and those who employ Angolan workers shall benefit from special fiscal incentives and opportunities\(^{200}\).

A communiqué from the Council of Ministers of the Angolan government issued a statement on the 28\(^{th}\) February, 2003, which stated that,

> The Council of Ministers approved a draft law on Private Investment that will replace the current one. The new text is intended to de-bureaucratise and simplify all administrative procedures related to investments. The future law makes no distinction between national and foreign investors, only the origin of the capital and a favourable legal climate for private investment necessarily depends on the setting out of a policy of tax incentives and benefits.

We foresee problems, but that is expected. The only guarantee the world has is the word of the Angolan people, and they should be accountable for their actions. The Angolan investment laws should not just be relaxed for the sake of attracting FDI, but should enable the rebuilding of the country. Angolans should also be careful of allowing multinational corporations into their country for the sake of FDI. Angola is a country that would want to change the legacy of civil war around to a country that turns its natural wealth into a meaningful contribution to the country. Angola is desperate and the leaders of this country should be careful not to allow MNCs to exploit the countries resources.

The one positive aspect in the situation in Angola is the fact that the civil war has ended. The Angolan people should not be the only ones helping to rebuild the country. Many developed nations are pledging their support and offering money for this. It would be wise for SADC to play a leading role in the reconstruction and development programme of Angola. The AU, as the parent body, should supply technical support to the country. The Angolan scenario is not unique to our world or should we say Africa. The position is not as hopeless as it looks, as long as the leaders of the country is committed to

\(^{199}\) - Foreign Investment Law: Art 13 (1)
\(^{200}\) - Foreign Investment Law: Art 13 (2)
rebuilding it, then the future is promising. Many would argue differently, but as long as Angolans have lasting peace and good governance prevails, the country should be able to turn their statistics around.

4.3 Recommendations

African countries should participate in negotiations on attracting FDI along the following lines:

i. It is important that Africa makes an effort to create a climate of investment and credit ratings, thus creating laws that would generate interest from the multinational corporations and private investors in Africa.

ii. As seen in SA and Angola, Africa should develop its own investment laws that would be understood by all 53 states as well as investors and develop a multilateral investment strategy in Africa that is regionally based.

iii. Our research has shown with particular reference to chapter 3, that Africans do not interact on an economic front and their need to become self-sustainable has been hampered by this approach; therefore national interests should no longer be a priority; African-regionalism should take centre stage.

iv. There is a clear indication from African States that they want to be taken seriously by their international partners and peers. Processes like the African Union (AU), New Partnership for Africa’s Development (NEPAD) and African Peer Review Mechanism (APRM), should be enacted as laws in the 53 states of the continent, in this enactment Member States commitment will be visible.

v. Regionalism in Africa has not been effective. Africa should consist of four strong regional blocks, namely: Eastern African Development Council (EADC),
Southern African Development Council (SADC), Economic Community of West African States (ECOWAS), and Northern African Development Community (NADC).

vi. Rating Agencies must find their home within a world organisation, for example, International Monetary Fund (IMF) World Trade Organisation (WTO) and be duly regulated.

vii. Future bilateral and multilateral agreements entered into must be in line with the aims and objectives of AU and NEPAD, as well as with the international trading laws to enable a uniformed approach.

viii. Our research has clearly identified a need for investment in Africa. It would only be to the advantage of Africans if they have a more focussed drive towards achieving a 50% FDI within the African continent by the year 2020.

xi. This integrated approach should be carried forward in the related fields of trade, investment and technology.

x. In dealing with investment-related disputes, Africa should be looking at a centralised dispute resolution mechanism drafted on similar lines to that of ICSID.

4.4 Conclusion

The information contained in this research has already been published in some or other document or Act. However, this information has to be harnessed. For decades now, Africans and the developed world have been entering into agreements and partnerships, which were carefully drafted but never delivered results. For the first time ever, the continent has embarked upon its most ambitious plan: NEPAD.
The ambition is clearly visible in the NEPAD document. For example, to achieve and sustain an average gross domestic product (GDP) growth rate of over 7% per annum for the next 15 years\textsuperscript{201}, and to reduce the proportion of people living in extreme poverty by half between 1990 and 2015\textsuperscript{202}. NEPAD also envisages the following expected outcomes: economic growth and development and increased employment\textsuperscript{203}, reduction in poverty and inequality\textsuperscript{204}, diversification of productive activities, enhanced international competitiveness and increased exports\textsuperscript{205}, and increased African integration\textsuperscript{206}.

Can the NEPAD process achieve its goals? The NEPAD document suggests a mere flexible African economy. African countries are encouraged to attract FDI. It would somehow be unfair to suggest that African states have not done enough to attract FDI. Chapter 2 placed the African problems into context and the need to address these problems. Coupled with the fact that Africa is facing all these problems, like HIV/AIDS, droughts, and corruption, the position is not made easier as we have seen in Chapter 2. Here we focussed on world investment trends as a means to deal with the problems at hand.

The continent is consistently judged by the developed world and the investment rules that apply to all countries are not enforced in the same way in Africa. For example, China has a reputation for not complying with international standards on human rights abuses, but yet it received WTO membership. One of the criteria for belonging to the organisation is to have a culture of democracy and respect for human rights. Rating agencies see the African continent as a liability. With the exclusion of seven states in Africa, ratings in the remaining 46 countries are non-existent.

\textsuperscript{201} - NEPAD: Section 68 (a)
\textsuperscript{202} - NEPAD: Section 6 (d) (1)
\textsuperscript{203} - NEPAD: Section 69 (a)
\textsuperscript{204} - NEPAD: Section 69 (b)
\textsuperscript{205} - NEPAD: Section 69 (c)
\textsuperscript{206} - NEPAD: Section 69 (d)
As discussed in Chapter 3, the different processes that have been initiated over the last five years have now become a reality, and it is time that Africa capitalises on its strengths. Co-operation in Africa is non-existent. Why do some African states still battle with poverty, corruption, political disorder and the failure to attract FDI? For example, the Zimbabwean crisis does not bode well for the African continent. The lack of decisive leadership in Africa can be blamed for the crisis, which is still continuing. We strongly believe the positives outweigh the negatives in regard to the future. As they live in a continent that is constantly in transition, Africans should stop being consumed by their own problems and rather focus more on the continent.

As illustrated by Nair207, “the SADC receives about $200 million (about R2 billion) in FDI a month. South Africa and Angola – because of its oil, generate most of the region’s foreign investment”. This suggests that the other 12 members of the community have nothing to offer or to sell to the world. As noted above, Zimbabwe is in the midst of a political crisis and has to focus its attentions on infrastructural development and tourism, which would increase the flow of FDI to the country.

The AU, along with the NEPAD process, must see to it that all African states conform to one standard and common laws. Regarding the AU, Kouassi208 says as follow,

In Short, it should be emphasised that building the Union calls for a lot of patience and perseverance. It is a long-term task, which does not permit haste or panic. In our view, the art of African leaders should be to lead a solid foundation, which will enable future generations to provide successive added value, the sum total of which would be the completion of this much-desired African edifice.

NEPAD has been adopted in 2001 and thus far its made great strides in achieving the goals set out in the document. In ECA209 article the NEPAD successes are captured as follow,

On a positive note, several missing links of Trans African highways conceived to integrate member states within and between REC’s have been realised. Railway interconnection projects in West Africa and Eastern sub-regions have been conceived, and resource mobilisation is under way to undertake feasibility studies. The road network has been improved considerably through better road

207 - 2001, 23
208 - 2002, 24
209 - 2002, 34
management initiatives and the establishment of appropriate institutions. SADC’s development 
corridors and the spatial development initiatives view transport in a holistic manner and could be 
used as a model in other sub-regions to open-up the access of land-locked countries.

Attracting FDI from MNCs and private investors should be the number one goal. Regarding FDI, there is no room for diversification within an African context. The rules of engagement regarding FDI are skewed in the world trading system. Standards are set by the developed world and non-compliance with these standards will result in countries not receiving or attracting FDI. Africa is still way behind the standards set by the developed world when it comes to FDI. The recent corporate governance debacle in the US, with two companies like Enron and WorldCom declaring false profit, has now resulted in new corporate governance laws to be enacted in the US. The two companies have subsequently been liquidated. This is a perfect example of how private investors can lose their money through devious bookkeeping and accounting fraud.

In dealing with the complex nature of FDI, Africa has to deal with its goals and objectives in a short space of time if it wants to achieve them. Nair\textsuperscript{210} argues that, “Foreign Direct Investment follows domestic investment. A developing country should have a savings rate of about 30%, but Africa’s savings rate is 15%”. Savings would be possible if there was anything to save at all. Economists see the world as a big business, forgetting sometimes that social problems exist. How do you save if you live on less than $1 a day? In this regard, Annan\textsuperscript{211} says,

\begin{quote}
Africa is at an important turning point, marked by many encouraging trends and developments. The New Partnership has emerged as the de facto policy framework for Africa and those committed to Africa’s development must help make it work. The primary responsibility for implementing the New Partnership rests with Africa, its governments and people.
\end{quote}

It is very important that the world’s largest institution, the UN, endorses the NEPAD process. There is now almost a sense of anticipation towards the new processes Africa has embarked upon. Failure is not an option for Africa; certainly, there will be some difficulties to overcome, but the goal is to revive Africa.

\textsuperscript{210} - 2002, 1
\textsuperscript{211} - 2002, 1

80
Some encouraging news is that SADC wants to adopt a three-step plan for the region’s economy. Wessels argues that, “the SADC had agreed on single digit inflation targets and limits on budget and current account deficits as part of an ambitious plan to integrate the region’s fiscal and monetary policies”.

Some of the other features in this research that should be mentioned are the commitments from the US in AGOA and ASEAN in TICAD. These agreements have given Africa an opportunity to showcase its true potential as a continent of note. It also creates the platform for Africa to engage investors, be it MNCs or private. A common understanding should develop amongst African leaders, so that no country is left out in the cold. This research contains allot information, but what is constant is the fact that Africa needs regional integration to drive the NEPAD process forward. Africa, at this stage, is not capable of dealing with the technical nature of FDI. The international world or, should we say, the developed world is proposing a Multilateral Framework on Investment (MAI). Multilateralism, the framework for investment, is not an option for Africa now; Africa has too many institutional and structural problems, as mentioned in this research.

The idea of a multilateral framework on investment has not been totally abandoned; it would be suggested that Africa focuses its energies on regional integration. Naidoo argues that,

Private investment requires a conducive environment, which offers functional infrastructure, skilled labour, an efficient and transparent regulatory framework, and a clear government commitment to foster private sector development. In the evolving global economy the real gains will be made by those countries able to participate in the new technological race and to reorient production structures as rapidly as possible in response to changing trends in world markets.

The opportunities are there to be achieved and, with the necessary will to achieve, it will be possible to attract FDI and lure MNCs and private investors to Africa. The multitude

\(^{212}\) - 2003, 1
\(^{213}\) - 2002, 52
of problems within the African continent can be solved. The role players determining Africa’s future should keep in mind that only through positive dialogue and active participation by all the people in the various processes will determine the success of the continent.
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