1 November 2023

Ms M.J. Veramendi Villa
Human Rights and Anti-Corruption Officer
Office of the High Commissioner for Human Rights
Geneva
Switzerland

By email: maria.veramendivilla@un.org

Dear Ms Veramendi Villa

INPUT FOR REPORT ON PROMOTING HUMAN RIGHTS AND THE SUSTAINABLE DEVELOPMENT GOALS THROUGH TRANSPARENT, ACCOUNTABLE AND EFFICIENT PUBLIC SERVICE DELIVERY

AfriForum is a non-profit organisation with over 300 000 members. The organisation is dedicated to advancing democracy, equality and civil, human, minority and constitutional rights in South Africa. Recognised as a non-governmental organisation with special advisory status at the United Nations, AfriForum actively works as a civil rights watchdog and strives for justice amidst the challenges faced by South African society.

As a civil rights watchdog, we are intimately involved in fighting for justice in and against the deterioration of South African society through advocating for transparency and holding public officials to account. We therefore seek to provide insight into the decline of state-owned enterprises in South Africa, as these entities continue to fail in their responsibility to provide basic services to citizens. We aim to promote transparency and hold those accused of state capture and corruption to account.

Yours sincerely

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Charting the decline: *Unravelling the factors behind the decline of state-owned enterprises and its impact on service delivery.*

AfriForum

Content

Abbreviations and acronyms used in this report

ANC	African National Congress
ASGISA	Accelerated and Shared Growth Initiative
B-BBEE	Broad-based Black Economic Empowerment
B-BBEE Act	Broad-based Black Economic Empowerment Act 53 of 2003
BEE	Black Economic Empowerment
CA	Companies Act 71 of 2008
DA	Democratic Alliance
DPE	Department of Public Enterprises
GEAR	Growth, Employment and Redistribution Strategy
IMF	International Monetary Fund
NDP	National Development Plan
NDR	National Democratic Revolution
NPA	National Prosecuting Authority
NPC	National Planning Committee
OECD	Organisation for Economic Co-operation and Development
OUTA	Organisation Undoing Tax Abuse
PFMA	Public Finance Management Act 1 of 1999
PIC	Public Investment Corporation
PPPFA	Preferential Procurement Policy Framework Act 5 of 2000
PRASA	Passenger Rail Agency of South Africa
RDP	Reconstruction and Development Programme
SAA	South African Airways
SAAPA	South African Airways Pilots Association
SACP	South African Communist Party
SANRAL	South African National Roads Agency SOC Ltd
SARS	South African Revenue Service
SC	statutory corporation
SCOPA	Standing Committee on Public Accounts
SIC	state-interest company
SOC	state-owned company
SOE	state-owned enterprise

Introduction

In his 2023 State of the Nation Address, President Cyril Ramaphosa forthrightly acknowledged the formidable challenges confronting South Africa, pinpointing state-owned enterprises (SOEs) and local government as the nation's most critical vulnerabilities.[1] SOEs play a crucial role in public service delivery; however, under the leadership of the government led by the African National Congress (ANC), these SOEs have all too often failed to provide vital services, such as water, electricity and sewage management, to the citizens of the country. This report by AfriForum endeavours to highlight the underlying causes contributing to the pervasive deterioration of SOEs.

While the factors contributing to this problem are numerous and intricate, this report will prioritise key aspects to emphasise the urgency of addressing these critical issues. The purpose of this report is to highlight the need to initiate discussions on alternative and supplementary solutions to alleviate the burden imposed by the government on ordinary citizens. While focusing on fundamental issues, AfriForum acknowledges the potential for more nuanced discussions within each SOE.

SOEs grapple with a myriad of challenges, including corruption, mismanagement, political interference and state capture. Some of the largest and formerly successful SOEs now depend on government bailouts to stay afloat, thereby failing to deliver essential services. The consequences of their failures extend beyond individual entities, creating a cascading effect on the nation. Despite numerous attempts to salvage them, repeated financial injections into these SOEs have resulted in the neglect of other vital sectors, such as infrastructure, education and healthcare.

Moreover, the majority of government policies and initiatives intended to promote social and economic equality have sadly exacerbated issues such as underperformance, incompetence and corruption within SOEs. Instead of fostering equal opportunities, these policies have widened the socio-economic gap. Continuing to invest in failing SOEs and endorsing ineffective policies will only aggravate South Africa's challenges. Consequently, debt will escalate, public discontent will intensify, and valuable resources and opportunities will be squandered. This report offers a brief overview of the current state of SOEs and underscores the pressing need for strategic reforms, transparency and accountability to ensure that SOEs regain their efficiency and play a pivotal role in the nation's progress in providing effective services to citizens.

The dismal state of SOEs

SOEs are government or state-owned and controlled businesses or organisations that play a significant role in influencing industrial policy and providing essential services and can promote economic growth within a country.[2] However, the performance of SOEs in South Africa has been in a state of chronic decline, characterised by rising operational costs, shrinking net profits and unsustainable debt levels.[3] The International Monetary Fund (IMF) found that SOEs in South Africa are not only delivering poor quality services, but these institutions are also representing a fiscal drag.[4] This decline has been exacerbated by the government's inability to make decisions and its focus on self-interest, which have hindered effective governance and administration of these enterprises and ultimately effective service delivery.

A brief history

The historical overview of SOEs in South Africa by Callaghan and Swilling[4] sheds light on the evolution of South Africa's economic policies and the role of SOEs. These policy changes result from a combination of social, political and economic transformations, as well as the failure of previous policies to address ongoing societal and economic issues.[5] As a means of addressing long-standing inequalities, the ANC government pursued market-oriented policies that prioritised privatisation and liberal trade after the transition to democracy in 1994.[6]

Nonetheless, these policies were criticised for their disregard for the disadvantaged and for aggravating inequality. Initially, between 1994 and 1996, the government implemented the Reconstruction and Development Programme (RDP), which emphasised social welfare initiatives.[7] During this time, however, many SOEs suffered financial losses, prompting demands for privatisation to enhance their economic performance. Later, the RDP was supplanted by the Growth, Employment and Redistribution Strategy (GEAR), which advocated market-friendly policies but was criticised for imposing austerity measures on the poor.[8]

During the GEAR era, the strategy for restructuring SOEs with the intention of privatisation shifted. With the adoption of the developmental state narrative in 2002, which positioned SOEs as integral to economic development, this perspective also shifted. The government's Accelerated and Shared Growth Initiative (ASGISA) was intended to invest in infrastructure projects managed by SOEs to improve services and mitigate the effects of the global recession.[9] The transition from privatisation strategies to the developmental state approach paved the way for future challenges during the administration of former President Jacob Zuma (2009–2018).[10] SOEs and the Public Investment Corporation (PIC) were critical in fostering infrastructure-driven growth under Thabo Mbeki's presidency (1999–2008). However, during Zuma's tenure, SOEs became the focal point of his state capture programme, acting as a rich source of illegal earnings.[11]

In an effort to create a black industrial elite and combat the dominance of white capital, the focus shifted to the procurement expenditures of SOEs.[12] Initially, this approach reinforced a dubious notion: the idea that channelling significant funds into extensive infrastructure projects (known as "capital deepening") would lead to the desired economic growth and development. However, there is only a limited connection between the amount of money invested and the employment opportunities generated by these investments, which require substantial amounts of capital. Furthermore, this strategy opened the door to state capture, allowing covert networks within the government to sway deal-making processes, particularly by prioritising procurement expenditures.

Under Zuma, these clandestine networks facilitating state capture flourished and state institutions were repurposed to resolve apparent contradictions from the previous era.[13] The rise of the political coalition centred on Zuma introduced the rhetoric of "radical economic transformation" to mobilise the support of marginalised communities. This narrative portrayed formal rules and institutions as biased toward whites and urban elites. It advocated disobeying these rules to effect change.

This ideology sanctioned massive rent-seeking, with SOEs and their procurement expenditures at the core of this political strategy. It was argued that rule-breaking was required to establish a robust black industrial class and challenge the dominance of "white monopoly capital", a term described by Alex Hogg as "the brutally effective racist Zuptoid moniker used most recently to obscure State thievery and corruption."[14]

Challenges that face SOEs

There is a long-documented history of the various challenges faced by SOEs. Most notably, the National Planning Commission (NPC)[15] documented the challenges faced and their repercussions in a report titled "The role of state-owned enterprises in achieving economic transformation and inclusive growth", which highlights the persistent underperformance of some SOEs and warns that in some cases they are dangerously close to collapse. In addition, the report emphasises the prevalence of irregular expenditures in the state-owned enterprises sector, which have become synonymous with corrupt practices and poor governance. Typically, corruption refers to situations in which public officials pursue private goals with public resources. However, SOEs have fallen victim to state capture, which poses an even greater systemic threat than ubiquitous corruption, which undermines development at all levels.[16] As defined by Bhorat *et al.,* state capture is comparable to a "silent coup" and must be acknowledged as a political endeavour whose legitimacy is veiled under the guise of radical economic transformation.[17]

The chronic underperformance of SOEs has subsequently resulted in reduced infrastructure spending by the SOEs,[18] the consequence of which is felt widely across the South African economy, as small businesses, ordinary citizens and large industries all are affected by the current failure of SOEs to deliver basic services, late delivery and poor value for money. Callaghan and Swilling[19] emphasised some extreme cases of cost overruns, late delivery and inadequate value for money, as outlined in table 1 below.

Table 1: Infrastructure SOE contribution to NDP Vision 2020

Project	Initial budget (Rand Bn)	Completion budget (Rand Bn)	Budget overrun (Rand Bn)
Gauteng Freeway Improvement Project	11,4	17,4	6
Gautrain Rapid Rail Link System	6,8	6	-0,8
Eskom's Ingula Pumped Storage Scheme	8,89	25,9	17,01
Transnet's New Multi-product Pipeline	12,7	30,4	17,7
Eskom's Medupi Power Station	70	208	138
Eskom's Kusile Power Station	80	239	159

A prominent example of an SOE in a dwindling state of decay is Eskom, the state-owned power utility responsible for generating, transmitting and distributing electricity throughout the country. Initially, Eskom gained recognition for its provision of low-cost electricity and received global accolades in the early post-apartheid era.[20] However, these accolades would be short-lived as load shedding implemented by Eskom has plagued South Africa since 2007. Remarkably, 16 years later, the problem continues to persist while the government neglected to heed various warnings about the state of the SOEs. Eskom has now become a major systemic risk to the South African economy.[21] In 1998, the White Paper released by the Department of Minerals and Energy warned of the impending electricity shortages and outlined a number of key priorities to address the situation. These priorities included expanding the system's generating capacity, opening up private investment, enabling competition among suppliers and diversifying the energy supply.[22]

The underlying reasons for decay at Eskom are multifaceted, as with many SOEs. However, a key contributing factor is the lack of decisive action, inadequate coordination and poor decision-making by the government. These issues have been further exacerbated by pervasive corruption and mismanagement (further discussed under "Political interference" on p. 16).[23] In his book, former Eskom CEO Andre de Ruyter details his three years at Eskom and attests to the decaying state of Eskom. Katzenellenbogen[24] summarises de Ruyter's account as –

> a story of corruption, red tape, destructive policies, a don't-care attitude, slack management, arrogance, inexperience, incompetence, political interference, and intrigue, elevated here and there with outbreaks of courage and excellence by staff members struggling to survive in Eskom's toxic atmosphere.

There have been numerous investigations at SOEs. Regarding Eskom, parliament's Portfolio Committee on Public Enterprises in 2017 found that Eskom had failed to follow proper procurement procedures and that there were instances of overpricing and preferential treatment being given to certain suppliers. The report further noted that the irregular expenditure had contributed to Eskom's financial troubles and that there was a need for accountability and consequences for those responsible.[25] Furthermore, the findings of the Zondo Commission revealed that Eskom contracts to the value of R14,7 billion[26] were affected by state capture, while its most recent financial statements show that the power utility's irregular expenditure ballooned to R67,1 billion as of 31 March 2022.[27]

In comparing South Africa to international counterparts, the dire situation in Venezuela provides a striking parallel to the challenges faced by Eskom, South Africa's state-owned power utility. On 7 March 2019, Venezuela experienced a complete collapse of the electricity grid[28], which did not come as a surprise to many citizens.[29] This country has routinely practised electricity rationing over the last decade, with large-scale power outages occurring regularly.[30] Table 2 depicts the similarity between Venezuela's and South Africa's electricity crisis.

Table 2: Comparison of similarities in power failures in South Africa and Venezuela

	South Africa	Venezuela
Timeframe	Ongoing since 2007	Ongoing since 2016[31]
Type of power failure	Load shedding	Rationing and power outages, followed by nationwide blackouts and continued electricity cuts
Causes		
Lack of investment in power grid infrastructure	Yes	Yes
Mismanagement and corruption within state-owned power company	Yes	Yes
Ageing power plants	Yes	Yes
Insufficient maintenance of equipment	Yes	Yes
Political interference	Yes	Yes
Informal systems of patronage (e.g., cadre deployment)	Yes	Yes

Eskom's failure to provide a reliable electricity supply has a ripple effect on other sectors of the economy, which has snowballed into a wider economic crisis, as reduced productivity, increased costs and decreased output affect businesses and consumers alike. William Gumede, Associate Professor at the University of the Witwatersrand,[32] goes as far as to describe South Africa's entire infrastructure as being on the verge of total collapse. He attributes the failure to:

> The lack of infrastructure maintenance, corruption in which dodgy black economic empowerment companies have been gifted tenders and often build flimsy infrastructure and cadre deployees without the necessary technical skills who have poorly looked after public assets…

While Eskom is frequently in the headlines with South Africans carrying the burden of load shedding, other SOEs face a similar fate. The state-owned freight transport and logistics company Transnet's ageing infrastructure has resulted in frequent breakdowns, delays and inefficiencies across transportation networks. The lack of timely maintenance and modernisation has strained the system's reliability, hindering the seamless movement of goods and negatively affecting various sectors of the economy.[33] The mining sector has warned that Transnet could contribute to an even greater problem for the mining industry than Eskom[34] as Transnet Freight Rail struggles to move products to ports efficiently.[35]

Like Eskom, Transnet has been plagued by corruption and mismanagement, leading to financial losses and a lack of accountability. Transnet serves as custodian for the nation's rail, ports and pipeline networks. This SOE accounted for 72% of all government and SOE contracts linked to state capture between 2009 and 2018 investigated by the Zondo Commission.[36] According to Mr Tau Morwe, a former Transnet executive, it was brought to the attention of the South African government two decades ago that the country's railway system was at risk of collapse. However, the government did not implement any preventative measures to address this looming threat.[37] The operational inefficiency of defunct Transnet railway lines costs the nation approximately R1 billion every day. Professor Jan Havenga of Stellenbosch University's Department of Industrial Engineering determined that Transnet's inability to maintain functional railway infrastructure and reliable train services has reduced potential economic growth by more than six percentage points over the past year.[38]

The collapse of South Africa's rail systems has affected not only Transnet – SOEs such as the Passenger Rail Agency of South Africa (PRASA) and the South African National Roads Agency (SANRAL) also suffer the consequences of the systemic failure of public railways, roads and state infrastructure being adversely affected, with problems being compounded by theft and vandalism.[39] As a result of the collapse of the railway infrastructure, 87% of general freight has been transported on South African roads since 2011, which has placed immense strain on roads.[40] In addition, commuters are confronted with increased transportation expenses due to the deterioration of the passenger rail system. PRASA has witnessed a staggering 97% decline in passenger numbers. This decline is significant, plummeting from a remarkable 500 million commuters a decade ago to a mere 15 million at present.[41]

Although this report focuses primarily on Schedule 2 entities (see below), South Africa's water system (Schedule 3 entities) is under immense strain, and while South Africa is classified as a water-scarce country, there is growing pressure on existing infrastructure for both drinking water and sewerage.[42] The country's water system now faces a similar fate to Eskom, as water-shifting looms to become a more frequent occurrence. Water-shifting has been implemented in Gauteng Province as a means to combat water shortages.[43] Water and Sanitation Minister Senzo Mchunu recently stated that the water provider Rand Water is unable to meet the demands of consumers in Gauteng,[44] while in 2022 when delivering a presentation to parliament, he stated that "many municipalities are failing to deliver water and sanitation to national norms and standards and the situation is generally deteriorating."[45]

AfriForum has submitted a plea to the United Nations Human Rights Council regarding the violation of the right to water and sanitation in South Africa. Despite damning evidence, the government has not taken decisive action to resolve these issues. The issues documented in the complaint to the Special Rapporteur include pollution of freshwater sources to sub-standard drinking water quality, water supply interruption and discrimination in terms of access to water and sanitation.[46]

Prominent factors contributing to the decline of SOEs

This section of the report gives an overview of the factors influencing the decline of SOEs in South Africa; the section draws upon research conducted by Kikeri and Burdescu.[47] Given the interconnected nature of inefficiencies, it is crucial to understand that each issue discussed here does not exist in isolation. Instead, they are interlinked, with one problem affecting the others.

Insufficient governance structures create obstacles to accountability and transparency within organisations. These challenges are compounded by inadequate legal and regulatory frameworks, which act as substantial barriers to effective governance practices.

Moreover, ineffective accountability mechanisms further hinder the performance of SOEs. This lack of accountability is exacerbated by political interference, intensifying the existing governance issues.

The structure of SOEs

SOEs are independent entities that are either partially or wholly owned by the government. These enterprises operate under specific legislation that governs their functioning. In South Africa, there are more than 715 SOEs[48], which are further classified into commercial and non-commercial categories. The commercial category of SOEs encompasses various types of incorporated and non-incorporated entities, which are divided into four categories:[49]

1. This research will focus on state-owned companies (SOCs), otherwise known as state-owned enterprises or SOEs (and referred to as such in this report). The government primarily owns these firms, giving it a controlling interest.
2. Additionally, the state controls a significant portion of state-interest companies (SICs) but does not have operational control over them.
3. A statutory corporation (SC) is a government entity that provides strategic products and services.
4. Lastly, there are financial intermediaries (FIs), which provide financial services to the government and the general public and may be wholly or partially owned by the government.

Non-commercial SOEs carry out public functions and include research entities, regulatory entities and advisory bodies.[50] SOEs are listed according to the Public Finance Management Act 1 of 1999 (PFMA)[51] and are categorised according to the PFMA schedules. Major commercial SOEs are listed under Schedule 2, while water boards and water companies fall under Schedule 3 (Part B) of the PFMA. Table 3 on the next page provides an overview of Schedule 2 entities.

SOEs in South Africa are vulnerable to corruption and state capture owing to their privileged position. These institutions are more prone to corruption in areas that are strictly regulated or dominated by monopolies, such as oil and gas, mining, energy, transportation and heavy industry. In South Africa, many SOEs operate in the aforementioned fields. Kikeri and Burdescu[52] note that SOEs operating in these highly valuable sectors often enjoy monopoly or quasi-monopoly rights, granting them abnormal profit generation opportunities and preferential relationships with the government and state financial support. According to a 2008 survey by the Organisation for Economic Co-operation and Development (OECD), state monopolies dominate South African SOEs, notably in the power and freight transport sectors. The OECD uses Transnet as an illustration due to its consolidation of numerous network monopolies, including rail freight, port facilities and pipelines.[53] The monopolistic structure of South African SOEs contributes to their predicament; their enormous scale makes them more susceptible to corruption, as they are able to pass on any additional costs to their customers and frequently rely on government subsidies.[54] The lack of competition has compounded this issue, effectively resulting in increased costs for businesses and citizens.[55]

Table 3: List of major Schedule 2 entities in South Africa

Schedule 2 entities	
Entity	**Industry**
Alexkor Limited	Mining
Armaments Corporation of South Africa	Arms procurement
Broadband Infrastructure Company (Pty) Ltd	Telecommunications
Central Energy Fund	Research & Development
DENEL	Arms procurement
Development Bank of Southern Africa	Banking
Eskom	Public utility/energy
Independent Development Trust	Social development
Industrial Development Corporation of South Africa Limited	Industrial development
Land and Agricultural Development Bank of South Africa	Agricultural finance
SA Broadcasting Corporation Limited	Broadcasting
SA Forestry Company Limited	Forestry
SA Nuclear Energy Corporation	Energy
SA Post Office Limited	Postal services
South African Airways Limited	Transport
South African Express (Pty) Limited	Transport
Trans-Caledon Tunnel Authority	Public utility
Transnet Limited	Transport

The South African government has provided numerous bailouts to SOEs in order to alleviate their financial distress. Table 4 on the next page provides an overview of historical bailouts granted to several SOEs since 2014.[56]

The substantial debt that was accrued from these interventions has elevated fiscal risk to an unacceptable level. This situation significantly jeopardises the government's ability to meet its financial obligations, which may cause widespread repercussions for the economy and the entire nation. One might expect SOEs to seek increased bank credit during challenging economic periods, fulfilling their role in balancing economic cycles. However, this anticipated response does not materialise. This decline mirrors broader trends in the financial and institutional sectors, where fraudulent practices have eroded the credibility of these organisations. The reduction in bank credit that is allocated to state-owned enterprises from one year to the next underscores a lack of faith in these entities during this crucial period.

Table 4: National Treasury historical bailouts

SOE recapitalisations (R million)											
	2014	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**Total**
Eskom			23 000				49 000	56 000	31 693	21 857	181 550
SAA				10 000		10 500	20 800	4 300	1 800	1 000	48 400
SANRAL										23 736	23 736
Sasria									22 000		22 000
Land Bank	300	500						3 000	4 563	5 200	13 563
SAPO	205		174	650	3700	3263				2 400	10 392
Denel							1800	576	3 036	3 583	8 995
DBSA	2 400	2 500	3 000				12				7 912
Transnet										5 837	5 837
SA Express						1249	300	164		1 583	3 296
SABC							3 200				3 200
ACSA								2 325			2 325
	2 905	**3 000**	**26 174**	**10 650**	**3 700**	**15 012**	**75 112**	**66 365**	**63 092**	**65 196**	**331 206**

Corruption risks are increased when SOEs are under the control of government departments that combine ownership, policymaking and regulatory functions. Consolidation of these responsibilities by governments can result in conflicts of interest, direct interference and fragmented accountability. The South African government serves as owner, shareholder and policymaker, making balancing commercial and non-commercial interests challenging. As a result, SOEs are being "[r]un more like government departments rather than as efficient, autonomous, and professionally run enterprises."[57] As the government has conflicting objectives, the South African government's first priority is obtaining an acceptable return on investment. In contrast to this economic goal, the government is equally concerned with attaining more substantial developmental goals by ensuring that SOEs can offer citizens the required services and job opportunities.[58] According to the NPC, the ownership structure of SOEs results from an apparent failure to successfully bring together and settle specific issues, resulting in a breakdown in responsibility among crucial individuals involved in governing and making decisions. This lack of accountability has an impact on how policies are executed and followed by various people in the governance and policymaking chain.[59]

The dynamic between Eskom and the government is just one example. While Eskom remains a state-owned enterprise, the government has assumed multiple responsibilities, including energy policymaker, economic regulator, environmental regulator, shareholder, and appointer of the board and executive leadership. This complex relationship dynamic has presented Eskom with challenges, as it must manage the contradictory requirements and expectations of these various government sectors.[60] The misalignments between Eskom and the government have been a major institutional weakness. These misalignments have contributed to Eskom's incapacity to deliver its electricity mandate as specified by the Electricity Regulation Act 4 of 2006 in a secure manner.[61]

The poor legal and regulatory environment

In weakened states, intricate legal frameworks, initially constructed to mirror an ideal state, are common. These laws, meant to govern society comprehensively, often prove inadequate in their practical application. South Africa serves as a prime example, where the legal landscape governing SOEs is convoluted. Contradictory laws and regulations obstruct efficient governance, highlighting the challenges faced in enforcing legislation in such environments.

The existing framework linking South African organs of state and state-owned enterprises is based on various national planning and policy documents.[62] These include the National Development Plan (NDP), which strives to eradicate poverty and decrease inequality by 2030, as well as initiatives like the RDP, GEAR, ASGISA and New Growth Path. Unfortunately, the effectiveness of these regulations diminishes over time, especially when examining their real-world impact in different sectors, as discussed above.[63]

In addition to these broad policy guidelines, SOEs operate within the framework of company-specific or generic corporate governance policies and strategies. This includes the King IV Report on Corporate Governance, the Department of Public Enterprises (DPE) Logical Planning, Monitoring and Evaluation Process, the DPE Protocol on Corporate Governance, plans and white papers from various line ministries, guidelines from the PFMA, and shareholder compacts ratified by SOE boards and state representatives.[64] Collectively, these documents represent the institutional context of SOEs and the objectives of each organisation. Many SOEs have been "captured" by special interests, despite the extensive institutional frameworks they operate in.[65]

Compliance with the law, which is the basis of good governance, is essential to efficiently operating SOEs and private businesses. The PFMA defines the oversight responsibility for SOEs' corporate plans, shareholder compacts, and reporting requirements and also provides guidelines for the role and responsibilities of SOE boards.[66] Despite this, however, the PFMA falls short in crucial areas outlined in SOE founding acts. Notably, it lacks provisions regarding the establishment of SOEs, with a variety of subsidiary structures permitted (aside from institutions included in Schedule 1), appointment of board members and CEOs, involvement of government officials on boards, and the handling of developmental mandates and objectives.

The challenges within the existing legal framework are underscored by the findings of the Presidential Committee Review of 2012.[67] According to the review, the PFMA places a significant compliance burden on SOEs, hindering their effective operation. Even though SOE subsidiaries are included in its scope, the PFMA does not adequately address their establishment, governance and day-to-day functioning. This gap becomes more apparent as many SOE subsidiaries create their own subsidiaries, operating without clear legislative oversight. The PFMA allows SOEs, with the exception of Schedule 1 institutions, to form subsidiaries, but there is a lack of regulations governing the number and activities of these subsidiary entities, leading to further complexity and lack of transparency within the SOE landscape.

The Companies Act 71 of 2008 (CA) establishes corporate governance for private-sector firms, which also applies to the few SOEs that are corporatised. The Act in most cases also provides a description of SOE objectives and requirements on governance, accountability and reporting.[68] Nevertheless, the CA's effectiveness in regulating SOEs is hampered by its inability to adequately address the substantial differences between incorporated SOEs and private companies. These distinctions involve how developmental and social mandates unique to SOEs are handled, the need for heightened accountability from SOEs, the precise definition of the owner/shareholder's responsibilities in guiding SOE objectives and strategies, and the procedures for divesting SOE shares. It is important to highlight that while the Act does provide guidelines for corporate subsidiaries, it does not extend the same framework to SOE subsidiaries. [69]

The presence of numerous laws and the lack of a dedicated SOE law have adversely impacted SOE governance and weakened the government's position as the owner/shareholder.[70] The disorganised legal landscape, characterised by frequent policy alterations, has created confusion in understanding and applying the law. Although implementing policies aimed at enhancing corporate governance and oversight of SOEs is vital to minimising corruption risks, there is an evident absence of political determination to enforce these measures.

One area where loopholes and ambiguity have historically been exploited is preferential procurement. The Zondo Commission's evidence sheds additional light on the numerous problems plaguing the nation's procurement system. In addition to the misuse of procurement for state capture, issues including limited professional capacity, fragmentation and rigid operations have been identified.[71] Despite the economic and social significance of implementing preferential procurement goals, the implementation of these frameworks has regrettably added a layer of complexity that certain individuals use to manipulate procurement outcomes.[72] Willie Mathebula, acting Chief Procurement Officer at the National Treasury, stated during his testimony at the Zondo Commission that deviations from procurement rules had become the norm. He placed the government's average annual spending on procurement at R800 billion and said the degree to which processes were flouted in public procurement was worrying.[73]

Fragmented governance and accountability measures

Transparency involves the disclosure of information and the adherence to clear norms and rules that govern the interactions between the government and SOEs. It is essential for both the government and its agencies, particularly SOEs, to be transparent in order to foster accountability.[74] Performance monitoring forms part of accountability and transparency for SOEs and is emphasised in OECD guidelines and international best practices.[75] This system enhances the openness, accountability and stewardship of public funds. In theory, it should ensure that boards and management of SOEs have defined objectives and targets, allowing them to comprehend the government's performance expectations as the owner.[76] These objectives establish a framework that permits strategic autonomy and ensures the government's ability to hold SOEs accountable for their performance. Similar to the responsibility of stockholders in private companies, monitoring the performance of SOEs is essential for obtaining optimal results.[77]

In South Africa, commercial SOEs are required to have shareholder agreements designed to enhance their effectiveness and efficiency. The purpose of these agreements is to theoretically ensure that government-owned companies execute their mandates and maximise profits without sacrificing service quality. While South Africa has a system of shareholder compacts that monitor performance and policy objectives for each SOE, these entities grapple with numerous policy objectives (discussed in "Black economic empowerment" on p. 24). The difficulty lies in effectively prioritising and translating these objectives into specific operational objectives, which is not always successful. The NPC's report states:[78]

> Often, the reference in SOE strategic documents to higher level policy documents is made in general terms, sometimes simply paying lip-service to the broader goals of the National Development Plan (NDP), without translating these into real NDP-focused specific, actionable KPIs at the level of the SOE, and without drawing out the operational and financial implications for the SOE. The 'cascade' in place seems to put emphasis on aspirational narratives rather than execution-focused substance.

Additionally, the purported goal of SOEs in South Africa is to address economic inequality and underdevelopment through policies like Black Economic Empowerment (BEE). However, the effectiveness of BEE programmes has been questionable (see "Black economic empowerment on p. 24). The performance management system for SOEs also faces numerous challenges, such as poorly defined key performance indicators, outdated mandates, limited technical competence among oversight authorities, compliance-focused evaluations, absence of standard reporting templates, absence of performance assessment across the value chain, and absence of a central authority to set performance targets and monitor all SOEs.[79]

SOEs are also deficient in terms of information disclosure, especially in sectors where corruption is more prevalent. SOEs must disclose both financial and non-financial information in accordance with internationally recognised standards for corporate disclosure.[80] This is necessary to resolve the concerns raised by insufficient accountability mechanisms within SOEs, which contribute to their poor performance, particularly in financial terms.[81] Finance Minister Enoch Godongwana's recent attempt to grant exemption to Eskom, a significant SOE, exemplifies the issue of insufficient accountability. Initially, Eskom was exempted from disclosing irregular and unnecessary expenditures in its financial reports, ostensibly to safeguard its credit rating. This decision, however, was widely criticised because many viewed it as an attempt to conceal financial irregularities, and owing to this public pressure the exemption was subsequently revoked.[82]

Similarly, the Minister of Finance exempted Transnet, another prominent SOE, from certain provisions of the Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA) in 2022.[83] This exemption, which will last for three years, exempts Transnet from disclosing irregular, fruitless and wasteful expenditure in its financial statements. A briefing by the parliamentary Standing Committee on Public Accounts (SCOPA) revealed that this exemption was primarily responsible for the improved audit outcome for the 2021–2022 period. It was noted, however, that if not for the exemption, Transnet would have received a modified audit opinion due to instances of material non-compliance regarding procurement and the disclosure of irregular, fruitless and wasteful expenditure.[84]

South Africa's accountability system is hindered by inefficiencies, presenting a significant challenge. The widespread disregard for laws, regulations and reporting systems, coupled with the lack of substantial consequences for those at fault, compounds the issue.[85] Despite the presence of internal controls, protocols and structures within state institutions, the Auditor-General's annual audits consistently expose significant violations of these systems in the public sector, local government and state-owned enterprises. While internal audit bureaus, audit committees and boards of directors are in place to ensure government organisations' accountability, these entities often face challenges.[86] Government agencies and businesses' audit departments are frequently understaffed, lack authority or are compromised by corrupt and ineffective elected and public officials. Additionally, external auditors, tasked with independently overseeing the financial affairs of public organisations, have also been implicated in corrupt collaborations to conceal corruption, negligence and incompetence.[87]

The authority to hold SOEs accountable rests with the cabinet and its shareholder departments.[88] If SOE boards fail to perform satisfactorily, the shareholder departments possess the power to dismiss them. Additionally, parliamentary committees oversee these departments and can demand the implementation of remedial measures, exercising their oversight roles effectively.[89] However, parliament has also shown unwillingness to act in this regard. Parliament failed to hold elected and public officials accountable during the period of state capture, which was characterised by inefficiency and inadequate public services. The 2022 report on parliamentary oversight in South Africa by the Organisation Undoing Tax Abuse (OUTA) revealed that this problem persists, including parliament's inability or unwillingness to hold the executive accountable and its perception of public participation as a mere checkbox exercise.[90] Judge Zondo issued a cautionary remark, highlighting the irrefutable evidence that state capture poses a significant threat to democracy when considering the role of the National Assembly, which is entrusted with the responsibility of serving the citizens. He also raised concern that parliament still does not have the ability to stop state capture. This comes after the Zondo Commission made serious findings of criminality against individuals, politicians and private companies that enabled and benefited from state capture in South Africa.[91] Evidence from the commission shows that the ANC directly benefited from tender corruption, receiving kickbacks and bribes as a form of party funding.[92, 93]

Media, civil society and ordinary citizens' attempts to expose corruption and negligence are frequently denied and rejected, with limited protection for whistle-blowers.[94] Consequently, the judiciary has become the last resort for pursuing accountability, although some argue that even these institutions have become entangled with the ANC's political and ideological objectives to some extent. A blame-shifting mentality has exacerbated the problem of accountability, as senior public officials frequently accuse public employees of corruption, mismanagement and poor public service.[95] According to Malan[96] in Duvenhage[97], South Africa's highly regarded constitution, often praised as exemplary, struggles to live up to its ideals when implemented. Various political ideologies and external influences distort its principles, leading to conflicting rules taking precedence. The ANC, functioning as both a political party and governing entity, exploits these discrepancies to erode vital elements such as the separation of powers, the rule of law, transparent governance and civil rights.

Citizens, through civil society organisations, have assumed the duty of holding the governing party accountable for its actions. Accountability is upheld by organisations such as OUTA, the Institute of Race Relations (IRR), Solidarity, AfriForum and Corruption Watch, to name a few. An illustration of this is seen in the case involving Ms Duduzile Cynthia Myeni, who held multiple board positions at South African Airways (SAA) and its subsidiary Air Chefs. In 2016, OUTA uncovered a contract worth R256 million between SAA and BnP Capital, resulting in the contract being terminated.

This unauthorised transaction involved BnP Capital to secure R15 billion in debt financing for the airline. OUTA's intervention prevented a cancellation fee of R49,9 million from being awarded to BnP Capital. Subsequently, in March 2017, OUTA and the South African Airways Pilots Association filed a petition with the court to have Myeni declared a delinquent director.[98] In May 2020, the court ruled in favour of the petition, declaring Myeni a delinquent director. This declaration signifies that Myeni is no longer considered suitable or qualified to hold directorship positions within any entity and necessitates her departure from several directorships held by her.[99] Another notable example is the AfriForum Private Prosecutions Unit, which plays a crucial role when the National Prosecuting Authority (NPA) either refuses or fails to effectively prosecute cases. In such instances, the AfriForum Private Prosecutions Unit takes the initiative to pursue private prosecutions. The primary aim of this unit is to provide legal recourse when state prosecutors are perceived as inactive or negligent in their duties.

Political Interference

Political interference has been at the centre of state capture and corruption; however, the phenomenon of state capture is not anything new, according to experts.[100] Observing the political and economic situation in South Africa, the ANC has always openly declared and profoundly unconstitutionally pursued state capture in order to promote its political and ideological interests.[101] Controversy surrounding corruption and state capture at SOEs has most notably been associated with appointing and dismissing board members and executives.[102] In many SOEs, politicians and party leaders are appointed to the boards as SOEs are often used by governing parties to pursue their personal or political objectives.[103] Regarding their governance structure, SOEs are accountable to the government and not to the governing political party. This has created a space for the ruling party to politicise boards as a means to further its ideological principles despite its inability to run an efficient and corruption-free government.[104] Duvenhage[105] explains that Malan[106] is of the opinion that state capture in particular has led to a hybrid government where collaboration between organs of state and private entities overshadows designated institutions. This has weakened the state, justified cadre deployment and resulted in discriminatory legislation against minority groups. Referred to as re-racialisation, it portrays the white minority as collectively guilty of colonialism, racism, apartheid, whiteness ideology, land theft and other crimes.

It is evident that when individuals are appointed outside the accepted governance rules, a corrupt environment is created, which negatively impacts procurement practices, which are often exploited for political gain.[107] SOE boards that are comprised of politically connected persons, such as tenderpreneurs, often play little or no role in exercising due diligence or care and are often found guilty of malfeasance. Despite having some safeguards in place, politicisation has significantly hindered the system's primary function.[108] During former President Zuma's term of office, both economic and political segments became more institutionalised than ever before.[109] Eskom, for instance, is inherently regarded as a techno-political object through which technology and politics are entangled for the strategic practice of designing or employing technology to constitute, embody or enact political objectives.[110] In this context, Eskom was transformed into a corporatised state-owned enterprise that lost its ability to influence its business environment effectively.[111] Zuma placed political loyalty over competence by filling various vacancies with party loyalists. These decisions were further driven by the ANC's cadre deployment policy and other affirmative action policies.

Policies closely linked to political interference

Weak states typically share the characteristic of having a plethora of normatively compliant, exhaustive and intricate laws.[112] In practice, however, the enforcement of these laws is frequently deficient and ineffective. In the context of South Africa's transformation, this circumstance is particularly evident. Despite the profusion of existing legislation, its implementation frequently fails to produce the desired results and, in many instances, produces outcomes that contradict the original intent.[113] The extensive presence of race-based legislation serves as one of the indicators of the aforementioned state of affairs. The influence of such policies in South Africa holds significant importance and has attracted considerable criticism. Moreover, these policies have contributed to the politicisation within SOEs.

Numerous critics assert that South Africa's existing race laws have been instrumental in fostering widespread corruption and hindering economic progress. The state capture report compiled by the Zondo Commission brings attention to a significant aspect of the race-based laws currently in place in South Africa.[114] The report emphasises the existence of an undeniable and inescapable conflict between the goal of achieving optimal value for money and the incorporation of race-based preferences in government spending and reveals the utilisation of these race laws as a strategy to disguise corruption and facilitate its widespread impact.[115]

In the 1960s, the ANC and the South African Communist Party (SACP) devised the National Democratic Revolution (NDR) in an effort to combat the effects of colonialism and bring about significant change. Adherents of the NDR believed that by seizing power from "white colonialists" and implementing their agenda, historical injustices could be rectified. The NDR demanded the removal of racially disloyal individuals from key institutions, racial quotas in universities, representative state organisations and wealth redistribution measures.[116] The leadership of the SACP and, later, the ANC endorsed racial nationalism, including the NDR, as a means of confronting racial inequality with force. The ideology provided an explanation for the majority's predicament as well as a corrective programme.[117] In addition, instituting the NDR provided a means for liberation movement members to realise their material desires.[118] Many socio-economic policies imported to the NDR were adopted, most notably affirmative action policies, which have steadily expanded since the ANC took power in 1994 and are among the most comprehensive and challenging in the world.[119]

Researcher James Myburgh was able to identify numerous race-based policies in South Africa. Bosma[120] identified 114 race-based policies. In 2022, the Institute of Race Relations created an index to monitor the ANC's racial legislation passed since 1994.[121] There are 166 articles of legislation based on race contained within this index, and the index is subject to change particularly as additional pre-democratic racial legislation is uncovered. Approximately 37% of South Africa's racialised laws were created after 1994. Van Staden[122] argues that although the historical racial Acts of Parliament before 1994 were more severe and had a greater impact compared to race laws after 1994, there is still a significant amount of work needed to remove racial elements from South African law. This is evident from the country consistently obtaining a high ranking on the Index during the democratic era. The current versions of the Index classify race laws as "Racial", "Deracialised", "Racialised" and "Ancillary". The term "racial" pertains to laws that were originally established based on race. "Deracialised" statutes have subsequently eliminated all racial aspects since their implementation. On the other hand, "racialised" laws were initially non-racial but have been modified to include provisions based on race. [123]

One example of such legislation is the Employment Equity Act 55 of 1998 (EEA) passed by parliament in 1998. This law legally enforces the principle that all institutions must strive to reflect the demographic composition of society, aiming for "equitable representation". This act provided the ANC cadres with the necessary legislative foundation to implement the party's transformative ideology in the state and parastatal sectors.[124]

The ANC cadre deployment policy (further discussed in "Cadre deployment" below), has been the subject of widespread criticism. This policy undermines the independence and efficiency of public institutions by strategically placing ANC loyalists in key positions. Pothier[125] argues that cadre deployment deviates from the initial sentiments of affirmative action expressed by the ANC, which emphasised the importance of South African institutions having a "truly South African quality" and a national character. Instead, cadre deployment prioritises achieving hegemony and implementing

ANC transformation policies, resulting in the erosion of the broader goal of building inclusive and competent institutions.

BEE, which serves as a manifestation of affirmative action in the South African context, has created opportunities for rent-seeking behaviour and corrupt practices within the tendering process, leading to "tenderpreneurship" (discussed on pp. 27–28) where individuals or businesses exploit their BEE status to secure government tenders or contracts. The Broad-based Black Economic Empowerment Act 53 of 2003 (B-BBEE Act) and the EEA are among the dozens of charters, plans, regulations, directives, notices and policies that seek to regulate aspects of society along racial lines and racialise commerce, apart from a number of additional pieces of legislation. The initial affirmative action policies, which were ostensibly intended to rectify historical injustices and promote equal opportunities for historically disadvantaged or marginalised individuals, fell short of their purported objectives.

Cadre deployment

Cadre deployment, characterised by the strategic placement of political party loyalists in influential positions within government institutions and SOEs, has been observed in various African countries as part of their efforts to promote political empowerment and social justice. These initiatives often include measures such as land reform, nationalisation of industries and the implementation of welfare programmes. However, a notable contrast emerges when comparing these approaches to those adopted by the Asian Tigers – South Korea, Taiwan, Hong Kong and Singapore.[126] While it is not possible to apply the broader developmental state narrative of the Asian Tigers to every aspect of the South African landscape, these countries are still used as an example to demonstrate the effectiveness of a merit-based system.

The Asian Tigers focused on economic development, implementing policies aimed at promoting export-oriented growth, attracting foreign investment and fostering their manufacturing sectors. Significant investments were made in education, infrastructure and technology to cultivate a skilled and productive workforce. As a result, these countries achieved remarkable success, transforming into prosperous and industrialised economies within a relatively short span of time.[127] In contrast, certain African countries relying on informal patronage systems, including cadre deployment, have encountered significant challenges. In extreme cases, cadre deployment in other African nations has even contributed to state collapses, coups or attempted coups.[128] Gumede[129] highlights the detrimental impact of cadre deployment, stating "[c]adre deployment is one of the main reasons why African countries – including [South Africa] – fail." He emphasises the importance of merit as a guiding principle in government appointments, stating that no developing country has transitioned sustainably from poverty to wealth without merit-based policies in place.

The ANC's cadre deployment policy, officially adopted in 1997, aimed to strengthen the party's influence and power across various social spheres while rewarding loyal members who adhere to party policies.[130] Various other documents highlight that the ANC itself raised concerns about its cadre deployment, citing the potential for corruption and undermining good governance.[131] The policy has faced long-standing criticism, particularly regarding its implications for the politicisation of SOEs.

Corrigan[132] summarises the ANC's motivation for cadre deployment as threefold:

1. The ANC desires to increase its power and influence in both the public and the private sector. In doing so, they hope to exert influence over ever-expanding societal spheres of activity.
2. This governance is intended to advance the National Democratic Revolution (NDR), the ANC's strategy to transform South Africa into a socialist and then a communist state.
3. Cadre deployment has also become an instrument of patronage used to reward those who remain loyal to the party and toe the party line.

Appointing individuals based on political allegiance rather than qualifications and experience poses a risk of prioritising political agendas over the organisation's or the public's interests. Moreover, this practice fosters a culture of loyalty to the party, often overshadowing the goals and objectives of the institution.[133] The policy has been described as a "disaster" by ANC veteran and Corruption Watch chairperson Mavuso Msimang, who sees no tangible benefits for the state.[134] Many others have also raised concern about the current state of the ANC in power. Cadre deployment seeks to establish political dominance for a specific party, rather than building civil and security services that serve the entire nation. Pothier[135] argues that cadre deployment represents a replication of apartheid-era state engineering under a different ideological framework, rather than a genuine departure from such practices.

The Zondo Commission determined that the ANC's cadre deployment policy is not only unconstitutional but also illegal, and the commission condemned the political interference in the appointment of a municipal manager in 2009. The party itself has been resistant to move away from this policy. Parliament recently voted against a bill which would have prevented politicians from being heads of departments. The bill was aimed at ending cadre deployment.[136] Historically there has been little scrutiny towards the policy. Malan[137] explains that the government justifies cadre deployment (i.e., weakening the state) and legislation that is openly discriminatory in nature against minority groups (white, brown and Indian) – and that it is sanctioned and applied as such by the courts, including the Constitutional Court – within the framework of the constitution (not **C**onstitution) and "transformatism" as a guiding ideology. Re-racialisation describes this phenomenon. Some of the implications of this policy are outlined below.

Corruption and service delivery

One significant consequence of cadre deployment is the emergence of state capture and the proliferation of tenderpreneurs (see pp. 26–28). The Zondo Commission has identified a clear link between the ANC's cadre deployment committee and instances of state capture.[138] Placing party loyalists in strategic positions increases opportunities for corruption and malfeasance, allowing individuals to exploit their positions for personal gain and to benefit select private entities.[139] This nexus between cadre deployment and state capture has had far-reaching implications for the integrity and effectiveness of SOEs. The diversion of resources, manipulation of procurement processes and compromised decision-making have resulted in significant financial losses for these entities and, consequently, for the public at large. Researchers argue that the concept of radical economic transformation has been distorted by its advocates, who now claim that the constitutional framework and the National Treasury hinder transformation efforts.[140] The ANC's radical economic transformation stands in contrast to the success of the rapid transformation experienced by the Asian Tigers, who were once impoverished but achieved substantial economic success. This disparity illustrates the substantial distinctions between the two approaches. While the Asian Tigers' transformation yielded positive results and relied primarily on a merit-based system, cadre deployment – which serves as one of the mechanisms to accomplish "radical economic transformation" – has failed to produce the same results.[141]

As a result of litigation by the Democratic Alliance (DA), minutes from the ANC's deployment committee meetings between 2018 and 2020 have been made publicly available. The minutes from these meetings of the ANC's deployment committee shed light on the committee's operation and the extent to which it affirmed its policies. Certain positions on the boards of SOEs are reserved within the committee for cadre deployment, revealing that the committee gives party cadres precedence over qualified and independent professionals.[142] Pauw writes in light of the appointment of individuals to various judicial positions:[143]

> ANC members serving on the deployment committee are mostly an odious lot. They lack not only the moral authority to support the appointment of certain judges, for example, but also the knowledge and insight to make any judgment about who should serve in any position in law-enforcement agencies. RET diehards like Lindiwe Sisulu and Nkosazana Dlamini-Zuma serve on the commission, and so does Sfiso Buthelezi, implicated in rampant mismanagement and corruption during his tenure

as Prasa board chairperson. Another member, former higher education deputy minister Mdu Manana, is a convicted criminal after pleading guilty to assaulting three women.

One notable figure often used in criticising cadre deployment is Mr Brian Molefe, a former CEO with an extensive career that began when he joined the National Treasury in 1997. He has since become associated with state capture.[144] The findings of the Zondo Commission report further implicate Molefe in facilitating irregular contracts at inflated prices through various means, including deviations, improper confinements and the manipulation of tender evaluation criteria.[145] These actions were allegedly aimed at benefitting Gupta companies involved in an extensive money laundering scheme. Interestingly, on 23 February 2017, Molefe embarked on a new career as a Member of Parliament for the ANC, receiving support from the party's North West branch. Subsequently, Molefe was controversially reinstated to his position in the state utility Eskom. While the ANC formally criticised Eskom's decision to reinstate Molefe, internal divisions within the party emerged, with reports suggesting that some members expressed support for his reinstatement.[146]

Insufficient competence and skills development

Insufficient competence and skills development at SOEs have been identified as significant challenges stemming from the ANC's cadre policy. While it is acknowledged that some ANC cadres deployed to these organisations possess the necessary competence, qualifications and diligence, there is a notable portion that falls short in these areas. This discrepancy is often attributed to the cadre deployment approach, which tends to downplay the importance of merit and overlooks the need for robust competence and skills development. The consequence of this inadequate focus on competence and skills development is a workforce that lacks the necessary expertise and proficiency to effectively carry out their roles within SOEs. There have been numerous instances where individuals who performed poorly or faced accusations of corruption and incompetence in one civil service branch were redeployed to another.

SAA has also been the victim of political patronage: from 2009 to 2019, SAA had 21 chief executive officers.[147] During most of this period, Ms Dudu Myeni, who falsely claimed that she was a qualified teacher, served as chairperson of the SAA board (from 2012 to 2017). Myeni formerly served as chairperson of the Jacob Zuma Foundation and was alleged to be a close friend of the former president. During her tenure, SAA faced significant financial challenges and operational difficulties, resulting in substantial losses and a reliance on government bailouts. Despite the controversies surrounding her leadership at SAA, after her term as chairperson ended in 2017, Myeni was subsequently appointed as a board member of another state-owned enterprise, the Mhlathuze Water Board, in 2018. Myeni's qualifications include:[148]

- Education
  - Primary Teacher's Certificate: Madadeni College (incomplete)
  - Secondary Teacher's Diploma: Umlazi College (incomplete)
  - Bachelor's degree in Administration: University of Zululand (incomplete)
- Career
  - Executive Chairperson: Jacob Zuma Foundation (Sep. 2008 to May 2020)
  - Acting Chairperson: South African Airways (Dec. 2012 to Dec. 2014)
  - Non-executive Director: South African Airways (Sep. 2009 to Oct. 2017)
  - Chairperson: South African Airways (Sep. 2015 to Oct. 2017)

Myeni was also allegedly responsible for the suspension of top executives at Eskom in 2015 due to her close relationship with former President Jacob Zuma.[149] Deputy Chief Justice Zondo, in the State Capture Commission report, extensively described the complicity of Myeni in the downfall of the airline while she served as the chairperson of the SAA board. Mr Tom Moyane, the previous commissioner of the South African Revenue Service (SARS), is another notable example, appointed by former President Zuma without the necessary skills, qualifications or experience.[150] Moyane was appointed in September 2015 and remained in office until October 2018. During his tenure, SARS was plagued by a number of controversies and allegations of misconduct and mismanagement. The Nugent Commission of Inquiry into Tax Administration and Governance by SARS recommended that the NDPP investigate criminal charges against Moyane for awarding a contract to Bain & Company for the restructuring of SARS, ultimately leading to a substantial weakening of SARS's capacity.[151]

Lack of accountability and performance

Cadreship grants a unique form of job security, often resulting in minimal or no consequences for inadequate performance, where a culture of unaccountability is fostered.[152] A glaring example is the case of Mr Mosebenzi Zwane, an ANC Member of Parliament facing numerous state-capture charges and allegations. Despite adverse findings by the Zondo Commission and facing fraud and corruption charges related to the Vrede dairy farm scam, Zwane maintains his position as a Member of Parliament.[153] In May 2023, he received a nominal fine of less than R20 000, equivalent to five days' salary, and is expected to issue an apology to the House. Additionally, he is prohibited from participating in parliamentary debates for an entire term. However, many argue that this disciplinary action is inadequate considering his unethical conduct. This includes facilitating the sale of Optimum Coal Mine to the Gupta company Tegeta, accepting a Gupta-funded trip from Switzerland to Dubai without disclosure, appointing Gupta-linked advisors, and abusing his position on an interministerial committee.

Black economic empowerment

Black economic empowerment[154]

The concept of black economic empowerment (BEE) was first introduced in South Africa in 1994, following the end of apartheid. The purported aim of BEE was to redress the historical economic imbalances and to give black South Africans a greater stake in the economy.[155] BEE was initially focused on ownership transactions, with the government encouraging companies to increase black shareholding and directorships. However, it soon became clear that ownership alone was not enough to achieve the desired level of transformation.

Broad-Based Black Economic Empowerment[156]

The BEE policy of the ANC-led government was made into law in 2003 with the B-BBEE Act. The Broad-Based Black Economic Empowerment (B-BBEE) programme was seen as a more comprehensive version of BEE.[157] B-BBEE went beyond ownership to include other areas such as skills development, enterprise development and procurement.[158] Sakeliga[159] reports that the B-BBEE Act has brought about a politicised scenario where the balance between cost-effective procurement and achieving specific objectives is at stake. Rather than being a single policy, BEE encompasses a range of laws, regulations and guidelines that aim to establish consistent standards and methods for implementing policies that promote the state's definition of black economic empowerment.[160]

The criticism of BEE as a cadre-based narrative suggests that it functions as a mechanism for political elites to consolidate power and control over economic resources, rather than achieving genuine empowerment and equitable redistribution.[161] This perspective emphasises the potential for cronyism, favouritism and corruption within the implementation of B-BBEE policies, leading to inefficiencies and the enrichment of a select few.[162] BEE has negatively impacted SOEs and has contributed to their decline. Some of these factors reflect a pattern similar to the consequences of cadre deployment, as discussed above. Some of the detrimental effects of BEE in relation to SOEs are outlined in the discussion below. Many of these negative effects echo those of cadre deployment discussed earlier in this report.

Limitations to BEE-compliant companies

According to the provisions outlined in the B-BBEE Act, government entities and SOEs are obligated to consider the B-BBEE levels of private-sector entities in the following scenarios: when procuring goods or services, when granting licences or other authorisations, and when establishing partnerships with private-sector parties.[163] It should be noted that new rules implemented by Finance Minister Enoch Godongwana in 2022 will exempt SOEs from relying fully on BEE-compliant companies for procuring the necessary products, which indicates the failure of BEE.[164] Relying on BEE-compliant companies for procuring necessary products has had negative consequences for SOEs. One such consequence is the limited pool of suppliers available to SOEs. By restricting procurement to BEE-compliant companies, competition may decrease, leading to higher prices, limited innovation and a narrower range of products or services to choose from.[165] In 2012, Gwede Mantashe, the then secretary-general of the ANC, criticised the nation's procurement system and government officials for prioritising the enrichment of BEE companies through public contracts over the provision of quality services at affordable prices.[166]

Additionally, an overemphasis on BEE compliance may create opportunities for corruption and fraud as individuals or companies exploit the system, as can be seen with fronting practices and tender abuse.[167] Financial implications can also arise if BEE-compliant suppliers charge higher prices, which can strain the financial sustainability of SOEs and impact their service delivery capabilities. It is crucial to strike a balance between promoting economic transformation and ensuring the efficiency and effectiveness of SOEs to mitigate these negative consequences.

Impact on investor confidence and economic growth

BEE's significant economic costs and ever-changing requirements have also damaged corporate trust, inhibited investment and contributed to slower economic growth.[168] BEE has punitive overtones, as resources are selectively redistributed while maximising the benefits for the governing elite. This is in stark contrast to an expansive policy that prioritises increasing wealth and opportunities for all based on individual contributions and efforts.[169] Significantly, the distributive approach of BEE has direct and indirect repercussions that hinder economic growth and meaningful social development.

South Africa has been ranked as one of the world's ten least attractive mining destinations in the Fraser Institute's 2022 annual survey of mining and exploration companies as a result of the policies and approaches adopted by the governing party.[170] When considering both policy and mineral potential, Botswana, one of the few countries that have introduced a merit-based governance system, is ranked among the top ten most attractive countries to invest in. Other countries that fell into the least attractive grouping alongside South Africa included countries that have also implemented informal patronage systems and in some cases similar policies to BEE, as is the case with Zimbabwe. Table 5 on the next page displays the least attractive African countries for investment, contrasted by Botswana.

Table 5: The Investment Attractiveness Index of African countries

Ranking	Country
10	Botswana
53	Tanzania
55	Democratic Republic of Congo
57	South Africa
58	Zambia
59	Angola
60	South Sudan
61	Mozambique
62	Zimbabwe

Corruption and cronyism

Corruption and cronyism have been a concurrent theme throughout this report. BEE policies, while designed to promote inclusivity and economic empowerment, have in some cases created opportunities for corruption and cronyism. Similar to cadre deployment, the emphasis on meeting BEE requirements rather than selecting the most competent candidates has resulted in appointing individuals who may lack the necessary skills and knowledge to effectively manage complex organisations, often leading to corrupt practices. In 2011, the presidency under former President Jacob Zuma released a media statement on the conclusion of the B-BBEE Advisory Council meeting.[171] The meeting concluded that there are significant shortcomings, particularly concerning the disproportionate emphasis placed on diversity of ownership and senior management. This overemphasis has resulted in unintended consequences, such as fronting and abuse of tenders. The allocation of BEE contracts, tenders and procurement opportunities can become susceptible to manipulation and favouritism, leading to the misallocation of resources and the wastage of taxpayer money. This diversion of funds and resources has undermined the financial stability of SOEs and hampers their ability to fulfil their mandates effectively.

Tenderpreneurship

Tenderpreneurship often takes place when black-owned businesses or individuals leverage their BEE status or connections within the ruling party to obtain government contracts.[172] The word *tenderpreneur* is a term used in South Africa to describe a businessperson who leverages their political connections to obtain government procurement contracts, commonly known as "tenders," often through the exchange of favours or mutual benefits. This word combines the concepts of "tender" (referring to providing business services) and "entrepreneur."[173] This practice can be seen as a form of corruption or manipulation of the BEE framework, which aims to promote economic empowerment for historically disadvantaged individuals. The scale of economic theft makes tenderpreneurship distinct from other techniques used to manipulate black empowerment systems.[174] A former treasurer-general of the ANC, Mr Matthews Phosa, highlighted the correlation between tenderpreneurship and BEE in 2015, stating that[175]

> [t]he present black economic empowerment policy... is with respect, not a cure-all to real broad-based black economic empowerment. Millions of black people feel left out and are very sceptical since they cannot enter the formal economy. They only see a few that largely benefited from tenderpreneurship and not from hard work.

Although not all instances of BEE involve tenderpreneurship, the correlation between these two terms has become synonymous within the South African landscape, particularly after former President Jacob Zuma took office in 2009. One of the most notable aspects of tenderpreneurship is the cultivation of relationships between tenderpreneurs and politicians, often involving financial support and career financing. Such practices further exacerbate concerns of corruption and malpractice, undermining the intended goals of BEE.[176] Tenderpreneurship has become a negative manifestation within the BEE framework and ultimately has a detrimental effect on SOEs.

Tenderpreneurship displays a trend in negative consequences similar to that of other policies such as BEE (see pp. 24–28) and cadre deployment (see pp. 19–23). The phenomenon leads to poor service delivery and overcharging of the state, with tenders often awarded to incompetent companies. This process is facilitated by the preselection process in the procurement framework, which allows corrupt government officials to bias procurement outcomes towards companies deemed eligible for high B-BBEE status, prioritising political connections over competency.[177] Tenderpreneur companies may exist as shell organisations, subcontracting the actual work to other contractors, while overcharging for goods and services. This enables both the tenderpreneur and the state client to extract profits from the fulfilment of the tender. This undermines public accountability and fosters mistrust in government officials.

Tenderpreneurship is also associated with maintaining the political status quo and undermining civil society.[178] One such example is that of the Gupta family. The Guptas invested in media outlets to generate positive news around the ANC and former President Jacob Zuma, while utilising public relations tactics, including disseminating "fake news", to counter criticism against tenderpreneurship. They aimed to shift the focus of political criticism towards "white monopoly capitalism", symbolising the continued dominance of white-owned businesses in the economy. The slogan of "radical economic transformation", which challenges the business establishment, has financial support from tenderpreneurs and "criminal enterprises" with corrupt ties to high-ranking officials in the Zuma political circle. This strategy serves to maintain the existing political power dynamics and undermines the role of civil society.[179] Consequently, the concentration of benefits in the hands of a small elite undermines BEE's intended goals.[180] It perpetuates an unsustainable misallocation of resources, hindering economic progress, impeding genuine transformation in South Africa and contributing to the decline of SOEs.

Conclusion

This report provided an overview of the dire state of South Africa's SOEs, characterised by corruption, poor governance and political interference. It is evident that immediate reforms are necessary to salvage these failing SOEs and in turn, provide basic service delivery to citizens. The consequences of continued investment in these ailing entities have far-reaching and harmful effects on the economy and society at large. To address these issues, South Africa requires comprehensive reforms in the governance, accountability and transparency of SOEs. Establishing a robust legal and regulatory framework is crucial to promote good governance and accountability within SOEs. Political interference and the politicisation of these entities must be eradicated to enable independent and efficient management. Additionally, race-based policies should be re-evaluated as they benefit a select view and do not alleviate crucial issues such as poverty or education.

Furthermore, prioritising meritocracy, competence and skills development within SOEs is essential to avoid the pitfalls of cadre deployment. Implementing transparent and accountable performance management systems will ensure the effective execution of mandates and responsible management of public funds (e.g., mandatory disclosure of political affiliation for SOE board members).

Competition plays a vital role in fostering innovation, efficiency and economic growth. However, the dominance of inefficient and monopolistic SOEs hampers competition, limiting opportunities for private-sector development and impeding overall economic progress. Promoting competition in an environment free of complex policies and requirements is essential for driving innovation, attracting foreign investment and stimulating economic growth in South Africa, where long-term strategic goals must take precedence over short-term goals often driven by political ideology.

From this report is it clear that, in order to implement these changes, citizens will not be able to rely on government alone: supplementary solutions and nuanced discussions towards sustainable solutions are needed in order to salvage SOEs. One such solution includes public-private partnerships, which can offer a framework to combine both public and private-sector strengths to achieve common objectives.

In order to preserve and safeguard citizens against state capture, Zondo stated that "[he] believe[s] in active citizenry, that the people of South Africa are the ones who must take their destiny in their own hands.[181] They are the ones who must say: "We have had state capture, and it is not going to happen again. They are the ones who must say never, never and never again."

AfriForum echoes this sentiment, which extends beyond the threat of state capture. The organisation recently stated that[182]

> the people who take action and intervene themselves are not victims of history; they write history. Suppose we want a better future for our children and future generations. In that case, we will only obtain the future that we create ourselves. If we do nothing, we will not have a good future. If we step in, we will have the desired future. #OnsSalSelf (we will take responsibility) for a future where we can live and work freely, safely and prosperously.

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