

Developmental Governance: Accountability and Participatory Governance at SOEs in South Africa

Submitted by

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DECLARATION

I, **K.H. MOPHETHE**, hereby declare that the mini dissertation that I herewith submit for the Master of Arts in Governance and Political Transformation at the University of the Free State, is my independent work, and that I have not previously submitted it for a qualification at another institution of higher education. I also declare that all reference materials used for this study have been properly acknowledged.

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List of abbreviations

ACAs - Anti-Corruption Agencies

ACSA - Airport Company South Africa

ADB - African Development Bank

ADB - Asian Development Bank

ANC - African National Congress

ATNS - Air Traffic Navigation Services

CA - Companies Act

CEF - Central Energy Fund

CEO - Chief Executive Officer

CIPFA - Chartered Institute of Public Finance and Accountancy

DCEC - Department of Corruption and Economic Crime

DPSA - Department of Public Service and Administration

EL - Enablement Act

GBE - Government Business Enterprises

GDP - Gross Domestic Product

ICAC - Independent Commission Against Corruption

IGR - Inter-Governmental Relations

IOs - International Organisations

ISO - International Organisation for Standardization

NCOP - National Council of Provinces

NPM - New Public Management

OECD - Organization for Economic Cooperation and Development

PFMA - Public Finance Management Act

PRC - Presidential Review Committee

PwC – PriceWaterhouseCoopers

QDA - Qualitative Data Analysis

SAA - South African Airlines

SAPO - South African Post Office

SARS - South African Revenue Services
SCOPA - Standing Committee on Public Accounts
SCs - Statutory Corporations
SICs - Interest Companies
SOC - State-Owned Corporations
SOE – State-Owned Enterprises
STD - State Diamond Trader
TCTA - Trans-Caledon Tunnel Authority
UK - United Kingdom
UN - United Nations
UNACS - United Nations Anti-Corruption Strategy
UNDP - United Nations Development Programme

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Abstract

The topic of this research is on Developmental Governance focusing on accountability and participatory governance at SOEs in South Africa

This study highlights the problems South African SOEs face in relation to governance challenges that impede their ability to operate effectively, create value and contribute to economic development. Most entities report to different political principles, i.e. to more than one state departments. Authorities have not yet been responsible for the reactions of the people and stakeholders. Public participation in these entities' decision making, transparency, feedback and accountability is not an open process. The continued low participation and lack of accountability will continue to bring down SOEs and other state agencies, eventually collapse and increase poverty and unemployment. High.

The objective of this study was to investigate why SOEs in South Africa are not achieving socioeconomic growth and service delivery, and whether they contribute to the state development agenda, or not. The study also seeks to determine whether these entities recognize and adopt the principles of development and participatory governance in the management and operation of these entities and explore why. accountability gaps lie within them.

The research applied the desktop study methodology.

This study reveals that cadre deployment has greatly contributed to the destruction of most SOEs in South Africa and is a real obstacle to achieving competent open governance, as it prioritizes the reliability of appointed officials over the legitimacy and ability of these individuals to carry out the responsibilities entrusted to them. This is why public services have fallen into the trap of inefficiencies by various government institutions. State Owned Enterprises in South Africa face performance challenges as a direct result of the ANC's operating culture.

The research reveals that SOEs in South Africa do not adhere to business ethics, principles and values of an ethical culture, transparency, good practice, effective monitoring and accountability, equity, as part of a corporate governance protocol that echoes the principles of the King's Code of Good Corporate Governance and the

King's Report on Good Corporate Governance for South Africa and, there are currently no punitive consequences for non-compliance as there is no legal obligation on public companies to comply with the provisions of the King and Code Report.

This study also reveals that State-Owned Enterprises in South Africa have become debt traps and fall into deeper financial problems, due to mismanagement and hopeless balance sheets, with oversight executive weakness. The research also found that there are limited opportunities available for citizens to receive feedback or information, and the policy-making process is perceived by the public as being driven by the elite, which excludes and demobilises them.

Furthermore, it has been determined that despite applicable and available legal provisions for participatory procedures, civil society does not have the opportunity to engage in meaningful participation activities. means. Communication channels are inadequate, inaccessible, and crippled, and new methods are needed to engage citizens in policymaking. This research also found that mutual trust, honesty, transparency, equity and respect for opposing viewpoints for stakeholder cooperation within the practical and legal constraints of decision makers was violated.

Furthermore, this research has shown that state agencies cannot function effectively because their mandates overlap to some extent, thus, they cannot fight or prevent corruption; activities of anti-corruption agencies have not been closely coordinated; and there is no cooperation between them to maximise efficiency.

The study also revealed that the absence of a national anti-corruption charter, or enforceable code of conduct, has allowed corruption to pervade key institutions in the public as well as private sectors, and become a threat to national security.

Additionally, the research has determined that the growth of good governance as a concept has given way to technocratic notions of good governance, disregarding autonomy in the civil service, and has led to governance failures, lack of accountability, lack of transparency, looting, cronyism, corruption, wasteful spending, mismanagement of funds and state holdings. Inadequate application of good governance transcends traditional ideals and practices of democracy and critical activism and prevents social actors from challenging oppression, corruption, and violations of human right.

The study further reveals that South Africa is struggling with outdated governance and inconsistent ownership practices as it lacks better governance mechanisms that can translate into effective institutions and accountability mechanisms, and that failure to comply with and inadequate application of corporate governance principles and practices as well as strict compliance with the requirements of the legal framework have resulted in the current dire state of SOEs in the South. Moreover, the study revealed a lack of oversight and adequate accountability, serious weaknesses in the composition and function of the board of directors, and an increase in corporate mismanagement, corruption, and public capacity.

Chapter 1: Introduction

1.1 Motivation

South Africa is a developing state trapped in low economic growth, the abuse of resources, and rampant corruption. The country is facing increasing levels of poverty due to the lawlessness of the authorities and persistent poor governance at public institutions and state organs. The Institutions and Governance Diagnostic Report by the National Planning Commission (2015:3) states that South Africa has been a developing state since the attainment of its democracy in 1994. The Diagnostic Report (2015) further states that claims of corruption and incompetence often appear in the media and are heard in public discussions and this has resulted in the public's low confidence in the state; it insists that in pursuit of the national plan, these views should be taken seriously because to build a national plan requires increased public confidence in the state's ability to deliver.

In recent years, media coverage has signposted certain issues, including cadre deployment, as the catalyst for the downfall of most State-Owned Enterprises (SOEs) in the country, which have resulted in poor governance at these institutions. SOEs are faced with elevated levels of mismanagement of funds, failure to comply with the Public Finance Management Act 1 of 1999, frameworks and policies, and incompetence. Kane and Christiansen (2015:3) highlight money laundering, looting and corruption as being the governance challenges faced by these entities; they hinder them from performing efficiently, creating value, and contributing to the economic development of the country. Phillip (2020a:1) states that South African SOEs' administrative and financial problems are symptoms of corruption, which is widespread in the public service.

Chitaga-Mabugu et al. (2021:2) state that South African SOEs are unlikely to be reformed because of a lack of skills and a lack of the ethical standards to run them efficiently and effectively and suggest that at the place these entities are at, they are not viable to improve the economy of the country; they further state that the SOEs are a burden to the economy. The fact that these entities have been drawing media attention over the past few years is evidence that poor governance results from

unskilled officials being placed in senior management positions at these entities. Apart from these challenges, Bezuidenhout (2020:3) emphasises that the high salaries of executives within South African SOEs and their perceived underperformance is also related to what ails SOEs.

This research aims to investigate, against the background of media and formal reports on the inferior performance and collapse of most of South Africa's SOEs, why these entities were established and why are they not achieving their primary objectives for being established.

Chilenga (2016) describes the establishment of SOEs as an approach that was adopted by the government for purposes of economic growth, to increase the government's ability to improve service delivery, and to assist in the state's development. Chilenga (2016) adds that the media emphasise SOEs' inadequacies, such as inept leadership, maladministration, and mismanagement. Chilenga (2016) however points out frameworks, which could make these enterprises efficient and effective. Pertinent to his view is the New Public Service Management Approach, as well as good corporate governance. Chilenga (2016) further asserts that the commercialisation of SOEs will make them profitable and promote their effectiveness and efficiency and highlights the fact that some major SOEs are failing to fulfil their mandate, and that strengthens the call for a need to examine how the management of SOEs could be improved.

Pillay (2004:586) depicts South Africa as a country devastated by corruption – to the point where good governance is restrained, and economic development is non-existent. He (*ibid.*) blames the rise of corruption on the complex political design, which has affected stability and the character of democracy, its values, and its principles. Furthermore, Pillay (2004) is of the view that the state has relentlessly battled against corruption, but the effects of corruption persisted increasingly over the years presenting itself through uncoordinated anti-corruption efforts in the public service, and on its effects on anti-corruption measures and good governance.

Turning to the concept of good governance, according to Biswas (2022), is an ideal concept inclusive of ethics and values, and that governance can only be called good when it yields participation, the rule of law, transparency, responsiveness, consensus, equity and inclusiveness, effectiveness, and efficiency, as well as accountability. One

of the elements that contributes to good governance in a state is participatory governance, which is also a good governance concept. Biswas (2022) refers to it as a process which encompasses democratic processes in democratic institutions.

Xavier et al. (2017) state that when an institution develops effective participatory mechanisms, the outputs of the participatory processes will have an impact on the strategic policy priorities. Coelho and Favareto (2006:644) assert that participatory governance leads to improved governance systems and provides a stimulus for development. Moreover, participatory governance increases the circulation of information, transparency, and accountability. Thus, participatory governance together with decentralisation are key elements to improve governance systems and to stimulate overall development (Coelho and Favareto, 2006:642). Public participation is an aspect within participatory governance, which may have various definitions but boils down to the involvement of the affected in the processes of decision making at institutions that have the power to make decisions.

Chava and Chamisa (2018:4) state that despite the good policies developed to improve the country's economic development, ANC loyalists still occupy senior positions in the government and state organs. This political patronage results in deficient performance in government institutions, highlighting cadre deployment as attributing to corruption, poor procurement systems, wasteful expenditure, and the deteriorating state of these institutions. Chava and Chamisa (2018) list state patronage or cronyism; skills shortages due to poor training; poor performances in governance; and a lack of transparency and accountability as the four primary issues related to deficient performance.

Considering the undesirable condition of SOEs in the country, this research considers investigating the Developmental Governance theory through participatory governance and accountability as an option to reform these entities and to hold those responsible accountable to the citizens of South Africa. Pillay (2004:586) concedes that the government has systematically attempted to counter the level of corruption, which has intensively affected the ethos and principles of democracy, but the problem has increased over the years. In the 2019/2020 national and provincial audit outcome report published by the Auditor-General on the PFMA 1 of 1999, Tsakane Maluleke highlighted that her office did not see any progressive and sustainable improvements

required to deal with accountability failures so they could be dealt with appropriately and consistently both at national and provincial level.

1.2 Problem Statement

Media coverage and media reports have indicated in recent years that SOEs face with governance challenges that hinder their ability to perform efficiently, create value, and contribute to economic development. Kane and Christiansen (2015:18) highlight that most of these entities report to various political masters – meaning more than one state department. This issue calls for authorities to be held accountable by citizens and stakeholders through public participation in decision-making processes, transparency, feedback, and accountability. The persistence of poor participation and non-accountability will continue to drag SOEs and other state organs to their knees and their eventual collapse. Such outcomes will increase the high unemployment rate and the high rate of poverty in the country.

Stein (2019) describes accountability as an expression of administrative responsibility that holds officials answerable to taxpayers and expects high morality for specific legal mandates. Stein (2019) further states that accountability and transparency are important aspects of the oversight of a government to ensure ethical engagement, and they are the two most important values to describe the personality of a person or an organisation. When good governance is applied at SOEs, bad governance will not prevail at these state organs (Kikeri, 2018:4).

According to a Presidential Review Committee (PRC) Report (2013), the Committee was established in 2014 to examine the performance of SOEs and to investigate if SOEs are responding to the Developmental State agenda of the country. The PRC Review details an analysis of the critical issues of SOEs and attempts to promote inclusively the role of SOEs in the economy, which has been clouded by the lack of policy frameworks and concerns about the broader governance at SOEs. After a thorough evaluation and monitoring, the Review found several challenges facing SOEs: politicisation, multiple and conflicting objectives, inadequate financing policies and framework, lack of adequate oversight and accountability, frailty in the functioning and composition of the board, and minimum transparency and accountability. The

Review came with 31 recommendations for the improvement of performance at SOEs. These recommendations emphasised application, in line with good practices. They focused on defining the size and scope of the SOE sector, and the development of a stand-alone SOE law, which should include: a modern state ownership framework, the professionalisation of SOE boards, enforcement of financial and fiscal compliance, and the improvement of performance monitoring mechanisms to enhance transparency and accountability. A critical recommendation was to ensure the development of a coherent SOE plan and strategy, whose goal was the Developmental State agenda. Moreover, the Report stated that SOEs would only deliver on the State's developmental goals through good governance (Presidential Review Committee (PRC) Report: 2013).

Decision makers at SOEs are not effective in the execution of their duties in ensuring that Developmental Governance is applied to achieve socio-economic development and growth, to address high unemployment rates and alleviate poverty. A 2021 report by Research and Markets paints a gloomy picture of the situation at SOEs in South Africa. It depicts leadership challenges, deficient performance, effects by external factors such as the Covid-19 pandemic, economic challenges, and debt. The report highlights their questionable operational and financial situation for their future practicality and survival. According to the report, these entities are faced by poor performance, high debts, and corruption at the peak of all their problems. Moreover, the inferior performance of SOEs results in their disintegrating infrastructure, poor leadership, corruption, wasteful expenditure, and the mismanagement of funds. The report also refers to the Zondo Commission, which highlights corruption as topping the list of problems at State-Owned Entities. SOEs are also seen to be failing because of poor governance. In addition, accountability does not seem to be finding expression in the administrative responsibility, which holds officials answerable to taxpayers and expects high morality for specific legal mandates. When good governance is applied by authorities at SOEs, bad governance will not prevail at SOEs (Kikeri: 2018:4).

The status of SOEs in the country is cause for concern considering South Africa's high unemployment and poverty rates and the poor economic growth. Most of these entities are on their knees or have collapsed due to the lack of leadership and failure to achieve their objectives. They need to be transformed to restore the economy and the confidence of the community in the state. These entities are expected to do

commercial activities on behalf of the state and bring about economic growth and poverty alleviation. The inculcation of good governance, and developmental and participatory governance, will not only bring about economic growth but transparency and accountability as well. This research rationalises poor governance in SOEs and the effect of inadvertent corruption. It intends to contribute towards the restitution of good governance leadership in SOEs.

As defined by Schwella (2015), governance thinking and action is the process of designing and delivering good governance. The concept of good governance is an impression that needs to be realised, derived from the concept of governance. Schwella (2015) states that governance deliberately seeks participation, the rule of law, transparency, responsiveness, equity, effectiveness and efficiency, accountability, and strategic vision in the exercise of political, economic, and administrative authority. Governance, thus, according to Mathebula and Munzhedzi (2017), is there to ensure the beneficial use of authority across the three spheres of government. For good governance to thrive, Matshabaphala (2014:1010) suggests that good governance must demand ethical and accountable leadership. This leadership needs to enhance good governance by promoting ethical principles, which include honesty, fairness, integrity, justice, and freedom (Matshabaphala, 2014:1010). According to Maserumule (2012:964), philosophers such as Plato, Aristotle and Aquinas had already dealt with the concept of good governance. Mathebula (2017) states that the concept of good governance has gained momentum in usage in the current academia, government, and society discourse. This research intends to fill the gap in the knowledge on the transformation of SOEs in South Africa to attain the restitution of these entities to achieve a healthy economy and a decrease in unemployment rates and poverty levels.

1.3 Research Questions

- This research will investigate why SOEs in South Africa failing to achieve socio-economic growth and service delivery.
- The research will investigate why South African SOEs are currently contributing to the developmental agenda of the state.
- Do these entities acknowledge and encompass the principles of developmental and participatory governance in the administration and operation of these entities?
- Why is there a vacuum of accountability at South African SOEs?

1.4 Aim and Objectives

South African SOEs were established to add value to the economic development plan of the ANC-led government. PwC (2011) states that alongside these were governing structures such as Parliament Oversight, the PFMA Act 1 of 1994, and the Company Act 71 of 2008, which were established to ensure efficiency and good governance at institutions. These entities were weighed down by ineffective corporate governance induced by elevated levels of official corruption and graft.

According to the Systematic Country Diagnostic Report of 2018, a free press is a strong institution in South Africa and has recently played an influential role in broadcasting information about state capture. In the same spirit, in recent years the media has been raising questions about the quality of management and leadership at South African SOEs and has related the failure of these organs to poor governance (World Bank: 2018).

The aim of this research it to advocate Speer's idea that governance mechanisms should be applied at South African SOEs to improve government responsiveness and service delivery by improving policy development with the clear intention of the inclusion of civil society and the business sector – the reason being that these mechanisms realise policy benefits and increase accountability (Speer, 2012). In Speer's assessment, she admits that this positive view is found to be limited in scope and method and admits that its implementation in developing countries is still a

challenge. Moreover, the problem that is apparent in the political landscape of South Africa reflects a citizenry that has lost faith in the country's systems and have become sceptical and distrusting of political parties and institutions (Carothers: 2005) due to increased unemployment rates and poverty levels, inequality, and the rise in corruption.

The objectives of this study are as follows:

- To investigate why SOEs in South Africa are failing to achieve socio-economic growth to decrease unemployment, alleviate poverty, and improve service delivery.
- To determine if South African SOEs are contributing to the developmental agenda of the state.
- To determine if SOEs acknowledge and encompass the principles of developmental and participatory governance in their administration and operation; and
- To analyse the vacuum of accountability at South African SOEs.

1.5 Research Methodology

Research methodology, according to Jansen and Warren (2020:2), is how a researcher is going to practically do the research systematically, basing the study on a systematic design for the validity and credibility of the results of the aims and objectives of the research. This research will adopt a qualitative approach as suggested by Jansen and Warren (2020:2), describing qualitative research methodology as the collecting and analysing of spoken or written words; and can be about softer data points as well. Qualitative data is any data, but numbers. Qualitative analysis is not limited to data like interview transcripts, documents and surveys, but also explores and describes data, and is of the view that qualitative analysis is not necessarily easier than quantitative analysis, and it can be time-consuming (Jansen and Warren: 2020:2).

This research will deal with more abstract concepts like good governance, participation, and accountability; these must be the measurable indicators for this research. Thus, this research will be qualitative, narrative, and interpretive.

Johnson (2022) defines data analysis as a sifting, transforming and remodelling data process which enables one to uncover useful information for the purpose of the aim of the research and will extract the information needed to analyse and make decisions on the study. This research will adopt the qualitative content analysis method. Crosley (2021) says that with content analysis, one does not need contact participants but can analyse data already produced which may include text messages, books, Facebook posts, videos and audio, newspaper articles, or political speeches. Crosley (2021) insists on the importance of having specific research questions to avoid being vague.

Hence, this research will use a qualitative research methodology as it aims to uncover the principal reasons for non-accountability and the failure of developmental and participative governance at SOEs in South Africa. It will explore other methods of data collection by collecting samples of various texts, speeches, news articles, or social media posts, as well as secondary data from previous studies on SOEs in South Africa, what the Constitution says about these entities and their legislation, deductions from the narratives by various authors on the performance of these entities, and also examining government journals and surveys on the topic. McCombe (2021) states that

the use of secondary data by a researcher can enhance the scope of the research through various samples. This process, according to Johnson (2022), helps to identify mistakes and to plan better so the same mistakes are not repeated. McCombe (2021) is of the view that this process helps with the analysis of data relationships, and the correlation of the identification of patterns and trends for interpretation. This analysis is a diagnostic analysis as it seeks to determine why SOEs are failing or collapsing. This type of data analysis is useful in identifying the behavioural patterns of data, states Johnson (2022).

This research will apply an exclusion criterion, meaning that it will not include human participants. It is a diagnostic approach, as mentioned earlier. It does not require informed consent of the subjects, as they have the potential to interfere with the accomplishment of the aim of the study or might even be a risk factor for auspicious conclusions (Patino and Ferreira, 2018:84). This research will adhere to the ethical guidelines, including acknowledging all the sources used and not fabricating data. As stated by Taylor and Francis (n.d.), research should be frank, acknowledge the authorship(s), and comply with the principles of plagiarism and data falsification.

1.6 Literature Study

This research will cover various authors' perspectives on the concepts of governance, developmental governance, and accountability through participation governance in the field of the Humanities. The researcher will examine the theories and perspectives of these authors and scholars. An assessment will be done to determine if the application of these theories and their principles will be effective in restoring the state of SOEs in South Africa.

It is a fact that the concept of governance has been extensively discussed and debated by various scholars. This concept has many definitions and has been interpreted in many ways, including that governance is a process where decisions are taken by authorities and implemented. Moreover, it is seen as an exercise where political, economic, and administrative authority controls the affairs of a nation's processes, relations and institutions, where the public express their interests and exercise their rightful obligations. Others see it as the management of a country's economic and social resources for the purpose of development (Islam: 2017).

Governance and action process thinking is the designing and delivering of good governance. If applied, it could help unravel the deep-seated problems in these institutions. Schwella (2015:386) is of the view that the South African governance system is perceived to be facing either a prosperous future or a collapse considering it being at a junction and in a sensitive political situation, close to a tipping point. This implies an either/or outcome. South Africa has the potential to become a prosperous rainbow nation with effective, ethical, good public leadership resulting in the delivery of professional governance and services practicing real ubuntu (ibid). However, the South African dream can only be achieved through political will coupled with effort among the rich, powerful, and privileged (Schwella, 2015:387).

Good governance, according to Mathebula and Munzhedzi (2017), is there for the state to ensure its effective use by the authorities across the three spheres of government. For good governance to thrive, Matshabaphala (2014:1010) suggests that good governance must demand ethical and accountable leadership. The leadership needs to enhance good governance by promoting ethical principles which include honesty, fairness, integrity, justice, and freedom (Matshabaphala, 2014:1010).

This research is undertaken based on the thought process that the South African government needs to rehabilitate and strengthen governance at its SOEs, as it has the responsibility to improve the country's socio-economic conditions by enhancing participatory governance mechanisms and accountability. Governance matters for development to occur. This supports Choudhary's (2018:8) point of view that Development Governance deliberately seeks participation, rule of law, transparency, responsiveness, equity, effectiveness and efficiency, accountability, and strategic vision in the exercise of political, economic, and administrative authority. It has an important and positive effect on sustainable development; further, it has the potential of reforming and repairing the situation at SOEs.

If South Africa is to achieve stability at its SOEs, the state will have to heighten the application of Developmental Governance, through participation by both the public and the business sector, to transform their management and tighten accountability for executives at these agencies. Developmental Governance will promote socio-economic development and it will restore these entities to serve the purpose for which they were established. This approach will assist with the facilitation of the efficient functioning of the economy in partnership with other stakeholders so that various development goals may be achieved, as the approach advocates for accountability, participation, predictability, and transparency. Furthermore, it is a process that will measure in what manner public institutions manage public affairs and public resources to guarantee the realisation of human rights, free of abuse and corruption and the recognition of the rule of law (Choudhary, 2018:7).

This research is of the view that the government should be willing to adopt this approach (i.e., Developmental Governance) to meet the citizenry's demand for public service delivery and transparency. Additionally, the state must increase governance levels to increase the level of sustainable development. Governance has an important and positive effect on sustainable development and service delivery.

Developmental Governance, according to Choudhary (2018:5), is a governing process that is intended to ensure the development of administrative as well as geopolitical offices. Choudhary (2018) states that Development Governance is a broad field of policy processes of participation and development, while the World Bank in its 1992 report entitled 'Good Governance and Development' defines good governance as a

way in which a country uses its power to manage its social and economic resources for the country's development. Moreover, Developmental Governance is considered as the governing of social and economic development through policy development, the designing of programmes, budget allocation, and administrative reform complimenting an organisation's long-term priorities and medium-term goals, as well as its short-term and annual targets (Choudhary, 2018). The custodians of Developmental Governance are those in power at these agencies, who hold the stewardship of such. Xavier et al. (2017:5) define stewardship as being the responsibility of those in charge of the use of resources, decision making, and accounting to the public. Stewardship today translates to an accountable and committed workplace that is not managed through increased control or compliance, but an intention to decentralise power to the lowest levels of the organisation (Block, 2013). Stewardship intends to support the common good of communities and, in recent years, and is a form of governance that is sorely needed (Xavier et al:2017:5).

According to Hutchinson (2020:5), to see progressive measures in the fight against corruption, the government must implement Developmental Governance to achieve improved governance. It is a concept that should transform into participatory governance to involve the citizens of the country.

Ever since the dawn of democracy in South Africa in 1994, the country has increasingly become a politicised community, with an increasing number of political and opposition parties, civil movements (which represents dissatisfaction and uprising against the state), and community unrests demanding accountability and service delivery by the government. This research, however, will focus on the concept of Developmental Governance, prioritising participatory governance as a mechanism, its meaning and role within SOEs in South Africa, and accountability by these entities.

Hutchinson (2020) view expressed above considers Khan's argument that governance matters, and his ideas of Developmental Governance offers the most theoretical approach to anti-corruption. Khan (2012:20) is resolute that the only feasible governance agenda should be to increase the application of Developmental Governance capabilities progressively and to start introspecting on the real political and institutional conditions of the country. Khan's (2012) view is that this action may reveal tangible sector problems and will result in specific-sector solutions, while Alence

(2004:179) findings draw insights from new institutional economics and focuses on how the role of institutions impacts on the state's incentives, aligned with the objectives of long-term economic development. From a Developmental Governance point of view, his findings indicate that a combination of democratic contestation and institutional controls on the government's judgement on executive authority could improve the quality of governance. This research concurs with the view of Choudhary (2018:8) on the incorporation of participatory governance as an element of Developmental Governance. His findings highlight development governance as contextualised reaction to the need for responsiveness of institutions in partnership with role players to manage development without corruption, procedural difficulties, discrimination, nepotism, and rigidity. According to Choudhary (2018:8), development governance must consist of participatory agreement, accountability, transparency, responsiveness, effectiveness and efficiency, equitability and inclusiveness, and must follow the rule of law. This would minimise corruption because the views of minorities would be considered, and the voices of vulnerable society members would be taken into consideration when decisions are taken. Choudhary (2018:8) further asserts that Developmental Governance is responsive to the current and future needs of a society.

Participatory governance is a mechanism that is often encouraged in developing countries to improve government responsiveness and service delivery through improved policies developed with the inclusion of civil society. It also realises policy benefits and increases accountability (Speer, 2012). Speer (2012) however concedes that this positive view is limited in scope and method and that implementing it in developing countries remains a challenge. The obvious problem in the political landscape of South Africa reflects a citizenry who has lost faith in the country's systems and has become sceptical and distrusting of political parties and institutions (Carothers, 2005) due to an increase in the unemployment rate and poverty levels, inequality, and a steep rise in corruption.

Participatory governance is mostly related to the inclusion of a broad spectrum of the citizenry and better sharing of information, transparency in political processes, participation in public debates, and promoting changes in policies and the design of institutions; it can further promote access to public policies, and to their quality and responsiveness (Coelho and Favareto, 2011:641). According to the World Bank (2006), participatory governance can result in increased chances of inclusion politically

and economically, better access to services, and increased power that can realise improved social equality. It also increases poor people's access to services; thus, increasing their chances of inclusion in both politics and the market economy, starting a virtuous cycle that could gradually increase their power, resulting in the promotion of social equality (World Bank: 2006).

The South African government recognises the need for transformation and open public participation, and to hold the stewards of institutions accountable. The country is engaged in a fight against fraud and corruption at various levels of government to unearth the roots of maladministration and poor governance. The Zondo Commission of Inquiry was established in 2018 to deal with state capture, and fraud and corruption in the public sector, including in the organs of state. Moreover, Xavier et al. (2017:5) highlight the need for a shift in mindset and for innovative approaches to develop and upgrade national capabilities to enable sustainable and inclusive development, as recognised in the National Development Plan 2030 (Xavier *et al*: 2017:5).

Andrews (2019) highlights public participation as a critical element of governance in a modern democracy and accentuates its critical role in good policies and improved service delivery. Andrews (2019) further believes that public participation in governance gives perspective into the ever-changing needs and values of citizens and assists the public sector to always be responsive, resilient, and relevant, and highlights the evidence and outcomes-based focus as one of the benefits of public participation governance to establish a powerful mechanism to build real-time evidence and help to prioritise the immediate needs of citizens. Public participatory governance assists in knowing when change occurs to keep abreast of the ever-changing national and global context (Andrews: 2019) .

According to Prinsloo (2013:10), accountability is the pillar of democracy and good governance. This forces the state, the private sector, and civil society to focus on results and to monitor and report on performance. Accountability has three dimensions: firstly, financial accountability; secondly, political accountability; and thirdly, administrative accountability.

1.7 Research Design

The research design will consist of a motivation, a theoretical or conceptual frame, then the main discussion, and finally, the findings of the research and the conclusion.

Chapter 1: Introduction

The first chapter is based on the motivation for researching this topic. It provides a brief historic background of the state of SOEs in South Africa; what the challenges are relating to these entities; the aims and objectives of this research; and the research methodology.

Chapter 2: Theoretical and Conceptual Framework

The second chapter focuses on the theoretical or conceptual framework on the Developmental Governance theory, its anti-corruption mechanisms, and participatory governance.

Chapter 3: The Constitutional framework for SOEs in South Africa

This chapter reflects on the constitutional definition of SOEs in South Africa, and SOEs, their legislation and objectives.

Chapter 4: The state of SOEs in South Africa

The chapter examines the poor application of Developmental Governance (the issue of the problem) in South African SOEs. The main discussion addresses the problem statement, which is poor governance that results in extensive corruption, lawlessness, and maladministration.

Chapter 5: This chapter provides the analysis and the findings of the research, and provides recommendations for the future, and a conclusion.

Chapter 2: Theoretical and conceptual frameworks

2.1 Introduction

The depth of corruption in SOEs, being the catalyst for the lack of good governance, has been proven in various research reports and highlighted by various authors in South Africa. The phenomenon suggests that the high levels of the mismanagement of funds (failure to comply with the Public Finance Management Act 1 of 1999 (PFMA), frameworks, and policies), officials' incompetence (filling senior management and executive posts with incapable, unskilled, and inexperienced officials), money laundering, looting, and corruption (failure to submit financial statements to the Auditor-General) have landed SOEs in the crisis they are in. SOEs are facing precise governance challenges that hinder their ability to perform efficiently, create value, and contribute to economic development. Kane and Christiansen (2015:18) state that these entities, in most cases, report to various "political masters", being more than one state department. Kane and Christiansen (2015) further state that the interface between limited oversight and executive power can create a vacuum that enables executives to advance their own interests without scrutiny and accountability. According to the Chartered Institute of Public Finance and Accountancy (CIPFA) International Framework Draft of 2013, government and government officials working for entities for the public sector are expected to practice high ethics and act in the interest of the public at all times, in compliance with the requirements of legislation and government policies, and not for personal gain but to act to build a positive perception of the organisation in the name of good governance and to the wider benefit of society, resulting in the expected results for both the beneficiaries and stakeholders. This research aims to evaluate the application of good governance in SOEs and to incorporate the elements/principles of development governance, as well as participatory governance.

Value of this chapter

Clearly, SOEs' current situation calls for improved governance leadership to avoid total collapse. These entities are plagued by a lack of good governance and failure to achieve their objectives. They need to be transformed to restore the economy and the confidence of the community in the state. These SOEs are expected to do commercial

activities on behalf of the state and bring about economic growth and eradicate poverty. The inculcation of good governance will not only bring about economic growth but political stability as well. This chapter justifies why poor governance is detrimental to SOEs. Furthermore, it intends to contribute towards the restitution of good governance leadership in SOEs. Moreover, this research intends to add value to the transformation of the economy of the country through the restitution of SOEs.

As defined by Schwella (2015:64), governance thinking and action, is the process of designing and delivering good governance. The concept of good governance is still an impression that needs to be realised from the concept of governance. Schwella (2015) says, according to the UNDP (2003), governance deliberately seeks participation, the rule of law, transparency, responsiveness, equity, effectiveness and efficiency, accountability, and strategic vision in the exercise of political, economic, and administrative authority. Governance, states Mathebula and Munzhedzi (2017:7), is there to ensure the good use of authority across the three spheres of government. For good governance to thrive, Matshabaphala (2014:1010) suggests that good governance must demand ethical and accountable leadership. The leadership needs to enhance good governance by promoting ethical principles, which include honesty, fairness, integrity, justice, and freedom (Matshabaphala, 2014:1010).

This chapter is set out to determine why SOEs in South Africa are struggling to perform efficiently, to create value, and to contribute to economic development. The background of the study will provide an overview on SOEs; followed by the legislation regulating these SOEs in the country; then, definitions of fraud and corruption and anti-corruption mechanisms; and lastly, the theoretical and conceptual frameworks on governance, Developmental Governance, and participatory governance.

2.2 Background

SOEs in the country face various barriers to their growth and sustainability; consequently, this leads to a high failure rate. They face elevated levels of the mismanagement of funds, failure to comply with the PFMA, frameworks and policies, and incompetence. Money laundering, looting and corruption are amongst the most critical governance challenges facing these entities. These challenges hinder the entities from performing efficiently, from creating value, and from contributing to the economic development of the country (Kane and Christiansen, 2015:3). According to Phillip (2020a:1), South African SOEs' administrative and financial problems are symptoms of the rampant corruption, which is widespread in the public service.

South Africa is an example of an emerging constitutional democracy, striving for good governance, and the South African governance system remains a work in progress. It is also important to note that the context wherein South Africa practices governance is complex and faces many challenges. To deal with the challenges arising from the complex context of South Africa, the best conceptual thinking and analytical concepts of governance are required to meet the country's needs. It requires devising and delivering professional good governance and service delivery through policymaking and implementation.

The South African governance system is facing either a prosperous future or collapse, considering the current position SOEs are in, as well as the sensitive tipping point the country's political landscape is at. Governance and action process thinking is the designing and delivering of good governance. If applied correctly, it can help unravel the deep-seated problems in these institutions (Schwella, 2015:76).

2.3 Definitions of SOEs

The establishment of SOEs was an approach that was adopted by the South African government for economic development and growth, and to increase the government's ability to improve service delivery and to assist the state with development (Chilenga, 2016:3). These entities were established to add value to the economic development plan of the ANC-led government.

SOEs are state-owned entities or companies, which are legal entities meant to conduct business activities on behalf of the state (Balton, 2010:11). The National Development Plan 2030 identifies SOEs as a major driving force for service delivery and structural development.

SOEs in South Africa are legally defined by the Public Finance Management Act (Act 1 of 1999) (PFMA). Section (1) of the PFMA of 1999 (updated in 2008, 8-10) refers to an SOE as an "National Government Business Enterprise", to be "an entity which (a) is a juristic person under the ownership control of the national executive; (b) has been assigned financial and operational authority to carry on a business activity; (c) as its principal business, provides goods and services in accordance with ordinary business principles; (d) is financed fully or substantially from sources other than the National Revenue Fund or by way of a tax, levy or statutory money" (PFMA, 1999).

SOEs have been formed worldwide to provide services like water and electricity and to build basic physical infrastructure to generate income for the Treasury (Chilenga, 2016:4). According to the Organization for Economic Cooperation and Development (OECD, 2014) and the World Bank Group (2014:44), SOEs were established to provide public goods, improve labour relations, limit private and foreign control in the economy, generate public funds, increase access to public services, and lastly, to encourage economic development and industrialisation; and they are a significant means of job creation and employment because of the extent of the work they undertake.

Chilenga (2016:5) further states that SOEs were established to aid the supply of affordable and cheaper rated basic services to communities, and to protect citizens from being exploited by private companies. SOEs are often established for government to manage strategic sectors of the country's economy, by minimising

chances of abuse and monopolisation of these sectors by private industries at the expense of citizens (Buge et al., 2013). SOEs are however independent bodies created by government to take part in commercial activities on behalf of government. They are either partially or wholly owned by government. According to Wendy and Associates (2013:4), South Africa, according to international trends, and corporatisation had to consider the transition of agencies into state-owned corporations, many of which have a direct impact on the economic growth and development of the country. This phenomenon was introduced in some sectors to promote effective and efficient service delivery for the sake of the newly elected democratic government in 1994.

There are commercial and non-commercial SOEs. They are all, however, owned by government as business or public-owned companies to assume commercial activities on behalf of government. Non-commercial entities are not profit driven and are there to provide goods and services to citizens, while commercial entities are there to pursue financially driven objectives (Chilenga, 2014:7).

In 2007, the South African government decided to adopt a new SOE policy that sought to expand the state's role in the economy. The ANC-led government was opposed to the privatisation of SOEs and embarked on a reform programme that included the partial privatisation of some SOEs (Gumede, 2016:70-72). South African SOEs were established to add value to the economic development plan of the ANC-led government.

SOEs are state institutions devoted to promoting a specific cause to the public, are expected to participate in commercial activities on behalf of the state and are significant vehicles for achieving economic growth and poverty reduction. SOEs must deliver infrastructure services that allow the economy to grow, such as energy, transport, water, and education while ensuring equity through access and quality of social services to all citizens (Kikeri, 2018:28).

2.4 Legislation of SOEs

PriceWaterhouseCoopers (2011:9) states that alongside the establishment of SOEs were several governing structures, such as Parliamentary Oversight, the PFMA, and the Companies Act of 2013, which were established to ensure efficiency and good governance at these institutions.

It is a well-known fact that South Africa has a world-class democratic Constitution (the Constitution of the Republic of South Africa, 1996). Chapter 3 of the Constitution requires the corporate governance of all three government spheres, including parastatals and entities; this translates to Intergovernmental Relations. Intergovernmental Relations is a multi-level government that has various units working together. It is a network that enables the various spheres of government to work seamlessly for the achievement of the objectives of the government (Colasante, 2018). Intergovernmental relations are conducted within a public administration framework where there are clear and consistent values and norms (Mathebula, 2004:131). This mechanism can be formal or informal and must be regulated to fast-track service delivery (Heinemann-Grüder et al., 2017:15-16).

To further define inter-governmental relations, Elazar (1987:16) states that IGR is about operationalising a government system through practices that involve extensive and continuing relations among the spheres of government. The Constitution (1996) established a state that supports interaction and cooperation between the three spheres of government continuously and provided a set of principles to direct the manner and quality of those interactions with the promotion of the principles of co-operation and intergovernmental relations in Section 41. The Constitution further states in Section 40(1) that the three spheres of government must be distinctive, interdependent, and interrelated. Section 41 of the Constitution provides for the principles of co-operative government and intergovernmental relations to govern the conduct of the three spheres of government, while Section 155(7) states that national government (subject to the participation of the National Council of Provinces) and provincial government have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive

authority, referred to in Section 156(1). The Constitution empowers the National Assembly and Provincial Legislators with an oversight role over their respective Executives of SOEs. Section 55(2) states that organs of state are accountable to Parliament, and Parliament must maintain oversight over the Executive Cabinet, while Section 92(3)(b) states that members of cabinet must provide Parliament with full and regular reports concerning matters under their control. However, it is impossible for the Parliament to exercise proper oversight over 35 National Departments and more than 250 public entities. Thus, Parliamentary Committees were established to facilitate an oversight role through the Standing Committee on Public Accounts (SCOPA) Portfolio Committee.

South Africa has succeeded in developing legal frameworks and guidelines to govern the state. It is not surprising that the Constitution recognises the importance of good governance and compels the government both through government departments and organs of state to adhere to the principles of good governance. Certain rights, as enshrined in the Constitution, have a direct bearing on the corporate governance of SOEs, and they include Access to information in the form of The Promotion of Access to Information Act 2 of 2000, which gives effect to the constitutional right of access to any information held by the state and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith. The Access to Information Act 2 of 2000 is based on three main principles: government information should be available to the public; exceptions to the right of access should be limited and specific; and decisions about disclosures should be reviewable independently of government. The Just Administrative Act 3 of 2000 gives effect to the right of administrative action that is lawful, reasonable, and procedurally fair and to the right to written reasons for administrative action as contemplated in Section 33 of the Constitution, and to provide for matters incidental thereto: the PFMA and cooperative governance.

Policy frameworks and guidelines serve a useful purpose in providing a context in which legal obligations are discharged. The South African government recognises the positive impact SOEs have on the economy as well as the role that they play in contributing to development. It developed a policy framework to guide the restructuring of SOEs towards effective and sustainable organs. This framework is dedicated to improving corporate governance and ensuring improved ethics and probity, and that

an SOE locates the government's role as a stakeholder in a framework that allows both the board and the shareholder to add value to the performance of SOEs (Khoza and Adam, 2005:28).

In a 2006 presentation by the Treasury on the 'Current position regarding governance of state-owned entities (SOEs) in South Africa', it mentioned the legislation regulating government business or state-owned entities, including the GBE Enabling Act, the PFMA, the Companies Act, and Treasury Regulations, as well as other governance structures like the National Assembly (the National Council Of Provinces (NCOP)), the Portfolio Committee, the Cabinet, and the line minister. The GBE Act stipulates the mandates of these entities, defines the corporative status of these entities, and gives power to these entities to appoint board members, to ensure their tax status is compliant with SARS, and to regulate their borrowing powers. The PFMA provides a financial framework for these entities, affords them operational and managerial autonomy, provides reporting or oversight mechanisms for a shareholder compact, and the corporate plan of entities and quarterly reports. The PFMA also regulates borrowing powers or guarantees and affords the National Treasury powers to request information, while the Companies Act of 2013 sets out the legislation governing company law, establishes the legal status of companies, appoints and outlines the responsibilities of directors and auditors, and holds entities responsible for the accounting and disclosures of companies. The NCOP and the Portfolio Committee provide the constitutional oversight of the performance of SOEs, which rests with the Parliament (being the National Assembly and the NCOP and its portfolio committees, the public accounts committees and joint committees). The Standing Committee on Public Accounts (SCOPA) interrogates the annual financial statements of SOEs, while Portfolio Committees review the non-financial information in the annual reports of SOEs, namely, the service delivery performance of SOEs. The challenge facing Members of Parliament is to improve the capacity of the policy/parliamentary committees to hold departments and SOEs to account for their performance, using their strategic plans, budget documents and annual reports as the basis for comparison to their mandates, which are set by Parliament, while the line Ministerial Departments are the ultimate authority to direct policy, which vests in the Cabinet. The Cabinet, comprising of various ministers, decides on the appropriate and desired policy to meet the mission and mandate of the country. Through their departments,

ministers give policy directives and ensure that the necessary structures, processes, and activities are in place within the SOEs to implement policy. The National Treasury, the Department of Public Service and Administration (DPSA) and various regulators provide support in the monitoring of policy implementation through respective financial, public service and regulatory mandates (National Department of Treasury presentation: 2006).

A presentation by the National Department of Treasury in 2006 also demonstrated that there is also Corporate Governance Protocol that encapsulates King II Code on Corporate Governance, the PFMA, have not been legislated best practice code, government's relationship to its SOEs, guiding principles on the management of ownership, directors' responsibilities, the role of the board and the establishment of committees of entities,

Additionally, in the 2021 State of the Nation Address, President Cyril Ramaphosa highlighted that a Presidential State-Owned Enterprise Council had been established to outline a clear set of reforms, which would enable SOEs to fulfil their economic growth and development mandate. Ramaphosa stated that overarching legislation for SOEs would be tabled in Cabinet in 2021 and would be tabled in Parliament in 2022. He also mentioned that a centralised SOEs model, which was meant to be implemented in 2022, would ensure a standardised governance, fiscal management and operational performance framework for all SOEs. Ramaphosa was of the view that the increasing graft at SOEs would be addressed through the new legislation aimed at restoring the socio-economic mandate of SOEs, which was eroded by incompetency and gross mismanagement over the years.

2.5 Fraud and corruption

The World Bank (2014) views corruption as a global problem which needs to be tackled globally. Before we delve into anti-corruption mechanisms, we should start by defining corruption. Corruption is defined as dishonest or fraudulent conduct by those in power, typically involving bribery. The second definition says it is the process by which a word or expression is changed from its original state to one regarded as erroneous or debased. According to an article by Transparency International (n.d.), corruption is when people entrusted with power abuse that power for personal gain. The article further states that the effects of corruption are eroded trust, weakened democracy, affected economic development, exacerbated inequality, poverty, social division, and environmental crises. It says that corruption presents itself in various forms, such as when civil servants in exchange for services they render demand or take bribes for favours. It can also be the misuse of public money by politicians for many reasons; it can be corporations bribing officials to pitch profitable deals. The article says the effects of corruption cost citizens their freedoms, the rule of law and their participation, and erodes their trust in government. Corruption is currently a world-wide scourge, which requires a unified approach to forge a fairer, safer, and more prosperous future for our global world (UNACS, 2017:71). Furthermore, the World Bank (2014) states that corruption impacts the poor and most vulnerable negatively and increases prices while it reduces access to services such as health, education, and justice. It further eats away at citizens' trust and confidence in government, it diminishes the quality of social contract, and exacerbates and increases inequalities and restlessness, which might result in fragility, violence and conflict (World Bank, 2014).

According to the United Nations Anti-Corruption Strategy (UNACS) (2017:71), corruption is broad in nature and its crimes involve corrupt acts. It highlights an array of global threats: serious and organised crime, modern slavery, terrorism, and more challenges that fortify corruption and require a joint and concerted effort to deal with. This strategy acknowledges that corruption disrespects national and organisational boundaries and suggests that to counter it strong partnerships from governments, the private sector and civil society at local and global levels are needed to dismantle it. It is also of the view that to deal with corruption, it is important to understand what

corruption is and zoom into specific areas by improving and expanding the evidence of corruption and its effects, assess serious organised crime, improve the reporting of crime at a national level, and launch new initiatives which will provide a reporting mechanism for allegations of bribery and corruption (UNACS, 2017:71).

Kohler and Bowra (2020:2) state that corruption is not limited to a particular type and can be found in all systems, whether private or public, and happens whether it is funded or not, and happens in the simplest of environments equally as it would in the most complex, and further state that corruption is not easy to identify as it is often concealed and difficult to tell if an act is corrupt. They highlight two specific types of corruption: isolated and systematic corruption. Isolated corruption is an act consisting of a very few people and is seldom detected; while systematic corruption is a deep-rooted trend that often takes place between the public and private sector, it is real and extensively known, and has been normalised. It occurs on a much larger scale and can be extensive and complex. Its systems are complicated and not easy to disentangle, and it usually involves organised crime (Kohler and Dimancesco, 2020:3).

By the time of the UN Convention against Corruption in 2005, when the Convention committed to establish anti-corruption bodies, improve transparency in the financing of election campaigns and political parties, an effective public service, recruitment based on merit, transparency, and accountability in matters of public finance and generally high standards of conduct in all areas of public affairs, corruption had already gained momentum (UNESCO, 2012:23). The Convention identified teamwork as a form of understanding corruption, as well as supporting, strengthening and implementing key international governance and anti-corruption agreements (including the UN Convention Against Corruption, the Sustainable Development Goals, and the OECD Anti-Bribery Convention). It was also of the view that applying behavioural science to anti-corruption must be considered as a mechanism of uprooting corruption as it focuses on psychological drivers and barriers, which shape human behaviour (ibid.).

According to the executive summary of the South African Anti-Corruption Strategy (ACS) 2020-2030, corruption has pervaded critical institutions in the public as well as the private sector, it is a threat to national security, it undermines the rule of law and weakens important institutions entrusted with the responsibility of safeguarding the

significance of the state as a protector and promoter of the rights of its citizens. The Strategy emphasises the importance of a unified anti-corruption approach in all sectors to fight the scourge of corruption and enhance the commitment of government, business and civil society to achieve the vision of the National Development Plan 2030 of a corruption-free South Africa, and build a society with key values, such as integrity, transparency and accountability, which guide the actions and behaviour of citizens. To achieve all these objectives, the development, implementation and monitoring of a National Anti-Corruption Strategy (NACS) was required (ACS, 2021:71). Other mechanisms which could be considered included democracy, transparency, an efficient public service, and the presence and enforcement of civil rights (Kohler and Bowra: 2020:5).

According to Kohler and Bowra (2020:4), many international organisations have been concerned about the increase in corruption as a policy issue. During the past two decades, there has been a real shift in the number of international organisations addressing corruption, and this shift can be attributed to several factors, including the higher monetary costs of corruption and increased media interest in corruption, and increasing public perceptions of corruption as “harmful” to society. The topic of corruption and its impact on development goals is no longer pushed to the side-lines. Instead, international organisations have developed anti-corruption policies and practices, as well as corresponding institutions to oversee compliance with these efforts. Kohler and Bowra (2020:2-3) further state that the Organisation of Economic Co-operation and Development (OECD) found in its review that weak governance is one of the causes or reasons for corruption, and that good governance is one of the credible conceptual frameworks to establish and implement anti-corruption efforts resulting in sustainable economic development. Sustainable economic development is achievable in an environment whose social cause allows for access to information by the society, and a government that is accountable. Poor good governance in organisations, whether right or wrong, has been linked to the inefficiency of financial institutions and to corruption. Kohler and Bowra (2020:3) describe good governance as the elimination of corruption “through the establishment of the rule of law and the efficiency and accountability of government”.

To make the elements of good governance operationally relevant, the Asian Development Bank (ADB) (2013) states that the government needs to translate anti-

corruption mechanisms into specific areas of action which can contribute towards a corruption-free government. Those elements are: (i) a giver, (ii) an acceptor, and (iii) gratification. As such, a person giving a gift to another would be guilty of the act of corruption where the purpose of the gift is to induce the other party to do or not to do anything. which is not authorised.

Moreover, the ADB (2013) emphasises the importance of developing a charter in the form of an agreement to intensify governance issues, including increasing recognition of the importance of creating a conducive policy environment, which stresses equity and development performance. It also speaks on the importance of improving project quality, and high economic performance. The World Bank's (2014) concept of good governance specifically focuses on effective management elements. It insists that good governance is a requirement for effective policies.

According to BMJ Health (2020:1), corruption and anti-corruption fall within the field of research on governance and it considers development governance. It argues that the approach is divergent from the normal approach of good governance because it scrutinises the nature of the structure of the casual approach in dealing with corruption and corruption as part of economic features and social relations, and not as results of social norms and culture. It further emphasizes that development governance focuses on measures, central and critical to anti-corruption, correcting practices that are detrimental to development. It supports Developmental Governance towards anti-corruption and is of the view that it must be detailed and allow for a refined approach (ibid.).

Xavier et al. (2017:28) state that participatory awareness and participatory mechanisms are essential to obtain public participation and to avoid riots during project implementation by creating platforms for the society to register their grievances and concerns. This mechanism allows projects to be completed on time and without wasteful expenditure due to delays resulting from riots. With consistency, good planning and public participation, the outcomes are usually positive with little conflict and greater cost-effectiveness and sustainability. Participatory governance has however got cost and time implications and must therefore be considered in the project design.

Barichievy, Piper and Parker (2005:390) maintain the view that participatory governance deepens democracy but says that in practice, there seems to little real change or effect. Their view is that this may be because ongoing implementation reflects deeper problems of design and political culture.

The Public Participation Framework for the South African Legislative Sector (2013) defines public participation as a reciprocal communication and collective problem-solving mechanism aimed at achieving representative and more acceptable decisions. It defines public participation mechanisms as a fundamental dimension of democracy and as a significant aspect in strengthening a young democracy like that of South Africa, which stands a good chance of setting a good example, if nurtured, and can be a trendsetter on the African continent and internationally. The Framework (2013) further states that public participation processes serve to strengthen institutions of representative democracy by enabling democracy in those institutions and ensuring that the public is vigorously engaged in the decision-making processes of the government. The key public actors are the citizenry, through their parties, and interest groups or stakeholders. This is a model where public participation involves a meaningful discussion between the public actors and government.

A CNPPAM (2002) report acknowledges that several authors have developed principles for public participation and describes them from the general principles for public participation. It refers to the IAP2 (2006), which produced a set of core principles for the practice of public participation, which stated that:

- The public should have a say in decisions about actions that could affect their lives;
- Public participation includes the promise that the public's contribution will influence the decision;
- Public participation promotes sustainable decisions by recognising and communicating the needs and interests of all participants, including decision-making agencies;
- Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision;
- Public participation seeks input from participants in designing how they participate;

- Public participation provides participants with the information they need to participate in a meaningful way; and
- Public participation communicates to participants how their input affected the decision.

The IAP2 report (2006) further suggests that public participation mechanisms should be considered at the beginning of the process to allow all interested and affected parties the opportunity to be represented, and the consideration of public input in the development and evaluation of alternatives.

According to the South African Anti-Corruption Strategy (2020-2030:51), all stakeholders should have seen the critical medium-term programme of the Implementation Plan annually between 2023 and 2025. A fully functioning National Anti-Corruption Advisory Board should be operational by 2022.

According to Transparency International, the first step towards defeating corruption begins with transparency. To fight corruption, the government must understand transparency as a precondition as it disrupts corruption and increases the chances of being caught out. Transparency refers to an environment where information about the decisions made is made available to the public in the true image of the decision maker and it can be verified according to the terms and conditions as this increases the prospects of detecting corruption (E4J University Module Series: Anti-Corruption). The Module further states that transparency provides for detection and reduces the possibility of corrupt activities because it keeps corrupt behaviour in check and allows for scrutiny, while lowering information blockades. Transparency thus exposes the public to government processes and standards of anti-corruption and their human rights. Access to information is another mechanism which can be applied to fight corruption as it promotes participation by society as well as civil society organisations; information laws are also pivotal in combating corruption (Costa, 2013:8). The Module also refers to Banisar (2006:6), stating that information laws allow society to protect their rights and enables them to stand up against corruption, abuse, and maladministration (Module 9 of the E4J University Module Series on Anti-Corruption). Considering the times, we live in, it also recommends e-government and open data as additional ways to promote transparency, as a proactive means of publishing information. This view is also shared by the World Bank (2023). It mentions that to win

the fight against corruption there must be intentional determination to overcome vested interests. When common cynicism with corruption and cronyism shows its face, the political will to address corruption can exceed the costs of upsetting interests, and that is when transparency and open governance must prevail. In the absence of restructuring attempts, anti-corruption can be achieved through more open processes, professional accountability systems, and the use of the latest advanced technologies to capture, analyse and share data to prevent, detect and deter corrupt behaviour. The World Bank Group (2023) further asserts that ground-breaking technologies can assist in public sector performance and productivity, and tackle corruption to improve trust and accountability, particularly in more fragile environments.

Anderson (2020) believes that ending corruption will not only save money but will also end corrupt behaviour and help with the achievement of wide range developmental goals. He writes, "Corruption has evolved over the last two decades, and during the Covid-19 response. Our approach is evolving as well." Anderson (2020) is however of the view that the World Bank's anti-corruption approach in the fight against corruption must change and it must keep up with times.

According to Transparency International (2015), Anti-Corruption Agencies (ACAs) play a pivotal role in the enforcement, prevention, and investigation of corruption and when these agencies are strong, they contribute enormously to the fight against corruption; but only when they are completely independent from government, do they have the potential to hold even the most powerful people to account. By virtue of them being institutions funded by taxpayers' money, these institutions are expected to be transparent, accessible, and accountable to citizens, and they must operate with the utmost integrity, objectivity, and professionalism. The Anti-Corruption Strengthening Initiative was launched with the aim to strengthen the ACA in 2015. The aim was to engage with ACAs to strengthen their effectiveness through strong oversight and enforcement mechanisms (ibid.).

Moroffa and Schmidt-Pfister (2010:89) state that over the last two decades anti-corruption programmes, projects and campaigns were crucial characteristics that established a base for advancing good governance. Meagher (2005:4) states that as corruption spread its wings in the world, the approach of increasing anti-corruption agencies also grew. Singapore and Hong Kong are good examples of countries with

established strong and centralised anti-corruption agencies, as well as strengthening anti-corruption capabilities throughout government agencies. Anti-corruption agencies are commonly known as institutions whose role is to detect, prevent and punish corruption, but their focus is on the establishment of separate and permanent agencies whose key function is to provide centralised leadership with principal anti-corruption activities. Their roles must include policy analysis, prevention, monitoring, and the prosecution of corruption, and they must also have outreach programmes for communities. Seemingly these two states, particularly Hong Kong, were successful in dealing with corruption and their achievements were based on (i) investigations which led to the prosecution and conviction of senior government officials and business people, (ii) paying attention to the ethical environment by education and awareness initiatives, (iii) consolidating community inputs on oversight and the reporting of corrupt activities, and (iv) setting a moral tone for government to achieve a clean government. Hong Kong's ICAC (The Independent Commission Against Corruption) model has proven to be influential in the world. Australia and Botswana are examples of states which cloned the Hong Kong ICAC model and the enactment of the Commission Against Corruption Act in Australia. Botswana saw the enactment of the Corruption and Economic Crime Act and the establishment of the Department of Corruption and Economic Crime (DCEC) as a permanent anti-corruption agency (Theobald and Williams, 2000:59; Moroffa and Schmidt-Pfister, 2010:67).

The establishment of an ACA is the first step towards fighting corruption. As much as there are critics who are sceptical about ACAs, there are also optimists, although there is still scrutiny needed to conclude the establishment of such an agency. It is also important to find clear objectives for the establishment of these agencies and determine whether they achieve their goals. According to Moroffa and Schmidt-Pfister (2010), these agencies are established to execute anti-corruption reforms, which address the re-aligning of incentives, improve information systems, and re-establish the correct balance of reward and punishment to nurture desired agent behaviour. Moroffa and Schmidt-Pfister (2010) also hold the view that the aforementioned statement applies to individuals, and corruption also happens in parallel structures, where networks and alliances may exchange "transactions" or "word" to achieve their objectives. They argue that if state institutions are potential instruments used to get

involved in corrupt activities, state institutions can equally be enticed to enable, conceal, and protect corruption.

Moreover, ACAs protect and enforce constitutional obligations. In South Africa, anyone may access or lay a complaint with the Public Protector for inadequate or corrupt services by government employees across the three spheres of government, including SOEs (as stated in the background of this chapter). ACAs do however not deal with complaints against the judiciary.

2.6 Governance

The concept of 'governance' has been extensively discussed and debated by various scholars and authors. This concept has many definitions and has been interpreted in manifold ways. 'Governance' is used interchangeably with 'good governance'. Therefore, they will be used interchangeably in this research.

Besser and Kuks (2003:2) state that when examining the literature where 'governance' is referred to as a prominent term, one immediately notices the various ways in which the term is used and how its meaning differs across different contexts. Besser and Kuks (2003) list six categories of publications on governance. Their impression is that two of these categories differ strongly from the other categories, in both interpretation and context (compare Björk and Johansson, 2000:1). 'Corporate governance' comprises many theories and studies on the management of companies, often from a stakeholder perspective, while 'good governance' is a term that is often used in development studies to indicate the administrative capacity as the context for sustainable or otherwise successful development. In these two categories of publications the term is used without a specific meaning, in about the same way as we would use the term 'administration'. According to the World Bank (2002:11), conceptually, 'governance' (as opposed to 'good governance') can be defined as the rule of the rulers, typically within a given set of rules. One might conclude that governance is the process by which authority is conferred on rulers, by which they make the rules, and by which those rules are enforced and modified (Besser and Kuks, 2003:4). Besser and Kuks (2003) further state that to understand

governance requires an identification of both the rulers and the rules, as well as the various processes by which they are selected, defined, and linked together.

Another question which arises is, “What is good governance?”. The debate on the quality of governance has been clouded by definitions which differ slightly from what governance means as a term. Governance is defined by the mechanisms that are needed to promote it. An example of this is where good governance has been related to democracy and robust civil rights, together with transparency, the rule of law, and efficient public services. Hence, the definition of good governance is linked to specific outcomes. The UNDP (n.d.) states that good governance is, among other things, participatory, transparent, and accountable, and it is also effective, unbiased and promotes the rule of law. Good governance warrants political, social and economic priorities on consent from the poorest and the most vulnerable and ensures that they are included in the decision-making on development resources (Besser and Kuks, 2003:4).

The dimensions of governance, as identified by Kaufmann, Kraay and Zoido-Lobaton (1999:104) are “graft, rule of law, and government effectiveness”. Other dimensions referred to are “voice and accountability” and “regulatory burden” (ibid.). Moreover, governance is “effective, equitable, and promotes the rule of law”, as prescribed by the UNDP (n.d.). The definition of governance, according to the OECD (2022), is determined by the role played by public authorities in instituting an atmosphere where the distribution of the economy benefits both the ruler and the ruled.

Kohler and Bowra (2020:4) state that good governance concepts such as accountability and transparency promote public involvement, especially in policy making, and hold government officials accountable for achieving development goals and for development and implementation. Good governance is therefore a valuable prerequisite for promoting sound governance and ensuring appropriate policy enforcement, effective oversight and robust accountability mechanisms for its management and design. Governance is also the set of standards, strategic vision and direction that articulates high-level goals and policies and oversees management and organisational performance to ensure that an organisation serves the best interests of the public, especially its stakeholders. oversees management to ensure that the organisation is operating in a responsible manner, fulfilling the mission of the

organisation, ensuring that the organisation is achieving the desired results, and that the organisation is acting prudently, ethically and legally (UNESCO, 2012:23).

The second broad governance theme deals with the concepts of democracy and the rule of law. This includes rights-based claims to equality before the law, judicial independence, participation in public affairs, electoral integrity, political pluralism, freedom of expression and media independence. These claims include demands for gender equality and the inclusion of young people and marginalised groups. Critical to effective implementation are informed and empowered citizens engaged in transparent and accountable governance processes. Free and pluralistic media are seen as essential for such purposes, as is free access to information held by public authorities (UNESCO, 2012:24).

Besser and Kuks (2003: 5) state that governance is a broad concept. However, it is also a misleading term widely used in the literature (Peters and Pierre, 1998; Lynn et al., 2000:234; O`Toole 2000:276). As Björk & Johansson (2000:1) noted, there are as many governance ideas as there are researchers in the field. Clearly a more comprehensive refinement of this concept is needed. According to Mehraj (2020:3-4). governance is a concept that is real and operating. He (2020) adds that it embraces the fast-changing political landscape, the social and economic environment, as well as the international atmosphere and conditions of operational governance. Mehraj (2020) explains that the modern concept of governance is participatory, responsive, consensus-oriented, transparent, accountable, effective and efficient, equitable and inclusive, and follows the rule of law. He (2020) highlights that governance is also interrelated with efficient and effective administration in a democratic framework, which is an administration expected to be friendly and considerate to citizens; it must also be transparent and responsive, and respect human rights at large. Mehraj (2020) defines governance, acknowledging the Cadbury Report (1992), as corporate governance on the basis that governance refers to the system that directs and controls organisations – meaning that the role of governance is about the provision of inclusive guidelines to the institution, directing and regulating the executive activities of management with reasonable probabilities for accountability and regulation by the interests beyond the corporate boundaries.

The ADB (1995:3) defines governance as a concept that is interested in the management of development processes, in the public as well as the private sectors. This concept incorporates the operations and capabilities of the public sector, and it takes an interest in rules and institutions that develop the frameworks regulating the conduct of the public and private sectors; it also monitors accountability for the economic and financial performance of these institutions. Moreover, it is interested in companies, corporations, and partnerships regulatory frameworks. Hence, governance is broadly about the institutional environment created for citizens to have interactions among themselves and the provision of direct interaction with government institutions and entities (ibid.).

According to the UNDP (2013:23), governance has three legs: economic, political, and administrative. Firstly, economic governance is the processes of decision-making that affects the economic activities of a country and keeps in check its relationships with the economies of other countries. This leg of governance has immense ramifications for equity, poverty, and quality of life. Secondly, political governance refers to a process of decision-making on the formulation of policy, while administrative governance is the system that creates structure for the implementation of policy. These three aspects of governance define good governance, which provides structural guidance for political and socio-economic relationships (UNDP, 2013). According to the Ombudsman Module on Concepts and Theories of Governance (2013:10-11), governance includes the state, but it surpasses the state because it incorporates participation of the private sector and civil society establishments. Here, the state is defined to include political and public sector institutions. Schwella (2015:75-76) defines the state as a range of things, including a collection of institutions, a territorial unit, a philosophical idea, and an instrument of coercion. The E4J University Module Series: Anti-Corruption (2013:6) defines the state as being linked to all other sectors of society through networks, partnerships, and markets.

Additionally, governance refers to the development of governing styles in which boundaries between and within public and private sectors have become blurred. The essence of governance is its focus on mechanisms that do not rest on resource to the authority and sanctions of government. Governance can also be about the potential for contracting, franchising, and new forms of regulating. In short, it is about what some people refer to as the New Public Management (NPM). However, governance is more

than a new set of managerial tools. It is also about more than achieving greater efficiency in the production of public services (Peters and Pierre, 1998:17-18). For Peters and Pierre (1998:232) governance is about process, while NPM is about outcomes.

Furthermore, governance is concerned with creating ordered rules and conditions for collective action. Note that governance outcomes are like government. It is a process difference. Governance refers to the development of styles of government that blur the lines between and within the public and private sectors (Kaboolian, 1998:17). Turning to NPM, for a description of the public sector reform movement that collectively encompasses it, Kaboolian (1998) states that it is a public choice approach, the transaction cost of relationships, and a set of innovations that prioritise efficiency over fairness.

The Ombudsman Module (2013:16;17) acknowledges Bekke et al. (1995), Peters and Pierre (1998), Stoker (1998) and Rhodes (1996, 1997), stating that the core of governance and their position, according to government critics, is concerned with and focuses on non-governmental institutions. Some observers have criticised this definition as being too simplistic. These critics argue that governance is neither easy nor methodical. Governance is complicated by the fact that it involves multiple actors, rather than a single helmsman. Chapter 1 refers to the ADB (1995:39) stating that governance and action process thinking is the designing and delivering of good governance. If applied, it can help unravel deep-seated problems in South Africa's SOEs. The concept of good governance is however still an impression the government must derive from the concept of governance. The South African governance system is perceived to be facing either a prosperous future or a collapse considering that it is at a juncture and in a sensitive political situation close to tipping point. This implies that the outcome may be either/or. Reference was also made to Mathebula and Munzhedzi (2011:51), who stated that good governance is there for the state to ensure its effective use by the authorities across the three spheres of government. For good governance to thrive, Matshabaphala (2014:1010) suggests that good governance must demand ethical and accountable leadership. This leadership needs to enhance good governance by promoting ethical principles which include honesty, fairness, integrity, justice, and freedom (Matshabaphala, 2014:1010). Mathebula (2017:19)

further states that the concept of good governance has gained momentum in usage in the current academia, government, and social discourse.

Furthermore, governance has an important and positive effect on sustainable development and service delivery. There are four elements to good governance which the ADB (1995:8) refers to: participation, accountability, predictability, and transparency. The ADB (1995) explains that people are the pulse of participation as participation is the heart of development and people do not only benefit from participation but are also agents of development, whether as individuals or groups. It further says that participation is commonly linked to accountability. Accountability is the responsiveness of institutions to the communities affected by their decisions, which leads to the fact that accountability demands transparency, and transparency demands accountability. Transparency here means an informed citizenry on the policy decisions made. "Government transparency can further be understood as the level of access to government information, which is made available to the population," state Kohler and Bowra (2020:4).

Grindle (2016:17-22) defines governance as a term that refers to institutional structures, which are pro substantive results and public legitimacy. She (2016) further argues that good governance often obscures more than enlightens, and with the popularity of good governance over the years, and its subsequent inflation of the idea of good governance, it masked numerous issues related to governance as far as the role of the state is concerned. Grindle (2016) adds that as much as governance is an important concept, the ideal conditions of governance were overtaken by 'good governance' and became less helpful over the years.

Rose-Ackerman's (2016:23-27) impression of the term governance is that it is ambiguous and often stands for something else. She (2016) believes that most governance related problems in government are linked to the corrupt, wasteful, and incompetent behaviour in the public service. Bouckaert's (2016:45-56) view is that firstly, governance has changed in the past decade. Secondly, the author states (2016), it is not as rigorous and relevant because researchers cannot keep up with its evolution, while governance is required to be rigorous and relevant to address future challenges.

Steffek and Wegmann (2021:43) state that the norms of governance are deeply rooted in the spontaneous standards of modern governance and are intended to maximise industrial modernisation. These standards are used to improve the quality of products and services, and to also achieve interoperability. The standardisation itself over the years became governance, and these authors (2021) say that the increase of good governance is evidence of governance norms regarding pertinent issues such as public participation, accountability, transparency, policy evaluation, and anti-corruption. The International Organization for Standardization (ISO) is currently in the process of developing “guidance for the governance of organizations” (ISO 37000). Steffek and Wegmann (2021:43) are however concerned with the attempt to standardise the quality of governance globally and they highlight the argument by critics that the normative concepts of governance from the West are envisaged to be the same in other parts of the world with little consideration to particularities and traditions. Steffek and Wegmann (2021:43) also highlight that other critics are concerned with the technocratic conceptions of good governance, which disregard self-governance as the traditional ideals and practices of democracy, while good governance standards may accelerate critical activism, enabling societal actors to challenge oppression, corruption, or violations of human rights. Steffek and Wegmann (2021: 43) state that there is good evidence of it, and good governance can help to hold powerful elites accountable.

The term ‘good governance’ has become a catchy shorthand way to describe a variety of institutions and is thus likely to remain in common public usage, but it is not a useful concept for development analysts. Disaggregation of the concept will allow for more precision in the formulation and testing of hypotheses, building on large, related literatures from Political Science (Gisselquist, 2012:8). The ADB (1999:6) concluded that good governance is a requirement for the implementation of effective and consistent policy choices. Kohler and Bowra (2020:4) state that the use of good governance can also be a critical tool to fight corruption, as anti-corruption efforts and good governance are twinning. Kohler and Bowra (2020) further note the many meanings attached to good governance but highlight that it is based on mechanisms such as participatory democracy, transparency, accountability, government efficiency and human rights. Lauridsen (2012) states that good governance is a good strategy to economic development and is of the view that good governance is seen as crucial

for economic growth and wider socio-economic development. According to Lauridsen (2012), best governance practices from developed countries led to several governance indicators indexes to assist developing countries. These indicators demonstrated that good governance promotes economic growth and development through investment, political stability, and ethnic conflicts; hence, good governance could be linked to elevated levels of economic development.

2.7 Development Governance

The previous chapter refers to Choudhary (2018:5) who defined Developmental Governance as being a governing process intended to ensure the development of administrative as well as geopolitical offices. Choudhary (2018) says that development governance is a broad field of policy processes of participation and development.

The World Bank in its 1992 report entitled “Good Governance and Development” views good governance as a way in which a country uses its power to manage its social and economic resources for a country’s development, while development governance is seen as the governing of social and economic development through policy development, the designing of programmes, budget allocation, and administrative reform complementing an organisation's long-term priorities and medium-term goals, as well as its short-term and annual targets (Choudhary, 2018:25-26). Huque and Zafarullah (2017:26) state that development governance can inter-connect crucial social and economic segments to the achievement of development goals and integrating relevant role-players to reach set goals. Development governance can determine the relevance of the developed strategies and how they will actualise. Where there is development governance, there will be human development, even for the socially and economically disadvantaged to benefit from the development and be participants in the process of development; that gives the poor the right to development. The Universal Declaration of Human Rights recognises the human element and argues that “development is the condition of all social life, the international duty of solidarity, the duty of reparation of colonial and neo-colonial exploitation, increasing moral inter-dependence, economic inter-dependence, and the cause of world peace threatened by under-development” (Nanda, 1993:43). The right to development is an equal right for groups or individuals to take part in and benefit in

the social, economic, cultural, and political development, as acceded by the UN for the realisation of human rights and freedom. The UN indicates that this, basically means full participation in the process of development, the processes of decision making, the right to equal opportunities and access to resources, the right to fair distribution of the benefits of development, the right to respect civil, political, economic, social and cultural rights, and the right to an international environment where all these rights are fully realised (Nanda: 1993:258). For Huque and Zafarullah (2017:22), development governance is about the empowerment of the poor and neglected. It affords them space to use their capabilities of taking part in and influencing processes of development. The World Bank (2002:11) states that this concept enables people to participate in, bargain, influence, have control over and hold institutions, which are responsible for their well-being, accountable.

Islam (2014:3) states that the concept of development has evolved over the years and defines it as the ability of a state to enhance its human resources to achieve high productivity to meet the needs of the people while empowering them at the same to rightfully make their needs known to the government. Development has many dimensions inclusive of political, economic, social, cultural and administrative aspects and should also have aspects of human rights that promote basics to nourishment, fighting hunger and poverty, and other basic rights such as education and the participation in political processes that migrates people from political, economic and political freedom and liberates them from the fear of want and exploitation (Islam, 2017:3-4). Development also improves citizens' self-confidence and worth and restores human dignity and recognises it as being "a process of growth in the direction of modernity and particularly in the direction of nation-building and socioeconomic progress" (Islam, 2017:3).

Huque and Zafarullah (2017:27-28) state that development governance results in harmony and economic growth, and in human and sustainable development. Development governance as a complex process integrates the social, economic and political goals of a country, which will synergise the state, citizens and global development governments, having a profound influence on a development culture routine which realises the material need of a society and promotes the inherent potential of the people. This concept of governance links institutions, instrument actors and transactions of development that are related and intended to result in a stable

economy meeting the needs of the citizenry (Huque and Zafarullah, 2017:27-28). For development governance to thrive, it requires an honest, accountable, and efficient PMS, which relies on the saturation of best practices emulated from the private sector to deliver good services to its beneficiaries and requires a policy-friendly environment that is receptive of inputs such as the setting of agendas, policy formulation, adoption and implementation, evaluation, and administration. A sound-policy environment calls for a reconciled political and bureaucratic input and a top-down-bottom-up approach together with an oblique blend of ideas from external stakeholders. This concept links public organisations with non-state entities (Huque and Zafarullah, 2017:27-28).

Development governance agents in government are the civil servants entrusted with the responsibility to serve as the custodians of development governance. Custodians of development governance are those in power agencies, who hold the stewardship of such. Scholars and practitioners describe stewardship as being the responsibility of those in charge of the use of resources, decision making, and accounting to the public (Xavier et al., 2017:5). Stewardship today translates to an accountable and committed workplace that is not managed through increased control or compliance, but an intention to decentralise power to the lowest levels of the organisation. Stewardship intends to support the common good of communities. In recent years, stewardship has become a form of governance that is needed (Block, 2013:6). In support of this view Lynn (2018:31) defines stewardship as a type of governance, which is the antithesis to agency governance, a caretaker of the needs of others. In a business context, stewardship is related to the executives of the company who have the responsibility of protecting the interests of the shareholders and make decisions on their behalf. An example of a firm that embraces the concept of stewardship is a company who appoints a CEO and chairperson under the executive and a board (Lynn, 2018:31). Custodians of Developmental Governance are those in power at these agencies, who hold the stewardship of such. Xavier et al. (2017:5) state that scholars and practitioners describe stewardship as being the responsibility of those in charge of the use of resources, decision making, and accounting to the public. Stewardship today translates to an accountable and committed workplace that is not managed through increased control or compliance, but an intention to decentralise power to the lowest levels of the organisation and is intended to support the common good of communities (Block, 2013:7). Eddleston and Kemermanns (2010:53) define the stewardship theory

as a process that incorporates participative strategy, organisational performance, and control concentration.

Another view on developmental governance by Hutchinson et al. (2020:5) expresses the expectation to see progressive measures in the fight against corruption. These authors (2020) further anticipate a government to initiate Developmental Governance to achieve improved governance. Their view considers Khan's argument that governance matters, and that ideas of Developmental Governance offer the most theoretical approach to anti-corruption. Khan (2012:20) remains resolute that the only feasible governance agenda should be to increase the application of Developmental Governance capabilities progressively and to start introspecting on the real political and institutional conditions of a country, which may reveal the actual sector problems and will result in specific-sector solutions. Alence's (2004:179) findings draw insights from new institutional economics and focuses on how well the role of institutions impacts on the state's incentives aligned with the objectives of long-term economic development. From a Developmental Governance point of view, Alence's findings (2004:179) indicate that a combination of democratic contestation and institutional restraints on a government's discretion on executive authority could improve the quality of governance.

The incorporation of participatory governance as an element of Developmental Governance implies a contextualised reaction to the need for the responsiveness of institutions in partnership with role players to manage development without corruption, discrimination, nepotism and rigidity; it must also include accountability, transparency, responsiveness, effectiveness and efficiency, be equitable and inclusive, and must follow the rule of law. This principle will minimise corruption because the views of minorities will be considered, and the voices of vulnerable members of society will be taken into cognisance when decisions are taken. It is also responsive to the current and future needs of a society. Between administration and development governance, development administration means that the development agenda is executed through the tool of bureaucracy, while development governance is a system in which the public, groups, institutions and networks' demands are made known and they are given a platform to exercise their rights. With development governance, citizens do not have to look up to bureaucracy to find solutions but resolve their problems in mutual partnership. Administration governance is seen as being the responsibility of the state

and development governance is seen as being inclusive of all partners, in this case being the state, the private sector and the public (Choudhary, 2018:7-8).

According to the BMJ Global Health Analysis (2020:2), Developmental Governance is a framework that demands any interface that is unambiguously paired with governance goals, which are integrated with development goals. It is remarkably relevant for the present debate on decolonising the public sector because it focuses on revisiting history to acknowledge the extent to which colonialism affected governance. The NMJ Global Analysis (2020:5) mentions Nigeria, Bangladesh, Pakistan and Tanzania as countries that started to use development governance as a framework for anti-corruption work in the health sector. The analysis has an opposing view from that of Lewis (2006:2-3), which suggests that good governance perceives anti-corruption measures as one part governance and one-part improvements, which are needed transversely in all sectors. It argues that Developmental Governance understands intended anti-corruption measures as the induction for governance improvements. Where action is possible, the identification of compartments of change is intricate and cannot depend on blueprints or standardised solutions. This analysis (BMJ Global Health Analysis, 2020:6) recommends that the public service system approach to Developmental Governance must explore Khan et al.'s model (2012:46), which focuses on political economic factors that shape corruption and the potential for anti-corruption intervention. Khan et al.'s idea (2012) of 'Developmental Governance' offers the most theoretically developed approach to anti-corruption. Like others, Khan et al. (2012) are critical of good governance and the way in which it benchmarks progress across the world against Euro-American countries. These authors (2012) question the fundamental assumption within the good governance framework: that good governance was enhanced by the rule of law, the protection of property rights and contract law, which created the conditions in which highly productive capitalist economies emerged (BMJ Global Health, 2020:6-8). Huque and Zafarullah (2017:13) concluded that development governance is a hypothesis that depends on a process that fosters effective participation of all relevant stakeholders and institutions during policy development; additionally, human and social capital remains central in the process and must get the support of institutional frameworks. Lauridsen (2020:350) highlights that the state is responsible for the establishment of relevant economic development institutions which will ensure support for economic growth and

transformation at developmental institutions, their structures, and the effective implementation of developed strategies and policies enhancing economic growth through investments. These institutions are expected to nurture sectoral diversification by establishing firms in local communities and improving the technological aspect of their operations so that they are technologically relevant in the global village (ibid.). Developmental Governance needs ongoing research on governance and economic growth to address challenges in this field (Lauridsen, 2020:351).

Another view on development governance is that of Ngang's (2019:380-381), who believes that when the socio-economic and cultural aspects of a society is prioritised, the community tends to participate meaningfully in politics and it guarantees civil and political rights benefits. A political environment is neither important nor needed for the achievement of development; it is not necessarily an intricate part of the well-being of the people and does not affect the right to development. The assumption is that communities are poor because governance and development are formed and characterised by politics and the use of power by the state, which overpowers ambitions for socio-economic and cultural emancipation and the well-being of communities. Socio-economic and cultural development is advanced by Developmental Governance and Developmental Governance demands ethical accountability from a government and ensures that people are the central role players to the achievement of development objectives and are not objects used for development. Ngang (2019:381) states that to achieve improved living standards for citizens, a government must invest in capacitating the people during the development process and make them a central focal point. Providing the right to development is a guide to consistent policy development, development programming and decision implementation, considering the role and contribution of the people in setting a base gauging the standards of living (ibid.). The right to Developmental Governance expects governments to develop tailor-made domestic policies and development programmes, which address local socio-economic and cultural needs rather than global needs that are determined by global politics and provide opportunities for development choices, which discard systems that are not applicable to a society (Ngang, 2019:388, 390). Ngang (2019) concludes that Developmental Governance dictates for progressive thinking and the endorsement of agreements.

2.8 Participatory governance

According to an article by Hofer (2020) on 'Participatory Urban Governance in South Africa', the South African Constitution made provision for frameworks encompassing and improving the role of local government as a mechanism to achieve equal rights for all citizens. Hofer (2020) states that the provision was aimed at establishing a foundation for participatory local democracy, aiming at fostering citizen empowerment, especially for previously disadvantaged citizens who were excluded under the apartheid regime.

The past decade has seen substantial growth not just in the scholarship surrounding participatory governance but also in the practice itself. Increasing citizen participation is sometimes seen to increase the efficacy of regulation, improve the provision of public goods and services, and bolster outcomes in areas such as health and education that straddle the boundaries between public and private, social, and individual (Fung, 2015:9).

To drive participatory governance processes, there needs to be a change of mindset, and the process of institutionalisation needs to be changed by setting clear and specific mechanisms for participation that can be monitored and evaluated (Veltmeyer 2004:67; Browning-Aikin et al., 2014:24; Schinke and Klawiter, 2015:44), and information needs to be made available to all stakeholders of opportunities suitable to them at the different levels and phases of decision making (Weiss, 2010:67; Coelho and Favareto, 2006:12; Newig and Fritsch, 2009:32); this process is called stakeholder engagement.

Participatory governance is a mechanism that is often encouraged in developing countries to improve government responsiveness and service delivery through improved policy developed with the inclusion of civil society, which according to Xavier et al. (2017:4) consists of "economic and social actors, community-based institutions and unstructured groups and the media at the local, national, regional and global levels". It also realises policy benefits and increased accountability (Speer, 2012:43). These mechanisms are relied on to bring public policy benefits, increased accountability, higher government responsiveness, and better public services. Huque

and Zafarullah (2017:16-17) state that total development requires total inclusivity, participation, and the empowerment of society through structures that are regionalised and accessible for interaction between the government and the people. A government for the people, a public-private partnership environment, and political-societal relationships can improve social capital. Huque and Zafarullah (2017:17) reference the ADB's four elements linked directly to development, namely accountability, transparency, predictability and participation (ADB, 1997:9), each one of them linking comportment on the social, political, legal, and ethical dimension of development governance.

Huque and Zafarullah (2017:18) state that **participation** is a collective effort that happens in a social environment with the aim of attaining control over resources, institutions, policy processes and decisions (Steel and Wolfe, 1994:5). In development governance, participation is a mechanism that embraces consultation designs, implements and evaluates development policies and programmes, and monitors information circulation referencing (Cohen and Uphoff, 1997:14; Zazueta, 1995:22; Brinkerhoff, 1996:58).

Accountability, according to the ADB (2013:10-11), is about building government capacity and ensuring public sector management, public enterprise management and institutional reform, sober public financial management and civil service reform. Accountability holds the public service answerable for its conduct and its responsiveness of its entities, and measures government performance; it is also a mechanism which oversees set standards and practices. It also requires the private sector to simplify procedures and is a rapid alternative to redress the incompetence of the executive authority. Lack of accountability, on the other hand, compromises the state's credibility as an economic partner (ADB, 1995:8). Huque and Zafarullah (2017:19) add that accountability ensures policy formulation and implementation, the good use of resources, skilful accounting, financial control, and excellent performance standards. When the society has access to information on government policies, rules and decisions supporting development, accountability mechanisms, and transparent development processes, it will reduce doubts on the policy process and it will prevent corrupt behaviour. Kohler and Dimancesco (2020:3) define accountability as a mechanism which holds individuals or agencies accountable and responsive to their beneficiaries. Vian and Kohler (2016:39) state that this mechanism holds institutions

accountable with responsive service delivery to the needs of their communities. Accountability is crucial as it ensures that entities account to beneficiaries of their decisions or actions (Vian and Kohler, 2016:39). Accountability therefore minimises the chances of corruption and abuses and ascertains compliance with standards and procedures; it also improves performance and organisational learning and requires institutions to explain and justify their performance outcomes to both their internal and external stakeholders. They must also apply consequence management when performance targets are not reached at these entities (Kohler and Dimancesco, 2020:66).

The ADB (2013:17) refers to **participation** as a participatory development process. This includes the participation of beneficiaries and affected groups, a public sector/private sector interface, the decentralisation of public and service delivery functions by empowering the local government sector and promoting cooperation of local government with non-governmental organisations (NGOs). The ADB (2019:8) further states that the principle of participation is a premise of the acceptance that development is for the people, not only as beneficiaries, but as agents of the development itself because development is for and by the people. The results of this approach can be beneficial for improved services delivery and sustainable policies, with empowered stakeholders. Huque and Zafarullah (2017:20) emphasise that the involvement of relevant stakeholders in the processes of development contributes to “legitimate and credible” governance. Citizenry involvement in these processes leaves them with a sense of ownership and improves the chances of the success of government programmes. A consultative approach towards participation results in a transformed society, from them being only the recipients of development to being partners in the process of development (Cornwall, 2000:9). Participation also changes the citizenry’s mind set, improves their confidence, improves community self-esteem, grows their assets and capabilities, lays a foundation to influence the outcomes of development initiatives, and complements top-down strategies by foot soldiers who contribute to the agenda setting in policy processes (Huque and Zafarullah, 2017:21).

The ADB (2019) describes **predictability** as a collective of legal frameworks enabling law and development as part of private sector development and policies to regulate society and ensure that their application is fair and consistent. The ADB (2019) further states that predictability is essential as it maintains the peaceful co-existence between

institutions and citizens. Huque and Zafarullah (2017) assert that predictability balances a transparent governmental framework, which in principle is based on a ruling system that regulates development, protects human rights, and resolves conflicts, because a well-structured legal structure ensures a rational assessment of business risks, keeps transaction costs low, and lessens government impulsion.

Transparency means open access to information and disclosure of information (ADB, 2013:21). According to Kohler and Dimancesco (2020:5), it is “the degree to which access to government information is available. Understanding how decisions are made requires information about the procedures followed and the criteria used by policy makers to reach decisions. Understanding why decisions are made necessitates disclosure of the information drawn on by policy makers and revelation of the arguments adduced in favour and against decisions”. Huque and Zafarullah (2017:20-21) state that transparent governmental frameworks complement predictability, which prioritises the comprehension of a rule-based system that regulates development, protects the rights of civilians, and counters conflict which might result from antagonistic policies and their application. Anderson (2020:18) refers to transparency as having value and as a basic human right. Kohler and Bowra (2020:8) are of the view that the conceptual framework of governance, particularly accountability and transparency, has been appealing to government institutions as public policy focus areas because they assist governments in terms of the needs and demands of the citizenry when their processes are inclusive, transparent, and accountable to their stakeholders. Accountability and transparency are likely to illuminate areas of corruption and where there may be corruption risks, and/or inefficiencies.

Referring to participatory governance, Speer (2012:21) states that the positive view on participatory governance is limited in scope, including the methods to implement it, because citizens and public servants are not enabled and encouraged to make participatory governance arrangements work, as effective accountability mechanisms in developing countries remain a challenge.

The four elements of governance are related and co-exist. Participation is inter-linked with accountability as the public hold institutions accountable for the non-performance

or non-achievement of set goals, and predictability is linked to transparency (ADB, 1995:10).

Participatory governance is mostly related to the inclusion of a broad spectrum of citizenry and the better sharing of information, transparency in political processes, participation, and public debates promote changes in policies and the design of institutions and they can promote access to public policies and their quality and responsiveness (Coelho and Favareto, 2011). To add to this view, Xavier et al. (2017:5) refer to the importance of civil society in economic transformation, as civil society is in a better position to “shift codes of good conduct, influence economic calculation and the dynamic of commercial life”.

According to the World Bank (2004 and 2006), participatory governance can result in the increased chances of inclusion, politically and economically, better access to services, and increased power that can realise improved social equality. It also increases poor people’s access to services; thus, increasing their chances of inclusion in both politics and the market economy, starting a virtuous circle that would gradually increase their power, resulting in the promotion of social equality (World Bank, 2004, 2006).

Andrews (2019:7) considers public participation as a critical element of governance in a modern democracy, heightening its critical role in better policy and improved service delivery. Andrews (2019) also believes that public participation in governance offers perspective on the ever-changing needs and values of citizens and assists the public sector in always being responsive, resilient, and relevant. Evidence- and outcomes-based participation focuses on the work as one of the benefits of public participation governance and is a powerful mechanism to build real-time evidence and helps to prioritise the immediate needs of citizens. To keep up with the ever-changing national and global context, public participatory governance helps to know when change occurs to deliver public good (Andrews, 2019:7). Hutchinson et al. (2020:5) define participatory governance as a concept that must transform into participatory governance to involve the people.

According to a Shadow Report on Participatory Democracy (2015:5-6), continued civic participation animates the functioning of representative democracy, and encourages society to become accustomed to legislation as soon as it is enacted. It enhances the

citizenship of participants by enabling their voices to be heard and considered; it promotes democratic and pluralistic convergence; it aims to promote the spirit of the law and to create widely accepted and effective legislation; and lastly, because of its open and public nature, it is open to covert lobbying and influence. Furthermore, it acts as a counterbalance to covert lobbying and influence (ibid.). Xavier et al. (2017:3, 4) argue that participatory governance affects both the state and civil society; it not only improves the outcomes of development activities, but also contributes to good governance as the foundation of democracy. Barichievy et al. (2005:371) refer to participatory governance as a way for local governments to regulate elections, articulating a set of structural and procedural requirements for understanding communities; a mechanism to implement local government participation to achieve community participation as a goal of legislation and participatory governance; countering representative democracy in a way that improves service delivery and development; and is intended to quantify local government responsibilities in new ways and more comprehensively than state or national territories. Moreover, it mainly refers to the relationship between external and internal democratic governance in a community. External governance concerns the relationship between the municipality and the community at large. It is in this relationship that institutional reforms of democratic governance aim at structural and procedural processes (ibid.). Internal democratic governance refers to decision-making that takes place within a community. The stronger the participatory governance with the continuous involvement of ordinary citizens in decision-making, the more democratic the state will be. Participatory governance ensures democracy when supported by the conception of democracy as political equality, and the theoretical understanding of the democratic deficit of modern representative democracy. Participatory governance ensures democracy as a form of compensation in democratic nations (Barichievy et al., 2005:103).

A CNPPAM Report (2002:18) highlights the main aim of public participation as ensuring that citizens have meaningful contributions to make into the decision-making process and it opens the line of communication between agencies who make decisions and the public. These benefits are evident when public participation is a two-way process where there is reciprocation for agencies and the public learns and gains benefits in return. The Report (2002) further states that effective public participation

considers the public's values and these must be merged into decisions that affect them. It highlights the benefits of participatory governance as being the following:

- Improved understanding of client expectations and user group needs,
- Improved agency understanding of conservation issues,
- Improved agency understanding of the role and contribution of the community,
- Greater continuity in knowledge,
- The ability to build community support for a project and to improve stakeholder relationships,
- Improved public understanding of the agency's responsibilities,
- Improved staff and community technical knowledge,
- Improved agency credibility within the community,
- Improved quality of decision-making by agencies,
- Enhancement of social capital and flow-on social and economic benefits,
- Enhanced and informed political process,
- Greater compliance through increased ownership of a solution,
- Greater community advocacy for biodiversity protection,
- Greater access to community skills and knowledge, and
- Improved community understanding of conservation issues and responsibility for conservation outcomes.

Despite the benefits, the CNPPAM Report (2002) acknowledges that there are disadvantages to this mechanism, stating that public participation may be time-consuming and expensive. For it to work, capacity building and staff training should be prioritised at organisations. The Report (2002) further states that if not done correctly, public participation processes can result in a loss of faith in the agency by the public and may lead to participants to have a negative perception of the outcome, which might result in little participation in future processes.

Waduzzaman and As-Saber (2009:14), contextualising participation, define participatory governance as the interaction process between citizens and government officials to state their interests, implement their rights and obligations, table and resolve differences, and join forces in development activities to deliver services. Participation is a process conceptualised for community members to participate

effectively and guarantees accountability and transparency of service delivery while implementing local-level development programmes. Participatory governance, as a governance system, is for the people and contributes to the fight against corruption, improves sustainable development, which is likely to help reduce poverty and increase the benefits for the communities (Servaes and Malikhao, 2007:52). In support of their view, they refer to Putman (1993, 176-1777), emphasising the importance of society engagement and good government intertwined in a “virtuous circle” to counter the “vicious circle” of lack of trust, chaos, and poor governance. Servaes and Malikhao (2007) acknowledge that participatory governance is seen as an important concept in the governance field.

Moreover, participation increases social justice through citizen participation. Fung (2015) states that participatory governance can promote social justice as the third value of governance. According to Investopedia (n.d.), social justice is the fair distribution of resources, opportunities, and privileges in society. The vision of justice is fairness. This means that society must consider the rules for the equitable distribution of social resources within society and the level of inequality that exists and can be allowed within society. There are many different definitions of what social justice is, but overall, they share broad goals of inclusivity and equity, with access, equity, diversity. They consider the same principles, including participation and human rights. Social justice must be pursued because it strives to protect citizens from becoming victims of unjust prejudicial deprivation and to provide everybody with the basic needs for a good life. Social justice as a political and philosophical movement aims to achieve the progressive sharing of resources and opportunities, address historical injustices, and direct resources to underserved communities in a just and fair way (ibid.).

Wampler (2012:2) argues that many new participatory governance institutions promote social justice to address obvious social inequalities and poverty in the democracy of developing countries and to minimise the bias of the middle and upper class as far as representative democracy is concerned. Wampler (2012) adds that many participatory democrats hope that participatory governance changes will also advance social justice. There are however challenges that come with these reforms, which are political. Wampler (2012) further states that often organisations and leaders who hold the resources and power to create significant participatory governance

initiatives do not have the motivation to advance social initiatives, but on the other hand they are motivated to enhance governance effectiveness or legitimacy. The challenge for those who seek justice through participation is primarily a political challenge, rather than an institutional design problem. They need to create the political and social conditions that will make powerful organisations and leaders more motivated to pursue social justice. Only then will they be interested in whether and how increased citizen participation can help promote justice. This suggests that to achieve social justice, participatory governance must put in place programmes with rules with a preferential bias towards poor citizens and communities (ibid.). Wampler (2012:8) concludes that participatory governance programmes in developing countries focus on social justice because of the widespread economic inequality and the lack of public services in poor communities.

A dissenting view from certain researchers is that the concept 'participatory governance' should not be viewed as a solution due to its limitations regarding its valid contribution and efficacy (Waduzzaman and As-Saber, 2009:52), while Nyholm and Haveri (2009:107) consider it time-consuming and inefficient. They refer to reasoning based on the views of Mansuri and Rao (2013). They question the limited participation of poor and marginalised segments of the community and state that thus participatory governance has not been achieved. The unnecessary influence and control of elites, including political and religious leaders and bureaucrats, jeopardizes the true participation of communities and is consequently tainted by "capture and corruption" (Nyholm and Haveri, 2009). Moreover, over-emphasising local participation can lead to government losing control, ignoring representative and democratic principles, and allowing local elites to freely influence the structure and effectiveness of governmental processes (Scott, 2009:24-26). Moreover, the optimistic expectations of participatory governance have often proven unrealistic and regionally unattainable (Mansuri and Rao, 2009, 2013).

There are however diverse ways to overcome the limitations of participatory governance and make it work (Eversole, 2003:11; Ferdinandi, 2009:27; Mansuri and Rao, 2013; Stephan, 2004:43; UNESCO, 2007:4). Law is determined by the knowledge, awareness, and competence of the participants, considering the goals and objectives of the development initiatives they participate in. Participants exercise the right to act positively and make meaningful contributions that influence outcomes

(UNESCO, 2007). For effective participatory governance, participants are empowered through capacity building (Waduzzaman and As-Sabre, 2009:477).

2.9 Conclusion

Combating corruption in state institutions is a key goal of South Africa. This realisation came after recognising that SOEs have failed to meet their initial economic growth and development goals, and that they have generally failed to thrive due to high levels of corruption. Moreover, SOEs are not functioning properly due to the poor application of good governance, and the impact thereof results in rising unemployment and poverty in communities as the recognised beneficiaries and stakeholders of these enterprises. It can further be said that South Africa's system of governance faces either a thriving future or total collapse, given the current position of SOEs and the country's political climate, which is at a delicate tipping point. The aim of governance and action processes is to design and deliver good governance, and if applied correctly, they could help unravel the deep-seated problems in these institutions (Schwella, 2015:76).

The discussion in this chapter highlighted precise governance challenges preventing SOEs from performing and creating value and contributing to economic development due to the depth of corruption anchored in these SOEs. Various reports, authors and writers in South Africa have shown that corruption is the catalyst for the lack of good governance. This phenomenon suggests that the elevated levels of mismanagement of funds (failure to comply with the PFMA, frameworks, and policies), officials' incompetence (filling of senior management and executive posts with incapable, unskilled, and experienced officials), money laundering, looting, and corruption (failure to submit financial statements and account to the Auditor-General) have landed SOEs in the dismal state they are in.

The chapter further defined the establishment of SOEs as the approach chosen by the ANC-led government for economic development and growth to improve service delivery and enhance the government's ability to support the national development process. These organs were also established to strengthen economic development plans by SOEs or corporations. To recap, SOEs are legal entities specialised in

conducting business activities on behalf of the country and are important drivers of service delivery and structural development.

This chapter also covered the Parliamentary Oversight Act, the PFMA, and the Constitution of the Republic of South Africa (1996). The Constitution gives national and provincial legislative bodies powers to oversee the respective leaders of SOEs. Section 55(2) states that government agencies are accountable to Parliament, and Parliament must retain control of the executive branch.

Furthermore, this chapter explored the existence of corruption, its impact on failed businesses, the relevance of the elements of good corporate governance to operations, and the importance of translating anti-corruption mechanisms into specific areas of action that can contribute to a government free of corruption.

This chapter also focused on development governance and participatory governance as key mechanisms, and other integrative governance concepts that contribute to the reformation of good governance and corruption-free state institutions.

Finally, the focus of the chapter moved to the importance of anti-corruption and anti-corruption mechanisms, which needed to be applied to clamp down on corruption in state organs.

The next chapter will focus on the specific challenges faced by South African SOEs

Chapter 3: Legislation on SOEs

3.1 Introduction

Legislation is the government's most important tools for organising society and protecting its citizens. It defines the rights and obligations of individuals and the authorities to which the law applies (Herman, 2000:3). Legislation establishes societal norms and standards at all levels of government and can be applied for several reasons. It is employed to regulate activities, give specific actions the go-ahead, supply resources like funding, impose penalties, and allow or prohibit activities. Legislation is crucial to the creation and operation of institutions (Britannica, n.d.).

The Constitution of the Republic of South Africa of 1996 envisages a nation with a well-developed economy and a strong social safety net through the National Development Plan (NDP) 2030, which is a government policy designed to help achieve this goal. In 2012, the African National Congress (ANC) government adopted the NDP as a guiding document of national importance. The NDP defines South Africa as a developmental state and refers to the country's progress as a key part of the country's future. Developmental states are usually associated with significant development in several sectors of the country's industries and high economic growth. South Africa's SOEs play an important role in the country's economic development, as they attract capital equipment, finance, and other resources. This benefits the Southern Africa region and the international community (Mayedwa, 2018: iv).

The previous chapter stated that the government adopted the establishment of SOEs as an approach for economic growth and development, and to increase its ability to improve service delivery and to assist with the state's development (Chilenga, 2016:3). SOEs are state-owned entities or companies, which are legal entities meant to carry out business activities on behalf of the state (Balton, 2010:11), and they are a major driving force for service delivery and structural development. These entities are however, according to the 2016 State of the Nation Address, under threat of running at a loss. They are facing precise governance challenges that can hinder their ability to perform efficiently, create value, and contribute to economic development (State of the Nation Address:2016).

This chapter looks at the legislation and frameworks regulating SOEs as legal entities doing business on behalf of the government; it explores the laws and corporate governance protocols providing the corporate governance framework for SOEs; and determine the power and authority vested in SOEs and their general functions.

3.2 Objectives of SOEs in South Africa

An SOE is an entity formed by legal means by a government to engage in activities of a commercial nature. Hence, an SOE is set up to carry out commercial activities on behalf of the government. SOEs not only represent the government in commercial activities, but also primarily sell material resources to trading organisations and companies. In many countries, the management of government resources such as oil and gas are the domain of SOEs. These entities provide a route through which governments can be held accountable for issues related to extractive resources (Corporate Finance Institute, n.d.).

The state ownership of enterprises occurs for a variety of reasons common to many countries. SOEs can fix market failures if the private sector fails to invest or produce in a particular sector, despite the net benefits to society. Another reason is the natural monopoly, where these organs are owned by the government to limit the negative effects of monopoly power arising from the structure of the sector. Entities related to national security or securing supplies of critical resources are often described as strategic and nationalised. Another key role of SOEs is to ensure that citizens have equitable access to critical services and infrastructure (Report of the Standing Committee on Finance, 2015: i).

SOEs further have the responsibility of ensuring that the economy of the country becomes more competitive, and additional to their regular task of providing public goods and services, basic rights, and infrastructure, they have the responsibility of investing in economic infrastructure, stimulating economic growth, and achieving industrial policy objectives (Report of the Standing Committee on Finance, 2015: iii).

According to the OECD (2018:19), the overall goals put forward by governments for the ownership of SOEs fall into the following categories:

- * To ensure the continuity of state ownership of enterprises,
- * To provide a particular public good or service (where the market cannot provide the same good or service),
- * To conduct business under conditions of "natural" monopoly, and
- * To create or maintain a government monopoly (or oligopoly) where market regulation is deemed impracticable or ineffective.

3.3 Legislation and legal frameworks on SOEs in South Africa

Eberhard (2003:13) states that there has been an excess of legislation since 1994 seeking to streamline and improve the economic and societal state with the aim of addressing the inequalities and injustices of the past. This legislation was put in place to further principles of justice and development as enshrined in the Constitution. Eberhard (2003) further states that South Africa's legal system was partly inherited from Roman-Dutch law and influenced by the British legal tradition. The democracy achieved in 1994 led to the birth of a progressive Constitution, which was internationally admired for protecting the first-generation rights (such as the protection of individual liberty and property and freedom of expression), combined with second and third generation development-oriented rights, which place obligations on the state to advance individuals' and communities' access to health, shelter, and a clean environment. Labour Law was also rewritten to provide the categories of protection offered to employees in mature social democracies (Eberhard,2003:13).

According to the IMF Country Report South Africa, 2022, several laws and corporate governance protocols provide the corporate governance framework for SOEs. SOEs are established by law and can be established at any level of government. They are subject to the Enablement Act of 1993 [section 53 (2)] (EL), the Companies of 2013 Act (section149(8), and the Public Finance Management Act No1 of 1999 (section 52) (PFMA). The content of the EL varies by SOE, but the EL typically includes a description of the SOE's purpose and its governance, reporting and accountability requirements. The CA establishes corporate governance for private companies, including a small number of incorporated SOEs, while the PFMA defines oversight

responsibilities for SOE business plans, shareholder agreements, and reporting obligations. The PFMA also sets out principles regarding the roles and duties of the boards of directors of SOEs. The Corporate Governance Protocol is a non-statutory code of conduct on SOE governance approved by the Cabinet. It seeks to define the relationship between the government and SOEs while maintaining independence from the executive branch in the day-to-day operations of SOEs (IMF Country Report South Africa, 2022).

The management of SOEs is governed by a variety of unconventional administrative pre-conditions, including structures, which serve as the SOE's overarching law, such as the PFMA, which governs money-related control, any other enabling legislation that substantiated the SOE, and the Companies Act of 2013 and the Convention on Commercial Governance of 2002 within the Public Sector, which oversees how SOEs are coordinated, supervised, and held accountable. The Convention on Commercial Governance within the Public Sector is out of date and it is based on the King II Report on Corporate Governance (PwC, 2011:7).

The Constitution highlights the significance of good corporate governance. Section 195 deals with the significant qualities and rules that manage the public sector. According to the Section, there must be a high standard of professional ethics. This standard must be advanced and maintained. These norms, standards and guidelines apply to the organs of state and the public (Section 195(2)). The Constitution further requires the government and the organs of the state (e.g., SOEs) to stay true to the requirements of good governance. Moreover, the Constitution secures certain rights that also have a bearing on the corporate governance of SOEs (Mbambo, 2017:6). Mbambo, (2017:6) states that the PFMA (No. 1 of 1999 as amended) was pronounced to offer influence to Chapter 13 of the Constitution. As per the then Minister of Finance, Trevor Manuel, the point of the PFMA was to modernise the planning of monetary administration (Manuel, 2003:1). Moreover, the PFMA laid the foundation for a more compelling corporate organisation structure for the public sector. The Constitution obligates different common commitments on all organs of state to progress pleasant administration.

It is a well-known fact that South Africa has a world-class democratic Constitution. Chapter 3 of the Constitution requires the corporate governance of all three spheres

of government, including parastatals and entities; this translates to Intergovernmental relations. Intergovernmental Relations is a multi-level government that has various units working together; hence, it is a network that enables the various spheres of government to work seamlessly to the achievement of the objectives of government (Colasante, 2018). Intergovernmental relations are conducted within a public administration framework where there are clear and consistent values and norms (Mathebula, 2004:131). This mechanism can be formal or informal and must be regulated to fast-track service delivery. To further define Inter-Governmental Relations, Mathebula (2011) quoting Elazar (1987:16) says that it is about operationalising a government system through practices that involve extensive and continuing relations among the spheres of government. The Constitution empowers the National Assembly and Provincial Legislators with an oversight role over the respective executives of SOEs. Section 55(2) states that organs of state are accountable to Parliament, and Parliament must maintain oversight over the Executive Cabinet.

Section 92(3)(b) of the Constitution states that members of the Cabinet must provide Parliament with full and regular reports concerning matters under their control. It is however impossible for the Parliament to exercise proper oversight over 35 National Departments and more than 250 public entities; therefore, Parliamentary Committees were established to facilitate an oversight role through the Standing Committee on Public Accounts (SCOPA) - Portfolio Committee. The structure gives powers to the National Assembly and Provincial Legislatures with an oversight obligation over their diverse or individual authorities. Section 92(3)(b) of the Constitution requires that individuals from the Cabinet must supply the Parliament with full and general reports concerning matters under their control. The challenge confronting MPs is to upgrade the capacity of the policy/parliamentary committees to hold state departments and SOEs to recognised accounting practices (Mbambo, 2017:11).

It should be stated here that South Africa has succeeded in developing legal frameworks and guidelines to govern the state. It is not surprising that the Constitution recognises the importance of good governance and compels the government, both through government departments and organs of state, to adhere to principles of good governance. Certain rights, as enshrined in the Constitution, have a direct bearing on the corporate governance of SOEs. Policy frameworks and guidelines serve a useful

purpose in providing a context in which legal obligations are discharged. The South African government further recognises the positive impact SOEs have on the economy, as well as the role that they play in contributing to development. Thus, it developed a policy framework to guide the restructuring of SOEs into effective and sustainable organs. This framework is dedicated to improving corporate governance and ensuring improved ethics and probity, and that an SOE locates the government's role as a stakeholder in a framework that allows both the board and the shareholder to add value to the performance of SOEs (Khoza and Adam, 2005).

In a 2006 presentation by the Treasury on the governance of SOEs in South Africa, legislation that regulated government business or state-owned entities were mentioned; they included the GBE Enabling Act, the PFMA, the Companies Act, and Treasury Regulations. The GBE Act stipulates among other things the mandate of these entities and defined the corporate status of these entities, while the PFMA provided a financial framework for these entities, afforded them operational and managerial autonomy, and provided reporting or oversight mechanisms for the shareholder compact, the corporate plan of entities, and quarterly reports. The Companies Act sets out the legislation governing company law, establishes the legal status of companies, appoints and outlines the responsibilities of directors and auditors, and holds entities responsible for accounting and disclosures of companies. Chapter 3 of the Companies Act deals with improved accountability and the accountability of organisations, including SOEs.

Bronstein and Olivier (2015:11) highlight that in the event of any conflict between the Companies Act and the PFMA, the PFMA will prevail. Unfortunately, this formulation inherently creates uncertainties. This is because the question of whether there is a contradiction between the two statutes requires a rigorous work of statutory interpretation. Section 5(4)(a) of the Companies Act provides that the provisions of both laws shall apply simultaneously to the extent that one of the conflicting provisions can be applied and complied with without violating the other provision as intended to support the other. On the surface, this approach may seem sensible, but in practice this leads to over-regulation. This is because direct conflict between the two laws rarely occurs. SOEs are likely to be forced to do more than necessary to achieve the purposes of the Companies Act and the PFMA. This leads to an inefficient legislative system, states Bronstein and Olivier (2015:11-12).

Another important legitimate system, or persuasive legitimate structure, is the King Codes of Good Business Administration and the King Reports on Good Business Administration for South Africa. The King III Report was published on September 1 2009, and entered into force on March 1 2010. It is therefore essential to note that each of these reports – Kings I, II, III, IV and V – is intended to promote good corporate governance in South Africa. The King III Report became very important as the Companies Act 2008 was amended and global governance patterns changed. The King III Report pays little attention to how it is integrated or formed, whether it is applicable to almost any organisation, the public sector at large, the private sector, or a non-profit organisation (Mbambo, 2017:3).

According to PriceWaterhouseCoopers (2011), the South African Governance Report 2009 and the South African Code of Governance Principles 2009, collectively known as King III, contain a non-statutory code of principles and practices. Unlike King I and King II, King III applies to all private and public entities regardless of the nature and form of incorporation or incorporation. By adhering to the Key Principles of King III, each unit practices good governance. Without departing from all other principles contained in King III, some of the most relevant principles are highlighted here (PwC, 2011:10). On the role of the boards, the King III Report (2009) clearly outlined the requirements for the board and each individual executive to have a working appreciation of the effects of the suitable laws, guidelines, codes and measures of the organisation and its business to the extent that Principle 6.2 of the King III Report (2009) is concerned. It is a basic requirement for executives to adequately satisfy their trustee commitments and their commitment of care, skill, and diligence to the best preferred position of the company, according to Principle 6.2.2 of the King III Report (2009). Moreover, the King III Report (2009) “proposes that the board delegates somebody to deal with the implementation of an effective compliance framework and process as far as Principle 6.4 of the King III Report is concerned”. Independent and skilled compliance personnel must be appointed in this regard. When dealing with Principle 6.4.7 of the King III Report (2009), personnel must be granted access and regularly consult with the governing bodies or relevant governing councils and relevant managers. As far as senior management is concerned, it should be ensured that the CEO is a responsible individual (Mbambo, 2017:9).

In the 2021 State of the Nation Address, President Cyril Ramaphosa said that a Presidential State-Owned Enterprise Council had been established to outline a clear set of reforms, which would enable SOEs to fulfil their economic growth and development mandate. Ramaphosa further stated that overarching legislation for SOEs would be tabled in the Cabinet in 2021 and would be tabled in Parliament in 2022. Moreover, he said that a centralised SOEs model, to be implemented in 2022, would ensure a standardised governance, fiscal management and operational performance framework for all SOEs.

3.4 Powers and authority of SOEs

According to Visser and Waterhouse (2020:4), the state establishes SOEs and has overall responsibility for their governance. They are public institutions and are owned by the state, and they do so for the public good. The governments must therefore be held accountable to the public for their functioning. The PFMA Appendices list a wide variety of companies that fall under the umbrella term 'SOE'. They range from large public companies like Eskom to regional corporations like Liquor Boards (Visser and Waterhouse, 2020:4).

The state has the power to create and empower SOEs, but this inherently creates a distance between the shareholders and the SOE's management. The state has the power to appoint and dismiss directors and to approve the establishment of the subsidiaries of SOEs. The government also approves when shareholders need to acquire or dispose of important assets, and provides loans, guarantees, compensation, or manages the issuance of collateral. Moreover, the government has direct authority over direct and unannounced interventions in SOEs by the Treasury and Parent Municipalities or related departments. In South Africa, the Department of Public Enterprises is the shareholder representative of the South African Government with oversight responsibility for SOEs in key sectors.

According to Bronstein and Olivier (2015:18), a typical SOE situation is that the company has one shareholder (the state or local government). It is important to remember that this is true most of the time, but not always. If you have more than one shareholder, you are subject to the Companies Act, which regulates the relationship

between shareholders. If a company incorporated as a corporation has only one government shareholder, it has no right to direct the affairs of the company or to conduct business on its behalf. As such, the law provides for an established distinction between ownership and control when a legal entity is also the state. If an entity is incorporated as a corporation, which has only one state shareholder, that shareholder has no right to direct the affairs of the corporation or to conduct business on its behalf. Where entities are also companies, the law provides a well-established distinction between ownership and control. In the case of state-owned or local SOEs incorporated as corporations, the relationship between state shareholders and the enterprise is often not explicitly regulated by law. There are areas where the PFMA and Treasury regulations intervene directly to change traditional business relationships. For example, with the PFMA and financial regulations, the relationship between a shareholder and the SOE's board of directors clearly incorporates shareholder agreements and corporate plans. Certain provisions of the PFMA provide for SOEs' borrowing capacity and the conditions under which shareholder approval is required for major transactions. In the end, there is a level of duplication between the PFMA and the provisions of the Companies Act (Bronstein and Olivier, 2015:18).

Oversight of SOEs is provided by the Parliament, the Executive Board, and the SOE Board. Parliament's Standing Committee on Public Finance reviews the financial statements and the Auditor-General's report. A separate Portfolio Board monitors the SOE's service delivery performance against corporate plans. Within the executive branch, shareholders and policy departments ensure proper governance is in place and they oversee the implementation of policies. The Treasurer and Treasury Department are responsible for financial oversight to protect the state budget and the state's creditworthiness, while the SOE Board provides strategic direction to SOEs and is fully accountable for SOE performance. Relevant shareholder departments appoint directors, ensure they have the skills to lead an SOE, and seek out the right mix of executive and non-executive directors. The shareholder department is also required to sign KPI agreements such as shareholder agreements with SOEs under its authority (IMF Staff Country Reports South Africa, 2020).

According to the OECD Guidelines (2015), the boards of SOEs must effectively execute their functions of setting strategy and overseeing management, based on the broad mandates and objectives set by the government. They should have the power

to appoint and remove the CEO. In addition, they need to set executive pays levels that serve the company's long-term interests (OECD Guidelines, 2015:69).

The OECD Guidelines (2015: 69) further state that it is important to have strong boards that can function in the interest of the entity and its owners. SOE boards are a key step towards achieving good quality corporate governance in these entities and should be able to provide effective monitoring in order to defend daily operations. The board, however, also needs to be empowered for improved independence and high functioning, and the board of directors should be consistent with best practices developed for the private sector.

According to PwC (2011:10), the board should be at the centre of corporate governance. The board must appoint a CEO and elect a chairperson who is an independent non-executive director. The board should also ensure that the SOE has effective risk-based internal audits and internal financial controls. It has the responsibility to ensure that shareholders (or shareholders in the context of most SOEs) are responsible for the composition of the board of directors. However, the nominating committee should actively support this process. Furthermore, the board must consist of executive and non-executive directors, with a majority of non-executive directors. The rotation of non-executive directors is recommended to ensure that one-third of the non-executive directors rotate each year. The board must be headed by a non-executive chairperson who cannot be the company's CEO. Moreover, the chairperson must be elected each year (*ibid.*). The performance of the board, its committees, individual directors, and the CEO should be evaluated annually. An independent non-executive director should lead the process of evaluating the CEO's performance. An evaluation of a CEO's performance should focus on his/her performance as a director and the CEO. It remains to be determined who should evaluate the CEO. However, the board and shareholders (the government) can do so on a transparent basis. The results of these assessments and action plans should be disclosed in a Synthesis Report, which will help the executive branch to monitor the SOE's performance (PwC, 2011:10).

PwC (2011) further states that when appointing directors and officers, the board should be composed of independent directors (whenever possible). Non-Executive Directors are competent and credible with the necessary skills, expertise, and

knowledge to make decisions (independent of management) on matters of strategy, performance, valuation, resources, and standards of conduct. The Managing Director is accountable to the Board of Directors. The board should set out the accountability and reporting obligations of the CEO (including the CFO and COO) to the board in the shareholder agreement and the CEO's terms of service. The board should play an active role in involving the government in CEO appointments. Appointments to the Board of Directors of SOEs must follow the best practices set out in the Handbook for Appointments to the State Council and State-Owned Bodies. However, if there are any deviations from the King III Principles, the SOE should explain why these were not applied (PwC, 2011:10).

An SOE's board of directors, according to PwC (2011), must be empowered in the context of shareholder agreements to provide effective and ethical leadership as a fundamental priority. Such shareholder agreements should be reviewed annually considering the various internal and external challenges facing SOEs. The board should have the power to appoint executives as they help ensure that the board is performing as it should (PwC, 2011:14).

PwC (2011) further states that stakeholder boundaries, roles and responsibilities can be defined by establishing or updating the governance framework. This should include a detailed service description for all relevant parties and is agreed on and approved by the relevant ministries. However, apart from administrative governance, good strategic governance also requires a proper understanding of leadership concepts. Transparency can also be promoted through informal means such as maintaining regular interactions and frequent dialogue between stakeholders. "Frequently held meetings between the board of directors, senior management and relevant departmental staff on company performance and strategic issues effectively ensure a surprising approach between the parties involved, and departmental staff enable the provision of timely and informed advice to ministers," states PwC (2011:14).

According to PwC (2011), ministers are also subject to scrutiny through practices that encourage continued accountability. As the representative shareholder, the Minister of Finance will function as an executive body to ensure a reasonable return on investment and ensure the financial viability of the SOE. Line Ministers are responsible for effectively and efficiently delivering service delivery requirements. The PFMA

defines the executive branch as a minister accountable to the Cabinet for his/her SOE. It is further recommended that regular communication be formalised between the SOE and its stakeholders. The Board should oversee the establishment of mechanisms and processes to assist stakeholders in engaging constructively with the SOE and the Board. These mechanisms and processes should be consistent with stakeholder guidelines. Such practices that encourage “continuous accountability” are rightfully subject to scrutiny by ministers, as well (PwC, 2011:14).

According to the OECD Guidelines (2015: 26), SOE boards should be given the authority, competencies, and objectivity that enables them to conduct the strategic functions, which guide and monitor the management of these entities, with a clear mandate, and responsibility for their functioning. The board’s role is defined according to the Company Act 75 of 2008 and it should be held accountable by the executive of the organ and must act in the best interests of the entity and its stakeholders. It is also the board’s responsibility to execute the role of setting strategy and supervise the management according to the wide mandate and objectives as determined by the government. The boards hold the power to hire and fire the CEO and determine their remuneration packages. It is also critical that board members are appointed on merit. They should hold relevant qualifications and equivalent legal responsibilities. Adding to the above, the boards have the responsibility to appoint specialised committees composing of independent and qualified members who supports the boards, especially on risk, audit, and remuneration management (OECD Guidelines, 2015: 26).

3.4 General functions of SOEs

By attracting and procuring capital goods, finance and partnerships, SOEs contribute significantly to economic development not only locally, but also regionally and internationally. The fact that SOEs contribute to South Africa's economy and development is not a new phenomenon. SOEs have helped shape the South African economy. These companies initially operated as exclusive franchises with the task of strengthening the import substitution industry.

Furthermore, they were established to ensure the sustainability and self-sufficiency of the country. An important function of SOEs include their status as an established legal entity operating in a commercial environment and the fact that the government is a shareholder. SOE plays a vital role in strengthening South Africa's economy and building industrial capacity to meet global demand for goods and services. By their very nature, they are ideally positioned to achieve the country's development goals through public-private financing roles, coordination, and social interaction. The central principle of the contribution of SOEs to developmental goals aims to promote industrial investment and governance practices related to targeted investments to minimise South Africa's dependence on commodity exports (Fourie (2014:32-34).

Fourie (2014:32-34), quoting Public Enterprises Minister Malusi Gigaba, says that SOEs are "now clearly seen as a means of socio-economic development...". SOE's role in the South African economy is critical to meeting the government's development goals, especially given the lack of critical infrastructure related to power, ports and rail technology (Fourie, 2014:38).

According to Chilenga (2016:28-29), South African SOEs are classified into different schedules (Schedule 2 and Schedule 3), according to their level and type of autonomy. Schedule 2 entities are classified as the major public entities. These state organs exist to declare dividends and make profits. Because Schedule 2 entities operate on both competitive market and business principles, they are typically granted more autonomy than other public entities in the state. These entities are authorised to lend money through their accounting authorities under the provisions of the PFMA in Section 66(3). This means they can have broad borrowing powers. As these entities are authorised to borrow money, they must submit a report detailing their annual borrowing plan to

the Secretary of the Treasury annually. As per PFMA provisions, this is fully applicable to wholly state-owned companies. In addition, the PFMA prohibits these companies from borrowing foreign currency funds above certain limits in their borrowing schemes, unless the companies are wholly government owned (Chilenga, (2016:28-29)

Schedule 3 SOEs are divided into three categories: 3A, 3B, and 3D. Schedules 3A and 3B are considered agencies responsible for ensuring that certain social or economic governmental responsibilities are conducted. These facilities rely on government funding through cash transfers from government revenue funds as required by law. These SOEs have the lowest autonomy of all SOEs. Schedule 3B SOE are also known as government business entities, which include state level agencies in all nine of the provinces in South Africa. Any other entity that does not fall under the list above falls under the 3D entities. These are called government enterprises. These companies generate revenue. However, they are state-sponsored or self-financed and they do not have broad autonomy. These units are sometimes called state government enterprises. However, they only operate in seven provinces (except Gauteng and the Northwest). It is also important to note that these companies have limited borrowing capacity (Chilenga, 2016:28-29).

SOEs are a critical machinery for service delivery (Mayedwa, 2018:23). In South Africa, government policy relies on SOEs as a means of supporting economic development. SOEs play a key role in the direct services they offer. Residents' access to water, electricity, sanitation, and transportation is almost entirely dependent on the state, which is operated through corporate vehicles. Moreover, SOEs are one of the most important sources of employment for their beneficiaries and communities. While SOEs should not play the role of 'employers of last resort', through good corporate responsibility policies they could play a vital role in improving work skills and raising social standards. Their importance is further reinforced by the fact that they tend to concentrate in 'strategic' sectors, including infrastructure and utilities (aviation, rail, energy, water, broadcasting, telecommunications), along with finance (banks). SOEs are also an important source of government revenue, with a recent study showing that the total SOE revenue is 8.7% of the GDP. By sector, transport (28.8%), followed by energy (27.3%), telecommunications (16.2%), financial services (8.03%) and water (3.61%) account for a significant share of SOE revenues (OECD, 2015).

Phalane and Ngulube (2022) argue that SOEs are at the centre of economic and innovation development in many countries as agents of economic change and job creation. SOEs themselves are knowledge-creating knowledge-based organisations that play a vital role in the knowledge-based economy. Globally, SOEs are the engine of the economy in both developed and non-developed countries. In South Africa, SOEs play a leading role in positioning the country as a developing country and play an important role in job creation. Moreover, SOEs play a key role in the global knowledge-based economy. SOEs are also used as a means of socio-economic development in South Africa (Phalane and Ngulube, 2022:1).

The Institution and Governance Diagnostic Report: Towards a capable and developmental state (2022:28) states:

State-owned entities today face a wide range of objectives. They must serve the needs of capital-intensive industry; provide secure employment; boost black participation in the economy; help government to implement and learn from implementing industrial policy; and narrow inequalities in access to water, sanitation and electricity. The emphasis placed on these agencies makes it particularly important to ensure that they operate effectively and in the public interest over the long term. However, concerns have been raised about whether the existing governance structures are adequate to develop long-term strategies for meeting these multiple obligations. The challenge is to identify better ways of working so that the multiple and competing priorities that are recognised in formal documents can be balanced against each other more effectively in practice.

According to the Governance Diagnostic Report (2022:28), SOEs are prevalent in the utilities, transport and telecommunications sectors, and in the provision of financial services for development. Given the diverse role of SOEs in providing critical inputs to business, and their large share of real gross investment formation (overall, averaging 13% over the last five years), SOE operations have a significant impact on the productivity and competitiveness of South African economy as they are also recipients of significant budget support in the form of transfers and guarantees, resulting in high direct costs, and an important source of fiscal risk in the form of contingent liabilities.

The IMF Staff Report (2022:21) states that SOEs' objectives are established in their enabling legislation, by both the shareholder departments and the Cabinet. The shareholder departments are responsible for ensuring that SOEs under their purview generate appropriate returns on investment, and more generally, are financially sustainable. The Cabinet provides policy directives to SOEs and contributes to the design and achievement of SOE objectives. In some cases, functions may be performed by two different departments. For Eskom, for example, the Department of Public Enterprises is the shareholder, while the Department of Minerals and Energy oversees the SOE's policy. There is no formal ownership policy for SOEs, nor a periodic re-evaluation of the relevance of their objectives.

The Governance Diagnostic Report (2022) further states that SOEs' enterprise assets reached 34% of GDP at the end of the financial year 2019/2020. Non-financial SOEs account for 86% of total assets, while financial SOEs account for the remainder. The three largest non-financial SOEs are Eskom (power), TRANSNET (transport) and Telkom (telecommunications). The South African Development Bank, the Industrial Development Corporation (both development finance) and the Land Bank (agricultural finance) account for 94% of assets, 95% of revenues and 91% of liabilities (2.8% of GDP). Most non-financial SOEs are in the utilities and transport sectors and are 100% owned by the government (IMF, 2022:20).

The IMF's Diagnostic Report (2022) also states that the utilities sector includes electric power companies (Eskom) and water companies (i.e., the water authority and its associated water infrastructure company, the Trans-Caledon Tunnel Authority (TCTA)). The transport sector includes commercial railways, state-owned companies of port and pipeline infrastructure (TRANSNET), airlines (SAA) and associated airports, air transport and shipping companies (ACSA, ATNS), and passenger rail transport (PRASA). Most of the remaining assets are SOEs operating in telecommunications, energy and mining, with the largest companies in each of these sectors being Telkom, the Central Energy Fund (CEF) and the State Diamond Trader (STD). Several smaller companies are also involved in forestry (SAFCOL), postal services (SAPO) and defence services (Denel). Regarding the ownership structure of non-financial SOEs, only Telkom and ACSA have private shareholders (IMF Diagnostic Report, 2022:20).

SOE's accountability mechanisms operate through the executive branch and parliament. The Cabinet and its shareholder arm have the power to hold SOE's boards and management to account for their performance. The Shareholders Division can dismiss SOE directors if they are not performing satisfactorily. In turn, parliamentary committees oversee relevant departments and, in exercising their oversight functions, can require the implementation of corrective actions (IMF, 2022)

Regarding policymaking, as noted above, the 2011 PwC Report notes that in some cases, deputy ministers as shareholders are not responsible for SOE policymaking. Where ministers provide policy guidance through departments responsible for policy making, it is often contradictory, unclear, or inadequate. When the minister/department responsible for policy making and the minister/department holding the shares are different, there is often no coordination between them. This undermines effective oversight, performance, and even the financial viability and viability of SOEs.

The government formulates policies for SOEs and regulates the operation of SOEs. Regulators can pressure companies to adopt certain policies, and the outcome benefits politicians rather than shareholders. Regulators in many countries often make the mistake of regulating SOEs, not only in highly arbitrary ways, but also in such a way as to protect SOEs from other social, political, or economic purposes (OECD: 2014: 20).

SOEs also interact with regulators independently, when applicable. Regulators focus on pricing issues, consumer protection, and the extent to which SOEs meet the standards of their specific industry (OECD, 2015).

3.5 Conclusion

The Constitution of the Republic of South Africa Act of 1996) envisages a nation with a well-developed economy and a strong social safety net. This ideal was endorsed by the NDP a government policy designed to help achieve this goal. The NDP was adopted by the ANC government as a guiding document of national importance, which defines South Africa as a developmental state and refers to the country's progress as a key part of the country's future.

According to OECD (2015), the 1994 transformation, however, inherited the legacy of SOEs with various problems, challenges, maladministration, and ailments. These entities were characterised by chronic under-performance with poor returns on government investments and continuous reliance on government support, whether in the form of explicit government guarantees (estimated to represent 6% of GDP in 2010) or subsidies. These SOEs were experiencing knowledge transfer and retention challenges pertaining to knowledge loss caused by voluntary and involuntary turnover and a lack of retention practices. They also faced deficiencies in the regulatory framework of SOEs, which resulted in regulatory uncertainty. All governance related problems bedevilling SOEs are evidence of the challenge of non-application of the critical legitimate system or imperative legitimate structure of the King Codes of good corporate administration and the King Reports on good corporate administration for South Africa, especially the King III Report which was released on 1 September 2009 and became effective on 1 March 2010. It is important to take note that every one of these were meant to advance good corporate administration in South Africa. Over and above this, challenges at SOEs include a lack of clarity in objectives, a multiplicity of mandates within their business models, improper costing of mandates, and weaknesses in governance and oversight (<https://www.oecd.org/corporate/south-africa-state-owned-enterprise-reform.pdf>).

To achieve developmental goals, SOEs in South Africa will need to change their funding structures to incorporate the governance principles embodied in frameworks such as those presented in the King III Report, the Companies Act, and the PFMA Act. New sources of funding should also be found, and this may be achieved through expanded investment plans provided by development (Fourie, 2014:38-39).

A contradiction between the two laws will definitely be difficult to interpretation based on section 5(4)(a) of the Companies Act 71 of 2008, as it makes provision that provisions of both Acts may apply concurrently to the extent that one of the conflicting provisions may be applied and complied with without violating the other for the purpose of supporting the other. (Bronstein and Olivier, 2015:11).

Chapter 4: The current state of SOEs in South Africa

4. 1. Introduction

The Department of Public Enterprises (DPE) in South Africa is the government's shareholder representative and has oversight authority over state-owned businesses in important industries. The DPE does not directly control some of these businesses; instead, other state departments control specific SOEs. Furthermore, not all state-owned businesses have corporate registrations.

According to a statement by the Minister of Public Enterprises, South Africa's SOEs should promote economic transformation, industrialisation, and import substitution. Six of the roughly 700 SOEs that operate at the national, provincial, and local levels are overseen entirely or in part by the DPE: South African Express, the South African Forestry Company (SAFCOL), Denel (military equipment), Eskom (electricity generation), TRANSNET (railway transport and pipelines) overseen by National Department of Transport, and Alexkor (diamonds) overseen by the Department of Minerals and Energy.

SOEs are established to safeguard economic growth and development, and to increase the government's ability to improve service delivery and to assist with the state's development (Chilenga, 2016:3). The previous chapter has emphasised that these entities are meant to add value to the economic development plan of the ANC-led government. SOEs are defined as state-owned entities or companies as legal entities meant to carry out business activities on behalf of the state (Balton, 2010:11). These entities will continue to be a permanent feature of the economic landscape and will remain an influential force globally for some years to come. Moreover, the state must continue to invest in SOEs to enable them to deliver the societal outcomes desired from them (PwC, 2015:6).

This chapter will highlight that South Africa is dealing with the reality of corruption as one of the impediments to economic growth and development. It will highlight the problems of corruption based on the country's constitutional values, but also bring with it a sharper focus on the constraints that corruption places on development and the quality of governance. This context of corruption springs from the bureaucratic

traditions, the political developments, and the social history (Pillay, 2004:589). Corruption opposes accountability and the rule of law as it undermines governance and diminishes public trust in the credibility of the state and threatens the ethics of the government and society (Pillay, 2004:586). According to Camerer (2009:2), unlike in the past, corruption is rife in developed countries, and it does more harm in these countries as there are fewer resources and they need to be utilised in a resourceful manner.

This chapter further aims to link the major challenges in SOEs, which are preventing them from performing their mandate, and will assess the actual issues found for consideration, as well as to further seek the truth to comprehend what went awry and how these problems could be unravelled in the future.

Furthermore, the chapter will seek solutions to the specific challenges of practices due to SOEs' poor adherence to best practices. The chapter also intends to suggest a key role for the Parliamentary Portfolio Committee to improve its policy capacity to ensure implementation and compliance.

4.2 Background

SOEs in South Africa appear to be an enduring feature of the economic landscape and will remain an influential force for years to come. As such, it is important to ensure that the state's investments deliver the societal outcomes desired. SOEs are also a growing force globally. For example, the proportion of SOEs among the Fortune Global 500 has grown from 9% in 2005 to 23% in 2014, driven by the growth of Chinese SOEs (PWC: 2015:6)

Government ownership has advantages in certain circumstances, such as in furthering social outcomes, providing physical infrastructure, and creating stability in times of crisis within and across supply chains. But equally, there is the risk that state ownership can destroy value if best practices in ownership and management are not applied and it results in corruption, bribery, and inefficiency (PwC, 2015:6). Money laundering, looting and corruption are amongst the critical governance challenges faced by South African SOEs. These challenges hinder the entities from performing efficiently, creating value, and contributing to economic development (Kane and

Christiansen, 2015:3). SOEs' administrative and financial problems are symptoms of the rampant corruption, which is widespread in South Africa's public service (Phillip, 2020a:1).

Very few SOEs have effective oversight mechanisms due to the diffusion of independent oversight; political influence in the oversight mechanisms of SOEs also impairs the ability of responsible overseeing bodies to guide SOEs in the fulfilment of their mandates. Often SOEs are sequestered from failure because the government does not allow SOEs to go insolvent and generally bail them out of their crisis. The option of a takeover bid, which may be viable for private companies if they fail, is also out of the question. This results in SOEs' boards and management slumping into a place of complacency. There is also a problem of setting clear, coordinated, and precise performance indicators, which assess the performance of SOEs by the applicable line ministry. The applicable line ministry also often does not have the capacity to monitor their performance (PwC, 2011:2).

According to Kane and Christiansen (2015:2), in most cases these entities report to various "political masters", being more than one state department. These authors (2015) further state that the interface between limited oversight and executive power could create a vacuum that enables executives to advance their own interests without scrutiny or accountability.

The ANC-led government developed policies designed to improve the economy and employed a policy of cadre deployment that promoted party loyalists to occupy prominent positions in the public sector. State patronage, which is often used to reward political allies, has played a significant role in the inferior performance of the government over the years. The deployment of cadres has exacerbated the problems of corruption, flawed procurement systems, wasteful spending and deteriorating local government (Shava and Chamisa, 2018:1).

In recent years, the media also signposted cadre deployment as a catalyst for the downfall of most SOEs in the country, which has resulted in poor governance at these institutions. The fact that these entities have been drawing media attention over the past few years is further evidence that poor governance results from unskilled officials being placed in senior management positions at these entities. Cadre deployment is justified as the appointment by a government's governing party of a loyalist to an

institution, as a means of enhancing public reporting-lines and ensuring that the institution stays true to the mandate of the party, as elected by the voters. The cadre deployment policy is justified by the ANC, although critics believe that it has been abused by some officials. This policy has attracted criticism from some quarters due to its perceived abuse by some officials of the party; furthermore, the deployments were not consistent with public servants performing their duties in a fair, balanced and non-partisan manner (Twala, 2014:2). From a financial perspective, the analysis of cadre deployment is patronage allotted to individuals, companies and agencies, by means of the government's governing policy (Ndedi and Kok, 2017:1).

Corrigan (2021) states that the ANC-led government did not have the skills base to control its own party efficiently. Secondly, the deployment of inexperienced people into the public service has been regarded as a direct contributor to the pathologies that the last decade has spawned; cadre deployment has further destabilised the political environment and skewed the functioning of the state. Moreover, it undermined the constitutional requirement that the public service needs to be professional and development-oriented, and that no employee of the public service might be favoured or prejudiced solely because that person supports a certain political party or cause.

4.3 Cadre deployments' impact on the performance management of SOEs

Shava and Chamisa (2018:5) state that the South African public service faces performance issues as a direct result of the ANC culture of cadre deployment. The authors (2018) criticise this policy, stating that the ANC strategy systematically puts reliability ahead of legitimacy and even capability; thus, posing a real obstacle to competent open governance (CDE, 2009:8).

Moreover, common knowledge among South Africans is that politically well-connected individuals occupy senior positions in the public service despite lacking the expertise and competence to run their public offices efficiently (CDE, 2009:24). This has become a route to advancement widely abused by politicians and other corrupt holders of public office when the accumulation of personal wealth becomes their primary goal, contrary to the original intentions of the policy. Criticism of the policy of cadre deployment is valid when formal qualifications are not considered when hiring civil

servants, and when there are no assessments to determine an individual's capacity or suitability to hold public office. Such inefficiency has contributed to poor performance management in various government departments in South Africa (Phillip, 2020a:7).

4.4 The problems of SOEs

After the change of government in 1994, the country realised that the main mechanism for mediating service delivery and implementation strategies was SOEs, whose centralised regulation and control were based on codified policies and prescribed procedures. SOEs are created in a variety of ways and are subject to a variety of regulatory and legal requirements.

According to the OECD (2015), most of the SOE sector are characterised by inferior performance and are “chronically ill” with low returns on government investment and constant dependence on government support, be it in the form of explicit government guarantees or subsidies. In some sectors, SOEs are also believed to benefit from a favourable market position, which may hinder rather than encourage competition and private sector development. Some of these shortcomings, stem from serious corporate governance failures, including weak management accountability, over-politicisation, and unclear goals in the country's largest and most important SOEs (OECD, 2015).

Most SOEs face knowledge transfer and retention challenges related to knowledge loss caused by voluntary and involuntary attrition and lack of retention practices. Commentators of resource and knowledge-based theory argue that these entities need to invest in developing and maintaining corporate human and knowledge resources to avoid the dire consequences of knowledge loss (Phaladi and Ngulube, 2022). According to Eberhard (2003:19), there was also institutional confusion. For example, government officials who held key posts in the Ministry of Minerals and Energy and the Ministry of Public Enterprises rarely remained there for more than two or three years. Hence, organisational memory and abilities were lost and had to be rebuilt. As a result, the reform process was slow, complicated and frustrating. Perhaps the only driving force for reform in the political sphere is to accelerate black economic empowerment (Eberhard, 2003:19).

Deficiencies in the regulatory framework of SOEs result in regulatory uncertainty, limited review of new investment projects, frequent changes in valuation methodologies, and insufficient independence of key decision makers. These are some of the factors that hurt SOEs' performance, including when unprofitable projects of SOEs would require massive politically unfeasible tariff hikes, costing risks would increase financing costs, and the need for government guarantees would also increase (IMF Country Report South Africa, 2020).

South African SOEs are troubled, as reflected in the 2012 Presidential Committee Report on State Owned Entities (PCRSOE), which extensively documented these challenges, which included a lack of clarity in objectives, a multiplicity of mandates within their business models, improper costing of mandates, and weaknesses in governance and oversight. These weaknesses have contributed to the poor financial health of SOEs. Furthermore, the use of bailouts to prop up SOEs' finances and guarantees to help them borrow, in the absence of sufficient assurance that appropriate restructuring and efficiency improvements will take place, have undermined SOEs' incentives to improve their performance. Moreover, SOEs' finances and service delivery have largely failed to improve, as exemplified by the continued deterioration in Eskom's finances and energy availability in recent years (IMF Country Report South Africa, 2022).

According to Jakob (2017), through SOEs, the government plays opposing roles as a regulator and a shareholder. As regulators, the government has a social contract with its citizens and must therefore serve their best interests to maintain social order. However, as a shareholder, the state must increase the value of its investments. Therefore, they face multiple and conflicting goals. In addition, the other non-financial goals make SOEs' performance difficult to measure, so incentives for SOEs' management are not as intricately linked to corporate performance as they are in the private sector (Jakob, 2017:10-11). Phillip (2020a) states that clear roles and a division of powers between the board and the executive management at these entities is necessary, as well as the assurance of operational independence of the executive management and the limited temporary governmental intervention.

4.5 Challenges at SOEs

According to extracts from the Presidential Review Committee on SOEs (NCOP meeting, 2021), South Africa lacked a common agenda and understanding of SOEs, as well as agreed-upon strategic sectors and priorities. The governance, ownership policy, and oversight systems were inadequate due to the lack of a consolidated national repository for all SOEs; the quality of the board and executive recruitment was inadequate; there was no clarity on the roles of the executive authority (shareholder representative minister), the board of directors, and the chief executive in the governance and operational management of SOEs; and many SOEs required a massive injection of capital (NCOP meeting, 2021).

According to the NDP 2030, South Africa needs to be serviced by a set of efficient, financially sound, and well-governed SOEs that address the country's developmental objectives in areas where the executive arm of government or private enterprise are unable to do so effectively.

4.5.1 Inadequate governance framework

According to PwC (2011), the performance of many SOEs has been bedevilled by an inadequate governance framework and the inability to balance the commercial, developmental and shareholder objectives imposed on them. In 2008 the then Minister of Public Enterprises, Alec Erwin, expressed the urgency to revamp the governance of SOEs. In his Parliamentary Budget Vote on 13 May 2008, he said failure to supply a coherent regulatory environment could have negative consequences both for the SOEs and, therefore, the South African economy's growth prospects (PwC, 2011:5).

Thomas (2012) states that the institutional framework for SOEs requires the government as the shareholder to assign a relevant Minister to appoint board members, and the board may recommend names for the position of CEO. This arrangement on its own blurs the performance accountability between the board and the shareholder based on the lack of authority the board has over the CEOs responsible for the operations of SOEs. This is when political patronage comes into

play and boards are instructed who to appoint for the operations of the entity. As the board wants to please the stakeholder, this affects the level and mix of critical skills of competency for the performance of the board and its accountability. This view suggests that the role of the government is to legitimately set objectives and performance targets for an SOE, appoint directors to the board, and monitor the performance of both the enterprise and the board, with authority for the performance of the entity residing with the board. This is supported by the OECD (2005), which considers it "best practice" for the board, rather than the government, to have the power to appoint and dismiss the CEO, as well as the full responsibility and accountability for the SOE's operations without political interference. South African government policy emphasises the need for SOE accountability, while also recognising the need for SOEs to conduct business independently of the government, which contradicts current practice. Thomas (2012:450) links accountability to transparency and associates lack of transparency to the society as the ultimate owners of SOEs due to political interference and the political nature of these enterprises.

It is clear that South Africa has a responsibility to work towards improving the governance frameworks for many of its SOEs, because such frameworks will assist with setting clear and specific objectives regarding profitability expectations, capital structure, and non-financial structures. SOEs are expected to deliver, as they are a risk to government's finances. Mboweni (2019:16) states that international practice determines good corporate governance as the cornerstone to operate SOEs, and also refers to Section 195 of the Constitution: "Public administration must be governed by democratic values and principles as contained in the Constitution including (a) a high standard of professional ethics must be promoted and maintained, (b) efficient, economic and effective use of resources must be promoted", in support of international practice.

4.5.2 No specific provisions for SOEs in the Companies Act

Mboweni (2019:17) argues that the fact that the Companies Act does not provide unique provisions to regulate only/specifically SOEs, and the legislature in its oversight role has failed to make provisions for specific sections in the Companies Act applying to SOEs, has flawed the legislative framework for SOEs in South Africa. This renders

them ineffective as it does not address issues specific to SOEs, such as changes to social mandates, SOEs' accountability, and the clear roles of shareholders in achieving the objectives of an enterprise. The blurred lines for these entities involve balancing commercial goals and public policy objectives, not ignoring the fact that the government is a player (the stakeholder) and a referee (the regulator). The point here is that based on the unique nature of SOEs, these institutions deal with unique challenges, which requires specific legislation to address the challenges within SOEs, alongside the prescribes of the PFMA and other forms of legislation such the Public Audit Act, and Treasury Regulations (Mboweni, 2019).

4.5.3 Questionable compliance with the principles of the King Code on Corporate Governance

SOEs are not functioning optimally due to the poor application of good governance; the impact thereof is rising unemployment and poverty levels in communities, who are the recognised beneficiaries and stakeholders of these enterprises. The governance system of South Africa, as an emerging constitutional democracy, remains a work in progress. It is also important to note that the context wherein South Africa practices governance is complex and challenging.

The King III Report promotes the principle of good governance, which is lacking in application at SOEs (Andreassen, 2011:647-673). The government announced a restructuring management system called the Accelerated Restructuring Agenda for SOEs. This governance structure was designed to empower the state to co-ordinate ideas on the most efficient ways to make SOEs flourish. Moreover, the idea behind it was to improve SOEs' management and improve morale at these institutions. Another important legitimate system is the Protocol on Corporate Governance, which echoes the principles of the King Codes of Good Corporate Administration and the King Reports on Good Corporate Administration for South Africa. The King III Report was released on 1 September 2009 and became effective on 1 March 2010. It is important to take note of the fact that every one of these reports – King I, II, III, IV, and V – are meant to advance good corporate administration in South Africa (Andreassen, 2011:647-673).

According to PwC (2012), it is important that the government balances legislative requirements with sound corporate governance practices to achieve stability at SOEs in South Africa. PwC (2012) in its overview states that the new Companies Act, the PFMA, and King III all apply to SOEs. They share many good governance principles, and alignment is not only possible, but also desirable in the spirit of the overarching governance principles of accountability, fairness, transparency, and responsibility. Despite the many similarities, there are some areas where provisions and recommendations may conflict. The reference to "the board" in King III is interpreted as equivalent to the accounting authority established in the SOE context under the PFMA and enabling legislation. The Companies Act emphasises board authority, whereas King III emphasises 'responsibility'. The importance of King III to the board, as the focal point of governance, is that the boards of SOEs must understand the specific responsibilities addressed in the PFMA and the Companies Act in terms of this governance principle. When attempting to resolve conflicts between the Companies Act and the PFMA, the PFMA takes precedence only where irreconcilable differences exist. When there are incompatible contradictions, reconciling the law (which must be followed) with governance recommendations (which must be applied voluntarily) presents a challenge. Governance is fundamentally about effective leadership, which is founded on ethical principles. Compliance, like any other business activity, should take place within the context of sound governance and leadership principles. SOEs should strive to apply King III in conjunction with regulatory provisions, even if they are contradictory, to achieve the overarching principles of sound governance, namely, responsibility, accountability, fairness, and transparency in the interest of substance rather than form. By approaching compliance and governance with this perspective in mind, SOE directors will benefit SOEs and their stakeholders, including, most importantly, the people of South Africa (PwC, 2012:2, 3, 18).

Recent incidents, media reports and new developments within three major strategic SOEs, namely Eskom, IPS and SAA, are alarming and suggest that these SOEs are not adhering to the business ethics, principles and values of an ethical culture, transparency, good performance, and effective control and legitimacy, as set forth in the King Reports (Kikeri: 2018:4). This matter should be investigated to understand and determine if corporate governance epitomes the methods and structures that

facilitate, manage, and qualify a company's efforts (Mbambo, 2017:14). The OECD (2015:4-5) states that the corporate sector in South Africa was systematised by the creation of the King Report on Corporate Governance in November 1994, which was supplanted by the King III Practice Notes of 2013. "The inspiration driving the King Reports is to propel the standards of corporate administration in South Africa and it is clear by the state SOEs are in that the recommended good governance practices the King III Note have not been applied in most, if not all entities," states the OECD (2015:4-5).

According to the OECD (2015:4-5), "The Protocol" was first adopted in 1997 to establish standards for good governance in public enterprises and is based on the social, political and financial goals of the government. While the King's Code, includes various components in open and non-open sectors. The King's Code can still be enforced. It should however, also noticed that there are some issues with some open shards that have not been fully resolved and need to be addressed by the protocol, for instance: The standards of the Convention are not to replace the Code of Whip under any circumstances. It is understood that it should be read in conjunction with the King Code.

Therefore, the public service as a significant investor in SOEs, is faced a variety of threats related to SOEs' activities, including budgetary, reputational, political, and operational threats. It is the duty of all public professionals to ensure that these threats are identified, mitigated, and monitored through. The parliament has the obligation as entrusted by the protocol duty of proper oversight of SOEs. In this way, reporting and recording the execution of financial and non-budgetary matters to appropriate public experts while maintaining autonomy is an integral part of SOEs. Bearing in mind that the goal is to ensure that SOEs achieve the management's goals and achieve satisfactory performance perform satisfactorily. The Protocol determines that the public service must make clear its goals and envisaged relationship with SOEs within the Protocol, the investors' compact, and the systems for SOEs as launched through the respective responsible departments (OECD, 2015:4-5).

According to Mboweni (2019), the Protocol on Corporate Governance's main objective was to provide guidance for the public sector for best corporate practice standards, also bearing in mind the unique mandate of SOEs. This system of uniformity is,

however, subordinate to the Companies Act and the King Report, because corporate governance for South Africa is yet to be legislated. Mboweni (2019) further states that the creation of the Protocol was a good initiative by the government as a guideline. Much as the King Codes III and IV are applicable to SOEs, and are meant to improve governance practices, the two codes are mandated to comply with the Report, and there are no punitive consequences for non-compliance as there are no statutory obligations for SOEs to adhere to the provisions of the King Report and the Code. This view by Mboweni (2019) implies that the South African legislator developed minimum standards for corporate governance, as the King Report improves legislative governance provision; they, however, do not contain specific conditions relating to SOEs. To conclude the argument, Mboweni (2019:19) suggests that the government should develop legislation that is specific to SOEs as recommended by the Presidential Review Commission and to enact the protocol on corporate governance in the public sector in order to strengthen its governance framework.

4.5.4 Financial mismanagement

Global experience demonstrates that when SOEs are professionally managed and good governance is in place, they can provide essential commodities and services to the population at an affordable cost. The opposite is also true. SOEs have the greatest impact on the poor when they are poorly managed as they poor are the most vulnerable to state and entity failure. Mediocre performance can manifest as incompetence, corruption, and generally poor delivery of public services (Chitiga-Mabugu et al., 2021).

The financial mismanagement of SOEs has negatively affected resources, savings, and capacity from both the public and the private sector because resources are channelled away from critical priority areas (PwC, 2011:6). “The need to find resources to prop up failing SOEs has also distorted financial systems and monetary policy, at times contributing to wider macroeconomic crisis”, according to the World Bank (2003:6). Moreover, the state should function as an informed and active owner to guarantee the governance of SOEs is carried out in a transparent and accountable manner, as well as to ensure SOEs are subject to high-quality accounting, disclosure, compliance and auditing standard (Phillip, 2020a:4).

SOEs with poor financial performance have consistently low profitability, liquidity, and solvency indicators, which are reflected in high leverage. Deteriorating operational and financial performance over time, as well as increasing budgetary strain, demonstrate an urgent need to reduce their large economic footprint and address underperformance. These are significant impediments to economic efficiency, competitiveness, and the expansion of productive private enterprises. Furthermore, service delivery shortages by SOEs, particularly electricity, combined with procurement and management corruption scandals have fuelled discontent and prompted calls for reform (IMF, 2022).

It is important to consider the management of SOEs' performance, including the PFMA (responsible for sound fiscal management and competent human resources), the Companies Act, and the critical legislation within which SOEs operates. Mboweni (2019:29) emphasises the key role that the PFMA plays, but also asserts that Companies and Intellectual Commissions have a critical role to play in ensuring that SOEs are compliant with governance provisions in the Companies Act. It is also vitally important that SOE leaders develop an operational understanding of this form of system to ensure that SOEs meet their strategic objectives. Poor implementation of the above-mentioned corporate governance and frameworks, leads to an escalation in crime, corruption, mismanagement, and related corporate governance violations in SOEs (Mboweni, 2019).

Eskom, PIC and SAA are evidence of the inadequate application of a clear governance framework, with Eskom having cited the recovery of R3,8bn in 2020, which was suspected to have been misappropriated by the former executive and its board members, linked to the Guptas (Phillip, 2020a).

According to Phillip (2021b), South Africa faces parastatal paralysis where SOEs have become debt traps and urgent intervention is needed. These SOEs are falling into deeper financial woes, a deteriorating state of mismanagement, and poor executive oversight. The current state of SOEs reflects financial systems that are in tatters, rapid institutional decline, and the loss of market share despite their monopoly status in some sectors (ibid.). The country's parastatals have also been identified as a problem in the broader context of South Africa by the Auditor-General, the IMF, and S&P Global Ratings. The overall sentiment is that SOEs have been turned into repositories where

the "misuse and leakage of public funds" are commonplace – that is polite speak for widespread corruption. According to the Auditor-General, "The audit outcomes of SOEs have regressed due to weak controls over financial and performance management, as well as compliance". The Auditor-General's 2020/21 Public Finance Management Act Audit Outcomes General Report further refers to the "continued worsening performance of SOEs". SOEs' audit results have regressed due to weak controls over financial and performance management, as well as compliance (Phillip, 2021b).

Chitiga-Mabugu et al. (2021) refer to frequent power cuts as evidence of the poor performance of Eskom, and the number of witnesses at the Zondo Commission on allegations of state capture and corruption, singling out favouritism, fraud and corruption at Eskom and TRANSNET. Corruption and ineptitude at SOEs have spread and affected the rest of the economy, which has resulted in lower economic growth, job losses mostly affecting low-skilled workers, and the risk of increased poverty. Moreover, the poor management of SOEs raises their operating costs and affects the economic sector (depending on the services they provide). These effects reduce the international and domestic competitiveness of companies and the economic sector and eventually affects the entire economy, which makes the country's exports less competitive. This chain reaction leads to increased unemployment, which reduces household income and therefore household consumption. Economic growth slows over time, reducing the economy's ability to create jobs. Weaker growth implies lower savings, investment, and tax collection by the government. This limits the government's ability to increase transfers and welfare redistribution efforts. Fraud and corruption also cause citizens and domestic and foreign investors to lose trust in the government. This discourages investment, slowing economic growth and leading to further increases in unemployment. South Africa's government should prioritise restoring the competitiveness of SOEs to create a virtuous cycle of increased citizen and investor confidence, which will lead to higher economic growth (Chitiga-Mabugu et al., 2021).

The Auditor-General's report (2020/21) states that the government cannot afford to continue losing money because of poor decision making, neglect and inefficiencies, and continued elevated levels of fruitless and wasteful expenditure. According to the Auditor-General's report, the main culprits were key service delivery departments and

SOEs, which wasted a total of R900 million. Moreover, R6.71 billion in government spending over the last three years has been fruitless and wasteful. In the same financial year, the Auditor-General referred to the status of the Development Bank of Southern Africa, the Airports Company of South Africa, the Central Energy Fund, South African Forestry Company, the South African Broadcasting Corporation, TRANSNET, and the South African Nuclear Energy Corporation as unchanged since the 2018/19 financial year. The Report further states, “Thirteen public entities disclosed uncertainty about whether they will be able to continue their operations. Many of these are key development and delivery entities that have been disclosing their vulnerable financial position for many years, including the South African National Roads Agency, the Property Management Trading Entity, and a number of provincial public entities” (Auditor-General’s Report, 2020/21).

Chitiga-Mabugu et al. (2021) state that at the helm of the inability to manage finances at SOEs was auditees failing to institutionalise established preventative controls receptive enough to pick up and counteract non-compliance, losses, and signs of financial distress during the year, and to correct these timeously. Their view (2021) is that SOEs will only succeed by creating a sound financial management environment, with effective governance structures and processes, including the implementation of government initiatives such as the Presidential SOEs Council aiming at strengthening the governance of SOEs in South Africa.

4.5.5 Obscure application of participatory governance

According to the principles of participatory governance, individuals should have a say in decisions that have an impact on them. It is intended to encourage effective decision-making that brings together stakeholders, improves the workplace climate, and capitalises on diversity's advantages. Mutual trust, honesty, transparency, equity, and respect for opposing viewpoints must be agreed upon. Stakeholders must agree to cooperate within the practical and legal constraints of decision makers. Participatory governance is thoughtfully designed, implemented, and assessed (Skyline College, n.d.).

Buccus (2011) referring to Buccus and Hicks’ (2007) research findings on what the public’s opinion is on their role in policy making in South Africa suggests that there are few opportunities for the public to provide feedback or share information; moreover,

the policy-making process is perceived as being driven by the elite, which largely excludes and demobilises the public. The South African public further said that attempts to facilitate community inputs were superficial and did not extend to the level where decisions were made. The research also showed that even among middle-class individuals who primarily made up the civil society sector, there was a growing sense of exclusion, marginalisation, and disempowerment. This was brought on by not getting feedback on inputs made into procedures, not seeing recommendations implemented, or not feeling like their participation and input had any discernible impact. There was a perception that the civil society sector was frequently excluded from a "inner circle" that had privileged access to decision-makers and were coerced into participating in a process with a predetermined outcome. There was also a sense that the government only started involving communities at advanced stages of policy formulation to get political buy-in and implementation, as opposed to at the beginning of the process when problems were identified, and solutions were reached. The research also found that there were power relationships at play in the policy making processes amongst policy makers themselves, and policy makers and the public. Buccus and Hicks (2007) state that although there are numerous legislative provisions for participatory procedures in place, these experiences and comments from members of civil society suggested that they were not enabling civil society to participate meaningfully. Moreover, current communication channels were insufficient, inaccessible, and disempowering, and new methods of involving citizens in the creation of policies were needed (Buccus, 2011:12, 13).

According to Arenstein's ladders of citizen participation (1969:216-224), there are three degrees of participation: non-participation, degree of tokenism, and degree of citizen participation. Arenstein's ladder of citizen participation is considered as the world's most referenced and influential model in the field of democratic public participation used by leaders, organisers, and facilitators for the formation of foundational theories of public engagement and participation (Organizing Engagement, n.d.).

Organizing Engagement (n.d.) further states that non-participation consists of therapy and manipulation, which are the two bottom stages on the ladder. These two stages lack control and influence by citizens. This approach does not enable neither empower citizens to participate in the planning or form part of government programmes and

enables people in power to only educate and/or “cure” participants. There are no attempts to transfer control or influence citizens on policies, programmes or projects and public intervention are limited.

Modise (2017:1) states that South African democracy started with participatory governance, but public participation was maximised, until it faded away and was engulfed by parliamentary democracy where a few people can make decisions on behalf of the entire nation. An example of this practice is seen through the appointment of boards and executives at SOEs in South Africa. According to Modise (2017), the problem arises when greed, egocentrism, favouritism and nepotism occur. When these unethical behaviours take over, these representatives forget about the people at grassroots levels and, as a result, participatory democracy disappears. According to Organizing Engagement (n.d.), placation as a degree of tokenism is the highest form of tokenism where public servants determine conditions for citizen participation and decisions are made on behalf of the public, and the public is still excluded and have no power to control or influence decisions.

Modise (2017) is of the view that the people at grassroots level are the baseline governance in a democratic system and that government must put its focus where the people are and have structures in place that allow people to consult and participate in the processes of government. Modise (2017) adds that these structures should be in place at municipality levels to make the people’s voices heard and to represent the people and not the politicians and officials.

Representative democracy is about the people electing officials to represent them in government processes and the people are not directly involved in government processes and decision making (Modise, 2017:1-2). Modise (2017) further highlights the notion that representative democracy’s downside is that the representatives might not serve the people they are supposed to represent properly. In many cases, however, representatives are often elected based on the shared beliefs and opinions of certain segments of the populace, regardless of those representatives’ education, knowledge, integrity, or ability to solve problems. (This point is discussed in detail in the next section on the problems and challenges, as well as the current state of SOEs in South Africa).

Ideally, the degree of citizen participation consisting of partnerships, delegated power and citizen control to promote citizen participation, and influence over public policies, programmes and projects, and citizens forming partnerships with government entities is what may assist in the reformation of SOEs in South Africa. Participation as partnership, according to Arenstein (1969:216-224), is when power is in fact “redistributed” through bargaining between citizens and powerholders; when public institutions, officials and administrators allow citizens to negotiate for better deals, they agree to planning and decision-making responsibilities through established structures to resolve impasses. Through delegated power the public service (institutions, administrators and officials) give some degree of control, management and decision-making powers to citizens. “At this level, the Arenstein ladder has been scaled to the point where citizens hold the significant cards to assure accountability of the program to them. To resolve differences, powerholders need to start the bargaining process rather than respond to pressure from the other end,” states Organizing Engagement (n.d.). SOEs need to achieve a state of citizen control where “participants or citizens can govern a programme or an institution, be in full charge of policy and managerial aspects, and be able to negotiate the conditions under which ‘out-siders’ may change them,” according to Arenstein (1969:216-224).

Based on the definition of citizenry participation, according to Arenstein’s ladders of citizen participation model, participatory governance at South African SOEs has been biased against the public. The research findings by Buccus and Hicks (2007) suggest that the public is excluded and demobilised in its role as far as policy making in South Africa is concerned, as the main drivers of policy development have been the elite.

Corruption is a part of human nature and has existed since the beginning of recorded history, therefore it is difficult to eradicate, but it can be controlled and managed to a certain extent. Corruption is the result of a lack of institutional mechanisms, weak civil society, uneven economic growth, and low political competition. It takes the form of bribery, fraud, misappropriation, favouritism, extortion, conflicts of interest, political deals, and abuse of discretion. Contrary to the notion that perceptions of corruption vary across cultures, socio-political and economic contexts define corruption as the “misuse of entrusted power for personal gain” (Habtemichael, 2009: iii). According to the executive summary of the South African Anti-Corruption Strategy (ACS) 2020-

2030, corruption has pervaded critical institutions in the public as well as the private sector, and is a threat to national security. It undermines the rule of law and weakens important institutions entrusted with the responsibility of safeguarding the significance of the state as a protector and promoter of the rights of its citizens.

Various reports and media coverage has shown the collapse of SOEs due to the mismanagement of funds, incompetent managers, corruption, and money laundering. According to BusinessTech, the Auditor-General (2020/21) reported concerns that a few SOEs were in financial trouble and did not submit their financial statements for auditing. Those who submitted them indicated that they might not have the financial muscle for future business. The Auditor-General (2020/21) further reported that there were 21 public entities that disclosed uncertainty about whether they would be able to continue as a growing concern. They included the Road Accident Fund (RAF) and the South African National Roads Agency (Sanral). In 2017, *Mail & Guardian* reported on how governance failures contributed to PRASA's downfall. The Agency went through turbulent times that were symptomatic of broad corporate governance failures when the Acting Chief Executive was fired by the board following allegations that he raised his remuneration package by more than 35%.

James (2022) states that South Africa does not have a national charter against corruption, nor an applicable code of conduct against corruption. Such a charter would be a significant and symbolic act that would usher in a new dawn for South Africa. If the nature and intent of the commitment were properly understood and there was meaningful belief in what it symbolised, such a charter could have immeasurable symbolic impact (James, 2022). Moreover, the Zondo Commission advised that a South African anti-corruption charter should include a "code of conduct" that outlined the moral expectations of those involved in public sector procurement. The Commission further suggested that the charter be created by the government in consultation with the business community. The circumstances of this charter would be a symbolic and substantive gesture marking a turning point to new beginnings for South Africa. The symbolic impact of such a charter could be immeasurable provided that the nature and purpose of the commitment was properly understood and there was meaningful belief in what it symbolised (James, 2022). According to Slater (2022), Business Leadership South Africa's (BLSA) CEO Busi Mavus applauded the Zondo Commission's outcomes with recommendations for South Africa to develop a national

charter against corruption because the charter would complement the integrity pledge of BLSA which encouraged its members to actively combat corrupt activities and to adopt a zero tolerance to corruption.

The Public Protector and the Hawks (the South African Directorate for Priority Crime Investigation (DPCI)) both play a part in the fight against corruption in South Africa. The Department of Public Administration deals with such initiatives. The Prevention and Combating of Corruption Act (PCCA) criminalises corruption in both the public and private sectors and codifies specific offences to make it simpler for courts to apply the law. The law requires public officials to report corruption-related offences while strongly denouncing bribery, extortion, abuse of authority, and money laundering. The PCCA is poorly implemented, just like many other anti-corruption laws in South Africa, and it does not have any whistle blower protections. According to Accram (2022), there is poor application of the PCCA at SAA, SAAT and SA Express, as captured in the first Zondo Commission report, which revealed a steady decline in quality and effectiveness governance, which opened the door for corruption at SAA since 2012. Accram (2022) further stated that at SARS the Commission found that there was a massive failure of integrity and governance, and that committed managers who stood up against unlawful demands from the board were removed from their positions. Moreover, at SAA, appointed auditors failed to pick up fraudulent and corrupt activities between 2012 and 2016 (ibid.).

The Public Service Commission Report (2001(3)) stated that the problem facing the South African government was that a number of state agencies were in place to combat and prevent corruption, but they could not be effective because their mandates overlapped, and some degree of rationalisation was needed to promote effectiveness. The Report (2001(3)) stated that performance by the agencies could be improved by the government ensuring that the activities of all anti-corruption agencies were better coordinated and that there was cooperation between them to maximise their efficiency. According to Byjus.com (n.d.), a winning combination to curb corruption is law enforcement, reforming public administration and financial management, and promoting transparency and access to information. Law enforcement must ensure that the corrupt are caught and face the might of the law. Transparency and access to

information keeps government in check and increases the responsiveness of government, and at the same time keeps the citizens informed.

4.5.7 Inadequate application of good governance

Chapter 2 of this research states that the norms of governance are deeply rooted in spontaneous standards of modern governance and are intended to maximise and modernise the workforce. These standards are intended to improve the quality of products and services, and to achieve interoperability. This standardisation has over the years become governance and the increase of good governance is evidence of governance norms regarding pertinent issues such as public participation, accountability, transparency, policy evaluation, and anti-corruption. The concern however is the technocratic conceptions of good governance, which disregards self-governance as the traditional ideals and practices of democracy, while good governance standards may accelerate critical activism, enabling societal actors to challenge oppression, corruption, or violations of human rights. There is good evidence, that good governance can help hold powerful elites accountable (Steffek and Wegmann, 2021). Moreover, the OECD (2012:1) suggested that better governance arrangements could result in more effective institutions and accountability mechanisms because Southern African countries frequently struggle with outmoded governance and inconsistent ownership practices. Better governance arrangements could also contribute favourably to development.

Mathebula and Masiya (2022) state that Eskom and TRANSNET are haunted by enormous governance failures, lack of accountability, lack of transparency, and looting and cronyism. These authors (2022) further state that SOEs and state capture is opportune because of the mediocre performance of SOEs and reflects the crumbling of the infrastructure, poor and everchanging leadership, corruption, wasteful expenditure, and mismanagement of funds. The fact that SOEs continue to operate at the "mercy" of the National Treasury through guarantees and bailouts makes the bad governance and state capture at these organisations worse (ibid.). This has negative effects on the economy and the fiscus, which makes it harder for the government to provide services. Despite the existence of legal requirements, including the Public Financial Management Act (1 of 1999), some of these irregularities persist (Mathebula and Masiya, 2022:146, 147,149). As stated previously, the role of citizens in policy

making in South Africa is seen as being driven by the elite and excludes and demobilises the public. According to Buccus (2011), tokenism is the participation tactic that is applied to appease citizens through the camouflage of superficial consultation.

Adherence to corporate governance principles and practices and strict compliance with the requirements of legislative frameworks have not been applied consistently and SOEs have failed in addressing the fundamental governance failures and challenges they are facing. Most SOEs are entangled in these challenges because of the failure of executive authorities (politicians) to act in the best interests of the public; the processes of appointing non-executive directors of SOEs are not based on constitutional principles such as transparency, ethics, good faith, accountability and adherence to the rule of law; and the board members (the non-executive directors) of SOEs are not appointed through a transparent process based on constitutional principles. Additionally, the boards at SOEs are not given the space required to do their work without any fear or favour because of political interference. The ministers appoint Chief Executive Officers at SOEs, and the authority and the accountability to appoint CEOs should lie with the boards (Madonsela, 2018:41-42).

4.6 Current state of State-Owned Entities in South Africa

This section focuses on the performance of SOEs, the factors that affect them keeping in mind the Covid-19 pandemic, and economic factors, and also focus on large SOEs including information on large companies. There are 24 public entities, including major SOEs such as TRANSNET, Eskom, SAA and Denel, as well as other government-owned and controlled entities such as the DBSA and IDT. The African Business Report (2021) states that the ongoing financial and operational crises faced by large SOEs cast doubts on their viability and survival. Total SOE debt stands at R692.9 billion. The most recent budget review showed that state-owned companies have reported weak growth, high costs and increased debt service costs, and several appear to be at risk of defaulting on their debts. Prospective reforms and increasing private sector involvement however offer hope to South African SOEs (Globe News Wire, 2021).

The 2021 Report on SOEs states that the Zondo Commission of Inquiry highlighted issues at the highest levels in entities such as TRANSNET, SAA, Eskom and Denel, amongst the state organs in the public sector, due to changing leadership, wasteful expenditure, mismanagement of funds and corruption, which resulted in disintegrating infrastructure. According to the Report, the government decided to sell 51% of SAA to a private company (a consortium) and maintain 49% of ownership. After the decision, the government would be open to consider independent power producers to increase self-generation from 1MW to 100MW (Globe News Wire, 2021).

According to Visser and Waterhouse (2020:5), even though the Constitution established values and principles to govern the public sector, such as maintaining exacting standards of professional ethics, accountability and development orientation, some SOEs stray far from the constitutional values and principles. There are also huge costs to taxpayers and the economy. Beyond the high-level impacts on service delivery, the failure of many SOEs has had a direct and detrimental effect on the public. These failures are responsible for much of the cost increase in services provided by SOEs. Poor people in particular endure the most service interruptions and increased risks to personal safety as a result of the failure of SOEs.

The previous chapter highlighted that much attention has been focused on the governance challenges faced by SOEs, which hindered their ability to perform

efficiently, create value, and contribute to economic development. This situation called for authorities to be held accountable by citizens and stakeholders through public participation in decision-making processes, transparency, feedback, and accountability. The persistence of poor public participation and non-accountability would continue to drag SOEs and other state organs to their knees and eventually to total collapse. Such outcomes will increase the high unemployment rate and poverty in the country. Transparency and accountability of SOEs could however increase the confidence in SOEs, which could attract much needed investment and private participation in areas traditionally dominated by the state. “The OECD Guidelines on the Corporate Governance of SOEs provide key principles that could help in setting up a contractual framework between SOEs and the state” (Phillip, 2020a).

According to Phillip (2020c), the OECD (2020) in its economic survey of the country advised that in order to turn the economy of South Africa around, issues of the governance framework for its many SOEs needed to be sorted out. The survey states that the framework will provide clear company-specific objectives as per profitability expectations, capital structure and non-financial objectives SOEs are expected to deliver (Phillip, 2020c).

Phillip (2020c) further states that this governance framework is necessary as the SOEs not only pose a risk to government finances but also represent an important part of the South African economy. Philip (2020) justifies his views based on the past few years in which some SOEs have become synonymous with the corrupt activities of state capture. The other problem is that SOE legislation is spread across legal guidelines and is not uniform. Crucial elements also contradict each other in certain parts of the law (e.g., EL, CA, PFMA), which consists of governance regulations and reporting lines. For example, there are disparities between the appointment of CEOs and boards of SOEs, the setting of compensation policies, accountability for checks and balances, and reporting requirements, creating uncertainty, making enforcement difficult, and increasing the compliance burden for SOEs. The lack of enforcement of the PFMA regulations has also been a long-standing problem (IMF Country Report South Africa, 2022).

The problems prevailing at public entities has had major effects on the competitiveness of the country’s economy through the cost of intermediate goods and

competition within the SOE sectors. In South Africa, where most public entities are underperforming, this pattern might have unfavourable consequences on the cost of doing business (Phillip, 2020c).

According to Kikeri (2018:4), SOEs in South Africa have collapsed due to unnecessary politicisation, multiple and conflicting objectives, and inadequate financing policies and frameworks. Moreover, there is a lack of adequate oversight and accountability, severe weaknesses in board composition and functioning, and accelerated maladministration, corruption and incompetence. Exacting standards of corporate governance for SOEs are critical to ensure financial stability to sustain global growth. South Africa will need to use the sustainability strategies used by China and the USA for its SOEs to flourish. These entities operate as private companies in China and the USA with shared dividends to role players, including the government, which has placed them amongst the most powerful countries, which lead economic development in the world.

In recent years, the debate about whether SOEs are delivering on their mandates has intensified. As public funds have become increasingly constrained, the growing burden of SOEs has been a key concern. Moreover, deficiencies in SOEs' service delivery, in particular in electricity provision, blended with corruption scandals in procurement and administration, have been a source of discontent and led to demands for reform. In FY20/21, direct transfers from the authorities to SOEs amounted to 1.6 percentage of GDP compared to an already excessive one percent of the GDP in the preceding five fiscal years. The inventory of government ensured that SOE borrowing amounted to 10.3 percent GDP in FY20/21, about two percent of GDP greater than in FY15/16. In addition, transfers averaging 0.5 percent of GDP per 12 months in FY21/22 and the subsequent two fiscal years have been budgeted. Although a decline in transfers to SOEs was budgeted, there was the threat that the projected transfers would grow to be insufficient if growth with restructuring plans, especially in the electricity sector, did not accelerate (IMF Country Report South Africa, 2022).

The previous chapter also referred to the Presidential Review Committee (PRC) report (2013, Volume 1:8), as acknowledged by Kikeri (2018). The PRC is a commission which was established in 2014 to examine the performance of SOEs. It had to investigate if SOEs are responding to the Developmental State agenda of the country.

According to the Report's overview of SOEs, as of 2012, South Africa had approximately 715 SOEs at various levels of government, including commercial and non-commercial SOEs and their affiliates. There are legal entities, incorporated and unincorporated, which make up a commercial SOE, known as (i) State-Owned Corporations (SOC); and (ii) State-Interest Companies (SICs). There are also Statutory Corporations (SCs) that offer high-yield goods and services, but are not controlled by the government, and then there are (iii) Financial Intermediaries, and (iv) Strategic Character (FI). The non-profit SOEs carry out a public mission and are composed of advisory boards, regulators, and research institutions (including SOEs, both for-profit and non-profit, and their affiliates). The four different forms of commercial SOEs are incorporated entities and unincorporated entities. Moreover, there are over 20 SOEs that are important at the national level, according to Schedule 2 of the PFMA, and 14 water authorities and companies which fall are under Schedule 3b of the PFMA. These SOEs play a key role in the economy, contributing over 8.5% of GDP. They maintain networks and services in key sectors such as infrastructure, finance, and in the national security and the social sector.

The PRC Report (2013) further detailed the analysis of critical issues at SOEs and attempted to promote inclusively in their in the economy which has been clouded by the lack of policy frameworks and concerns about broader governance at these entities. After a thorough evaluation and monitoring, the Review established several challenges facing SOEs: politicisation, multiple and conflicting objectives, inadequate financing policies and frameworks, lack of adequate oversight and accountability, frailty in the functioning and composition of the boards, and minimum transparency and accountability. The Review produced 31 recommendations for the improvement of performance at SOEs. These recommendations are emphatic on applications in line with good practice. They focused on defining the size and scope of the SOE sector and the development of a stand-alone SOE law, which should include a modern state ownership framework, the professionalisation of SOE boards, the enforcement of financial and fiscal compliance, and the improvement of performance monitoring mechanisms to enhance transparency and accountability. A critical recommendation was to ensure the development of a coherent SOE plan and strategy whose goal was the Developmental State agenda. According to the PRC Report (2018), SOEs could only deliver on the State's developmental goals through good governance.

The National Planning Commission in the National Development Plan (NDP) states, “While considerable attention has been given to the transformation of SOEs, less attention has been given to the transformative or developmental role that SOEs can play” (NPC, 2013:438). The NDP further states, “Different spheres of government have not cooperated effectively around built-environment functions relating to housing, state-owned land and transport infrastructure” (NDP, 2013:434). This would include the activities and impact of SOEs. Although SOEs play a crucial role in providing critical services for urban development, there is concern around the inferior performance of some SOEs, states the NDP (NCP, 2013:160). In some cases, current investment levels were insufficient and maintenance programmes were lagging. The NDP suggested that the performance of SOEs could be improved by increased cooperation and competition. Also, institutional and reporting structures and being able to innovate could contribute.

To achieve a transformed public service administration, it is important that the leadership of the government encourages and supports bureaucrats running the administration to be trained in innovative and creative thinking more like entrepreneurs. It is also time to initiate programmes that will change how the government goes about re-writing the code so that public administration attracts more transformative thinkers in the future through capacitated Human Resources, which will appoint the right people for the right positions through proper recruitment and selection processes. When there are formal processes in place, the public service could continually improve what it delivers to beneficiaries of the public service. The nature of the public service is changing due to external factors such as technology; the government needs to embrace these changes and adapt accordingly.

According to Business Tech News, the Auditor-General (AG) (2020/2021 financial year) reported concerns that some SOEs were in financial trouble and did not submit their financial statements for auditing. Those that submitted them indicated that they might not have the financial muscle to conduct future business. The AG further reported that there were 21 public entities that disclosed uncertainty about whether they would be able to continue as a growing concern. They included the Road Accident Fund (RAF) and the South African National Roads Agency (Sanral).

According to CIPFA's International Framework Draft of 2013, government and government officials working for SOEs are expected to practice high ethics and act in the interest of the public at all times, in compliance with the requirements of legislation and government policies, not for personal gain but to build a good image of the entity in the name of good governance and for the wider benefit of society, leading to the expected results for beneficiaries and stakeholders.

President Cyril Ramaphosa stated in his State of the Nation Address in 2021 (Mputi, 2021) that state-owned entities were paralysed by mismanagement and looting and were a burden on taxpayers. He also pointed to the impact of Covid-19, among other challenges, which added to the strain on the country's financial growth. The President further acknowledged that SOEs' socio-economic mandate had been undermined over the years by the incompetence and gross mismanagement of these entities.

4.6.1 Covid-19 and its effects on SOEs

According to the South African Economic Reconstruction and Recovery Plan (2022: 2), the South African economy was in a vulnerable state before the outbreak of the Covid-19 pandemic in March 2020. By the time the pandemic reached South Africa, the South Africa had experienced the second consecutive quarter of recession. As a result, the Covid-19 pandemic exacerbated the economic crisis. Many people lost their jobs, many lost their income for extended periods of time, and many went hungry every day. Inequality increased and poverty deepened.

South Africa's current economic stagnation has been attributed to a variety of reasons, including the unstable power supply, low consumer and business confidence, diversion of ministry funds to bail out SOEs, and lack of structural reforms (Department of Economic Affairs Research, 2020:8; National Treasury 2020:13). According to Asmal and Rooney (2021:3), the Covid-19 pandemic and its associated restrictions on economic activity placed further strain on an economy that was not performing well. The underlying reasons for the mediocre performance of the economy pre-pandemic are unlikely to be resolved in the short-term and are likely to also impact the country's ability to recover from its Covid-induced economic shocks.

The Covid-19 pandemic came with a barrage of negative effects, also the performance of state-owned entities. Naidu (2021) highlights that before the onslaught of Covid-19, South Africa was in a technological recession in late 2019. This was the second time the country had fallen into recession under President Cyril Ramaphosa. As 2020 began, the South African economy experienced some of the worst structural and economic constraints. The country's socioeconomic stability was already fragile when the tipping point of Covid-19 arrived. Naidu (2021) also refers to the criticism that accompanied President Ramaphosa's decision of suspending economic activities and prioritising saving lives, amid the economic hardships facing the poor, vulnerable and marginalised, while trying to slow the progression of the pandemic. Ramaphosa and his cabinet decided to redirect state budget expenditure to the introduction of emergency social assistance measures, such as extra cash payments to child benefit recipients, unemployment benefits to those not receiving social assistance, and food distribution to vulnerable households.

To further emphasise the impact of Covid-19 on the economy, Naidu (2021) writes that:

- The economy contracted by 7.2%,
- 2.2 million jobs were lost in Quarter 2 of 2020,
- The unemployment rate peaked above 32% in Quarter 4 of 2020,
- Tax revenues were well below expected earnings, and
- Poverty and inequality were on the rise.

According to Scholtz (2021), Covid-19 affected some SOEs less than others, but many of them faced challenges stemming from the economic slowdown and 2020 lockdown restrictions. This added to the burden on SOEs, which were already struggling with allegations of a public administration takeover and corruption. SOEs that were particularly hard hit by the coronavirus pandemic included Transnet (hit by increased vandalism and fuel theft), Eskom (it slowed down usage as mines and industries were closed and revenues fell as a result), and SA Express had to minimise aircraft capacity from 100% to 30% and had to face the challenge of increased airfares impacting on its profitability. The aviation sector was hit the hardest. In 2020, the aviation market fell by 82%, and it was only 18% of the market compared to 2019. This on top of the

dire state of SAA and SA Express before the pandemic hit. Turning to the National Railways, Ports and Pipelines Authority, the pandemic has affected all of Transnet's operations divisions, especially rail volumes, which accounts for 70% of the company's revenue. The effects of the pandemic was seen on the overall performance of SOEs and the situation was escalated by fatalities, especially at Eskom and Transnet (*Mail & Guardian, 2021*).

4.7 Measures to improve oversight at SOEs

The Department of Public Enterprise (DPE) recommended that a new state-owned asset management company be established to function as a 100% state-owned investment management company with a mandate to transform economies, grow middle-income populations, and strengthen competitive advantages. This was according to a meeting held by the NCOP for Public Enterprises and Communication on 8 September 2021. This new investment company would be an active investor and shareholder with the long-term goal of generating sustainable value for its stakeholders. It would have its headquarters in South Africa as an asset management SOE. The DPE or the Presidency, on behalf of the South African government institution, would hold a 100 percent ownership stake. The SOE was meant to answer directly to the President as part of the long-term plan. Among other important strategies, its long-term strategy included considering the evolution of its portfolio as a mid- to long-term process. Despite the fact that members generally agreed with the recommendation, they expressed concerns about the DPE's ability to put it into action because many of its smart suggestions had not been implemented. They demanded assurances that there would be fool-proof procedures to ensure that no fraudulent activities would take place and inquired about who would be appointed to the board to run the asset-management SOE. A timeline for when the company would be established was also requested (DPE, 8 September 2021).

An independent team needed to be formed to address the issues, with a focus on:

- *Stabilising SOEs,

- *Repositioning SOEs to be commercially competitive, and

*Controlling the turnaround procedure. The PSEC, the Minister of the DPE (who serves as the PSEC secretariat), and the Presidency would receive direct reports from the team. The length of time involved would be the amount of time needed to reposition and restructure the SOE portfolio (NCOP for Public Enterprises and Communication, 8 September 2021).

The restructuring and stabilisation unit would create a secure foundation for strategic equity partners (SEPs) to enter and advance SOEs, boost the portfolio's market appeal, and pinpoint the assets primed for SEP entry. The newly created state-owned asset management firm would make it possible to identify assets that were designated as non-core, speed up the selling procedure to stop the value eroding, and provide creative solutions for selling and boosting the economy (NCOP for Public Enterprises and Communication, 8 September 2021).

Mandate of (Presidential SOEs Council) PSEC:

The purpose of the Presidential SOEs Council was to support the effort government as an institution to reposition SOEs as effective engines of economic development and transformation. In order to strengthen the legal framework governing SOEs, a comprehensive act governing SOEs was introduced, and an appropriate shareholder ownership model was chosen. Interventions tailored to SOEs were being used to stabilise businesses by enhancing governance, addressing immediate liquidity issues, and putting turnaround plans into action. The Council's mandate would include reviewing SOEs' roles and responsibilities to ensure they contribute positively to society and are in line with the national development agenda; reviewing SOEs' corporate plans to make sure they are in line with public service administration priorities and that the necessary systems are in place to monitor their implementation as well as their operational and financial performance; and reviewing SOEs' business models, capital structures, and sources of financing. The DPE would serve as a secretariat for the Council, as it was the shareholder representative for the government as an institution, with oversight responsibility for SOEs (DPE, 8 September 2021).

To support the reform process, the Presidential SOEs Council (PSEC) was present to:

*Provide a concise list of reforms that would let these important public entities carry out their mandate for expansion and improvement;

*Provide comprehensive legislation for state-owned businesses, to be presented to Cabinet this fiscal year and to Parliament the following fiscal year;

*Implement a centralised SOE model to ensure uniform governance, financial management, and an operational performance framework for all SOEs'; and

*Review all SOEs' missions to make sure they are responsive to the needs of the nation and the NDP's implementation (DPE, 8 September 2021).

4.8 Conclusion

After 1994, the new democratic government inherited a legacy of malfunctioning SOEs characterised by underperformance, with low returns on government institution's investment and a continued reliance on the state support, be it in the form of explicit state guarantees (estimated at 6% of GDP in 2010) or subsidies. They also faced deficiencies in the regulatory framework, leading to regulatory uncertainty.

All the governance-related issues plaguing SOEs bears testament to the challenge of not applying the critical legitimate system or imperatively legitimate structure of the King Codes of Good Governance and the King Reports on Good Governance for South Africa, particularly the King III Report, which was issued on 1 September 2009, and came into effect on 1 March 2010. It is therefore important to note that all King Codes Reports were designed to promote good corporate governance in South Africa. SOEs' challenges include a lack of clarity in objectives, a multitude of mandates within their business models, inappropriate costing of mandates, and weaknesses in governance and oversight. These weaknesses have contributed to the poor financial health of SOEs.

This chapter highlighted the challenges at SOEs, including the following:

- (i) the inadequate governance framework,
- (ii) no specific provisions for SOEs in the Companies Act,
- (iii) the mismanagement of SOEs that has negatively affected resources, savings, and capacity from both the public and the private sector because resources are channelled away from critical priority areas,

- (iv) the obscure application of participatory governance, which results in a lack of transparency and accountability to ensure that SOEs are subject to high-quality accounting, disclosure, compliance and auditing standards, and
- (v) ineffective anti-corruption strategies to curb the levels of corruption at SOEs.

The chapter also painted a picture of the current state of SOEs in South Africa, which is hindering their ability to perform efficiently, create value, and contribute to economic development; the persistence of poor public participation and non-accountability which continues dragging SOEs and other state organs to their knees and to total collapse; legislation that is dispersed among many laws and lacks uniformity; and many important elements that contradict each other in different pieces of legislation (EL, CA, PFMA), including governance arrangements and reporting lines. SOEs are currently overwhelmed by excessive politicisation, multiple and conflicting objectives, inadequate funding policies and frameworks, and a lack of adequate oversight and accountability. Furthermore, they are experiencing serious weaknesses in the composition and functioning of their boards of directors, which accelerates maladministration, corruption and incompetence. In addition, shortcomings in the performance of SOEs, particularly in electricity supply, coupled with corruption scandals in procurement and administration, have become a source of major dissatisfaction and this situation calls for reforms. Finally, the chapter discussed measures to improve the oversight of these institutions.

To address these challenges at South African SOEs, the state requires realistic revenue targets, greater accountability to business objectives, and sensible regulation to improve competition. The government should prioritise setting realistic targets for SOEs, including expected profitability, capital structure and non-financial targets. It must ensure that SOEs are specialised state structures and that they refrain from short-term political interference. Furthermore, the government as institution must harness the privatisation of SOEs, such as telecommunications companies operating in markets with sufficient competition. The government as an institution must also nurture increasing competition, especially by reassessing SOEs' dominance in the network industry, which makes it harder for new companies to enter and increases the cost of intermediate products. The public service administration must further ensure the deployment of independent regulators in the network industry to ensure non-

discriminatory third-party access. It must also implement the Presidential Review Board recommendations for SOEs.

The next chapter will deal with the findings, recommendations, and conclusion of this research.

Chapter 5: Analysis, recommendations, and conclusion

5.1 Introduction

This concluding chapter of this study provides an overview of the research, its analysis, a summary of the findings, the conclusion, the value it adds to the field of study, and the recommendations.

This study is based on the negative reports on the inferior performance of SOEs generally in South Africa due to the poor application of Developmental Governance and participatory mechanisms and the various media reports on the mismanagement of funds, non-compliance with the PFMA, frameworks and policies, the incompetence of corporate appointed executives, money laundering, looting, corruption, and lack of accountability. These challenges are not limited to questionable operational and financial situations for their feasibility and survival. These institutions are mainly plagued by poor performance, high levels of debt, corruption resulting in crumbling infrastructure, poor governance, wasteful spending, and the mismanagement of funds. SOEs in South Africa face politicisation, divergent and conflicting goals, inadequate funding policies and frameworks, a lack of proper oversight and accountability, weaknesses in the functioning and composition of their boards, and minimal transparency and accountability.

The aim of this study was to investigate the causes of the poor performance of SOEs and the failure of some SOEs in South Africa to achieve socio-economic growth and improve service delivery. It also assessed whether SOEs added value to South Africa's development agenda as a state. A further aim of this study was to analyse whether these institutions recognised and applied the principles of development-oriented and participatory governance in their administration and leadership. The study also attempted to understand the reasons for the accountability gap in South African SOEs. Moreover, the study advocated the application of developmental governance mechanisms and participatory governance in SOEs in South Africa to improve the public administrations responsiveness to service delivery through the conscious involvement of civil society and the business sector in policy development and anti-corruption processes.

This research has achieved its research objectives by answering the research questions, as stated in the Chapter 1, Section 1 and 2.

Why are SOEs in South Africa failing to achieve socio-economic growth and service delivery?

In Chapter 4 (Section 2) it was stated that South Africa is dealing with the reality of corruption as one of the impediments to economic growth and development. The values of the Constitution brought with it a sharper focus on the constraints that corruption puts on development and the quality of governance. Poor financial mismanagement at SOEs has negatively affected resources, savings, and capacity in both the public and the private sector because resources are channelled away from critical priority areas, which are meant to enhance socio-economic growth and service delivery (Chapter 4, sub-heading: Financial mismanagement, page 15).

Why are South African SOEs currently not contributing to the developmental agenda of the state?

The effect that cadre deployment has on the performance management of SOEs (Chapter 4, page 6) is an active problem contributing to SOEs' inability to contribute towards the developmental agenda of the state. There is no adequate governance framework to regulate these entities (page 9), and the absence of specific provisions for SOEs in the Companies Act is not supporting their role (page 11); there is questionable compliance with the principles of the King Code on Corporate Governance (page 11); there is financial mismanagement (page 14); there is obscure application of participatory governance (page 18); there are ineffective anti-corruption strategies in place (page 22); and there is inadequate application of good governance principles (page 25). Indeed, these entities should be acknowledging and encompassing the principles of developmental and participatory governance in their administration and daily running

South African democracy started with participatory governance, with public participation being maximised, until it faded away and was engulfed by parliamentary democracy where a few people can make decisions on behalf of the entire nation (Chapter 4 on page 18 under the sub-heading: Obscure application of participatory governance). Representative democracy at local government level was parallel, where nominated officials represented the people in structures or structures or institutions in the form of appointments as executives and board members of SOEs (Chapter 4, page 20). The principles of developmental and participatory governance have been violated as these representatives did not serve the people they were supposed to represent and they were often elected

based on the shared beliefs and opinions of certain segments of the populace, regardless of those representatives' education, knowledge, integrity, or ability to solve problems (sub-heading: Cadre deployments impact on the performance of SOEs: page 6). The South African public service faces performance issues as a direct result of the ANC culture of cadre deployment, a strategy which systematically puts reliability ahead of legitimacy and even capability; thus, posing a real obstacle to competent open governance. This practice on its own has violated and rejected the principles of developmental and participatory governance.

Why is there a vacuum of accountability at South African SOEs?

The persistence of poor public participation and non-accountability will continue to drag SOEs and other state organs to their knees and eventually to total collapse. Such outcomes will increase the high unemployment rate and poverty in the country (Chapter 2: Overview of SOEs, page 15). Lack of transparency results in a lack of accountability, and it has compromised the credibility of the state. Citizens have not participated in policy formulation and implementation, the effective use of resources, skilful accounting, financial control, and good performance standards at these institutions. When the society has access to information on government policies, rules and decisions supporting development, accountability mechanisms, and transparent development processes it reduces doubts about the policy process and it disrupts corrupt behaviour (Chapter 2: Participatory governance, page 33).

The inadequate institutional framework for SOEs has resulted in distorted performance accountability between the board and the shareholder because of the modest amount of authority the board is given over the CEOs responsible for the operations of SOEs. To address this matter, the state has the responsibility to assign a relevant political Minister to appoint board members, and the board may recommend names for the position of CEO. Political patronage then determines who to appoint for the operations of the entity, and the board stands to satisfy the stakeholders. This practice affects the level and mix of critical competency skills for the performance of the board and its accountability. Furthermore, the government must be intentional about setting objectives and performance targets for SOEs, appoint directors to the board, and monitor the performance of both the enterprise and the board with authority for the performance of the entity, which resides with the board. It is "best practice" for the board, rather than the state, to have the power to appoint and

dismiss the CEO, as well as full responsibility and accountability for the SOE's operations, without political interference. South African government policy emphasises the need for SOE accountability, while also recognising the need for SOEs to conduct business independently of the state, which appears to contradict current practice. Thomas (2012) links accountability to transparency and associates a lack of transparency to the society, as the ultimate owners of SOEs, due to political interference and the political nature of these enterprises (Chapter 4: Challenges at SOEs, page 10). Accountability is seen as an expression of administrative responsibility that holds officials answerable to taxpayers and expects high moral standards for specific legal mandates (Problem Statement, page 21).

5.2 Overview of the research

This section discusses the value and contributions of Chapters 2, 3 and 4 to this research. Chapter 2 discusses the theoretical and conceptual frameworks on fraud and corruption, governance and the concept of good governance, Developmental Governance and participatory governance mechanisms. This chapter highlights the lack of good governance in SOEs and aims to assist in restoring good governance leadership in state-owned businesses.

Chapter 3 discusses the legislation on SOEs. It examines the laws and corporate governance guidelines that provide the framework for the corporate governance of state-owned businesses, as well as the general responsibilities and powers granted to state-owned entities.

Chapter 4 discusses the current state of SOEs in South Africa and emphasises the fact that corruption is one of the obstacles facing SOEs; it further seeks to comprehend what went awry and how these problems could be unravelled in the future. Moreover, the chapter seeks solutions to the specific challenges in the landscape and practices that bear evidence of the SOEs' poor adherence to best practice. The information in all three chapters contribute to the research questions and assists with realising the objectives of this study, in the sense about what should happen to reform SOEs in South Africa.

Chapter 2

Chapter 2 provides the basis of the theoretical and conceptual framework applied in the research. It discusses theories, the views of authors and reports on theories and concepts, which build the viewpoint this research holds. The chapter also discusses the legislation regulating SOEs in South Africa; followed by definitions of fraud and corruption, and anti-corruption mechanisms that need to be in place for the proper functioning of the public service; and, lastly, the theoretical and conceptual frameworks on governance, Developmental Governance, and participatory governance. This chapter further explains poor governance in SOEs and intends to contribute towards the restitution of good governance leadership in SOEs.

This chapter expresses the view that the concept of good governance is still an impression that needs to be realised from the concept of governance and emphasises governance that deliberately pursues public participation, the rule of law, transparency, responsiveness, equity, effectiveness and efficiency, accountability, and strategic vision in the exercise of political, economic, and administrative authority. It credits good governance for demanding ethical and accountable leadership, that foretells improved good governance, which promotes ethical principles including honesty, fairness, integrity, justice, and freedom.

Furthermore, the chapter underscores good governance as a good strategy for economic development. It is of the view that good governance sets institutions on the right track and it is seen as crucial for economic growth and wider socio-economic development. It also states that the best governance practices in various developed countries have led to several governance indicators indexes, which could help developing countries. These indicators demonstrate that good governance promotes economic growth and development through investment and political stability. In addition, various scholars are of view that good governance is related to elevated levels of economic development.

Chapter 3

This chapter clarifies an objective of SOEs as ensuring that the country's economy becomes more competitive; and additional to their regular task of providing public goods and services, basic rights, and infrastructure, they have the responsibility of investing in economic infrastructure; stimulating economic growth; and achieving industrial policy objectives. It recognises that SOEs not only represent the government in commercial activities, but also primarily sell material resources to trading organisations and companies.

This chapter also discusses the legalisation of SOEs. It defines legislation as the government's most important tool for organising society and protecting citizens. Legislation defines the rights and obligations of individuals and authorities to which the law applies and establishes societal norms and standards at three spheres of government, which can be applied for several reasons. It demonstrates the regulatory activities and the specific go-ahead actions, and guides the supply of resources like funding, imposing of penalties, and allowing or prohibiting activities (as required). Legislation is crucial to the creation and operation of institutions; and legislation and frameworks regulate SOEs as legal entities

doing business on behalf of the government as an institution. The chapter further explores the laws and corporate governance protocols, which provide the corporate governance framework for SOEs, and determines the power and authority vested in SOEs, and their general functions.

The legislation of SOEs in South Africa seeks to streamline and improve the economic and societal state with the aim of addressing the inequalities and injustices of the past. Chapter 3 outlines the legislation that was put in place to further the principles of justice and development, as enshrined in the Constitution. It states that SOEs are established by law and can be established at any level or sphere of government. They are subject to the Enablement Act (EL), the Companies Act (CA), and the Public Financial Management Act (PFMA). The content of the EL varies from SOE to SOE, but the EL typically includes a description of the SOE's purpose and governance, reporting and accountability requirements. The argument however is that in the event of any conflict between the Company Law and the PFMA, the PFMA shall prevail. Unfortunately, this formulation inherently creates many uncertainties. This is because the question of whether there is a contradiction between the two statutes requires rigorous work statutory interpretation. Section 5(4)(a) of the Companies Act provides that the provisions of both laws shall apply simultaneously to the extent that one of the conflicting provisions can be applied and complied with without violating the other provision as intended to support the other. On the surface, this approach may seem sensible. But, in practice this leads to over-regulation. This is because direct conflicts between the two laws rarely occur. SOEs are likely to be forced to do more than necessary to achieve the purposes of the Corporation Law and the PFMA.

The chapter further highlights that another important legitimate system, or persuasive legitimate structure, is the King Codes of Good Business Administration and the King Reports on Good Business Administration for South Africa. The King I, II, III, IV and V are intended to promote good corporate governance in South Africa. The South African Code of Governance Principles 2009, collectively known as King III, contain a non-statutory code of principles and practices. Unlike King I and King II, King III applies to all private and public entities regardless of the nature and form of incorporation or incorporation. By adhering to the Key Principles of King III, each unit practices good governance.

The Constitution oversees the legislature within the more noteworthy portion of its structures, both through the government and organs of the state (tallying SOEs), to stay true to the benchmarks of good governance. It is subsequently the course of action of the Constitution, additionally, the sanctioning built up in the wording thereof, that is significant to SOEs. The Constitution secures certain rights that also have a bearing on the corporate governance of SOEs. The PFMA (No. 1 of 1999), as amended, was pronounced to offer impact to Chapter 13 of the Constitution. The Standing Committee on Public Accounts (SCOPA) - Portfolio Committee, according to Section 92(3)(b) of the Constitution, was established to exercise proper oversight over 35 National Departments and more than 250 public entities. As an overarching legislation, The Presidential State-Owned Enterprise Council was established in 2022 to outline a clear set of reforms which would enable SOEs to fulfil their economic growth and development mandate.

The powers of SOEs lie with the government. The government has direct authority over direct and unannounced intervention in SOEs by the Treasury and parent Municipalities or related departments. In South Africa, the Department of Public Enterprises is the shareholder representative of the government with oversight responsibility for SOEs in key sectors. The state also has the power to create and empower SOEs, but this inherently creates a distance between shareholders and SOE management.

Chapter 3 then states that the oversight of SOE is provided by the Parliament, the Executive Board, and the SOE Board. Parliament's Standing Committee on Public Finance reviews the financial statements and the Auditor-General's reports. A separate Portfolio Board monitors the SOE's service delivery performance against its corporate plans. Within the executive branch, shareholders and policy departments ensure proper governance is in place and oversee the implementation of policies. Additionally, the Treasurer and Treasury Department are responsible for financial oversight to protect the state budget and the state's creditworthiness. Moreover, the role of boards is described as the providers of strategic direction to SOEs and they are accountable for the performance of SOEs.

Chapter 4

This chapter examines the current state of SOEs in South Africa. It further brings to the fore the reality of corruption as one of the impediments to SOEs' economic growth and development. It also highlights the problems of corruption, based on constitutional values, but also brings with it a sharper focus on the constraints that corruption puts on development and the quality of governance.

The chapter further links the major challenges in SOEs that prohibit them from performing their mandate, assesses the genuine issues found for consideration, and seeks the truth to comprehend what went awry and how these problems could be unravelled in the future. The chapter also seeks solutions to the specific landscape challenges and practices that bear evidence of SOEs' poor adherence to best practices. Moreover, it highlights the role the Parliamentary Portfolio Committee plays in improving SOEs' capacity to ensure implementation and compliance.

The chapter also alludes to the fact that state ownership is a risk that could destroy the value of SOEs if best practices in the ownership and management are not applied; this could result in corruption, bribery, inefficiency, money laundering and looting, which are the most critical governance challenges faced by South African SOEs. These challenges hinder the entities from performing efficiently, creating value, and contributing to economic development, and they are the symptoms of rampant corruption, which is widespread in the public service.

Chapter 4 also addresses the controversial issue of cadre deployment, which destabilises the political surroundings and skews the functioning of the state. It also undermines the constitutional requirement that the public sector needs to be professional and development-oriented, and that "no employee of the public service might be favoured or prejudiced solely because they support a unique political party or cause". The South African public service faces performance issues as a direct result of the ANC's culture of cadre deployment. This ANC strategy policy systematically puts reliability ahead of legitimacy and even capability; thus, posing a real obstacle to competent open governance. There are serious corporate governance failures, including weak management accountability, over-politicisation, and unclear goals in the country because of cadre deployment.

Moreover, reference is made to institutional confusion because government officials who holds key positions in the Ministry of Minerals and Energy and the Ministry of Public Enterprises rarely remain for more than two or three years, which is the reason why organisational memory and abilities are often lost and must be rebuilt (Chapter 4, page 86).

The challenges which were identified at SOEs are as follows:

Inadequate governance framework

The institutional framework for SOEs requires the state as the shareholder to assign a relevant political Minister to appoint board members, and the board may recommend names for the position of CEO. This arrangement on its own blurs the performance accountability between the boards and the shareholder, based on the meagre authority the boards are given over the CEOs responsible for the operations of SOEs. It affects the level and mix of critical skills of competency for the performance of the boards and their accountability. A suitable governance framework will assist SOEs with setting clear and specific objectives regarding profitability expectations, capital structure, and non-financial structures. SOEs are expected to deliver, as they are a risk to the 's finances (Chapter 4, page 85).

There are no specific provisions for SOEs in the Companies Act that service the unique provisions to regulate only/specifically SOEs. The failure of the legislature in its oversight role to make provisions for specific sections in the Companies Act of 2008 applying to SOEs has flawed the legislative framework for SOEs in South Africa; this renders them ineffective as it does not address issues specific to SOEs, such as social mandates, SOEs' accountability, and the clear roles of shareholders in achieving the objective of an enterprise. Considering the unique nature of SOEs and the unique challenges they face, they require dedicated legislation to address arising challenges, alongside the prescribes of the PFMA and other forms of legislation such the Public Audit Act and Treasury regulations (Chapter 4, page 87).

Questionable compliance with the principles of the King Code on Corporate Governance

also stands out as a challenge seriously affecting the performance of SOEs. The context wherein South Africa practices governance is complex and faces many challenges. The King III Report promotes the principles of good governance, which are lacking in application at SOEs. The Companies Act emphasises board authority, whereas King III

emphasises 'responsibility'. The importance of the King III Report to the board, as the focal point of governance, is that boards of SOEs must understand the specific responsibilities addressed in the PFMA and Companies Act in terms of this governance principle. When attempting to resolve conflicts between the Companies Act and the PFMA, the PFMA takes precedence only where irreconcilable differences exist. When there are incompatible contradictions, reconciling the law (which must be followed) with governance recommendations (which must be applied voluntarily) presents a challenge. SOEs should strive to apply King III in conjunction with regulatory provisions, even if they are contradictory, to achieve the overarching principles of sound governance, namely, responsibility, accountability, fairness, and transparency in the interest of substance rather than form. By approaching compliance and governance with this perspective in mind, SOE directors will benefit SOEs and their stakeholders, including, most importantly, the people of South Africa. The state must also clarify its goals and envisaged relationship with SOEs. As much as the King Codes III and IV are applicable to SOEs, and are meant to improve governance practices, the two codes are mandated to comply with the report, and there are no punitive consequences for non-compliance as there are no statutory obligations for SOEs to adhere to the provisions of the King Report and the Code practices. This view suggests that the South African legislator developed minimum standards for corporate governance as the King Report improves legislative governance provision; they do however not contain specific conditions relating to SOEs (Chapter 4, page 87-90).

Financial mismanagement is another challenge that was identified that negatively affects resources and capacity in both the public and the private sector because resources are channelled away from critical priority areas. SOEs with poor financial performance had consistently low profitability, liquidity and solvency indicators, which was reflected in high leverage. Deteriorating operational and financial performance over time, as well as increasing budgetary strain, demonstrates an urgent need to reduce their large economic footprint and address underperformance. Both are significant impediments to economic efficiency, competitiveness, and the expansion of productive private enterprises. Poor implementation of the Companies Act and corporate governance frameworks leads to an escalation in crime, corruption, mismanagement, and related corporate governance violations in SOEs. South Africa faces a parastatal paralysis where SOEs have become debt traps and urgent intervention is needed. With every financial year passing, SOEs sink deeper into their financial woes, a deteriorating state of mismanagement and desperate

balance sheets, with weak executive oversight. The current state of SOEs indicates that their governance and financial systems are in tatters, with rising losses, rapid institutional decline, and loss of market share despite their monopoly status in some sectors. At the helm of the inability to manage finances at SOEs, auditees fail to institutionalise established preventative controls receptive enough to pick up and counteract non-compliance, losses and signs of financial distress during the year, and to correct these grave issues timeously (Chapter 4, page 91).

The obscure application of participatory governance at SOEs have left citizens with perceptions that are hard to swallow. Research has shown that the public's opinion on their role in policy making in South Africa suggests that since most decisions present predetermined positions and programmes, there are few opportunities for the public to provide feedback or share information, and the policy-making process is perceived as being driven by the elite, which largely excludes and demobilises the public. South Africans further claim that attempts to facilitate community inputs are superficial and do not extend to the level where decisions are made. The research also shows that even among the mostly middle-class individuals who make up the civil society sector, there is a growing sense of exclusion, marginalisation, and disempowerment. This resulted from a lack of feedback on inputs made into procedures, not seeing recommendations implemented, or not feeling like their participation and input had any discernible impact. There is a perception that the civil society sector is frequently excluded from an "inner circle" who has privileged access to decision-makers and that they are coerced into participating in a process with a predetermined outcome. Despite several legislative provisions for participatory procedures being in place and available, civil society is not being given the opportunity to engage in meaningful participation. The current communication channels are insufficient, inaccessible, and disempowering, and new methods of involving citizens in the creation of policies are needed (Chapter 4, page 94).

Ineffective anti-corruption strategies emerge amongst the challenges at SOEs through the conspicuousness of corruption in state institutions. Corruption has pervaded critical institutions in the public as well as the private sector and is a threat to national security; it undermines the rule of law and weakens important institutions entrusted with the responsibility of safeguarding the significance of the state as a protector and promoter of the rights of its citizens. There are claims that because South Africa does not have a national charter against corruption or an applicable code of conduct, the anti-corruption

strategies employed in institutions are ineffective. The charter would be a significant and symbolic act that would usher in a new beginning for South Africa. If the nature and intent of the commitment are properly understood and there is meaningful belief in what it symbolises, such a charter could have immeasurable symbolic impact, as advised by the Zondo Commission. The Commission suggested that the South African anti-corruption charter should include a "code of conduct" that outlines the moral expectations of those involved in public sector procurement. It also suggested that the charter be created by the state in consultation with the business community. The other view is that the problem in the South African governance is that a number of state agencies are in place to combat and prevent corruption, but they cannot be effective because their mandates overlap, and some degree of rationalisation is needed to promote effectiveness. It is argued that performance by the agencies can be improved by the government institution in ensuring that the activities of all anti-corruption agencies are better coordinated and that there is cooperation between them to maximise their efficiency, which is not desirable at present (Chapter 4, pages 94-98).

The inadequate application of good governance in the public service has become a concern as the technocratic concepts of good governance disregard self-governance, as the traditional ideals and practices of democracy defeat critical activism and disable societal actors from challenging oppression, corruption, and the violation of human rights. Moreover, governance failures, a lack of accountability, a lack of transparency, looting, cronyism, corruption, wasteful expenditure and the mismanagement of funds was an inevitability because of the poor and everchanging leadership at SOEs and reflects the crumbling of the infrastructure, while operating at the "mercy" of the National Treasury through guarantees and bailouts. The inadequate application of good governance resulted in the aforementioned negative effects on the economy and the fiscus, which makes it harder for the public administration to provide services. SOEs have failed in addressing the fundamental governance failures and challenges they are facing due to the non-application of good governance principles and practices and strict compliance with the requirements of the legislative frameworks. Reformation processes are therefore slow, complicated, and frustrating. Another problem identified that hurts SOEs' performance is the deficiencies in their regulatory framework, which results in regulatory uncertainty, limited review of new investment projects, frequent changes in valuation methodologies, insufficient independence of key decision makers, lack of clarity in objectives, a multiplicity

of mandates within their business models, improper costing of mandates, and weaknesses in governance and oversight. These weaknesses have contributed to the poor financial health of SOEs. Moreover, the government as the main institution plays opposing roles as a regulator and a shareholder and because of that, SOEs face multiple and conflicting goals (Chapter 4, page 101).

5.3 Analysis

This study is of the view that the application of (Developmental) Governance and participatory governance mechanisms in SOEs in South Africa could improve the government's responsiveness to service delivery through the conscious involvement of civil society and the business sector in the processes of policy development and anti-corruption strategies.

The argument of this research is that the poor application of Developmental Governance mechanisms and participatory governance (good governance practices) at SOEs has resulted in the failure of many SOEs to contribute to economic growth and effective service delivery (Chapter 4: problems of SOEs (page 83), Challenges at SOEs (page 85), Current state of SOEs in South Africa (page 102)).

The view of this research is that the government of South Africa must enforce the application of good governance through all applicable legislation and frameworks available and embrace the good governance practices, as recommended by the King Code (Chapter 4, page 85).

Cadre deployment has played a significant role in the demise of most SOEs and currently stands in the way of competent open governance because it consistently prioritises reliability over legitimacy and even capability. This has become the main factor in the poor performance of the public sector in various institutions. In South Africa, those chosen to represent the beneficiaries on boards and in executive positions in SOEs frequently succumb to greed, egocentrism, favouritism, and nepotism. When these unethical behaviours take control, these representatives frequently forget about the people at grassroots level (Chapter 4, page 82). Hence, the PFMA and the guidelines and rules were not followed by many SOEs, and this ineptitude led to poor governance at these institutions. These strongholds are controlled via corruption, theft, and money laundering (Chapter 4, page 91).

Studies (Andreassen 2011:647-673; Mbambo: 2017: 2-3; PwC, 2012) have also expressed the urgency to revamp the governance of SOEs, considering that there is an inadequate governance framework, and this has resulted in their inability to balance the commercial, developmental and shareholder objectives imposed on them. Failure to supply a coherent regulatory environment has had a negative impact on SOEs and the South African economy's growth prospects.

Respective National Departments overseeing various SOEs are inconsistent in developing a legitimate set of objectives and performance targets for SOEs; must appoint directors to the board; and should monitor the performance of both the enterprise and the board with authority for the performance of the entity residing with the board. Such frameworks will assist with setting clear and specific objectives regarding profitability expectations, capital structure, and non-financial structures that SOEs are expected to deliver on, as they are a risk to the government's finances (Chapter 4, page 85).

The legislation has *no specific provisions for SOEs in the Companies Act*. Some authors argue that because the Companies Act does not offer unique provisions to regulate only/specifically SOEs, and the legislature in its oversight role has failed to make provisions for specific sections in the Companies Act applying to SOEs, this has flawed the legislative framework for SOEs in South Africa. This renders them ineffective as it does not address issues specific to SOEs, such as social mandates, SOEs' accountability, and the clear roles of shareholders in achieving their objectives (Chapter 4, page 91).

SOEs do not adhere to business ethics and principles, the values of ethical culture, transparency, good performance, effective control and legitimacy as stated in the King reports, which promote the principle of SOE good governance in the complex context in which. South Africa practices governance. Nor can these entities use the Corporate Governance Protocol and the South African Code of Good Corporate Governance and the Royal Reports on Good Corporate Governance as a legitimate and compelling structure. The public service is unable to balance legislative requirements with sound corporate governance practices to achieve stability in South African public enterprises. This balance is crucial to the stability of SOEs in South Africa (Chapter 4, page 89).

According to the media and several academic studies, South Africa's state-owned entities are deeply in debt, and requires immediate intervention. These SOEs suffer from worsening financial problems, poor management, poor balance sheet and inadequate

management control every fiscal year. Despite their monopoly status in some industries, the current state of SOEs shows that their management and financial systems have broken down due to mounting losses, rapid institutional decline, and declining market share (Chapter 4, page. 92).

There is no question that SOEs have developed into hotbeds of corruption since the prevailing view is that they have become sites where the "misuse and leakage of public funds" are prevalent. Due to the financial mismanagement of SOEs, resources are diverted away from high-priority areas, which negatively draws resources from the public and private sectors (Chapter 4, page 110).

SOEs performance have declined due to weak financial and performance management, non-compliance and continuous performance deterioration. In addition, the failure of all SOEs to manage their finances stems from the inability of auditees to create proactive audits that can detect violations, losses, and signs of financial distress within a year and promptly correct them (Chapter 4, page 94).

South Africans are predetermined, and government programmes are decided by senior officials and managers. There is little opportunity for the public to provide feedback or information, and the public perceives that the decision-making process is driven by an elite that excludes the public. South Africans argue that initiatives that encourage community input remain outside the decision-making process and are superficial. A sense of marginalization, marginalization and powerlessness is growing even among the predominantly middle-class members of civil society. No feedback will be given on procedural recommendations if the recommendations are not implemented or if your participation and input does not have a tangible impact. The civil society sector is often forced to participate in a process that has a predetermined outcome and excluded from a "inner circle" with preferential access to decision-makers. Another perception is that, rather than involving communities at the beginning of the process, when issues are uncovered and solutions are found, the government only begins doing so at later stages of policy creation to secure political support and implementation (Chapter 4, page 95-96). The civil society stakeholders are led to assume that, despite the existence of many legislative mechanisms for participatory procedures, civil society was not being given the chance to participate meaningfully (Chapter 4, page 95). New strategies for incorporating citizens in

the development of policies are required because the existing avenues of communication are weak, inaccessible, and disempowering.

Participatory governance means that the people can influence the decisions that affect them, because it encourages good decision-making and brings stakeholders together, improves the work environment and benefits from diversity. Within the practical and legal limits placed on decision-makers, participatory governance is carefully designed, implemented and evaluated to utilize mutual trust, honesty, transparency, fairness and respect for opposing viewpoints in stakeholder collaboration (Chapter 4, page 94).

Lack of institutional mechanisms, a weak civil society, uneven economic growth, and little political competition, in the opinion of some authors, created a favourable environment for corruption in many forms, including bribery, fraud, misappropriation, favouritism, extortion, conflicts of interest, political deals, and abuse of discretion. On the other hand, other authors hold that perceptions of corruption vary across cultures, socio-political contexts, and economic contexts. Several state agencies are able to combat and prevent corruption, but they are unable to do so since their objectives overlap to some extent, making rationalisation necessary to increase efficacy. The respective executives and appointed boards can improve agency performance by making sure that all anti-corruption agencies work together to maximise efficiency and better coordinate their efforts (Chapter 4, page 98).

The absence of a national anti-corruption charter and an applicable code of conduct allowed corruption to spread to important public and private institutions and endangered national security, threatening the rule of law and weakening vital institutions tasked with maintaining the seriousness of corruption. the state as the defender and protector of the rights of citizens. If the nature and purpose of the National Anti-Corruption Charter is well understood and meaningfully believed in its meaning, it will be a significant and symbolic act that will usher in new beginnings for South Africa. Such a charter can have a significant symbolic impact in the fight against corruption. The charter should include "codes of ethics" that define the moral standards required of those working in public sector procurement. It is recommended that the public service draw up a charter after consultation with businesses (Chapter 4, page 99).

Technocrats ignore self-governance as traditional ideals and practices of democracy, while norms of good governance can boost critical activism, empowering social actors to resist

oppression, corruption or human rights. Effective governance can help hold powerful elites accountable. While South Africa struggles with outdated governance and inconsistent ownership, better governance can lead to more effective institutions and accountability mechanisms. (Chapter 4, page 101).

According to the findings of this study, SOEs have failed to address their fundamental governance issues and the difficulties they are currently facing is because there has been a lack of adherence to corporate governance principles and practices, and a lack of strict compliance with legal framework requirements.

5.4 Findings

The media regularly bemoans the declining standards of South African SOEs, and news reports show how corruption has crippled these institutions' ability to function and fulfil the purpose for which they were created – economic growth and development – by obstructing their ability to be transparent and serve the public interest (Chapter 4, page 78). This study has shown how crucial it is to use participatory governance and Developmental Governance as catalysts for powerful SOEs and how important good governance and effective anti-corruption policies are for the reformation of state institutions in South Africa (Chapter 4, page 94).

The analysis of this research identified several challenges as the cause of SOEs subpar performance or collapse in South Africa:

Cadre deployment has contributed immensely to the ruin of most SOEs in South Africa and is a real obstacle to the achievement of competent open governance as it prioritises the reliability of officials being appointed over the legitimacy and the capability of these individuals to execute the responsibilities entrusted upon them. This is why public services fell into the trap of poor performance at various government institutions. The South African public service faces performance issues as a direct result of the ANC culture of cadre deployment (Chapter 4, page 80).

SOEs in South Africa are not conforming to business ethics, the principles and values of an ethical culture, transparency, good performance, effective control and fairness, as part of the protocol on corporate governance which echoes the principles of the King Codes of

Good Corporate Administration and the King Reports on Good Corporate Administration for South Africa. This legitimate and persuasive structure to achieve good governance is overlooked by SOEs and the application of the King III Report, which aims to promote the principle of good governance because this system of uniformity is subordinate to the Companies Act. As much as it is a good initiative by the government, it is not legislated and is not a binding legislation that specifically addresses corporate governance in SOEs. As much as the King Codes III and IV are applicable to SOEs, and are meant to improve governance practices, there are no punitive consequences for non-compliance as there are no statutory obligations for SOEs to adhere to the provisions of the King Report and the Code. This view suggests that the South African legislator developed minimum standards for corporate governance, as the King Report improves legislative governance provision; they, however, do not contain specific conditions relating to SOEs (Chapter 4, page 110).

This research also found that SOEs have become debt traps and are falling into deeper financial troubles, a worsening state of mismanagement, and hopeless balance sheets, with weak executive oversight (Chapter 4, page 92).

It was further found that there are few opportunities for the public to be receive feedback or information, and the policy-making process is perceived by the public as being driven by the elite, which excludes and demobilises them. South Africans claim that attempts to facilitate community inputs are superficial and do not reach the level where decisions are made. The research also shows that even among the mostly middle-class individuals who make up the civil society sector, there is a growing sense of exclusion, marginalisation, and disempowerment. There is also a sense that the government only starts involving communities at advanced stages of policy formulation to get political buy-in and implementation, as opposed to at the beginning of the process when problems are identified, and solutions are reached (Chapter 4, page 95).

Moreover, it was established that even though there are legislative provisions for participatory procedures in place and available, civil society is not being given the opportunity to engage in meaningful participation. Communication channels are insufficient, inaccessible, and disempowering, and new methods of involving citizens in the creation of policies are needed (Chapter 4, page 95).

This research also found that mutual trust, honesty, transparency, equity and respect for opposing viewpoints for stakeholder cooperation within the practical and legal constraints of decision makers was violated (Chapter 4, page 94).

Furthermore, the research established that state agencies cannot be effective because their mandates to some extent overlap, therefore, they are unable to contend with or prevent corruption; the activities of anti-corruption agencies are not properly coordinated; and there is no cooperation between them to maximise their efficiency (Chapter 4, page 100).

The research further found that the absence of a national charter against corruption, or an applicable code of conduct, has given way for corruption to invade critical institutions in the public as well as the private sector and it has become a threat to national security (Chapter 4, page 99).

Additionally, the study established that the evolution of good governance as a concept has given way to technocratic conceptions of good governance, which disregarded self-governance in the public service and resulted in governance failures, lack of accountability, lack of transparency, looting, cronyism, corruption, wasteful expenditure, the mismanagement of funds, and state capture. The inadequate application of good governance has defeated the traditional ideals and practices of democracy and critical activism, and has disabled societal actors from challenging oppression, corruption, and the violation of human rights (Chapter 4, page 101).

The study further found that Southern Africa struggles with obsolete governance and inconsistent ownership practices because it does not have better governance arrangements that can result in effective institutions and accountability mechanisms. The non-adherence and inadequate application of corporate governance principles and practices and strict compliance with the requirements of legislative frameworks resulted in the current dire state of SOEs in South Africa (Chapter 4, page 101). Moreover, the study found a lack of adequate oversight and accountability, serious weaknesses in the composition and functioning of boards of directors, accelerating maladministration, corruption and incompetence in SOEs (Chapter 4, page 80).

5.5 Recommendations

After reviewing the data and the relevant literature, compiling the chapters and reaching findings, the research proposes the following recommendations:

- Cadre deployment has contributed immensely to the ruin of most SOEs in South Africa. This is why the public service fell into the trap of poor performance at various government institutions. The Constitution requires the public sector to be professional and development oriented. It is therefore recommended that cadre deployment practices must be reconsidered and instead merit-based recruitment and selection should be implemented in the public service as soon as possible. Moreover, the legislation that was signed by the President in August 2022, separating the powers of political executives and the public service, should be implemented by the public service.
- SOEs in South Africa do not conform to business ethics, the principles and values of an ethical culture, transparency, good performance, effective control and fairness, as part of the protocol on corporate governance, which echoes the principles of the King Codes of Good Corporate Administration and the King Reports on Good Corporate Administration for South Africa. It is recommended that these legitimate and persuasive structures be recognised by SOEs in order to achieve good governance and continuous monitoring for compliance at these entities.
- This research also established that the government does not have legislation that is specific to SOEs and to enact the protocol on corporate governance in the public sector to strengthen its governance structure. It is recommended that the government uphold good governance principles and improve service delivery through the formulation and application of policies.
- The research found that SOEs have become debt traps and are falling into deeper financial troubles, a worsening state of mismanagement and hopeless balance sheets, together with weak executive oversight. The financial mismanagement of SOEs has negatively affected resources and capacity from both the public and the private sector because resources are channelled away from critical priority areas. It is recommended that the management of SOEs' performance, be integrated and monitored against the PFMA (responsible for sound fiscal management and competent human resources), the Companies Act, and the critical legislation within which SOEs operates. The key roles of

the PFMA, and the Companies and Intellectual Commissions in ensuring that SOEs are compliant with governance provisions in the Companies Act. This research also recommends leaders at SOEs be given the responsibility to develop operational understanding of this form of system to ensure that SOEs meet their strategic objectives. Poor implementation of the above-mentioned corporate governance and frameworks, leads to an escalation in crime, corruption, mismanagement, and related corporate governance violations in SOEs.

- The obscure application of participatory governance has resulted in most decisions being predetermined by civil servants and executives appointed in senior positions. There are few opportunities for the public to be provided with feedback or information, and the policy-making process is perceived by the public as being driven by the elite, which excludes and demobilises the public. This research also found that mutual trust, honesty, transparency, equity, and respect for opposing viewpoints for stakeholder cooperation within the practical and legal constraints of decision makers is being violated. Thus, it is recommended that test-driven, evidence-based, values-based, and more highly trusted outcomes of public participatory mechanisms be applied urgently in the public sector work and programmes as an effective mechanism to tangible evidence and to prioritise the real time basic needs of communities.
- It was also found that even though there are legislative visions for participatory procedures in place and available, civil society is not being given the opportunity to engage in meaningful participation. Communication channels are insufficient, inaccessible, and disempowering, and new methods of involving citizens in the creation of policies are needed. Therefore, it is recommended that the public service order the development of a strong online hub, recognised after the lessons of Covid-19, a tool to connect and communicate with communities; develop community heap-maps, a geospatial tool that assist leaders in connecting with communities and simultaneously visualising comments on a map; steady-stream emails, via social media; offline interactions such as workplace meetings; offline surveys and QR codes; use of current contacts; Consistent Post Updates; and, safe space for community involvement.

- This research further found that the lack of a national charter against corruption and an applicable code of conduct has paved the way for corruption to penetrate critical public and private sector institutions and this has become a threat to national security. It is therefore recommended that for a fundamental change in South African legislation, a national charter against corruption should be developed, the nature and purpose of which should be clear and the purpose of which should be to hold wrongdoers accountable. This charter should include a code of conduct that sets out the ethical standards expected of persons involved in public procurement. It is recommended that this charter be developed by DPE in consultation with the business community.
- This study established that state agencies cannot be effective because their mandates overlap, and therefore they are unable to contend with and prevent corruption, and the activities of all anti-corruption agencies are not properly coordinated and there is no cooperation between them to maximise their efficiency. This research recommends that the mandates of ACAs be revised and that a working group be formed to identify further overlapping of the mandates of the ACAs. South Africa should also review its best practices, best approaches and best strategies for implementation in the country's ACAs when measured against other countries.
- It was also noted that Southern Africa suffers from outdated governance and inconsistent ownership practices in SOEs. This research therefore recommends that an ownership model that falls broadly into one or more of the following types be chosen: a centralised model, a coordinating agency model, a dual ownership model, a bifurcated model, or a decentralised ownership model.
- Non-compliance and the improper application of corporate governance principles and practices, as well as strict compliance required by legal frameworks, is another challenge and a recognised factor in the failure of SOEs. This research recommends that South African SOEs' funding structure should be altered to incorporate the governance principles outlined in legal frameworks like the King III Report, the Companies Act, and the PFMA. New funding sources must be identified as well. An extensive investment plan can be used to accomplish this.

5.6 Value and contribution

This study places special emphasis on how poor governance and fortuitous corruption impacted South African SOEs and how this led to their adverse status. Assisting SOEs to regain effective governance leadership is the goal of this study.

The concept of great governance is derived from the idea of government and is still an idea that needs to be realised. Governance is the deliberate pursuit of participation, the rule of law, transparency, responsiveness, equity, effectiveness and efficiency, accountability, and strategic vision when exercising political, economic, and administrative authority.

Good governance needs demand moral and responsible leadership for it to succeed. Leadership must encourage ethical values including honesty, fairness, integrity, justice, and freedom to improve good governance. The goal of this research is to advance the transformation of SOEs in South Africa so that they can be restored, the economy and service delivery can be improved, and poverty and unemployment can be reduced. Further study, in the opinion of the researcher, is required, particularly on the overlapping objectives of SOEs, the development of an anti-corruption charter, and increased public participation and representation to hold leaders accountable.

5.7 Conclusion

The content of Chapters 2,3 and 4 was analysed, and findings and recommendations on the current state of SOEs in South Africa were deduced. This chapter summarised the challenges that have plunged state organs into collapse. It identified challenges including the poor application of good governance and participatory governance, the mismanagement of funds, non-compliance with the PFMA, frameworks and policies, the appointment of incompetent corporate executives, money laundering, looting, and a lack of accountability. It also demonstrated that these challenges resulted in elevated levels of debt, corruption resulting in crumbling infrastructure, poor governance, wasteful spending, and the mismanagement of funds. SOEs in South Africa face politicisation, divergent and conflicting goals, inadequate funding policies and frameworks, a lack of proper oversight and accountability, weaknesses in the functioning and composition of the boards, and minimal transparency and accountability.

If the government fails to improve the application of frameworks and laws and is not open to the adoption of development governance policies and the application of public participation mechanisms that contribute to effective communication, openness, transparency, and accountability, South African SOEs will continue to deteriorate and collapse. More research and innovation are needed to reform the current state of SOEs in the country.

Overall, it can be summarised that the South African government must enhance a coherent regulatory environment with specific provisions for SOEs in the Companies Act, and strengthen the professionalisation of the public sector through proper recruitment processes and enforce the application of good governance through all applicable legislation and frameworks available, including a national anti-corruption charter to end corruption, and create open and efficient channels of communication and feedback to achieve an informed citizenry and effective service delivery.

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