

AN ASSESSMENT OF CORPORATE GOVERNANCE IMPLEMENTATION IN STATE-OWNED ENTERPRISES OF THE EMERGING ECONOMY

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Abstract

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South African state-owned enterprises (SOEs) form a critical cog in the state machinery. The significance of sound corporate governance has become more pronounced as citizens demand more accountability and value in the use of public resources (Vicente, 2020). The paper utilised a qualitative desktop approach, a case study design and thematic analysis to investigate board and executive management practices in the North West Development Corporation (NWDC) corporate governance, factors hindering good corporate governance and lastly recommendations that can be offered to enhance good corporate governance. The NWDC is a regional development finance institution in South Africa, which over the years has continued to implement adverse audit outcomes (AGSA, 2019b). The thematic analysis findings revealed a direct relationship between lack of consequence management and the state of poor corporate governance in the NWDC. The lack of ethical leadership lies at the heart of this morass of SOEs in general. The study, therefore, recommends the full implementation of the existing legislative framework, the Codes on Good Governance and the anti-corruption national strategy in order to inculcate accountability in the South African public agencies that include the NWDC. The paper is relevant in addressing the Auditor-General qualified audits, which underlines the ineffectiveness of the existing SOE governance system by not inherently correlating corporate success with the presence of deeper corporate governance standards and ethical behaviour.

Keywords: Good Governance, Corporate Governance, Accountability, Ethical Leadership, State-Owned Enterprises

Authors' individual contribution: Conceptualization — M.K. and A.M.; Methodology — M.K. and A.M.; Formal Analysis — M.K. and A.M.; Investigation — M.K. and A.M.; Resources — M.K. and A.M.; Writing — M.K. and A.M.

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1. INTRODUCTION

The ongoing disclosures at the Zondo Commission of Inquiry into State Capture continue to send shockwaves through the public regarding the degree

of corruption (AFP, 2019). The risks and realities of governance collapse have been experienced in South African state-owned firms and some businesses, hence there is a need for governance checks and balances in both public and private companies.

In 2018, after the siphoning of R1.9 billion (US\$130 million) from investor funds by internal and outside syndication, the South African Reserve Bank liquidated Venda Building Society Mutual Bank (Lowman, 2018), and since 2017, Steinhoff has lost almost 99 per cent of its market value after the accounting irregularities of R250 million (US\$16 million) were discovered (Wasserman, 2019).

Despite the existence of a regulatory architecture underpinned by the 1999 Public Finance Management Act No. 1, hereinafter referred to as the PFMA, the 2008 Companies Act and King Codes on Good Corporate Governance, little progress has been made by the public sector in achieving clean audit status. The public debt of South Africa, including that of its state-owned enterprises (SOEs), rose from R250 billion (US\$16 million) in 1992, reaching R900 billion (US\$60 million) in 2009, to R3.1 trillion (US\$204 billion) in 2018 (Centre for Development and Enterprise, 2019, p. 3).

Vicente (2020, p. 128) defines SOEs as companies in which the state has total or majority of shareholder control. Vicente (2020, p. 128) further differentiates between an Anglo-Saxon perspective that prioritises shareholder rights over any other in organisations and an emerging European view that acknowledges the coexistence of several stakeholders, such as managers, suppliers, employees, customers, labour unions, the state and other interest groups in society. Any conflict that arises among these stakeholders has to be settled through trade-offs. The former perspective is termed the stakeholder theory of corporate governance (CG) (Clarke, 2004, p. 173).

As a public body, the North West Development Corporation (NWDC) is funded to the tune of R350 million (US\$21 million) over the Medium-Term Expenditure Framework (MTEF), (North West Department of Economy and Enterprise Development, 2019, p. 248). It was formerly reported to the Department of Business Growth and Economy (North West Department of Economy and Enterprise Development, 2019). The NWDC has not been able to secure a clean audit since the financial year 2009-2010 (AGSA General Report 2013-14) (AGSA, 2014, p. 63), yet all internal formal governance structures have been in place.

Against this backdrop, the fiscal situation of many SOEs has continued to deteriorate and the number of qualified or disclaimed audits received by auditors (departments and public entities) in the North West increased from 8 (45 per cent) in 2014-2015 to 12 (63 per cent) in 2017-2018 (AGSA, 2019b, p. 61). In audit terminology, a disclaimer is the most adverse audit opinion in which the auditee has not provided suitable evidence in the form of documentation on which an audit opinion can be based. In other words, there is no documentary evidence which transactions and decisions were made (AGSA, 2019a). The Auditor-General concluded in the 2017-2018 NWDC Annual Report that the leadership philosophy at the NWDC did not contribute to clean administration (AGSA, 2019b, p. 6).

This paper sought to investigate theoretical approaches to understanding corporate governance in public administration, board and executive management practices in the NWDC corporate governance, factors hindering good corporate

governance in the NWDC and lastly recommendations that can be offered to enhance good corporate governance in the NWDC.

The structure of the paper is as follows: Section 2 reviews the relevant literature. Section 3 presents the research methodology underpinning this research. Section 4 presents results from the thematic analysis of documents. Section 5 discusses in detail nuances from the findings and lastly, Section 6 concludes with recommendations on how to improve limitations in CG practices in the NWDC.

2. LITERATURE REVIEW

Abdullah and Valentine (2009, p. 89) posit that independent of any ideological orientations, CG can be defined as a set of processes for controlling and directing organisations. This position is akin to the 1992 Cadbury Report that had described CG as the manner by which corporations are controlled and directed (Cadbury, 1992).

Farrar (2005, p. 3) mentions that Richard Eells used the term CG in his book, *The Government of Corporations*, for the first time in 1962. In the narrower sense, he referred to the control of corporations through systems of accountability. In the wider sense, CG refers to self-regulation through norms and best practice. While the use of CG may have commenced in the 1960s, Abdullah and Valentine (2009, p. 88) argue that the development of corporations heralded the beginning of modern day CG. With the surge of capitalism, corporations had become dominant social and economic actors. While there seem to be distinct configurations of corporate governance in the Anglo-Saxon, European and Far Eastern economic systems, CG addresses concerns of capital providers in order to address the risk associated with investments and returns on such investments. Corporate behaviour in the NWDC, therefore, was investigated primarily through the prism of three theories of CG, namely: agency theory, stewardship and stakeholder theories.

While the agency theory is predicated on a manager whose mission is to maximise his or her interests, stewardship theory argues that there is no inherent conflict between managers and owners (Clarke, 2004, p. 117). Subramanian (2018, p. 89) points out that stewardship theory was introduced by Donaldson and Davis (1991) as a critique of the agency theory and is grounded on psychology, sociology and leadership theories. Stewardship theory holds that, among other factors, managers who identify themselves with their organisations and are highly committed to organisational values are more likely to serve organisational ends.

Blair (as cited in Clarke, 2004, p. 173) points out that stakeholder theory defines organisations as constituting multiple internal and external stakeholders. As such, rather than simply viewing a corporation as an asset of shareholders or principals, stakeholder theory holds that the corporation is an institutional arrangement for governing relationships between stakeholders.

Cloete, De Coning, Wissink, and Rabie (2018, p. 4) note that in the latter half of the 20th century, there was a paradigm change for governments from merely providing good public administration to

concentrating on public leadership and good governance in order to encourage a competent public service. Thus governance has become a dominant value system defining behaviour patterns and processes. Any deficiencies in these values can result in either good or bad governance.

Accountability, which is a part of good governance, entails holding people to account for their decisions. This principle applies to both public and private organisations. The notion of accountability illustrates the interlinkages between public administration, governance, and corporate governance. South African public bodies are listed as government departments, government corporations, and elements of government and organizations of public concern (PFMA No. 1 of 1999).

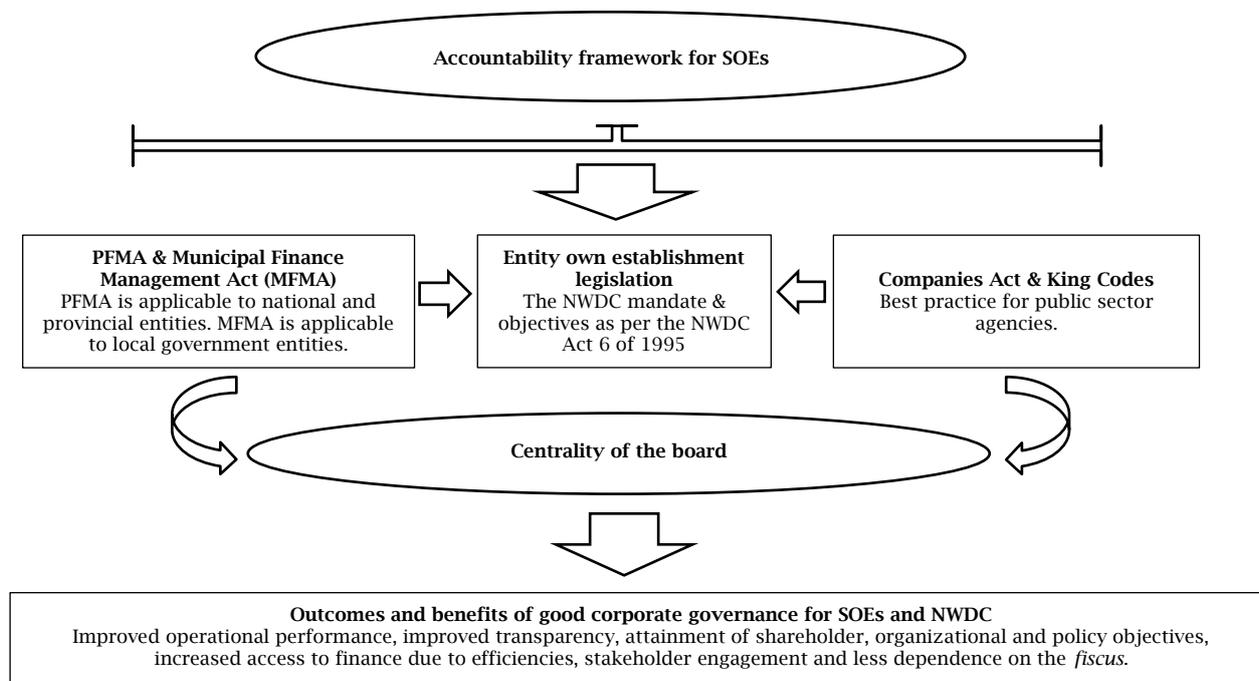
Thornhill (2015, pp. 78-79) characterises accountability in the public sector as firstly, legal accountability which is concerned with observing state laws; secondly, fiscal accountability involving prudent utilisation of public funds; thirdly, procedural accountability (responsibility for

observing rules and regulations); fourthly, the accountability of the programme, which includes accountability for the implementation of all programmes; and finally, accountability for results-based programme implementation. The NWDC is no exception to this expectation.

The NWDC falls under the classification of a government business enterprise. SOEs such as the NWDC are expected to play an important role in local economies' development and, as such, in pursuing their mandate, their performance, financial sustainability and state of governance are critical. Thabane and Snyman-Van Deventer (2017, p. 3) define corporate governance as the process of controlling management and of balancing the interests of all internal stakeholders and other parties who can be affected by the corporation's conduct.

Figure 1 presents South Africa's corporate governance framework and key governance instruments for public (at national, provincial and local levels) and private corporations.

Figure 1. Conceptual framework for good corporate governance for state-owned entities



Source: Adapted from Mashamaite and Raseala (2019, p. 129).

Figure 1 presents an accountability approach for state-owned entities and the NWDC, in particular. Thabane and Snyman-Van Deventer (2017, p. 9) point out that SOEs are products of legislation. Their governance and management are clearly defined in the Companies Act of 2008, No. 34 and being public entities, they are regulated by the PFMA at national and provincial levels and Municipal Finance Management Act for local government agencies. In addition, SOEs have their own founding legislation that determines their specific public mandates. Being companies in their own right, they also have to implement the recommendations of best corporate governance practice from the respective King Codes. At the heart of this framework is the centrality of boards. In all instances, the primary responsibility of

the board is to act as a fiduciary for the corporation and discharge its duty of care, skill and diligence, while providing strategic direction to management (Thabane & Snyman-Van Deventer, 2017, p. 23).

The governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The aim is to align as nearly as possible the interests of individuals, corporations and society (Cadbury, 1992).

Literature on corporate governance practices in South African SOEs is scant. In 2015, Mbele wrote on governance deficiencies at Eskom and the SABC.

The study findings entailed that the execution and understanding of the principles of corporate governance were complex. In addition, there was a poor institutional structure among shareholders, boards and management (Mbele, 2015, p. 187). The researcher also argued that the board and executive appointment procedures were politicised, which invariably undermined SOEs' transparency and efficiency.

In the same vein, Langeni (2018) examined the perceptions of King II and King III Corporate Governance Codes among listed companies and their explanations for this among the Johannesburg Stock Exchange (JSE) listed companies. The researcher's findings were that the majority of participants considered King II to be innovative among South African companies and increased SA's global status in terms of competitiveness and corporate governance stature (Langeni, 2018, p. 161).

Gumede (2018) proffers a pragmatic solution to the public and private sectors collaboration to enable SOEs to meet their transformation and development objectives. The author suggests that the private sector should take the lead where there are well-established private actors, and where it is too costly the state should carry the risks that the private sector is unwilling to carry. The parameters of this proposition are worth exploring in terms of conducting due diligence and feasibility studies in terms of which sectors are most suited for a better-defined role for either the state or market players. Furthermore, there is a skewed remuneration framework between the public sector and SOEs. The objective of a standardised remuneration policy should be to bring out parity in conditions of services between the various levels of government with rewards being linked to productivity.

Gumede (2018) points out that, in many countries, SOEs have generally been less efficient and successful, with the exception of some SOEs in East Asian and Scandinavian states. In Africa, in particular, SOEs have not been able to create new markets or industries or upscale the sprawling informal sector.

Pauw, Van der Linde, Fourie, and Visser (2015, p. 12) assert that despite South Africa's strong regulatory framework the performance of the South African economy remains too low to implement National Development Plans. In South Africa, SOEs have historically assisted governments to achieve economic growth. At the heart of this malaise there has been corporate governance failure evidenced by unethical management and leadership practices in many state institutions. Sithomola (2019, p. 62) contends that this leadership conundrum thrives because SOEs have been turned into political patronage-nurturing opportunities where senior executives pursue skewed missions and objectives of their political principals as opposed to leading these institutions in the national interests. Walsh (2020) suggests that the biggest misconception for society is that the future will proceed on the course of the past and as such there should be as minimal adjustments to governance processes as possible. This has however not been the case for many South African SOEs. However, in post-apartheid South Africa, most of these SOEs have fallen into disrepute. Challenges faced by South African SOEs

range from a lack of accountability to political cronyism. Consequently, SOEs have been constrained by unstable leadership structures (Sithomola, 2019, p. 62). Ethical leadership needs to continue introspecting all past governance shortfalls with a view to yielding maximum benefits for the organisations they are tasked to manage and control.

The study adds to the literature by exploring the extent to which corporate governance codes and practices have been observed in the NWDC, identify corporate governance implementation challenges faced by the NWDC and recommending strategies and mechanisms for enhancing good corporate governance in the NWDC. It addresses the forecast of the Auditor-General which underlines the ineffectiveness of the existing SOEs governance system by not inherently correlating corporate success with the presence of deeper corporate governance standards and ethical behaviour.

3. RESEARCH METHODOLOGY

The study utilised a qualitative desktop approach drawing on a case study design and thematic analysis of documents from the NWDC Annual Reports, NWDC Board Charter, Strategic and Corporate Plans, Delegations of Authority and Auditor-General Reports. The period covered was between 2016 and 2019.

The qualitative desktop approach enabled the researcher to clarify governance issues in the NWDC with flexibility. As the research does not aim to validate a hypothesis, but rather to evaluate lessons and provide alternatives, the qualitative approach provided the analysis and the scope of the information for such resonance. The qualitative desktop approach adheres to the objectivism paradigm. According to the objectivism paradigm, social phenomena exist independently of social actors. It provides solutions to questions about reality (Bryman, 2012).

According to Yin (2009, p. 103), the value of a document analysis technique is to corroborate and augment evidence from other sources in that some documents may provide specific details about the phenomenon. More importantly, documents analysis tends to be unobtrusive and broad and may be viewed repeatedly. Consequently, it is not negatively influenced by the actions of the respondents, as with interviews, an alternative data collection method. Interviews with the NWDC management, and those charged with oversight responsibilities for the entity, could have yielded quality study outcomes. However, the interviews have their own limitations, especially in the prevailing political environment enshrined with state capture inquiries.

4. RESULTS

Thematic analysis was utilised to augment corporate governance challenges faced by the NWDC. The selected themes and documents are summarised in Table 1.

Table 1. Corporate governance challenges faced by the NWDC

<i>Selected documents</i>	<i>Selected themes</i>
Annual Reports for 2016–2017, 2017–2018, and 2018–2019 Auditor-General Reports for 2016–2017, 2017–2018, 2018–2019 and 2019–2020	Irregular, unauthorised and wasteful expenditure
Board Charter for 2016–2017, 2017–2018, and 2018/19	Board performance
Auditor-General Reports for 2016–2017, 2017–2018, 2018–2019 and 2019–2020 Delegation of Authority	Consequence management
Auditor-General Reports for 2016–2017, 2017–2018, 2018–2019 Newspaper and commentator articles for 2020	Political oversight
Strategic and Corporate Plans for 2016–2017, 2016–2017	Strategic direction of the NWDC

Utilising the document analysis, the thematic patterns shown in Table 1 are discussed in subsequent sections.

4.1. Irregular, unauthorised and wasteful expenditure

The PFMA Act of 1999 describes irregular expenditure as expenditure incurred in contravention of an applicable national or provincial legislation (PFMA, 1999, p. 8). Expenditure of unauthorised funds is defined as expenditure of unbudgeted funds. It is overspending within a vote or a key division; or expenditure which is not made in compliance with the intent of a vote. Fruitless and wasteful expenditure means spending rendered in vain as no proper diligence was exercised and would have been avoided (PFMA, 1999, p. 7).

The National Treasury guidelines on irregular expenditure published in May 2014 hold that for expenditure to be considered irregular, it must be linked to financial transactions. In other words, such a classification occurs when payment is made and recognised through the modified cash standards. The 2014 guidelines further make a distinction between irregular and unauthorised expenditure. Pauw et al. (2015, p. 50) term irregular, fruitless and wasteful expenditure as a “gruesome threesome” that works against the efficient use of scarce public resources. National Treasury guidelines on the treatment of irregular expenditure further require officials who suspect such occurrences of the ‘gruesome threesome’ to report these in writing to the accounting officer, who in turn is obliged to investigate and take corrective action.

In 2017–2018 wasteful and fruitless expenditure alone amounted to R2.5 billion (US\$138,580,931) (Butler, 2018). This was a 200% increase compared to 2017. Irregular expenditure on the other hand amounted to R80 billion (US\$4,434,589,800), with SOEs accounting for a R51 billion (US\$2,827,050,998) share. In 2018–2019, this rose to R61 billion (US\$3,381,374,723). The cumulative irregular expenditure incurred by government departments and public entities increased to R174 billion (US\$9,645,232,816). In the same period, government guarantees ballooned to R446 billion (US\$24,722,838,137). SOEs are using these government guarantees to secure

loans and these are recorded as a contingent liability on the *fiscus*.

For the North West province, the provincial audit outcomes for 2018 indicated six (6) unqualified audits, seven (7) qualified audits, and six (6) disclaimers with one entity failing to submit annual financial statements. No department obtained a disclaimer. Of 22 municipalities in the province, thirteen (13) obtained disclaimers (North West Provincial Treasury, 2020, pp. 3–5). At a national level, of twenty (20) major SOEs audited by the Auditor-General audits, fourteen (14) did not obtain clean audits, with three (3) failing to submit annual financial statements (Merten, 2019). In order to stem the tide of financial regression, the North West Provincial Treasury has embarked on a clean audit strategy, targeting four departments with interventions intended to stabilise the state of financial governance (North West Provincial Treasury, 2020).

For the financial year ending in March 2020, the Auditor-General reported that incidents of irregular and wasteful expenditure continue to persist (NWDC Annual Report 2019/2020, pp. 76–177). This is attributed to failure in addressing deficiencies previously raised and an ineffective internal control environment in the NWDC. The NWDC has, therefore, been disclaimed for 10 consecutive years, with the latest audit outcome for the year ending in March 2020 (NWDC Annual Report, 2019/2020).

4.2. Board performance

To a great extent, the success of the organisation depends on how well it is managed. Key in this management architecture is how effective the board is in setting the tone for the rest of the organisation. Kuoppamaki (2018, p. 41) defines board performance as contributions directors provide towards organisational performance and how these contributions can be measured. Organisations can no longer be measured on financial indicators alone. While financial performance is important, it has rather become an insufficient metric as a singular measure of corporations’ success.

Kuoppamaki (2018, p. 46) expands the classical narrow view of board performance by arguing that board performance should also encompass organisational performance, strategic performance and process performance which considers the economic and social environment in which corporations exist. Viewed against these four variables, board performance highlights the need for visionary and dynamic leadership. With the implementation of sustainable reporting by companies, this view was already shown in a change from a bottom line approach to a triple bottom line in King III.

In the case of the NWDC, a Board Charter became a common CG feature following the adoption of King III Codes on CG in 2016 (NWDC Board Charter, 2016, p. 2). A Board Charter outlining the role, structure and authority of the board is a part of the company’s corporate governance architecture. Membership of the NWDC boards consists of between six and fifteen directors, with the majority being non-executive independent directors (NWDC Annual Report, 2019/2020, p. 53).

The chief executive officer (CEO) and the finance directors are ex-officio members of the board. By outlining its relationship with the shareholder (Member of the Executive Council (MEC)), management and other stakeholders, the NWDC Board Charter identifies the board as a custodian of CG. The Charter further commits the board to run the corporations' affairs along with sound CG principles and ethical foundations.

The board has delegated some of its powers and functions to the CEO in accordance with section 48 of the PFMA (Board Delegations, 2017, 2018 and 2019). Some expenditure and financial commitments are delegated to the CEO with approval for expenditure to the CEO limited to R5 million (US\$312,500). Limits to enter lease agreements for the CEO were increased from R5 million (US\$312,500) in 2017 to R50 million (US\$3 million) in 2018. Viewed from a stewardship theory of corporate governance, it is evident that the board does not live up to its stewardship obligations towards the shareholders.

Through analysis of official documents, such as Annual Reports and the NWDC Board Charter, it is evident that there is a level of what could be regarded as simply malicious compliance with the requirements of legislation and best practice with regard to the implementation of CG in the NWDC. All oversight mechanisms are in place, such as the Board Charter, the entity's vision, numerous board sub-committees, and clearly specified roles and responsibilities among the various organizational role players. The performance outcome for the entity has however raised cause for concern, a fact demonstrated by recurring negative reviews from auditors and parties charged with proper and sound management of the organisation.

Reviewing the Annual Reports of between 2016 and 2019, the analysis of the board of directors reveals that of ten appointed in July 2016, two were re-appointments from the previous board that had been in place since 2014. Two directors were the previous chairperson and an advocate (NWDC Annual Report, 2016/2017). In December 2019, nine new members of the board were appointed, following the resignation of six members between July and October 2019 of the then board (NWDC Annual Report, 2019/2020, p. 60). This is indicative of the volatile, uncertain, complex and ambiguous environment in which the board may have found itself.

The skills profile of the board suggests the board that is more than appropriately qualified, with two of the board members holding professorships. All but one of the directors on the board between 2016 and 2018 possessed postgraduate qualifications (NWDC Annual Report, 2018/2019, p. 53). The skills set varies in disciplines, such as project management, taxation, strategic management, property management, financial accounting, business administration, law, auditing and risk management among other expertise, coupled with both private and public sectors board experience (NWDC Annual Reports, 2016/2017, 2017/2018, 2018/2019 and 2019/2020).

Outcomes of the corporation performance as evidenced by AGSA reports over the recent years indicate that board performance has been

underwhelming as it has failed to hold management accountable for a litany of transgressions. Alagla (2019, p. 97) affirms the view that the proportion of independent directors on boards is critical for the management of public and private organisations as independent directors are external directors with no relationship with management or the firm in any way and are thus better positioned to curb opportunistic behaviour of managers.

4.3. Consequence management

Consequence management refers to the application of direct and commensurate consequences to hold individuals to account when there is non-compliance. Section 83(1) of the PFMA holds accounting authorities (AA) responsible for financial misconduct, if the AA willingly or negligently fails to ensure compliance with any PFMA provision or permits inappropriate, wasteful or irregular expenditure. Officials incurring fruitless and wasteful expenditure would similarly be guilty of financial misconduct.

Section 83(3) of the PFMA holds these officials liable for such wasteful expenditure and the AA is required in terms of section 51(1)(e) to recover such expenditure from these officials. The accounting officer is charged with recovering such expenses in terms of the recovery process. King III recommended that compliance functions and processes be developed that describe the roles and responsibilities of different management team members in organizations. King IV urges companies to move from actually complying with the letter of the law (malicious compliance), to compliance with the spirit of the law (substantive compliance).

In 2019, as required by section 51(1)(e)(iii) of the PFMA, the Auditor-General could not obtain evidence in the NWDC that disciplinary measures had been taken against officials who had incurred irregular and fruitless and wasteful expenditure following the findings of 2017. The Auditor-General found that no irregular spending and fruitless and wasteful spending investigations were conducted and no disciplinary action was taken against any official liable for such losses in all the years reviewed. In 2018, only one employee was subjected to disciplinary hearing for failing to carry out a lawful instruction (NWDC Annual Report, 2018/2019, p. 60).

In 2019, disciplinary sanction against employees resulted in one written warning, five final written warnings and one case being withdrawn. Of the cases brought against employees in 2019, one was for insolence, one for repudiation, one for not performing work within the scope and two for theft (NWDC Annual Report, 2019/2020, p. 80). None were for irregular and unauthorised expenditure.

4.4. Political oversight

Political oversight refers to the accountability of a political head for the performance of an organ of the state. Inversely put, it is an instrument through which a political head can account for the performance of that entity and the use of public resources in the implementation of its mandate (Pauw et al., 2015, p. 37). Van der Walt (2015, p. 1) argues that specific frameworks and procedures for

oversight of the executive and other state institutions are given in Chapter 9 of the Constitution. In this case, the Office of the Public Protector and the Commission on Human Rights are examples of institutions created to protect the executive and other spheres of government against misuse of authority. Political oversight is characterized by Senay and Besdziek (as cited in Van der Walt, 2015, p. 2) as the interaction initiated by the legislature to promote compliance with constitutional mandates and legal obligations. This interaction ensures that the executive authority is held accountable to the elected representative of the people, i.e., the legislature.

In 2016, the then Premier of the North West invoked sections 137 and 140 (1)(b) of the South African Constitution to re-assign functional and reporting responsibility of the NWDC from the Member of the Executive Committee responsible for finance, economy and enterprise development to the Premier's Office. Following concerns over the financial position of the province, the National Treasury invoked section 100 of the Constitution in May 2018, thereby placing five (5) provincial departments under national administration (NW state of the province address, 2019) (South African Government, 2019). Between 2016 and 2017, under the NWDC alone, the province had registered close to R200 million (US\$11 million) in fruitless and wasteful expenditure, the financial loss which the then Premier of the province requested the National Treasury to condone (NW state of the province address, 2017) (South African Government, 2017).

On July 17, 2018, the incoming Premier reversed his predecessor's decision by relocating the entity to the MEC for Enterprise Development (Provincial Proclamation No. 153 of 2018). This political somersaulting created a political vacuum and instability. The initial decision to move the NWDC to the Premier's Office did not seem based on rationality as the Premier's Office is largely a policy coordination office. Programme and project implementation are executed at line departments.

4.5. Strategic direction of the NWDC

The Auditor-General (2019) noted that the new North West administration has set the tone for accountability in North West and this has resulted in stabilisation of the overall audit outcomes for the first time for four years following the placement of five departments under administration by the national government in July 2018 (AGSA, 2019a, p. 22). This is a marked improvement from the Auditor-General's view previously that the NWDC leadership's philosophy and operating style did not contribute towards sound corporate governance. This was demonstrated by the lack of oversight authority for the corporation's financial reporting and enforcement and related internal controls and the consequent failure in previous years to resolve areas of non-compliance reported.

During the provincial legislature's chairpersons' forum hearings held in July 2020, the Premier of the NW lamented the state of governance in the province's municipalities and departments (Tau, 2020). There were reports of continuous tender irregularities and mismanagement of public resources in the province.

The situation was described as a disaster by members of the forum and calls were made for accountability and consequences for wrongdoing. Walsh (2020) contends that while South Africa's most pronounced challenges could be described as an abuse of public resources through corruption and mismanagement, the underlying cause is a lack of ethical leadership.

This deficit in ethics transcends other private sector operators as demonstrated by corporate scandals in 2019 and 2020. such as EOH when the JSE-listed company was found to have conducted itself in an illegal manner. EOH is described as Africa's biggest technology company (EOH, 2020). An IT tender to the value of R1.2 billion (US\$750 million) was secured from the city of Johannesburg. In addition, accounting irregularities at Steinhoff and Tongaat-Hulett represent some high-profile CG failures in current South Africa. In the public sector, failures in governance failures have been amply demonstrated by commissions of inquiry into state capture by the Public Investment Corporation (PIC) and South African Revenue Services (SARS), the National Prosecution Authority (NPA) and the ongoing Zondo Commission (Niselow, 2019).

The paper was able to demonstrate that governance fundamentally deals with the development of conditions for orderly rule and collective action. Stoker (1998, pp. 18-24) identifies governance as being composed of a series of outside government systems and institutions. The interlinkages between public administration, governance and corporate governance are illustrated by the notion of accountability, which means holding people to account for their decisions. This principle applies to both public and private organisations.

The paper has demonstrated that the board of directors has not lived up to its fiduciary responsibilities. Fiduciary responsibility creates an obligation for one party who is in a formal relationship with another one to act entirely on the other party's behalf and best interest ("Fiduciary responsibility", n.d.). It is considered to be the standard of the highest care that appointed agents need to demonstrate in the management of organisational affairs.

Recurring management failures to set up financial management systems as required by the PFMA and consequent financial losses suffered by the entity fully funded from the public resources are a demonstration of the board and management to carry out their fiduciary duties. Public policy requires corporate representatives to protect the company's general interests and prevent any action that might harm the company. Officers are expected not to deprive the corporation of possible profit by not using their best skills. These requirements have not been observed at the NWDC for a very long time. What is evident is that the conduct of the NWDC board and management can be described as superficial corporate governance compliance. There is a lack of consequence management at all levels of organisational and political spheres. For the period under review, no evidence could be found to suggest that there were consequences for non-compliance for those officials that keep flouting regulations and financial management prescripts.

5. DISCUSSION

Sibanda (2017 p. 314) asserts that the continuous assessment of performance is a key factor in the modern public sector for identifying areas of high impact and those that require constant attention and address. There should be continuous performance management. Dweba (2017, p. 408) defines performance management as evaluating the total sum of the performance contributions made by its individual employees in striving towards organisational goals. The success of an organisation, therefore, depends on the interface between planning and performance management. This is the crux of an optimally functioning organizational performance system.

Performance information gathered must be utilised as a resource for critical decision-making. As it has been demonstrated in the foregoing discussions, the lack of effectiveness of control systems compromises accountability in various organs of state. Consequently, the culture of accountability and performance needs to be enhanced through existing legislative and performance measures in place. Performance objectives need to reflect the integrated reporting demanded of modern-day corporations and organisations and not only financial performance.

The disclaimers that the NWDC has repeatedly obtained over the past 10 years reflect an absence of intent to implement sound financial systems. Section 51 of the PFMA requires an accounting authority to ensure that such financial systems are in place. Change management needs to be instituted in the whole organisation in order to recalibrate the organisation to its intended purpose. The need to strengthen financial management in the entity cannot be overstated.

SOEs fall within the scope of both the Companies Act and the PFMA. The PFMA prevails if there is a conflict between two pieces of legislation. It is therefore necessary to streamline the reporting channels of SOEs by removing any ambiguities in legislation. In practical terms, SOEs are accountable to different ministries, thereby straddling various political lines. SOEs may be accountable to a board, department or a holding company and this multiple reporting often makes accountability less robust. Vicente (2020, p. 128) termed this reporting dichotomy a *multiplicity of principals*, following his study of the Portuguese public transport agency, wherein he argued through the agency theory that SOEs have an increasing problem as they have to account to a set of principals distributed among the four elements of corporate governance, namely: management, control, supervision, and accountability.

In this case, agents, who are managing organisations on behalf of principals, can retain information and hide their adverse actions that are not in the best interest of organisations. There is, therefore, a need for streamlined reporting by SOEs. The NWDC multiplicity of principals includes its parent Departments for Economic Development, Environment, Conservation and Tourism Finance, Economy and Enterprise Development. This is in addition to the board and executive management headed by a CEO. The board appointed in April 2021 consists of 10 directors drawn from varied fields,

such as development finance, local and provincial governance, corporate, trade unions.

There does not appear to be an acknowledgement from the review of CG practices in the NWDC that overall accountability for the SOE resides with the board. Despite the regulatory framework is clearly defined in the Constitution and various Treasury regulations and entity-specific codes of conduct, there often have not been any consequences for non-compliance. The Auditor-General argues that by acting consistently and purposefully against those officials who deliberately fail to comply or are guilty of fraud or misconduct, transparency in government spending can be strengthened (AGSA, 2017). The PFMA requires management to investigate matters of waste and misconduct and take appropriate action. As was demonstrated by the findings of the research, there are negligible (not more than five) instances of disciplinary cases against implicated or negligent officials. Consequence management would therefore be the realisable short-term objective in the NWDC.

The board is required by section 50 of the PFMA Act to act in the financial interests of the entity. The executive authority responsible for the NWDC needs to hold NWDC board to this principle. All levels of the public sector need to be permeated by the values of selflessness, integrity, objectivity, transparency, openness, fairness, and ethical leadership, particularly in SOEs, where the sense of public duty seems to have been lost (Maserumule, 2017, p. 310). Section 20(c) of the PFMA still considers the executive authority accountable for the performance of duties, even if these have been delegated to other functionaries in either departments or public entities. In the case of the NWDC, there does not seem to have been political and legal accountability by political office bearers and officials even in instances where malfeasance has been discovered and reported. This deficit in ethical leadership accounts for the state of the NWDC, wherein transgressions of rules have not resulted in consequences for both board and staff of the entity.

Gawthrop describes the public service ethos by arguing that, "to labour in the service of the state is to recognise that all of us are called, in varying degrees of responsibility, to be watchmen, sentinels, or prophets for others any others, as well as for one another, in attempting to attain the common good" (as cited in Maserumule, 2017, p. 310). The NWDC board should be reminded of this adage.

6. CONCLUSION

The paper utilised a qualitative desktop approach drawing on an extensive review of literature from solicited documents on corporate governance in South Africa's SOEs. It explored the extent to which corporate governance codes and practices have been observed in the NWDC, identified corporate governance implementation challenges faced by the NWDC and recommended strategies and mechanisms for enhancing good corporate governance in the NWDC. It addresses the forecast of the Auditor-General which underlines the ineffectiveness of the existing SOEs governance system by not inherently correlating corporate

success with the presence of deeper corporate governance standards and ethical behaviour.

The thematic analysis of official documents showed the main challenges facing CG in the NWDC to be the prevalence of unauthorised, wasteful and fruitless expenditure; inconsequential lack of consequence management; lack of strategic direction of the NWDC, unclear political oversight and the general board failure, which is a key feature.

The NWDC board has not lived up to this expectation. Agency costs suffered by the corporation seem to cascade down all levels of the organisation. The outcome of the review reveals that the board has simply misdirected the entity. The Provincial Treasury, however, has acknowledged the poor state of financial governance in provincial entities and has announced that future transfers to all entities and departments alike would be dependent on the implementation of remedial actions by affected departments and entities (South African Government, 2019).

If corporate governance connotes to how organisations are directed and regulated, it is evident that the NWDC accounting authority (board) has failed to reach the anticipated level of conduct in the performance of its responsibilities. The lack of consequence management is an indictment on the board's perceived and understood obligations towards the shareholder and society in general. The PFMA obligates the board of directors to maintain adequate accounting and financial records.

The study recommends the adoption of an effective performance management system and control in order to improve corporate governance standards within the NWDC. Consequently, there is a need to institute change management in enhancing the financial management capacity of the institution. Other necessary strategies include consequence management and ethical leadership.

The paper is relevant in addressing the Auditor-General qualified audits, which underlines the ineffectiveness of the existing SOE governance system by not inherently correlating corporate success with the presence of deeper corporate governance standards and ethical behaviour.

The paper utilized documents to analyze corporate governance implementation in the NWDC. The documents were necessary to capture salient accountability issues, which could not be captured by utilizing alternative methods such as interviews. The major challenge in documents analysis has been the unwillingness of NWDC management to make some documents available that are not in the public domain, due to circumspect ethical issues. The researcher was therefore circumspect in assuring the ethical usage of the collected data. This paper provides a framework for future research on corporate governance implementations in South African SOEs.

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