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The state of corporate governance regulation and performance in state-owned enterprises in South Africa and Zimbabwe

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ABSTRACT

This article analyses the state of corporate governance regulation and performance in state-owned enterprises (SOEs) in South Africa and Zimbabwe by outlining SOE corporate governance regulation and examining SOE performance in both countries. SOEs are critical to African economies as they are a significant tool for service delivery and economic development, and as a result, must be managed appropriately. However, the problem is that corporate governance in SOEs in these countries is weak, often being characterised by chronic underperformance with poor returns, continual reliance on government support, and incompetence. Major SOEs in both countries have experienced severe failures due to disregard for governance regulations manifested in corruption, poor decision-making and the squandering of resources. This article assesses the regulation of corporate governance of SOEs in South Africa and Zimbabwe and makes recommendations. The results of the study suggest that excessive political interference in SOEs is the main problem, one from which many other challenges arise.

Keywords: state-owned enterprises; corporate governance; corruption; South Africa; Zimbabwe; SAA; SABC; Eskom; PRASA; ZBC; NRZ; Air Zimbabwe

1 INTRODUCTION

State-owned enterprises (SOEs) are wholly or partially owned and controlled by the state.[1] SOEs generate revenue from selling goods and services[2]. Unlike privately owned companies, their objective is not necessarily profit maximisation but service delivery, for example, providing employment or social grants to the citizens.[3] Thus, some SOEs are based on non-financial goals such as socio-economic services.[4] South Africa has more than 700 SOEs,[5] which are categorised on the basis of the Public Finance Management Act 1999 (PFMA). This study is limited to selected major SOEs listed in Schedule 2 of the PFMA, incorporated as companies under the Companies Act 2008, and those listed in Schedule 3B of the PFMA as national government business enterprises. By comparison, Zimbabwe has 107 SOEs, which are companies under the ownership and control of the government. Most SOEs in Zimbabwe are assigned public function mandates. However, in recent years, they have engaged in hybrid operations in order to fulfil their public responsibilities while pursuing profitability.[6]

While SOEs are essential to African economic development, most have not performed well and thus fail to fulfil their economic and service delivery roles.[7] For example, South African and Zimbabwean SOEs have regularly been in the news for corruption and corporate scandals involving their boards, management, and shareholder ministers.

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1 Sokol D "Competition policies and comparative corporate governance of state-owned enterprises" (2009) *Brigham Young University Law Review* 1713 at 1714.

2 World Bank *Bureaucrats in business: The economics and politics of government ownership* New York: Oxford University Press (1995) at 26.

3 See Sokol (2009) at 1713.

4 See Sokol (2009) at 1713.

5 Kikeri S "Corporate governance in South African state-owned enterprises" New York: World Bank Group (2018) https://documents1.worldbank.org/curated/en/798071529303940965/pdf/127288-WP-P161945-PUBLIC-Corporate-Governance-in-South-African-SOEs.pdf (accessed 11 June 2024).

6 Chiuriri FM & Arshad R "Enhancement of state-owned enterprises' financial reporting through e-governance" (2023) 440(06001) *E3S Web of Conferences* 1.

7 Verhoef G "State and market: SOEs in Africa since the opening of markets, 1990s–2015" (2022) 67(2) *Zeitschrift für Unternehmensgeschichte* 245 at 246.

Clearly, corporate governance challenges in SOEs in South Africa[8] and Zimbabwe[9] are due mainly to immense disregard by boards and management for corporate governance principles. This article thus explores the state of corporate governance regulation and thse performance of strategic SOEs in the two countries. These countries were chosen for this study because their major SOEs dominated the media in 2014–2018 due to abysmal corporate governance. The corporate governance failures are popularly known as "state capture" in South Africa and "the Salarygate scandal"[10] in Zimbabwe.

First, the article defines corporate governance and discusses relevant theories necessary for assessing the state of corporate governance regulation and performance in SOEs in South Africa and Zimbabwe. It outlines corporate governance regulation and SOE performance in both countries. Furthermore, the article identifies the key corporate governance, regulatory and operational problems that SOEs in the two countries face. Lastly, it recommends measures to improve corporate governance regulation in SOEs in the two countries as well as strengthen performance.

2 DEFINING "CORPORATE GOVERNANCE"

The notion of corporate governance gained prominence after several corporate scandals in the United States and United Kingdom in the 1980s and the subsequent Cadbury committee report in the early 1990s.[11] The simple definition is that corporate governance is a system by which companies are directed and controlled.[12] According to the Organisation for Economic Cooperation and Development (OECD), corporate governance is a set of relationships between a company's management, board, shareholders and

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[8] Thabane T & Snyman-van Deventer E "Pathological corporate governance deficiencies in South Africa's state-owned companies: A critical reflection" (2018) 21(1) *Potchefstroom Electronic Law Journal* 1.

[9] Chimbari P "Public sector corporate governance in Zimbabwe: The nexus between the ZIMCODE and state-owned enterprises" (2017) V(7) *International Journal of Economics, Commerce and Management* 212 at 216.

[10] The "Salarygate" scandal refers to the 2013–2014 revelations that senior executives in several Zimbabwean state-owned enterprises and public entities were receiving extraordinarily high remuneration packages, including excessive salaries and allowances, at a time when many of these institutions were financially distressed. Investigations and media reports disclosed monthly earnings that far exceeded public sector norms, triggering public outrage. The scandal exposed weak oversight, ineffective board control, and inadequate regulatory enforcement within SOEs. It became emblematic of broader corporate governance failures and elite impunity in Zimbabwe's public enterprise sector.

[11] Boyd C "Ethics and corporate governance: The issues raised by the Cadbury Report in the United Kingdom" (1996) 15 *Journal of Business Ethics* 167 at 167.

[12] Cadbury A *Report of the committee on the financial aspects of corporate governance* London: Gee (1992).

other stakeholders.[13] The aim of practising corporate governance in a company is to facilitate management control and the attainment of company value.[14]

Although SOEs, unlike private companies, are state-owned, globally the corporate governance practised in both SOEs as well as private companies is similar because SOEs have the same appearance and behaviour as private companies and are designed to compete in a free market.[15] However, as public sector entities, SOEs have several exceptions that allow them to operate more flexibly, such as relaxed tax incentives, government financial support, flexible corporate governance requirements, and removal of competition.[16] SOEs' legitimacy emanates from their ability to fulfil their economic and socio-economic role and return a profit to their owners, to whom they have primary responsibility.

3 THEORETICAL FRAMEWORK

Various theories underlie the concept of corporate governance. For this study, which focuses on corporate governance in SOEs, only four main theories will be discussed, with the purpose being to establish the true shareholders of SOEs, the position and importance of stakeholders in SOEs, and the responsibility of the directors as the agents in SOEs. The theories are the shareholder theory, the enlightened shareholder value approach, the stakeholder-inclusive approach, and agency theory. Collectively, they form the conceptual structure which this study adopts so as to understand the nature of corporate governance in SOEs.

3.1 Shareholder theory and enlightened shareholder value approach

The shareholder theory states that a company should serve the interests of shareholders only.[17] It asserts that, as residual risk-bearers, they are in the best position to ensure that

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[13] OECD *Principles of corporate governance* (2004) *OECD* available at https://www.oecd.org/en/topics/corporate-governance.html (accessed 11 March 2022).

[14] Ho PL & Taylor G "Corporate governance and different types of voluntary disclosure: Evidence from Malaysian listed firms" (2013) 25(1) *Pacific Accounting Review* 4 at 6.

[15] Roper J & Schoenberger-Orgad M "State-owned enterprises: Issues of accountability and legitimacy" (2011) 25(4) *Management Communication Quarterly* 693 at 697.

[16] See Sokol (2009) at 1713.

[17] Wiese T *Corporate governance in South Africa with international comparison* 2nd ed Cape Town: Juta (2017) at 7.

the corporation operates efficiently and focuses on profit maximisation.[18] This means that corporate managers, as agents, should answer only to shareholders and act in a way that furthers the interests of shareholders.[19]

The shareholder theory is now considered the old way of doing business, with firms noticing drawbacks to focusing on shareholders alone. A good example is the demise of companies such as Enron[20] and WorldCom.[21] The mounting pressure on managers to yield more profit for shareholders resulted in the manipulation of company accounts. The enlightened shareholder value approach is currently favoured instead, as it is grounded in the notion that a company's decisions should consider the interests of its stakeholders as long as these decisions ultimately benefit the shareholders.[22] The approach necessitates that directors prioritise the company's long-term growth and prosperity over immediate financial rewards for shareholders.

However, it is essential to note that under the enlightened shareholder value approach, shareholder interests are still considered more important than those of other groups. In essence, the approach involves maximising shareholder value while considering stakeholder interests in order to achieve long-term shareholder value maximisation.[23] In SOEs, company managers should prioritise the state as the owner and citizens as taxpayers and ultimate shareholders, a notion that aligns with both the shareholder theory and the enlightened shareholder value approach.

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[18] See Wiese (2017) at 7.

[19] Friedman M *Capitalism and freedom* Chicago: University of Chicago Press (1984) at 133.

[20] Petrick JA & Scherer RF "The Enron scandal and the neglect of management integrity capacity" (2003) 18(1) *American Journal of Business* 37.

[21] Ahmed AS "Summary of WorldCom accounting scandal" (2002) *Academia* available at https://www.academia.edu/18835601/Summary_of_WorldCom_Accounting_Scandal (accessed 22 August 2023).

[22] Ho VH "Enlightened shareholder value: Corporate governance beyond the shareholder-stakeholder divide" (2010) 36(1) *Journal of Corporation Law* 59 at 77.

[23] Bebchuk LA, Kastiel K & Tallarita R "Does enlightened shareholder value add value?" (2022) 77 *The Business Lawyer* 731.

3.2 Stakeholder-inclusive approach

Stakeholder theory in corporate governance was triggered by the growing recognition of the need to consider the broader interests of society.[24] This theory stretches the scope of corporate governance beyond the relationship between management and shareholders to include other interested parties in the corporation's activities.[25] Empirical studies support the notion that, although costly,[26] firms whose managers take a stakeholder-oriented approach can outperform those that do not.[27]

Stakeholder theory is based on the premise that a company is a legal and artificial person that carries out its activities in a community. It is necessary to disclose corporate information and meet the needs of different interested parties.[28] According to the theory, most organisations have a broad collection of stakeholders to whom they owe obligations and responsibilities; as a result, they should operate in a way that satisfies stakeholders' demands.[29] Furthermore, the theory's core notion is that corporate transparency should focus on serving the interests of all stakeholders rather than just resolving conflicts between company management and shareholders.[30] Managers must be focused on both the company and all of the company's stakeholders.[31] This ensures that the interests of stakeholders other than shareholders are directly represented in corporate decision-making.[32]

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[24] Kang H Cheng M & Gray S J "Corporate governance and board composition: Diversity and independence of Australian boards" (2007) 15(2) *Corporate governance: An international review* 194 at 195–198.

[25] Wanyama DW & Olweny T "Effects of corporate governance on financial performance of listed insurance firms in Kenya" (2013) 3(4) *Public Policy and Administration Research* 96 at 120–121.

[26] Ogden S & Watson R "Corporate performance and stakeholder management: Balancing shareholder and customer interests in the UK privatized water industry" (1999) 42(5) *Academy of Management Journal* 526 at 527.

[27] Hillman AJ & Keim GD "Shareholder value, stakeholder management and social issues: What is the bottom line?" (2001) 22 (2) *Strategic Management* 125 at 132.

[28] Sweeney L & Coughlan J "Do different industries report corporate social responsibility differently? An investigation through the lens of stakeholder theory" (2008) 14(2) *Journal of Marketing Communications* 113 at 115.

[29] See Sweeney & Coughlan (2008) at 115.

[30] See Sweeney & Coughlan (2008) at 78.

[31] Freeman ER *Strategic management: A stakeholder approach* New York: Cambridge University Press (1984) at59.

[32] Kang, Cheng & Gray (2007) at 195.

The King IV Report on corporate governance[33] and the National Code on Corporate Governance in Zimbabwe (ZIMCODE)[34] support an inclusive stakeholder approach in which the board considers all stakeholders' interests in executing its duties instead of prioritising the needs of the shareholders only. Applying the stakeholder approach to SOEs means the board is expected to prioritise the interests of the state and its citizens as the primary stakeholders or owners of SOEs, as well as employees, the community, civil society, and the public.

The difference between the enlightened shareholder approach and the stakeholder-inclusive model is that, with the former, stakeholders other than shareholders have merely instrumental value: their needs, expectations and interests are considered only to the extent that it is beneficial to the shareholders of the company. By comparison, in the stakeholder-inclusive model the board considers the needs and interests of stakeholders other than shareholders as having value for its decision-making in the interests of the company.[35]

3.3 Agency theory

The fundamental theory in the corporate sector is agency theory, which separates ownership from management, resulting in agency challenges due to interest conflicts between managers and shareholders.[36] In this approach, shareholders, who are owners or principals, engage agents to perform work by delegating company management to shareholders' agents, such as directors or managers.[37] The company is reduced to two parties under this theory: managers and shareholders. Agency theory states that there is a problem regarding shareholders' interests. Directors do not always act in the interests of shareholders when investing.[38] It suggests that the board has opposing objectives to

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[33] Institute of Directors in Southern Africa (IoDSA) *King report on corporate governance and the King Code of Corporate Governance* ("King IV Report") Sandton: IoDSA (2016).

[34] Zimbabwe National Code on Corporate Governance (ZIMCODE) 2015.

[35] Rossouw GJ "Business ethics and corporate governance in Africa" (2005) 44(1) *Business & Society* 94 at 97–98.

[36] Saltaji IM "Corporate governance and agency theory: How to control agency costs" (2013) 32(1) *Internal Auditing & Risk Management* 51.

[37] Clarke T "Cycles of crisis and regulation: The enduring agency and stewardship problems of corporate governance" (2004) 12(2) *Corporate Governance: An International Review* 153 at 154.

[38] Jensen MC & Meckling WH "Theory of the firm: Managerial behaviour, agency costs and ownership structure" (1976) *Journal of Financial Economics* 77.

those of shareholders [39] when directors seek to advance their gains through actions that benefit themselves but which are harmful to the shareholders.[40] This is more common than not in companies with poor corporate governance and no internal disciplinary mechanisms, something prevalent in SOEs. As a result, agency costs will be generated by the divergence between these interests and those of outside shareholders.[41] The agency theory expects the agent to act and make decisions in the best interests of the principals.[42]

SOEs are run by directors and managers who are not owners of the corporations since it is the state, and, ultimately, its citizens, that own them.[43] Agency problems may worsen due to this divergence of interest. As a result, just as SOE directors cannot be expected to monitor SOEs' interests as closely as they would their own, the shareholder minister may also lack the necessary attentiveness.[44] The problem of dual agency in SOEs suggests that corporate governance issues arise on agency and political costs.[45] In addition, agency problems may arise in SOEs where the government is the dominant shareholder. These varying self-interests in SOEs (due to the existence of more than one principal) make it complicated for directors to act in the interest of both principals when they have potentially competing goals and objectives.[46]

4 CORPORATE GOVERNANCE REGULATION IN SOEs IN SOUTH AFRICA AND ZIMBABWE

4.1 South Africa

Major SOEs and national government business enterprises are listed in Schedule 2 and 3B of the Public Finance Management Act of 1999 (PFMA).[47] Those incorporated as

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[39] Daily CM, Dan RD & Cannella Jr AA "Corporate governance: Decades of dialogue and data" (2003) 28(3) *Academy of Management Review* 371 at 372.

[40] Chang HJ "State-owned enterprise reform" (Policy Note 14) New York: UN Department for Economic and Social Affairs (2007).

[41] See Jensen & Meckling (1976) 305 at 313.

[42] Padilla A "Can agency theory justify the regulation of insider trading?" (2002) 5(1) *Quarterly Journal of Austrian Economics* 3 at 13.

[43] See Thabane & Snyman-van Deventer (2018) at 7.

[44] Lin S "Double agency costs in China: A legal perspective" (2012) 9 *The Asian Business Lawyer* 115.

[45] See Lin (2012) at 115.

[46] See Lin (2012) at 115.

[47] Public Finance Management Act of 1999 (PFMA).

companies are subject as well to the Companies Act of 2008.[48] SOEs in South Africa are also subject to their founding legislation,[49] the Treasury Regulations,[50] and non-binding regulations such as the King IV Report[51] and the Protocol on Corporate Governance for SOEs.[52] The Johannesburg Stock Exchange (JSE)[53] further governs corporate governance in listed SOEs. SOEs incorporated as companies are subject to the company's memorandum of incorporation, which provides supplementary rules by which these companies must be governed. Lastly, SOEs are expected to adhere to the OECD corporate governance principles, guidelines,[54] and other international regulations.

The Companies Act establishes the term "state-owned company", defined in section 1 as an enterprise registered in terms of the Companies Act as a company and listed as a public entity in Schedule 2 or 3 of the PFMA. The Companies Act contains provisions to ensure transparency and accountability in corporations. Section 66 requires companies to have a board with the authority to manage and control all company affairs. Sections 88–94 of the Companies Act make provision for companies to appoint auditors, company secretaries, and audit committees.[55] This tier was provided to ensure accountability and transparency. Furthermore, Chapter 2, Part C of the Act, establishes criteria to maintain company transparency, accountability, and integrity.[56] Section 76 lists the standard conduct of directors, which includes not using their position to improperly benefit themselves or cause harm to the company.

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48 Companies Act 71 of 2008 (Companies Act)

49 For example, the founding legislation of the South African Broadcasting Corporation (SABC) is the Broadcasting Act 4 of 1999.

50 Treasury Regulation, GG 27388 of March 2005.

51 King IV Report (2016).

52 Department of Public Enterprises *Protocol on corporate governance in the public sector* (2002) available at https://www.gov.za/sites/default/files/gcis_document/201409/corpgov0.pdf (accessed 23 August 2023).

53 Johannesburg Stock Exchange (JSE) available at https://www.jse.co.za/ (accessed 23 August 2023).

54 OECD *Guidelines on corporate governance of state-owned enterprises* (2015) available at https://www.oecd.org/corporate/guidelines-corporate-governance-soes.htm%20(accessed%2008%20March%202022 (accessed 23 August 2023).

55 Sections 34(1) and 84(1) a–b Companies Act.

56 Ncube CB "Transparency and accountability under the new company law: Corporate formation and corporate finance part 1" (2010) *Acta Juridica* 42 at 47.

Secondly, the PFMA regulates the management of public finances at the national and provincial government levels.[57] The PFMA, in its objectives, promotes the principles of public administration, such as transparency, accountability and sound management.[58] The PFMA provides operational and fiduciary responsibilities to boards and chief executive officers (CEOs) to ensure transparency and sound financial management.[59] Sections 38, 50 and 51 address the duties of the board, which include ensuring that SOEs are transparent and operate efficiently. Section 51 states that SOEs must prevent loss from irregular activities and avoid any wasteful and fruitless expenditure, while section 83 states that the executive must ensure that SOEs comply with PFMA provisions and SOE policies.[60]

Thirdly, the Treasury Regulations in parts 2 and 3 specify the conditions that SOEs must meet to advance good governance, such as ensuring that public administration principles are followed. This includes appointing a chief financial officer (CFO) and audit committee, preparing a strategic plan, and budgeting.[61] In addition, the King Code[62] is the sector supplement for corporate governance, which is not legally binding on companies. The King Code states that the SOEs, given their public service mandate, must balance their responsibility to deliver strategic objectives whilst achieving acceptable commercial performance.[63] It states further that good governance is essential if an organisation is to succeed for itself and society.[64] Although the King Code is not binding, its principles are often cited in common law; the effect thereof is that they become part of the common law, which is binding.[65] For example, in *South African Broadcasting Corporation (SABC) v Mpofu*, the court urged SOE directors to consider the value of *ubuntu*, as emphasised in the King IV Report, and focus on serving humanity when making decisions.[66]

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57 Section 3 of the PFMA.

58 Chapter 2 of the PFMA.

59 Chapter 6 of the PFMA.

60 Section 83 of the PFMA.

61 Parts 2 and 3 of the Treasury Regulations.

62 Part 2 King IV Report (2016).

63 Part 2 King IV Report (2016).

64 Part 2 King IV Report (2016).

65 *South African Broadcasting Corporation (SABC) v Mpofu*,2009 JDR 0608 (JSJ) at paras 62–64.

66 *Mpofu* (2009) at paras 62–64.

Lastly, the OECD has published revised guidelines on corporate governance for SOEs.[67] The guidelines were developed in 2005 as a complement to OECD principles on corporate governance and revised in 2015 to address issues arising in SOEs domestically and internationally. The guidelines are internationally agreed-upon standards for how governments should exercise state control of SOEs.[68]

4.2 Zimbabwe

In Zimbabwe, corporate governance in SOEs is regulated by the SOE founding legislation,[69] Companies Act,[70] Public Finance Management Act (PFMA Zimbabwe),[71] and Companies and Other Business Entities Act.[72] The Zimbabwe Stock Exchange (ZSE) Act, listing requirements, and the Public Entities Corporate Governance Act also govern SOE corporate governance.[73] Previous efforts to encourage compliance with corporate governance practices include the Corporate Governance Framework for State Enterprises and Parastatals in Zimbabwe.[74] Corporate governance in SOEs is also governed by the Institute of Directors of Zimbabwe's (IODZ) National Code on Corporate Governance in Zimbabwe (ZIMCODE), which is not mandatory.

First, the Companies Act contains provisions regulating corporate governance issues, such as the establishment, registration and management of companies. The statute outlines the standard conduct of directors and emphasises transparency and accountability. Sections 318 and 340–345 of the Act impose liability on directors who conduct business recklessly or fraudulently and thus cause losses to the company. Section

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67 Part 2 King IV Report (2016).

68 OECD Guidelines 2015.

69 For example, the founding legislation for the Zimbabwe Broadcasting Corporation is the Zimbabwe Broadcasting Corporation Act of 2001.

70 Companies Act [Chapter 24:03] (Companies Act Zimbabwe).

71 Public Finance Management Act [Chapter 22:19].

72 Companies and Other Business Entities Act [24:31].

73 Public Entities Corporate Governance Act [Chapter 10:31].

74 Ministry of State Enterprises and Parastatals *Corporate governance framework for state enterprises and parastatals in Zimbabwe* (2010) available at https://www.studocu.com/row/document/zimbabwe-open-university/business-finance-2/corporate-governance-framework-003/54175175 (accessed 25 August 2023).

186 requires the directors to act in good faith in the company's interests and declare any conflict of interest.[75]

Secondly, the PFMA Zimbabwe's mandate is to advance transparency and accountability in managing the revenue expenditure, assets and liabilities of public entities, including SOEs.[76] In section 50, the Act states that all public entities must adhere to and implement sound corporate governance practices. The Act further provides for the formation of accounting authorities in SOEs, which may be the board, and if there is no board, the CEO or, the person in charge of the SOE or the person appointed by the Treasury.[77] Section 42 lays down the fiduciary duties of such accounting authority, which include the duty of care and disclosure of material facts to the Minister.[78] In addition, the accounting authority must act with fidelity, honesty and integrity and in the best interests of the public entity when managing it.[79] Section 42 addresses the issue of conflict of interest. It states that all accounting officers have a fiduciary duty to the entity to disclose to the board any business interests that they may have.[80]

Recently, the Public Entities Corporate Governance Act was introduced to remedy the lack of compliance with corporate governance principles in the Corporate Governance Framework for State Enterprises and Parastatals in Zimbabwe (introduced in 2010) and the Corporate Governance Remuneration Policy Framework for CEOs of Parastatals (introduced in 2014). The Public Entities Corporate Governance Act addresses board appointments, performance, management, and remuneration issues. Other vital provisions state that board and executive appointments must be based on merit and be transparent. Clause 12 requires that executive salaries in public entities be paid according to the public entity's performance and profitability.

In addition, the ZIMCODE is a corporate governance code for both the public and private sectors compiled by the IoDZ and introduced in 2015.[81] Before this code was launched,

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[75] Section 170-189 Companies Act (Zimbabwe).

[76] Section 3 PFMA (Zimbabwe).

[77] Section 41 PFMA (Zimbabwe).

[78] Section 42 1 a and c PFMA (Zimbabwe).

[79] Section 42 1c PFMA (Zimbabwe).

[80] Section 42 3a PFMA (Zimbabwe).

[81] Section 80 ZIMCODE.

Zimbabwe had no national corporate governance code, and the practice of corporate governance was based on the South African King Code and the Cadbury Report of the United Kingdom.[82] The ZIMCODE recommends that the board possess certain qualities, play certain roles, and perform certain functions and duties.[83] It states that the board's leadership must be based on ethics, professionalism, and sound morality,[84] and that the entity's best interests must always be promoted.[85] As with the other corporate governance instruments discussed above, the ZIMCODE recommends that directors conduct themselves with honesty and integrity[86] and adhere to their legal duty to act in good faith, loyalty, care, skill and diligence when executing their duties.[87]

While the ZIMCODE is critical, especially for a struggling economy (considering that it relates to the socio-economic challenges faced by the Zimbabwean economy), research shows that for incorporated companies in Zimbabwe, there is no substantial association between ZIMCODE corporate governance principles and market-based indicators of firm performance.[88]

Despite the availability of corporate governance regulations such as those above, poor corporate governance in SOEs continues to be a problem, leading to some SOEs becoming dysfunctional and others struggling to stay afloat.

5 SOE PERFORMANCE IN SOUTH AFRICA AND ZIMBABWE

SOEs are predominant in most African markets. In South Africa and Zimbabwe, they play an essential role in the economy and service delivery; however, they face many corporate governance and performance challenges, such as corruption, maladministration, poor decision-making, and boards lacking in competence and independence. Rossouw observes that Africa lacks an adequate regulatory and institutional framework to

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[82] Obert S et al. "Corporate board failure in Zimbabwe: Have non–executive directors gone to sleep?" (2014) 16(7) *IOSR Journal of Business and Management* 78 at 78–79.

[83] Chapter 3.52 of the ZIMCODE.

[84] Chapter 3.54 a–e of the ZIMCODE.

[85] Chapter 3.54 a–e of the ZIMCODE.

[86] Chapter 3.57 and 65 of the ZIMCODE.

[87] Chapter 3.61 of the ZIMCODE.

[88] Nyakurukwa K "The Zimbabwe Code on Corporate Governance (ZIMCODE) and financial performance" (2021) 23(3) *Journal of African Business* 549 at 550.

encourage good corporate governance.[89] The state's board and senior management appointments are often made purely on political grounds rather than on merit.[90] The challenge is that the board of directors loses its independence and authority when there is excessive political interference in SOEs. As a result, weakened oversight creates opportunities for corruption and poor decision-making, leading to financial losses, resource misallocation, weakened internal controls, and compromised compliance with statutory and reporting obligations. Given the critical role that SOEs play in achieving the socio-economic aims of the two countries under study, they should be managed appropriately to ensure their continuous positive contribution to the economy and socio-economic services.[91] This, however, has not always been the case.

5.1 South Africa

The influence of SOEs underpins the success of South Africa's economy. However, the SOE sector is engulfed with poor corporate governance and corruption.[92] Most major SOEs, such as Eskom, South African Airways (SAA) and the Passenger Rail Agency of South Africa (PRASA), as well as the SABC, have been involved in scandals entailing bribery, corruption, board and management inefficiency and incompetence, state interference and secret deals, and others.[93] They have suffered severe governance failures that have left them unable to execute their mandates. Most of the decay was brought to light by the Public Protector's office in its investigative reports on various SOEs and other organs of state,[94] particularly the State Capture Report, which was followed by the Commission of

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[89] Naidoo R *Corporate governance: An essential guide for South African companies* 3rd ed Durban: LexisNexis (2015) at 353.

[90] See Rossouw (2005) at 96.

[91] Department of Public Enterprises *Analysis of the financial performance of state-owned enterprises* available at https://www.gov.za/sites/default/files/gcis_document/201409/analysisfinperformancesoe0.pdf (accessed 23 August 2023).

[92] See Thabane & Snyman-van Deventer (2018).

[93] See Thabane & Snyman-van Deventer (2018).

[94] Office of the Public Protector *State of Capture* Report No. 6 of 2016/2017 ("State Capture Report") available at https://cdn.24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d88f10ed060997f76.pdf (accessed 11 January 2022); Office of the Public Protector *When governance and ethics fail* Report No. 23 of 2013/2014 available at https://www.gov.za/sites/default/files/gcis_document/201409/when-governance-fails-report-exec-summary17feb2014.pdf (accessed 25 January 2022); Office of the Public Protector *Derailed* Report No. 3 of 2015/2016 available at https://www.gov.za/sites/default/files/gcis_document/201508/publicprotectorinvestigationreportno3of201516prasa24082015a.pdf (accessed 23 January 2022).

Inquiry into State Capture Allegations.[95] The revelations caused an uproar among civil society organisations, the public and opposition political parties, which took it upon themselves to challenge corruption and poor governance in SOEs.

For example, in 2016, the public protector exposed corruption at Eskom and singled out its board for failing in its fiduciary duties.[96] The Judicial Commission of Inquiry also exposed the irregular issuing of tenders to associates of those in the ruling party and to the Gupta brothers.[97] It described cases of conflict of interest among Eskom management in which contracts worth billions of rands were awarded to companies owned by family members of senior management without following Eskom's supply chain management policy.[98] SAA has faced similar challenges, including irregular awarding of tenders without due procurement process.[99] This led to SAA's former chairperson, accused of weakening the airline, having been declared a delinquent director by the High Court in 2020.[100] In addition, the public protector's investigative report, *Derailed,* and evidence brought before the Judicial Commission of Inquiry detailed questionable tenders and irregular expenditure at PRASA, fake qualifications among executive members, corrupt management, and an ineffective board.[101]

Furthermore, another report by the former Public Protector, *When governance and ethics fail,* described the SABC as an organisation filled with political deployees, a senior management officer who was dishonest and operated above the law, and a board that failed to discipline him.[102]

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[95] Commission of Inquiry into State Capture *Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector including organs of state reports: Part I Volume I, Part IV Volume IV, Part IV Volume III, Part V Volume II* available at https://www.statecapture.org.za/ (accessed 20 January 2023).

[96] State Capture Report.

[97] Judicial Commission of Inquiry Report Part IV Vol IV; Judicial Commission of Inquiry Report Part IV Vol III.

[98] Judicial Commission of Inquiry Report Part IV Vol III.

[99] Judicial Commission of Inquiry Report Part I Vol I. 2.

[100] *Organisation Undoing Tax Abuse v Myeni* 2020 3 All SA 578 (GP).

[101] *Derailed* Report 3 of 2015/2016; Judicial Commission of Inquiry Report Part V Vol II.

[102] *When governance and ethics fail* Report No. 23 of 2013/2014. See Judicial Commission of Inquiry Report Part V Vol II.

5.2 Zimbabwe

Zimbabwe is a low-income emerging economy in Southern Africa with a fragile economy due to the country's political travails.[103] Zimbabwe's SOEs were established primarily to accelerate socio-economic growth through service delivery.[104] They operate in various economic sectors, including transport, energy, water, mining, financial services, and agriculture.[105] SOEs are estimated to contribute roughly 42 per cent of the country's gross domestic product (GDP), and account for a significant portion of domestic capital formation, industrial investment, service delivery, and job creation.[106] Major SOEs in Zimbabwe include the Zimbabwe Broadcasting Corporation (ZBC), the Zimbabwe Electricity Supply Authority (ZESA), Air Zimbabwe, and the Harare City Council.

As in South Africa, major corporate governance failures in Zimbabwe's SOEs include poor management oversight and ineffective boards, often leading to looting and other breaches of corporate governance policies.[107] Despite the corporate governance frameworks available in Zimbabwe, governance failures are rampant in SOEs, with some of the failures severe and long-standing.[108] This has led to a loss of investors, who do not want to risk investing in the country. The failures have also undermined citizens' trust in the Zimbabwean government.

A wave of scandals in 2013–2014 was attributed to deficiencies in corporate governance.[109] The 2016 financial audit showed that 38 of 93 SOEs had incurred a combined loss of USD 270 million due to weak corporate governance practices and mechanisms.[110] For example, some entities operated for long periods without a full board, while in other cases, a single person would be found to be a board member of multiple

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[103] Dube Z L & Mapfudza C "Debt sustainability in fragile economies: The case of Zimbabwe" (2020) 10(3) (3) *Journal of Management and Science* 29 at 30.

[104] Moyo G "The curse of military commercialism in state enterprises and parastatals in Zimbabwe" (2016) 42(2) *Journal of Southern African Studies* 351 at 353.

[105] Chigudu D "Picking up pieces of good corporate governance to sustain national railways of Zimbabwe" (2021) 14(1) *Indian Journal of Corporate Governance* 27.

[106] Uncorroborated figures from the Reserve Bank of Zimbabwe.

[107] See Chigudu (2021) at 38.

[108] Chimbari (2017) at 216.

[109] Chimbari (2017) at 213.

[110] Ministry of Finance and Economic Development "Zimbabwe National Budget Statement for 2018: Towards a new economic order" (2018) available at https://www.tralac.org/news/article/12520.html (accessed 6 June 2024).

SOEs.[111] Certain SOEs rely heavily on government support.[112] Ministers meddle in the running of SOEs, leading to maladministration in SOEs,[113] which ends up draining the fiscus due to subsequent bailouts from the government.[114] Ministers responsible for appointing boards of directors in SOEs have used their powers to bestow patronage on their spouses, personal friends, and fellow tribespeople.[115] As a result, the boards have failed to fulfil their duty of standing between political ministers and management. Boards of directors lack autonomy and are involved in corrupt activities, since political appointees are believed to act in the interests of their appointers rather than of SOEs.[116]

For a while now, SOEs in Zimbabwe have also faced the challenge of military officers being deployed as SOE directors or managers even though they lack the technical and professional knowledge and skills necessary to run an SOE.[117] Politicians and the military manipulate SOEs to pursue political objectives and financial gain.[118] The reason given for the presence of the military in SOEs is that the army is disciplined and efficient; however, the actual reasons are political and financial.[119] These servicemen and -women are not the right people for the job. They lack the proper skills, making SOEs unlikely to attract financial and technical investors.[120]

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[111] Wushe T, Shenje J & Ndlovu D "Too many seats, too little talent: An analysis of optimum number of seats for board of directors in state-owned enterprises (SOEs) in Zimbabwe" (2015) 6(2) *Environmental Economics* 109 at 110; Muzapu R, Havadi T & Mandizvidza K "Managing state-owned enterprises (SOEs) and parastatals in Zimbabwe: Human resource management challenges – Drawing lessons from the Chinese experience" (2016) 6 *Management* 89 at 95.

[112] See Chigudu (2021) at 28.

[113] Milhaupt CJ & Pargendler M "Governance challenges of listed state-owned enterprises around the world: National experiences and a framework for reform" (2017) 50 *Cornell International Law Journal* 473.

[114] Mutize M & Tefera E "The governance of state-owned enterprises in Africa: An analysis of selected cases" (2020) 12(2) *Journal of Economics and Behavioral Studies* 9 at 10.

[115] See Moyo (2016) at 356.

[116] See Muzapu, Havadi & Mandizvidza (2016) at 94.

[117] See Moyo (2016) at 356.

[118] Ruhanya P "The militarisation of state institutions in Zimbabwe, 2002–2017" in Ndlovu-Gatsheni SJ & Ruhanya P (eds) *The history and political transition of Zimbabwe: From Mugabe to Mnangagwa* Cham: Palgrave Macmillan (2020).

[119] Jackson P "The civil war roots of military domination in Zimbabwe: The integration process following the Rhodesian war and the road to ZANLA dominance" (2011) 13(4) *Civil Wars* 371 at 387–389.

[120] Rupiya MR (ed) *Zimbabwe's military: Examining its veto power in the transition to democracy* African Public Policy and Research Institute (2013) at 64.

More widely, managerial jobs in SOEs in Zimbabwe often depend on nepotism and political connections rather than merit.[121] Hence, there is a shortage of the essential skills and expertise needed to oversee economic activity.[122] As a result, corporate governance procedures and norms are rarely followed, leading to a lack of openness and accountability. When most SOEs – such as the National Railways of Zimbabwe (NRZ), Zimbabwe United Passenger Company, Zimbabwe National Road Administration, ZESA and Air Zimbabwe – were established, the boards were constituted poorly in terms of membership, capitalisation and independence.[123] This fuelled corruption, maladministration, and poor decision-making, as monitoring via boards was ineffective and top officials were often involved in corruption cases.

For example, in 2014, the former Vice President was fired from the ruling party, Zimbabwe African National Union-Patriotic Front (ZANU-PF), allegedly because she had defrauded SOEs such as ZESA of thousands of US dollars, leading to most SOE boards being reviewed or dissolved.[124] This was followed by revelations of SOE CEOs receiving enormous salaries. One Premier Service Medical Aid Society (PSMAS) CEO earned almost USD 500,000 monthly in pay and perks.[125] Similarly, the finance manager earned USD 200,000, the group operations executive, USD 122,000, and one board member and President's spokesperson, more than USD 100,000. This happened at a time when PSMAS was struggling to stay afloat.[126] After the scandal, the CEO of PSMAS was replaced by a managing director who earned a monthly salary of USD 40,000 – which was still four times higher than what it should have been under the new remuneration structure.[127]

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[121] Marumahoko S & Chigwata TC "The idea of a new Zimbabwe post-Mugabe" in Ndlovu-Gatsheni SJ & Ruhanya P (eds) *The history and political transition of Zimbabwe: From Mugabe to Mnangagwa* Cham: Palgrave Macmillan (2020) at 311; Rusvingo LS "The Salarygate scandal in the Zimbabwe parastatals sector: Another dark side of the nation" (2014) 14(10) *Global Journal of Management and Business Research* 19.

[122] See Rusvingo (2014) at 20.

[123] Mthombeni A et al. "Implementation of the Public Entities' Corporate Governance Act (Chapter 10.31) by state-owned enterprises (SOEs) in Zimbabwe" (2021) 1(8) *Interdisciplinary Journal of Applied and Basic Subjects* 23 at 28.

[124] Bracking SL "Political economies of corruption beyond liberalism: An interpretative view of Zimbabwe" (2009) 30(1) S*ingapore Journal of Tropical Geography* 35 at 47.

[125] Matambo M et al. "Corporate governance and credibility gap: Four decades of struggling reform efforts in Zimbabwe" (2022) 19(4) *African Renaissance* 105 at 109.

[126] See Matambo et al. (2022) at 109.

[127] See Matambo et al. (2022) at 109.

In another case, a ZBC CEO grossed about USD 40,000 per month and received a housing allowance of about USD 250,000; at the same time, employees at this SOE had not been paid for months.[128] At the Harare City Council, 18 managers were reported to have collectively earned nearly USD 500,000 per month in salaries and associated benefits. In these major SOEs, senior management enjoyed a lavish lifestyle while service delivery was poor and employees struggled; at the same time, concerns were raised regarding the use of foreign travel allowances and discretionary contingency allocations, which enabled personal financial benefit at public expense.[129] At Air Zimbabwe, top managers looted more than USD 10 million over five years, leading to the board being dissolved.[130]

Indeed, incompetence has prevented most SOEs in Zimbabwe from delivering. A good example is the NRZ, which relies heavily on government grants.[131] It has routinely made losses and depends on the government for bailouts.[132] The government continues to support it, maintaining that the reasons for the entity's ills lie in the sanctions imposed on the country.[133] The NRZ is responsible for competitively operating a bulk rail transport services system for passengers and cargo. Considering its potential operations and railway destinations, both within Zimbabwe and neighbouring countries, it should be well-positioned to contribute substantially to the Zimbabwean economy and Africa at large. However, this is not the case: in addition to its failure to provide locomotives at its workstations,[134] the NRZ in 2009 had about 168 locomotives and 8,682 wagons in repair, but by late 2012, only 71 locomotives and 3,427 wagons remained.[135]

As a result, then, of the poor corporate governance described above, various SOEs in Zimbabwe have closed down. Those that have not closed entirely, such as Air Zimbabwe

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[128] See Rusvingo (2014) at 19–29.

[129] Machivenyika F "Zimbabwe: Cut unnecessary foreign trips, ministers told" (16 February 2022) AllAfrica available at https://allafrica.com/stories/202202160104.html (accessed 20 April 2022).

[130] Mangudhla T "Corruption: Dealing with top officials elephant in the room" (14 February 2014) *The Independent* available at https://www.theindependent.co.zw/2014/02/14/corruption-dealing-top-officials-elephant-room/ (accessed 13 March 2022).

[131] See Muzapu, Havadi & Mandizvidza (2016) at 89.

[132] See Chigudu (2021) at 28.

[133] Muli MGS *An analysis of the impact of industry role players on the competitiveness and profitability of an airline in a volatile environment* (Master of Commerce thesis, University of South Africa 2012) at 99.

[134] Sibanda P et al. "Employees reactance and survival strategies in an underperforming Zimbabwean parastatal" (2014) 8(22) *African Journal of Business Management* 1043 at 1044.

[135] Chiguvi D & Magwada A "Crisis management in government parastatals: A case study of National Railways of Zimbabwe" (2016) 8 (27) *European Journal of Business and Management*.

and the NRZ and ZBC, are struggling to stay afloat.[136] For example, in 2022 Air Zimbabwe was banned from operating in European Union airspace for not meeting international safety standards.[137]

The lack of interest in upholding corporate governance in Zimbabwe's public sector is apparent.[138] Those benefiting from the corrupt system will maintain it and frustrate any reforms so they can continue to prosper; this explains why, despite the rot in SOEs, there has been no meaningful prosecution of wrongdoers, such as those implicated in the Salarygate scandal.

6 KEY CORPORATE GOVERNANCE PROBLEMS IN SOES

The corporate governance problems in SOEs in South Africa and Zimbabwe are, to a large extent, similar, with both causing severe consequences for the economy and citizens' socio-economic rights. These problems stem from a variety of factors, including the board's disregard for corporate governance standards. The government's position as a sole shareholder is, however, central to most of the issues that SOEs face.[139] In other words, the government's position as a single or dominant shareholder, one interfering in board appointments and dismissals, is a problem that underlies many others. For example, due to close contact with the shareholder, a CEO appointed directly by the shareholder (the government) might undermine the board and render it ineffective. Executive and management officers appointed by the government on political grounds are likely take actions that please those who appointed them, even if they are corrupt actions. When ministers as shareholders in SOEs, boards of directors, and management are implicated in corruption, fraud, maladministration, and poor decision-making, then corporate governance cannot thrive.[140]

Secondly, in both countries the legal and regulatory structure governing SOEs is weak and lacking in uniformity.[141] The legal environment for SOEs comprises overlapping laws

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[136] See Chigudu (2021) at 38.

[137] Khairuddin NA et al. "What causes aviation sanctions? A systematic review" (2023) 41(1) *Collegiate Aviation Review International* 210 at 217.

[138] See Chigudu (2021) at 28.

[139] Thabane & Snyman-van Deventer (2018) 1 at 23.

[140] Thabane & Snyman-van Deventer (2018) 1 at 23.

[141] Böwer U "State-owned enterprises in emerging Europe: The good, the bad, and the ugly" Washington, DC: International Monetary Fund WP/17/221 (30 October 2017) 1 at 2.

and regulations that make proper governance difficult, opening gaps for interference and confusion. Generally, existing regulations in the study countries do not emphasise the need for a higher level of responsibility in SOEs. For example, the Companies Act 2008 of South Africa does not distinguish between state-owned and private companies despite the unique characteristics of SOEs and their role in service delivery. By confining SOEs to the Companies Act, SOEs are handled similarly to private companies, even though SOEs are unique and deserve a legal instrument that focuses on their goals, which are both commercial and non-commercial.

In addition, although the South African PFMA establishes guidelines for financial reporting and accountability, it does not cover important factors such as the establishment of SOEs, the appointment of board members and CEOs, and developmental goals and objectives.[142] This is problematic and has led to ambiguities that negatively affect SOEs.[143]

Thirdly, as owners, many governmental bodies are involved in the operation of SOEs. Such a decentralised structure allows for political meddling, influence, role duplication, and a lack of ownership-focus. States fail to provide optimal oversight and uniformity in their asset management,[144] something which is manifest in the absence of transparency and accountability in SOEs. South Africa and Zimbabwe both have complex SOE ownership structures that are confusing. Also, the state's lack of transparency and accountability as a shareholder is a significant hurdle in SOEs.[145] According to the OECD Guidelines, an effective performance management system is critical for driving SOE performance and improving transparency and accountability in the use of public funds. Financial disclosure in SOEs is lacking given the lack of financial statements and basic accounting standards and the presence of poor audits,[146] and worsened by a tendency to operate in secrecy.

[142] See Kikeri (2018).

[143] See Kikeri (2018).

[144] See Mutize & Tefera (2020) 9 at 16.

[145] Yu H "The ascendency of state-owned enterprises in China: Development, controversy and problems" (2014) 23(85) *Journal of Contemporary China* 161 at 178–181.

[146] Carrigan T "Corporate governance in Africa's state-owned enterprises: Perspectives on an evolving system governance" (2014) South African Institute of International Affairs (SAIIA) Policy Briefing 1.

Another issue with SOEs is the lack of clarity in their goals.[147] SOEs have both commercial and broader public policy objectives, and balancing the two can be difficult due to the lack of a clear policy direction for the operation of SOEs, leading to ineffective, non-standardised practices. In most situations, SOEs emphasise their commercial roles while ignoring service delivery responsibilities.[148] Furthermore, SOE boards in both countries lack the essential competencies, objectivity, and authority to carry out their primary tasks of providing strategic guidance, monitoring management, and acting honestly and with accountability. Good corporate governance requires a board of directors comprising qualified and competent individuals, appointed through a transparent, merit-based nomination process and capable of providing effective strategic oversight as well as exercising independent judgment free from political interference.

Lastly, nepotism and corruption are a problem in South African and Zimbabwe SOEs, as appointments are not subject to proper selection procedures, evaluations, or interviews. Wrongdoers use SOEs as conduits for perpetrating acts of corruption and nepotism.[149] In Zimbabwe, nepotistic appointment practices facilitated the concentration of control of SOEs, as successive entities were established and administered by the same politically aligned network, paving the way for SOEs to be used to divert funds for personal gain.

7 CONCLUSION

It is clear that SOEs in the two countries face common challenges, which suggests that the solutions to the problems are likely to be similar. First, it becomes evident that the proximity of SOEs to the state is the source of their main challenges, such as excessive political interference, poor regulation, ineffective leadership, and lack of transparency and accountability. Thus, institutional safeguards must be strengthened to insulate SOEs from undue political interference.

Secondly, building a comprehensive and modern governance framework is crucial for improving SOE governance and performance. This can be accomplished by passing a

[147] Wong SCY "Improving corporate governance in state-owned enterprises: An integrated approach" (2004) 7(2) *Corporate Governance International* 1 at 9.

[148] See Mutize & Tefera (2020) at 13.

[149] See Mutize & Tefera (2020) at 10.

separate SOE statute that spells out the state's objectives and responsibilities as owners or shareholders under the Company's Act.

Thirdly, developing policy guidelines tailored to SOEs would aid them in balancing commercial and non-commercial objectives. A written policy also promotes more responsibility by ensuring effective monitoring of SOE delivery, which is critical for promoting transparency and accountability, profit maximisation, and service delivery.

Fourth, the government is engaged in the ownership and nomination of boards of directors in SOEs, hence the indisputable link between SOEs and their government.[150] This has resulted in board appointments in SOEs in South Africa and Zimbabwe being based on political connections rather than merit, allowing for political intervention.[151] Political meddling must be reduced in SOE governance, as it is problematic. Thus, the need is to avoid political intervention and ensure that boards have the necessary competencies and abilities. This is possible with a well-organised and transparent board appointment policy.

Furthermore, as a vital strategy to improve SOE performance, governments should choose proper directors, execute due diligence procedures, and establish professional boards constituted of skilled personnel with actual skills and aptitude to handle intricate company operations. Boards should consist mainly of private-sector members with relevant business, professional, and other credentials, selected through a well-organised and open nominating process. To make unbiased and independent choices, the board should be diverse. Nominations to the board of directors must be transparent and merit-based, as outlined in clearly established board nomination norms and procedures.

Lastly, corporate governance standards in both countries require watchdogs to enforce them. Political influence has weakened anti-corruption units such as the Anti-Corruption Commission and National Prosecuting Authority in Zimbabwe and the Hawks and National Prosecuting Authority in South Africa; they continue to fail to investigate high-profile individuals implicated in corporate governance scandals.[152] These units must be

[150] Zvavahera P & Ndoda G "Corporate governance and ethical behaviour: The case of the Zimbabwean Broadcasting Cooperation" (2014) 9 *Journal of Academic and Management* 1 at 3.

[151] Zvavahera & Ndoda (2014) at 3.

[152] Chimbari (2017) at 216.

free of political interference so as to enable them to operate autonomously and hold wrongdoers in SOEs accountable.

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