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State-owned Enterprises in Southern Africa: A Stocktaking of Reforms and Challenges

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ABSTRACT

State-owned Enterprises in Southern Africa: A Stocktaking of Reforms and Challenges

By Sara Sultan Balbuena*

This report is the first known stocktaking of its kind to provide a regional overview of state-owned enterprise (SOE) governance reforms and challenges across the Southern African Development Community (SADC) region. Part One summarises the challenges and governance practices related to state-ownership across SADC economies; it draws conclusions on how to address common regional priorities. Part Two of the report is organised around country profiles providing a fact-based assessment of SOE reform policies and practices in 14 economies. The report was prepared at the request of the Southern Africa Network on Governance of State-Owned Enterprises – a regional cooperation initiative aimed at improving the corporate governance of SOEs, and mainly covering the member economies of the SADC region. The stocktaking was prepared based on information self-reported by authorities in participating economies and supplemented by desk research.

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ABOUT THIS REPORT

This report is organised as follows: Part One summarises the overarching role and challenges related to state-ownership, examples of reform efforts and governance practices, and draws some conclusions on how to address common priorities in the Southern African Development Community (SADC) region. Part II of the report provides a country-by-country overview of SOE reform. Each country chapter is organised around a brief description of the size and composition of the SOE sector; the history of recent SOE reform; the institutional, legal and regulatory framework for SOE governance; and concludes with some reflection on specific national reform challenges.

The report is based on a combination of desk research and information self-reported by the relevant authorities. The countries covered by the report include: Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

The report was prepared at the request of the Southern Africa Network on Governance of State-Owned Enterprises – a regional co-operation initiative aimed at improving the corporate governance of SOEs, and mainly covering the member economies of the SADC region. See our website for more information about this initiative www.oecd.org/daf/ca/soe-africa.htm.

PART I

1. Introduction

Most Southern African countries have business sectors consisting largely of resource-based activities (including farming and fishing), small private companies and state owned enterprises (SOEs). SOEs are one of the largest segments of the economy. Although the weight of SOEs in economic activity varies from country to country, data collected by the World Bank just over a decade ago suggest that SOEs accounted for close to 20% of the total non-agricultural economic activities in an average low-income developing country. In certain economies that have transited from a formerly state-socialist economic model the share remains above a third.

SOEs play a vital role, first, in terms of the direct services they provide. The population's access to water, electricity, sanitation and transportation is in most developing economies almost entirely dependent on the state, operating through corporate vehicles. In addition, SOEs are among the main sources of urban employment in developing countries. While the State's enterprises should not play a role as "employer-of-last instance", they can play an important role in upgrading labour skills and raising social standards through appropriate policies of corporate responsibility. Their importance (and, as corollary, the importance of having well-governed SOEs) is further compounded by the fact that they tend to be concentrated in "strategic" sectors, including infrastructure and utilities (e.g. air and rail transport, electricity, gas, and water supply, broadcasting, natural resource extraction, telecommunications), in addition to finance (e.g. banking and insurance) which are crucially important to the competitive position of most of the private sector economy.

Table 1. Performance Challenges in SOEs

Challenge	*Description*
Inadequate capitalisation	SOEs rely on debt and finance to fund basic operations, but this may not be enough to fund capital intensive projects especially rehabilitation and upgrading of infrastructure in the utilities and network industries
Below-cost pricing/cost recovery	Tariff structures may need to be revisited if tariffs are kept artificially low and prevent full cost-recovery by SOEs. Compensation may be required for non-commercial services
Remnants of poor investment decisions	Remnants of initial investment decisions in industrial and commercial SOEs; lack of ability to adjust to changing market conditions.
Collection deficiencies	SOEs have been underfinanced partly because they have not been able to collect on services (historically).
Inadequate reporting systems	Inadequate reporting and monitoring does not allow for transparency and accountability surrounding SOE cost structure. It further does not help expose where SOEs may be over or under financed, and it ultimately shields SOE from misuse of public budgets, corruption, and from revealing where inefficiencies may exist.
Deficient boards of directors	SOEs' boards may require further professionalization and shielding from the political apparatus.
Other shortcomings	Encouraging and attracting talent in SOE boards and in SOE management. Upgrading or downsizing SOEs to ensure efficient functioning.

Source: Adapted from Nellis (2005).

Many Southern African economies have placed SOEs at the centre of their national development strategies. This is partially a response to disappointment with the outcomes of privatisations and structural reforms programmes in the 1990s. There has been a growing trend to rely on SOEs to remedy market failures and remove direct obstacles to development. In parallel, governments are also pursuing important reforms aimed at promoting competition, boosting private sector development and improving international and regional trade and investment. Some distinct challenges (to a varying degree according to national context) remain for improving SOE performance, as summarised in Table 1.

2. Similar reform paths

Most of the economies across Southern Africa have followed similar reform paths. Through the 1990s and 2000s most governments began by deregulating sectors in which SOEs operate and restructuring state-owned firms as part of broader structural reform policies. In most cases this "marketisation" was seen as a precursor to privatisation. Ultimately the focus of the process changed from privatisation toward improving the efficiency and effectiveness of SOEs slated for continued government ownership (and in some rare cases out-right re-nationalisation). There were several reasons for this, including the unpopularity of privatisations in some national constituencies and unexpected difficulties with privatising large SOEs in key sectors - especially public utilities.

While outright privatisation may be off the table in many of the SADC economies, the process of gradually opening up sectors predominated by SOEs and encouraging private sector participation has continued. In addition, private sector actors are increasingly seen as partners in the delivery of goods and services previously reserved for SOEs. These arrangements are through concessions and other forms of public-private partnership (PPP). This reorientation has been occasioned by several policy considerations. First, governments have sought to redirect funds previously used to subsidise SOEs toward other essential purposes. Secondly, private participation has been considered as a means to enhance management and supervisory structures of SOE, to develop local markets and to facilitate technology transfer through foreign investment. Thirdly, private sector participation is seen as a means for SOEs to raise capital, especially in the absence of developed stock markets.

Some concerns have been expressed regarding the effectiveness of these approaches, including the managerial and technical capabilities of the participating SOEs. Irregular practices including conflicts of interest and outright corruption have also been alleged, especially in public procurement practices, privatisations and market segments opened up to private competition. Thus, attention has once again been placed across the SADC region on rationalising state ownership, establishing clear ownership policies underpinned by a coordinated ownership function, and supported by sound corporate governance principles and practices. Such approaches and remaining governance challenges are discussed below.

3. Governance approaches to similar challenges

This section is organised around six main issues that broadly cover the corporate governance priorities that have been raised in the context of the Network's deliberations. It attempts to summarise the current governance approaches and challenges across SADC economies, and draws on country practices. The sub-sections chapters are organised as follows: (1) the legal and regulatory framework for SOEs; (2) the role of the State acting as owner; (3) the treatment of non-government shareholders and private participation in SOE activities; (4) relations with stakeholders, corporate ethics, and anti-corruption; (5) transparency, accountability and disclosure; and, (6) SOE board practices.

3.1 The legal and regulatory framework for SOEs

A consistent and coherent legal and regulatory framework is a key aspect of ensuring accountability of both the State acting as owner and the SOE itself, in that it establishes a clear division of responsibilities, objectives and expectations. In order to have a consistent framework, the government should ideally take stock of its SOE sector, and categorise those with a commercial purpose from those with a non-commercial or regulatory purpose (including agricultural "boards" or authorities).

Box 7. Malawi Sector Guidelines: Defining and categorising SOEs, parastatal organisations and other entities

- A **Parastatal Organisation** is a public (wholly government-owned) corporate body that has been set up for a specific purpose. Parastatal organisations are clearly separated from the regular government administration and are given sufficient autonomy to pursue their objectives in a flexible manner. They are autonomous public bodies, without shareholders but controlled by the government exercising its rights and responsibilities as owner. Its objectives can either be fully social and public, or mixed social/public and commercial.
- A **Statutory Corporation** is an autonomous public corporate body set up under a special Act of Parliament (or of other legislative authority) or otherwise created by statute (truest deed or a fund order).
- A **State-Owned Enterprise** is a company established according to Company or statutory laws. It can be wholly or partially owned, with the government having a significant level of controlling ownership. SOEs have a mainly commercial objective, with an expectation to earn profits and bring in a revenue stream to the government budget.

These entities can be further broken down into three types of categories depending on their degree of funding/subsidisation by the State Budget and commercial versus non-commercial objectives:

- **Fully subsidised entities carrying out social/public objectives**: These entities are fully funded/subsidised by the government/state budget and have no insignificant sources of revenue. They have a fully social and public objective character. None of their objectives have a commercial character and there is no potential for competition with/from the private "for profit" sector.
- **Semi-commercial or partially subsidised entities carrying out mixed social/public and commercial objectives**: These are entities are partially funded/subsidised by the government/state budget and partially use their own sources of revenue. They have both social/public and commercial objectives. Some of their objectives have a commercial character with a potential for competition with/from the private "for profit" sector.
- **Commercial entities with mainly commercial objectives**: These entities are not funded/subsidised by the government/state budget and fully use their own sources of revenue. Entities that have mainly commercial objectives as part of their core objectives and there is (a potential for) competition with/from the private "for profit" sector. Such entities are expected to earn profits and earn revenues for the State budget.

Source: Adapted from Malawi Code: Sector Guidelines for Parastatal Organisations and State Owned Enterprises (2011).

Classifying SOEs and legal status. All the countries covered by the report have a "mixed bag" of SOEs, including those which are incorporated according to ordinary company law, those which have been established according to special and statutory laws (i.e. acts of parliament or other establishing legislation), and other types of entities which are embedded in general government and in many cases mostly perform non-commercial functions (Table 1). In statistics language these would be characterised as "quasi-corporations", but in practice they are often referred to as "parastatals" or "public enterprises". In most cases, there is no consistent application of a legal framework (although in Malawi the SOE Code sets out one, see Box 1). The "mixed bag" of entities reflects a number of factors, including entities inherited from

previously planned economies or institutional forms inherited prior to independence. Thus, in most cases a consistent and harmonious framework is lacking due to historical factors. Some countries are working towards systematically commercialising and corporatising their SOEs, updating company laws and/or enacting SOE laws to harmonise disparate legal and regulatory frameworks. Another interesting feature among the SADC economies is the categorisation of regulatory entities or specific sectoral "boards" as SOEs/parastatals. Although these entities carry out regulatory functions, they are often counted as part of the government's SOE portfolio.

Separating the ownership function from other functions. Another related issue is the separation of regulatory from the ownership and other functions. This includes the presence of an autonomous competition authority. In so-called SOEs which are in reality regulatory entities this point is moot, but commercial enterprises in some countries are overseen by government bodies which also retain regulatory functions (i.e. line ministries or agencies that own SOE and also regulate activities in the same sector). The establishment of autonomous regulatory bodies is currently in progress in Angola, DR Congo, Lesotho, and Swaziland; such bodies have already been put into place in Malawi, South Africa, and Zambia. Most jurisdictions have established autonomous competition authorities.

Corporate governance codes and ownership policies. One of the most pressing challenges in the region is arguably to establish clear ownership policies. An ownership policy, specifying the purpose of state ownership and the expectations of the state, is prerequisite to providing individual SOEs with clear objectives, both commercial and non-commercial, and that the government, acting as owner, is guided by a consistent and coherent approach. For some countries, the establishing legislation for SOEs may pose a constraint, while for others the challenge is the lack of clear categorisation of SOE activities and subsequent separation between social/developmental and commercial activities. A number of countries (DR Congo, Malawi, Mauritius, Mozambique, South Africa, and Zimbabwe) are working towards establishing ownership policies and/or reinforcing their governance practices through the establishment of governance codes applicable to SOEs and other public commercial entities. (See Box 2)

Box 8. Existing national SOE codes or guidelines in the Southern Africa region

Democratic Republic of Congo : 2013 Rules of Good Governance Relative to SOEs Incorporated Under Company Law (*Règles de Bonne Gouvernance Relatives aux Entreprises Publiques Transformée en Sociétés Commerciales)*

The guidance is intended to complement the existing laws, statutes and regulations applicable to SOEs incorporated under Company Law. Their implementation is mandatory for all commercial SOEs. The guidelines are organised around eight principles of good governance and address issues relative to the governance of SOEs given that the State is the only Shareholder. The eight principles address transparency and accountability: SOE board governance; executive management governance; shareholder governance; financial reporting and performance; internal audit; stakeholder relations; and external communication.

Malawi: 2011 Sector Guidelines for Parastatal organisations and State Owned Enterprises

The sector guidelines were developed by the Institute of Directors (IoD) at the request of the National Corporate Governance Review Committee to clarify how the Malawi National Code of Governance II applies to parastatals and SOEs. They provide specific definitions, guidelines, best practices and in some cases more stringent requirements for their implementation. Although tailor-made, it draws from international good practices, including OECD's Guidelines. Their aim is to facilitate systematic promotion and monitoring of compliance by the Department of Statutory Corporations, in cooperation with the Ministry of Finance's Public Enterprise Reform and Monitoring Unit.

Mauritius: 2006 Guidance Notes for State-Owned Enterprise

The Mauritius guidance for SOEs is derived from the national Code of Corporate Governance (based on the OECD Principles for Corporate Governance). It aims to provide solutions to distinct governance challenges faced by SOEs including accountability, monitoring board performance, risk management, internal control and audit, stakeholder communication, etc. SOEs are required to comply with the provisions of the code.

Mozambique: 2009 Guide on Corporate Governance Best Practices in State Shareholding Enterprises

The guide was developed by the ownership entity (IGEPE) in collaboration with participating companies as means to promote better management of state assets through corporate governance. The guide introduces the philosophy guiding the ownership entity vis-à-vis state ownership, the corporate governance values on which it is based, and the role of State in the economy. It is followed by substantive recommendations covering eight key areas, including the State as shareholder, general assemblies and the treatment of minority shareholders, management and board supervisory structures, special committees; audit, relationship with stakeholders, and other company practices related to the functioning of the company. The guide draws on international experiences and the OECD SOE Guidelines.

Zimbabwe: Corporate Governance Framework (CGF) for State Enterprises and Parastatals

The CGF were designed around four pillars of corporate governance which are responsibility, accountability, fairness and transparency to promote the efficient use of public resource and accountability for stewardship of SOEs. The CGF is binding for all SOEs in Zimbabwe and compliance is to be monitored by relevant bodies. It draws on the national philosophy of Ubuntu, but also draws on other regional and international codes including the OECD SOE Guidelines.

South Africa: 2009 King Code for Governance

Application of the King III Code is mandated by sector-specific laws or regulations (such as by the Limited Listings Requirements of the Johannesburg Stock Exchange (JSE). Although no specific implementation guidelines have been developed for SOEs, the King Code does refer to recommended practices for SOEs; compliance is only required for those which are listed on the JSE.

Sources: Government of Mauritius (2006), Government of Malawi (2011), Government of Zimbabwe (2010), South African Institute of Directors (2009).

Table 2. Legal and Regulatory Framework for SOEs

	Classifying SOEs and Legal Status			Overall ownership policy	National SOE guideline or code	Competition authority	Ownership function separate from regulatory functions	Categorisation of commercial and non-commercial entities
	Incorporated SOE (Company/ Commercial law)	Statutory legislation	Non-commercial entities/ Regulatory bodies/Boards/ Authorities/ mixed bodies					
Angola	✓	✓	No	✓	No	No	✓	No
Botswana	✓	✓	✓	In progress	No	✓	No	No
DR Congo	✓	✓	✓	No	✓	In progress	In progress	✓
Lesotho	✓	✓	No	No	No	No	In progress	No
Malawi	✓	✓	No	✓	✓	✓	✓	No
Mauritius	✓	✓	✓	No	✓	✓	✓	In progress
Mozambique	✓	✓	✓	✓	✓	In progress	✓	No
Namibia	✓	✓	✓	No	No	✓	No	No
Seychelles	✓	✓	✓	No	No	✓	In progress	In progress
South Africa	✓	✓	✓	✓	✓	✓	✓	In progress
Swaziland	✓	✓	✓	No	No	✓	In progress	No
Tanzania	✓	✓	✓	No	No	✓	No	No
Zambia	✓	✓	✓	No	No	✓	✓	No
Zimbabwe	✓	✓	✓	No	✓	✓	In progress	No

3.2 The State acting as an owner

A crucial question when addressing the role of the State as an owner is what precise agencies of government are tasked with exercising the ownership rights. Internationally, three ownership models predominate namely (1) centralised ownership with one ownership agency or dedicated unit in a government ministry; (2) dual ownership with one line ministry and one economic ministry sharing the ownership role; and (3) decentralised ownership, where individual line ministries look after their "own" enterprises – ideally (but in practice not always) subject to government coordination at the Cabinet level. A hybrid solution has in some cases included decentralised ownership combined with a coordinating agency – with distinct national differences regarding the agency's powers to "coordinate".

Table 3. Organisation of the ownership function across SADC economies

	Typology of the ownership function	Characteristics/Challenges	Institution/Country
Centralised	**Full centralisation /coordination**	Pooling of ownership responsibilities over a portfolio of SOEs into one single entity/Ministry.	**DR Congo:** Ministry of Portfolio* **South Africa**: Department of Public Enterprise* **Mozambique**: IGEPE* and the National Treasury for Public Enterprises
	Dual ownership and Coordinating/ advisory body	Line ministries are controller of SOEs and Ministry of Finance/Economy acts as a Shareholding ministry, with an arm's length agency or MoF unit acting in an advisory capacity to line ministries on technical and operational issues, in addition to being responsible for performance monitoring.	**Angola**: Institute for Public Sector Enterprises **DR Congo**: COPIREP (advisory body for reform) **Lesotho**: Privatisation Unit (MoF) **Namibia**: SOE Governance Council Secretariat **Seychelles**: Public Enterprise Monitoring Commission (PEMC) (MoFTI) **Swaziland**: Public Enterprise Unit (MoF) **Zambia**: Investment and Debt Management Unit (MoF)*
Decentralised	**Full decentralisation and an advisory body**	Dispersed ownership across line ministries and departments. Line ministries are controllers. In some cases, an advisory body reports to the Council of Ministers/ Prime Ministry/Presidency with an advisory and performance monitoring role.	**Botswana**: Public Enterprise Evaluation and Privatisation Agency **Malawi**: Department of Statutory Corporations **Mauritius**: Office of Public Sector Governance **Zimbabwe**: Ministry of Finance, State Enterprise Restructuring Agency*
	Other	For example, holding company structure.	**Tanzania**: Consolidated Holding Corporation
	* Relevant for a portfolio of companies. Other governance arrangements may exist at other levels of government or at the sub-national level. Source: Author.		

The *OECD Guidelines on the Corporate Governance of SOEs* recommend a central organisation – or at least a strong coordination – of the ownership function. However, this recommendation is made in a specific economic and administrative context that may or may not be applicable to the SADC region. Centralised ownership may be either an advantage or a challenge ― depending on the strength of existing governance frameworks; the size and volume of SOE portfolios; and the resources, capacities and integrity of the ownership function. The question of whether to favour a centralised ownership function versus a decentralised or dual structure has not been sufficiently tested in practice among Southern Africa economies. Moreover, if an ownership function is established then its focus should normally be commercial enterprises, while fully non-commercial entities (e.g. regulatory authorities and non-profit institutions) are placed within the activities of general government.

The centralised model amid political uncertainty. One of the main purposes of centralising ownership is that it facilitates a full separation of the State's roles as owner and regulator. However, in some cases it might actually have the opposite effect – e.g. if the central levels of government also exercise considerable regulatory powers. As mentioned, in most jurisdictions the volume of SOEs is also considerable. Thus, the ownership function must be adequately resourced, and in some cases equipped to manage large portfolios of companies with vastly different sectoral orientations (for example, depending on the level of "inheritance" of SOEs from formerly planned economies). Where there is weak oversight and co-ordination at the central levels of government, the centralised model could move expertise and competencies which already exist away from line ministries and SOEs.

Weaknesses of the decentralised model where there are multiple and competing objectives. On the other hand, where there is fully decentralised ownership, the government may lack a clear ownership policy – and it may even not have a full picture of its state-owned sector. As such it cannot fully rationalise in which sectors it wants to retain state ownership and which forms of state ownership are most suitable. A decentralised model may also detract from broader development objectives especially where SOEs are entrusted to carry out both commercial and non-commercial obligations to meet the national developmental agendas (which is often the case among SADC economies).

Among Southern African economies the tendency has been to transform agencies formerly tasked with privatisation into bodies mandated to coordinate the ownership function. In some cases the ownership function is centralised, while in others it is decentralised, with varying levels of capacities and enforcement powers. The most prevalent model is to have a dual ownership of SOEs, entrusted to line ministries and the shareholding ministry (often the Ministry of Finance), with an arms-length coordinating or advisory body providing technical and operational support. Not all SOEs fall under the portfolio of companies coordinated by these agencies, but the largest are mostly included. Table 3 attempts to capture the various typologies and characteristics of the ownership function across the 14 economies covered by this report.

3.3 Broadening the ownership or management of SOEs: Equitable treatment of shareholders and private participation in SOE activities

Governments have often found that broadening the ownership (even through the issuance of small minority stakes) in SOEs can be helpful in raising corporate governance standards. However, when doing so the State must ensure that minority shareholders are treated fairly and equitably. The same thing applies when SOEs enter into joint ventures and other forms of partnership with the private sector. This is a priority issue for the region not least because governments in the region are turning to private capital for funding (especially for big infrastructure projects). Private capital can be raised by selling shares to "strategic investors",

floating minority shares of SOEs on stock markets (this may be less prevalent in some countries with less developed capital markets) and other arrangements where the activities of SOEs are transferred to private actors as substitute for privatisation (e.g. through concessions, delegated management contracts, leasing or other forms of public-private partnership).

Listing practices of SOEs. Internationally, the issue of equitable treatment of shareholders has moved further to the forefront because governments increasingly use the rigours of stock market listing to enhance SOEs' corporate governance and performance. (Some governments also list SOEs as a means to develop local capital markets.) Although the Southern Africa region has relatively less experience with this type of governance arrangement (Mauritius, South Africa and Zambia), the issue deserves particular attention especially to ensure appropriate governance frameworks prior to and following listing.

SOEs as managers, providers and partners with the private sector. In the Southern African economies SOEs often engage in partnerships with the private sector – especially in the infrastructure sector. Governance arrangements involving private sector participation differ among countries and within jurisdictions depending on the sector which is concerned. Some governments have brought in the private sector to complement state-owned and provided infrastructure provision (e.g. Botswana, with a mostly traditional approach to infrastructure procurement); others have focused on privatisation and divestiture (e.g. Zambia, although there have been some recent policy reversals); a third group has preferred to maintain control of strategically important companies (e.g. Mauritius which has nonetheless encouraged its SOEs to function on commercial principles and increasingly on a cost-recovery basis); finally, a fourth group has alternated among the various arrangements (e.g. Tanzania and South Africa which have introduced public-private partnerships in several infrastructure markets but not across the board). (OECD, 2012)

It would appear that a number of inefficiencies and implementation shortfalls in the partnership between public and private sectors have arisen. These have been attributed by analysts to factors including: poorly defined regulatory frameworks, under-capacity in the public sector to manage the risks and complexity of public and private procurement contracts, insufficient upstream infrastructure project preparation, underestimated contingent liabilities falling on the public partner, and poor public-private communication. One implication is that such approaches should not be embarked upon without an assessment of the SOE's performance and capacity for infrastructure deployment vis-à-vis the private sector. This involves assessing the comparative advantage of each actor in providing the service with a view to optimal risk-sharing and to securing maximum value-for-money for end-users; accurately calculating the long-term fiscal implications of projects throughout their lifetime; designing a compensation mechanism for the public or private infrastructure provider, based on performance and accounted for in a transparent manner; and monitoring performance of both the SOE and of private actors on a regular basis.

3.4 The role of stakeholder, corporate ethics and anti-corruption

Stakeholder relations are an important aspect of SOE governance. These obligations include those which are of a contractual and, where applicable, fiduciary nature toward creditors and employees. The issue also comes to the forefront where SOEs are delivering on public service obligations, which concern citizens as the ultimate shareholders, and where they operate in high-risk activities where the needs of affected communities deserve special attention. Building sound stakeholder relations is part of ensuring that SOE operations are sustainable, financially sound and commonly accepted.

In the Southern African region, the operation and governance of SOEs are important societal concerns which must be addressed through stakeholder consultations. Where stakeholders have not been adequately consulted this has occasionally led to disruption in the SOEs operations. Thus, as also recommended by OECD's Guidelines, a case could be made that stakeholder rights should be explicitly established by law or through mutual agreements, and that SOEs should be required to report on their relations with stakeholders. Mapping stakeholder relations will also avoid "capture" by specific constituencies, as it ensures that all relevant stakeholders have been identified; and that the extent or limits to their rights, powers and interests in the company have also been determined. Across the SADC region different models for stakeholder relations exist, and depending on the company, different stakeholders also exist. These practices are summarised in Box 3.

Corporate ethics and the need to curb corruption in SOEs. Existing Southern African SOE guidelines generally also refer to ethics as a cornerstone of good corporate governance. In Malawi, Mauritius and Zimbabwe the national SOE guidelines have specific sections dealing with ethics, starting from the responsibility of the board, but going beyond to the conduct of management and employees, and other stakeholders affiliated with the SOE. A parallel issue is curbing corruption, which is as much linked to ethics as it is to transparency, accountability and disclosure (section 3.5 below) practices.

Box 9. Stakeholder relations as defined across SADC economies

In Mauritius, the Guidance Notes for SOEs formulate the relationship with stakeholders, including the need to communicate with stakeholders through their Annual Reports, and the boards' responsibilities vis-à-vis stakeholders.

In Malawi, the Sector Guidelines for SOEs require that, stakeholders, including competitors, should have access to efficient and impartial redress when they consider that their rights have been violated by a SOE or parastatal. The guidelines further recommend that if there is a need to involve a large number of stakeholders, the government could consider creating a "Stakeholder Advisory Committee" providing a structural basis for strategic interaction between the Board and a broader forum of representatives from stakeholder organisations. SOE must develop and publish a client service delivery charter, outlining its standards for service delivery and operational performance and its responsibilities towards clients and other stakeholders.

In Namibia, the 2006 SOE Act (amended in 2008) requires that stakeholders are consulted, and that their considerations be taken into account prior to restructuring a SOE.

In Zimbabwe, the Corporate Governance Framework for SOEs and Parastatals defines stakeholders broadly as shareholders (represented by the Responsible Ministers), the (former) Minister of State Enterprises and Parastatals, Boards of Directors, Management, employees, suppliers, customers, financial institutions, regulators, and communities at large.

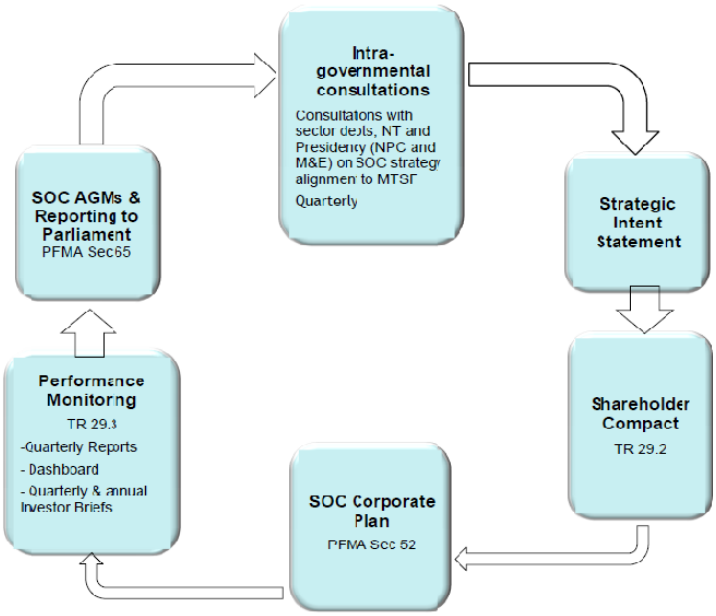
3.5 Transparency, disclosure and accountability

High standards of transparency, disclosure and accountability are among the most important and challenging aspects of SOE governance. These are recurrently cited among priority areas for reform – including by the ownership functions themselves – across the Southern Africa region. The basic challenge is to ensure that SOEs are fully accountable vis-à-vis national fiscal budget processes. Where SOEs carry out public service obligations alongside their commercial obligations, these should be directly compensated by the State. In some jurisdictions, SOEs enjoy a privileged position in the marketplace as a means to compensate for public service obligations – this however, is a less transparent means of keeping SOEs accountable for any non-commercial objectives that they are carrying out.

Almost all the reporting economies have some form of legal requirements concerning transparency, disclosure and accountability. Arguably the most sophisticated model is found in South Africa (see Figure 1), based on a full cycle of planning monitoring and evaluation. Good practice starts from setting objectives; reviewing performance; auditing performance; reporting on performance; and ensuring adequate transparency and disclosure at the company level. Most SADC economies have some form of a Public Financial Management Act (PFMA) (modelled after the South African eponymous Act) which has specific provisions holding public undertakings (in which ever form they take) accountable to the public budget process (and beyond what is required by the Company Act, if applicable).

Figure 1. SOE oversight in South Africa

Planning, monitoring and evaluation cycle



Source: Government of South Africa (2012).

Use of performance contracts. A common way to manage SOE performance in the SADC region has been through the use of "performance contracts" (also called "management contracts" in some jurisdictions and/or implemented as part of a "corporate plan"). Performance contracts are effective if the SOE is fully transparent about its cost structure and the State clearly identifies its objectives/expectations for the company. This ensures that the Board (or, as the case may be, the SOE management) is held accountable with specific objectives and performance targets to which all board members commit and includes possible remedial action in the case of non-performance. A system of indicators is often used to measure performance, with a system of incentives for senior management where performance targets are met (Box 4 provides an example from Mozambique).

Compensating for non-commercial objectives. Another important issue to consider is the degree to which commercial and non-commercial activities of SOEs have been identified and

separated in the cost structure of the undertaking[1]. This will allow governments to account and compensate adequately for public service obligations, and may help ensuring that no undue advantages or disadvantages are afforded to the entity charged with carrying out such obligations. Public service obligations should be included as one of the performance targets identified for SOEs; as such performance contracts can be used to compensate SOEs transparently for fulfilling special obligations through the state budget. Compensation should be structured in a way that avoids market distortions (especially if the SOEs are in competitive sectors of the economy, or where there is potential for competition). In some cases, the oversight of performance contracts has been awarded to a private third party (i.e. management consultancies). The risk is that the use of such outsourcing may undermine the oversight function of the coordinating agency/body.

Box 10. Mozambique: IGEPE "Performance Contract" Indicators

Mozambique's ownership coordinating agency, IGEPE, is developing a set of performance indicators to be agreed with SOE governing bodies at the beginning of their term. The contract includes objectives which are measured with indicators used to evaluate managers' performance. These objectives include:

- Financial results;
- Share dividend distribution:
- Process and product development;
- Investment and reinvestment plans;
- Best practice implementation; and,
- Improvements to human capital and organisational management.

3.6 SOE board practices

Boards play a central function in the governance of SOEs. The board carries ultimate responsibility, including through its fiduciary duty, for SOE performance. Whilst formally located within the SOE it acts essentially as an intermediary between the State as a shareholder, and the company and its executive management. For this and other reasons it is important to clearly identify the role of board of directors; and ensure transparent and consistent procedures and practices for board nomination and appointment. Most jurisdictions also are faced with challenges concerning board composition and remuneration; in addition to moving towards performance oriented boards. Also important, but perhaps secondary (depending on the jurisdiction) is board training and evaluation.

Across the reporting economies a number of challenges remain concerning SOE board practices. In most jurisdictions, civil servants (and sometime Ministers or other persons related to the executive powers) sit on boards – thus the question of board independence is of real concern. This is partly related to board nomination and appointment processes. In some jurisdictions, board appointment processes are subject to significant political controls (e.g. wholesale replacement of the board where there is change in government). There needs to be a clear distinction between policy makers and SOE directors (particularly government nominees drawn from the private sector), as to the respective roles that they can and should play, the

[1] This is based on the assumption that the State has clearly communicated its objectives to the company, and that commercial and non-commercial activities have been clearly identified and separated.

challenges that they face and how they might better interact. The Malawi Code has developed extensive guidance on this topic, including defining an "independent" board member. In other jurisdictions, SOE board expectations are more explicit in the form of "board charters" (Botswana).

Board remuneration is another constraint, especially where limits pose challenges to attract talented independent directors. Some jurisdictions are developing practical guidance in order to streamline methods to calculate remuneration of board members and the principles that underpin their pay scales (Namibia, see Part II).

4. Conclusions

Governments are the cornerstone of implementing an SOE reform agenda in any context. In Southern Africa, this challenge must be set against the broader issues of political governance, and requires particular attention to ensure that proposed reforms are achievable within current political and resource constraints and are matched to the cultural and legal. Among the SADC countries, the stage of reform varies considerably. Some countries (such as South Africa and Mozambique) have relatively sophisticated arrangements that can provide pathways for other countries in the region to emulate. Most countries are on steady reform paths and are working towards implementation of good practices; while others are still in a policy-formation stage. Regardless of these differences, some common regional priorities can be highlighted. These include:

- *Defining the role of public policy in rationalising the purpose of SOEs and their role in social and economic development.* One of the most pressing challenges faced by SOEs in the region is how to achieve sustainable balance sheets while also meeting socio-economic objectives that are requested by the government. For some countries, the problem is in the establishing legislation for SOEs, while for others the challenge is the lack of clear separation between social/developmental and commercial objectives.

- *Developing effective, coordinated and transparent ownership arrangements given the size and volume of SOEs. The categorisation of SOEs is fundamental to determine the role of the ownership function, and the legal status of SOEs.* The size and volume of SOEs is considerable in some countries, which poses a governance challenge for the ownership function(s). The sheer volume and coordination capacities required to manage such large portfolios may have an impact on the optimal configuration of the ownership function (i.e. central, dual or decentralised). It also highlights the need to clearly classify commercial versus non-commercial SOEs given the sometimes multiple and competing objectives SOEs are faced with.

- *Anchoring codes and other practices into law will help to ensure implementation.* One challenge is to ensure that SOEs are adequately independent from government intervention, while also meeting the stated objectives of the government as Shareholder. Clarifying the role of Ministers and government vis-à-vis the board and executive management of SOEs is an important aspect of this. Clarifying these roles, by anchoring codes and other practices into law can serve to hold responsible parties accountable for their actions.

- *Addressing the undercapitalisation of SOEs*. A common challenge remains the undercapitalisation of SOEs. Some SOEs are indebted because of a number of obligations imposed by the State, including delivering on service obligations at below costs (to appease consumer voices), while maintaining over-employment, and lacking

strategic investment. However, there is less of a practice in the region for SOEs to seek financing from the market, i.e. through debt financing, or through capital markets. A lack of developed capital markets make it difficult for SOEs to turn to private funding as an alternative. Undercapitalisation has had perverse consequences for some SOEs affecting their ability to participate as viable counterparts in PPPs and joint ventures, especially in large undertakings in the infrastructure sector.

- *Reinforcing board independence and clarifying the role of government as shareholder.* The issue of board nomination, appointments and composition is a challenge in virtually all jurisdictions covered by this report. Board nomination and appointment is beset by political interference, including cases of dismissal and reappointment of the board where there is change in government. There is a clear disconnect between policy makers on the one hand, and SOE directors (particularly government nominees) as to their respective roles, the challenges that they face, and how they might better interact.

- *Curbing corruption and corporate ethics.* Addressing the issue of anti-corruption and ethics is multi-dimensional, but it necessarily starts with good SOE governance practices. One of the challenges for the region is to ensure that corruption risks are identified. The role of independent boards of directors and their respective committees play a key role to ensuring reporting, disclosure and compliance with codes and policies on company ethics.

Addressing common priorities through a regional approach

To complement some of the ambitious reform programmes pursued at the national level, a regional approach to the governance of SOEs can help to address some of the common priorities cited above. Developing a regional consensus on good practice for SOE governance and agreed reform priorities can serve to help governments assess and improve the way they exercise ownership, while benchmarking their reform efforts with peer economies. Existing internationally applied recommendations for SOE governance (e.g. the OECD Guidelines on the Corporate Governance of SOEs) are not always relevant or applicable in the Southern African context; nor do they represent a shared regional consensus on SOE reform priorities. Regional SOE Guidelines are intended to be aspirational, and a helpful tool for national governments from which to draw and adapt national ownership practices. Good practices will serve to improve the governance and performance of SOEs, and promote competitive, transparent and more efficiently-run enterprises.

Until now, no Southern African regional benchmark for SOE governance has been developed. However a small number of national SOE corporate governance guidelines do exist. (Part II of this report describes, in more detail, national reform efforts.) The findings of this stocktaking support the approach of the OECD Southern Africa Network on Governance of State-Owned Enterprises – a regional cooperation initiative aimed at improving the corporate governance of SOEs, and mainly covering the member economies of the SADC region. a regional to develop regional Guidelines. This assessment underscores the need for a regional approach to compliment national reform efforts. Ultimately, regional guidelines can be a useful tool for the State exercising or coordinating the ownership function, but also for SOEs themselves, state-audit bodies, and other stakeholders with an interest.

PART II: COUNTRY PROFILES[2]

ANGOLA

1. Size and Composition of the State Sector in the Economy

In Angola the State remains active in a number of key economic sectors that are important in terms of size and development goals. The state sector in the Angolan economy is concentrated in the transport, telecommunications, energy and water, and, industry, geology and mining sectors. The state is also active in other sectors through both wholly- and partially-owned enterprises in fishing and agriculture; food logistics and distribution; social work; education and basic sanitation; hotels and tourism; financial services; ICT services; and construction.

2. History of SOE reform

The active role of the state in the economy partly reflects the inheritance of a planned economy that preceded its privatisation programme launched in the early 1990s under the auspices of a government task force, *Gabinete de Redimensionamiento Empresarial (GARE)*, set up to prepare the privatization of large enterprises. By 2000 the government privatised over 400 small and medium-sized companies, effectively liquidating around 29.5% of the Angolan state's participation at that time. Among some of the larger enterprises, the privatisation process was less effective as state assets were either reorganised or sold on favourable terms to insiders with political connections to the government (Aguilar, 2003).

From 2001- 2005, the government launched a second phase to its privatisation programme under the government's broader Economic Reform Programme, with the aim of further restructuring SOEs. The second stage of this process was based on the Privatisation Act when an additional 17 companies were privatised, and the remainder were put under management contracts. The second phase of the privatisation programme reportedly aimed at generating revenue for the State (amounting to 22.8 million U.S. dollars and 150-200 million U.S. dollars as additional investment). (Government of Angola, 2008)

Following 2005 reforms, the State has continued reforming the SOE sector with a view to divest where possible, but also with a view to improve the legal and regulatory environment in which SOEs operate. It also has set forth the "Pledge Contract" with the aim of rehabilitating SOEs and improving their performance according to an investment programme agreed together with the ownership entity. The current institutional, legal and regulatory framework governing SOEs are described below.

[2] This Part of the report is based on oral presentations made at the 3rd meeting of the OECD Network on the Governance of SOEs in Southern Africa held on 8-9 October 2012. It is supplemented by desk research and additional documentation provided by responding countries. The country profiles for Malawi, Tanzania and Zambia are almost entirely based on desk research.

3. Institutional, Legal and Regulatory Framework

Institutional Framework

The Angolan government exercises dual ownership of its wholly-owned SOEs. The ownership function is assured by the Ministry of Economy in coordination with the line ministries in charge of different sectors of economic activity (i.e. transport, mining, construction, finance, agriculture, etc.)[3].

Table 4. Typology of ownership structures in Angola

	Wholly-owned SOE	Partially-owned SOE
Incorporation	Statutory corporations (government decree)	Company law
Ownership	Dual ownership (line ministry and Ministry of Economy)	State holds Majority ownership

Respective line ministries are responsible for policy formulation and regulation as it concerns the sector in which the SOE operates. Respective line ministries exercise their function as dual owner by setting policy objectives; evaluating the plans and budgets proposed by the company; and taking part in board appointment and evaluation.

The Ministry of Economy formulates, coordinates and executes the State's overall ownership policy. It also proposes legislative and regulatory measures for the management of SOE assets, including for what concerns implementing the State's privatisation policy. The Ministry of Economy also approves and monitors PPP projects involving SOEs. The responsibilities are split between two entities operating in the Ministry. The Minister's cabinet houses a Technical Office for the State Entrepreneurial Sector (GTSEP) which plays a strategic and policy role vis-à-vis the ownership function. An arms-length agency called the Institute for Public Sector Enterprises (ISEP), established in 2009, is responsible for both technical and operational aspects of the ownership function, including policy execution, carrying out privatisations, monitoring and providing technical assistance to SOEs (box 5).

Box 11. Angola: Institute for Public Sector Enterprises

Government decree 37/09, established the Institute for Public Sector Enterprises (ISEP), an arms-length institution linked to the Ministry of Economy. ISEP is responsible for the technical and operational aspects related to the ownership function of SOEs. Its specific roles include:

- Evaluation of strategic, business and investment plans as well as annual and pluri-annual budgets of SOEs;
- Propose methods and standards for accountability and enforce the terms of accountability;
- Propose guidelines for the administration and control of the assets of SOEs;
- Evaluation of financial statements and reports of SOEs;
- Proposing inspections (probing) of SOEs;
- Keep updated technical, economic and financial data of SOEs; and,
- Propose the necessary tools to ensure the effective management of state shareholdings.

[3] The post-2005 reforms have also led to a number of financial enterprises previously under decentralised ownership to be transferred to the Ministry of Finance.

Legal and Regulatory framework

The current legislative and regulatory framework governing SOEs is the 1995 Law of Public Enterprises, the Regulation to the Law of Public Enterprises, and a 2010 Amendment to the Law of Public Enterprises. The current legal and regulatory framework is under consideration to govern the state enterprise sector, which will include new regulation and specific statutes on the remuneration of public managers. This SOE law provides only a partial framework, for provisions outside its scope, the company law prevails.

4. Challenges as identified by authorities

Some of the challenges faced in SOE governance in Angola include:

- Consistent monitoring and evaluation of SOEs performance;
- Cost and asset identification, including accounting for public assets (i.e. infrastructure), government transfers (i.e. in the form of subsidies or other);
- SOE board practices (i.e. appointment, remuneration and evaluation);
- Establishing performance contracts for State and SOE board members.

BOTSWANA

1. Size and Composition of the State Sector in the Economy

Botswana has undergone rapid economic development over the last decades; still the State has remained an important economic actor in a number of key sectors that are important to the economic fabric of the country. Botswana has 49 operational SOEs, of which 19 are commercial entities operating in a wide sphere of activities ranging from utilities including telecommunications, to meat-processing. The remainder of enterprises operate as non-commercial entities.[4]

2. History of SOE reform

The state-owned sector as it exists today is a remnant of a nationalisation policy embarked upon in the 1980s which put the State at the centre of industrial development policy. At this time, a number of parastatal entities were created to drive industrial development and orient resources previously devoted to agriculture to manufacturing and the services sector. It was further aimed at diversifying economic activity away from the mining sector. (OECD, 2013)

While state divestiture has gained prominence over the past two decades, the overall Government stance relies on the one hand, divesting where possible and on the other pursuing a strategy to improve SOE performance and efficiency. The gradual strengthening of the private sector in Botswana and the State's instrumental role in promoting it has been viewed as a way to phase out the State's role in the market place (Mothusi and Dipholo, 2008). In 2000, a privatisation policy was launched establishing the Public Enterprise Evaluation and Privatization Agency (PEEPA), an autonomous authority under the Ministry of Finance and Development Planning, aimed at carrying out the policy. However, this first privatisation process remained largely unsuccessful (OECD, forthcoming). In 2005, the government launched a five year plan for the implementation of the 2000 Privatisation Policy ("The Privatisation Masterplan"), which was less focused on privatisation as such, as with improving corporate governance of SOE and improving government shareholder oversight. In 2011, PEEPA commenced a review of the Masterplan with the aim of developing a new plan (Privatisation Masterplan II, 2013-2018). The revised Masterplan is currently under consultation, before being presented to the government for approval. The Draft Privatisation Master Plan II identifies services and public enterprises that are suitable for outsourcing and divestiture, including the Botswana Telecommunications Corporation (for which the first phase of privatisation was completed in November 2012).

3. Institutional, Legal and Regulatory Framework

Institutional Framework

Today ownership and oversight of SOEs remains decentralised under the auspices of the respective shareholding ministries. PEEPA plays a coordinating role in terms of exercising oversight over performance and governance of SOEs. The revitalisation of the 2005 privatisation

[4] Although the government has shareholding in some mining ventures, none of these are classified as a parastatal (mining accounts for nearly 35 per cent of GDP),

programme has also provided an impetus to further improve the corporate governance of SOEs which are not destined for privatisation. PEEPA actively promotes SOE governance reforms and has developed an integrated framework of governance instruments intended to:

- set performance objectives for SOEs;
- reward SOEs which have achieved their mandates/objectives;
- enhance shareholder oversight;
- promote transparency and accountability; and
- monitor and evaluate the performance of SOEs.

Legal and regulatory framework

Botswana's SOEs are a mix of statutory corporations and firms incorporated according to the Companies Act. A recent Cabinet Directive (November 2012) includes developing an ownership policy for SOEs, which includes finalising the corporate governance code and applying it to the governance of SOEs. PEEPA will be responsible for developing an implementation plan for the Cabinet Directive. The implementation plan will aim to develop corporate governance capacities in both the government and within SOEs themselves; and will re-evaluate remuneration policies for boards of directors.

4. Challenges as identified by authorities

Some of the challenges reported by authorities include:

- application of a consistent ownership policy, including where social, developmental and commercial objectives are concerned;
- adoption of best practice framework still discretionary in SOEs due to decentralised ownership of SOEs; and,
- restrictive legislative frameworks, including vis-à-vis board remuneration limits.

DEMOCRATIC REPUBLIC OF CONGO

1. Size and Composition of the State Sector in the Economy

SOEs account for a significant part of the Congolese economy. The major state-owned companies employ between 4,000 and 12,000 people each; other state-owned enterprises are considerably smaller (Herderschee, *et. al*., 2011). The current portfolio includes 20 companies classified as SOEs, and almost 55 government-controlled entities performing commercial activities (*sociétés d'économie mixte*) (Kungu, 2012). The undertakings in both categories operate in virtually every sector as the main service/infrastructure providers, and maintain monopoly rights in most network industries, including water and electricity supply, insurance and railroad transportation. Their respective financial states range from bankruptcy to modest performance.

2. History of SOE reform

The Democratic Republic of Congo began reforming its SOEs in 2003 to address problems related to a bloated state sector. The reforms have taken place in the framework of a broader economic reform agenda aimed at liberalising and opening up to competition a number of key sectors which was initiated in 2003. The government has, among other things, attempted to decouple its role as regulator from its participation in the market as service provider.

The package of reforms included provisions to first modernise the legal and institutional framework, then restructure and privatise SOEs in priority sectors including in energy, mining, transport, telecommunication and financial services. In addition, it aimed to upgrade the legal and institutional framework under which SOEs operate, thereby establishing two institutions charged with overseeing and financially managing the process of SOE reform. This included the establishment of the *Comité de pilotage de la réforme des entreprises du portefeuille de d'état (COPIREP)* to assist the government with the SOE reform process. The first phase of reforms have resulted in the liquidation of six companies and the transformation of 20 companies into commercial companies, 21 into public institutions (or agencies) with a non-commercial mandate and the integration of another four into the general government.

The transformation process allowed for a thorough valuation process of state assets, including an inventory and evaluation of its assets; any debts or any cross lending must be accounted for. The government is in the process of determining its SOEs' contingent liabilities and how they will be dealt with in the restructuring process. Based on these assessments, each SOE is then categorised as either in need of being stabilised, or in need of a deep restructuring (i.e. through PPPs, or other).

As an intermediate strategy, the government has started stabilising SOEs whose activities are considered to be vital, and those at risk of not being sold. The objectives are to improve technical, financial and operational aspects related to the functioning of the company. Four companies have been examined in this regard including in mining, rail, transport/ports, and airports. Depending on the company the State has either decided to disengage from the company, to structurally separate different business activities (i.e. air navigation from airports in the case of RVA), or to transform others into asset holding companies, and to transfer service

delivery activities to private operators in the form of PPPs or other arrangements where possible. Other classes of companies have been approved entirely for divestment by the State and are at various stages of this process.

3. Institutional, Legal and Regulatory Framework

Institutional framework

In 2009 a law was passed which transformed COPIREP's status to a public agency in charge of SOE reform and the state's disengagement process (i.e. through privatizations or PPP). The body reports to the government, through the Ministry of Portfolio, the decision-making body in charge of defining the direction of reform.

Legal and regulatory framework

After their transformation into commercial companies, SOEs operate now under the commercial law and their respective statutes. Part of the reform process was aimed at transforming former SOEs with a public service orientation into public agencies or integrated into the activities of general government, while those having primarily commercial orientations transferred under Company Law. Companies incorporated under the Company Law are required to report more stringently (i.e. filing provisional financial reports on-time; and conducting due diligence) as compared with those that under statutory laws.

As of February 2013, the government issued additional guidance on good governance for SOEs transferred under Company Law ("*Règles de Bonne Gouvernance Relatives aux Entreprises Publiques Transformée en Sociétés Commerciales")*. The guidance is intended to complement the existing laws, statutes and regulations applicable to SOEs, and is mandatory for all commercial SOEs. The guidelines are organised around eight principles of good governance and address issues relative to the governance of SOEs given that the State is the only Shareholder.

4. Challenges as identified by authorities

The authorities report that some of the current challenges include:

- the social costs of restructuring, which should be considered by a whole-of-government approach and based on consensus;
- Identifying costs, contingent liabilities and current debt structures of SOEs (i.e. cross-debt ("*créances croisée*") owed by SOEs and the State); and,
- Inadequate investment in SOEs a part of their recovery, to prepare them for PPP projects.

LESOTHO

1. Size and Composition of the State Sector in the Economy

There remain a number of SOEs operating with varying degrees of commercial orientation. Most SOEs operate as legal or natural monopolies, with the exception of a few sectors in which joint ventures have been pursued. The main sectors which include state-ownership are in mail delivery, telecommunications, water delivery and sewerage systems, and power generation facilities. The government has structurally separated some aspects of these operations to create competition through contracting some services or through BOTs and other PPP arrangements. A quarter of the enterprises remain dependent on government subsidies.

2. History of SOE reform

Since the 1990s the government has pursued a privatisation programme with the aim of reducing subsidies, fostering private sector development, opening SOEs to investment (as a means to raise capital), and improving SOE efficiency and performance. The pace of privatisations has been slower than expected as the local private sector does not have the resources to purchase enterprises (WTO, 2009). In parallel, the institutional and regulatory environment has been strengthened through the establishment of regulatory bodies (although there is no national Competition authority).

3. Institutional, Legal and Regulatory Framework

Institutional framework

SOE policy is informed by the National Strategic Development Plan of the government, which in turn is carried out by sector and line ministries, who oversee SOEs. The Ministry of Finance's Privatisation Unit orchestrates the privatisation programme. The Privatisation Unit monitors individual privatisation projects and is advised by the Private Sector Advisory Committee (PSAC) (comprising of representatives from business, labour and other interest groups).

Legal and regulatory framework

The privatisation programme in Lesotho is carried out under the 1995 Privatisation Act (pertaining to agricultural enterprises) and the 1997 Privatisation regulations, the act calls for reducing breaking up monopolies and introducing competition in sectors where SOEs are present. The income generated from privatisations is pooled into a fund that supports private sector development.

SOEs are either subject to Company Law or take the form of statutory corporations.

4. Challenges as identified by authorities

Some of the challenges with state-owned enterprise reform cited by the authorities include:

- A lack of commercially-driven performance of SOEs or investment decisions which lack commercial outlook (i.e. due to a lack of enabling governance structures, or adequate capital resources);

- Managing political interference in SOE operations;

- Improving accountability and reporting mechanisms; and,

- A lack of skills or ready access to markets for SOE products.

MALAWI

1. Size and Composition of the State Sector in the Economy

Despite a long privatisation process, there remain approximately 50 SOEs in Malawi (World Bank, 2007). The SOEs operate in a number of sectors including utilities and infrastructure provision.

2. History of SOE reform

Since 2006 the National Growth and Development Strategy placed corporate governance as a policy priority for the government. As such the Malawi Code for the best practice in corporate governance was developed by the National Corporate Governance Review Committee in 2010, and this was followed by enacting a specific set of guidance developed for SOEs and parastatal organisations in 2011.

3. Institutional, Legal and Regulatory Framework

Institutional framework

The Department of Statutory Corporations, which falls under the Office of the President and Cabinet, oversees the SOE sector. It monitors and oversees financial, administrative and managerial aspects related to the SOE sector. The ownership function is dispersed and decentralized across Ministries. The Ministry of Finance has a unit that monitors the performance of large parastatals and formally owns and votes SOE shares. Policy issues are dealt with by sector ministries.

The Public Accounts Committee of Parliament is also mandated under Section 18(d) of the Public Audit Act to promote "the accountability of statutory bodies and those other persons charged with the management of public money and public resources."

Legal and regulatory framework

SOEs in Malawi exist in a variety of legal forms and are derived from Acts of Parliament, Government Orders, the Companies Act and Trust Deeds. The legal framework that applies to SOEs includes the Public Financial Management Act, the Public Audit Act, and the Procurement Act which made it mandatory for parastatals to disclose information on their financial and non-financial activities.

The 2011 *Sector Guidelines for Parastatal Organisations and State Owned Enterprises* are a policy document developed at the request of the National Corporate Governance Review Committee by the Institute of Directors in order to clarify how the Malawi National Code of Governance II would apply to the specific case of parastatals and SOEs. The Guidelines provide specific definitions, guidelines, best practices and in some cases more stringent requirements for their implementation. Although their application is voluntary, their development and implementation is supported by the both SOEs and the government institutions in charge of SOE oversight. Their aim is to facilitate systematic promotion and monitoring of compliance by the

Department of Statutory Corporations, in cooperation with the Ministry of Finance's Public Enterprise Reform and Monitoring Unit.

4. Challenges as identified by authorities

Some reported challenges include:

- Special obligations and responsibilities are mandated to SOEs which may not be adequately compensated;
- Inconsistencies or incoherence in the current legal framework concerning SOEs;
- Capital restructuring of SOEs lacks an overarching policy and thus occurs on an *ad hoc* basis (i.e. reactionary to societal and donor pressure); and,
- High turn-over on boards.

MAURITIUS

1. Size and Composition of the State Sector in the Economy

In Mauritius, there are 150 SOEs representing 15 per cent of GDP. A majority of SOE output is concentrated in the largest enterprises. SOEs operate in most economic sectors and account for 20 000 employees. A large part of the SOE sector is not considered to be efficiently run, relying to a large extent on transfers from the government budget, and loans underpinned by public guarantees. However, in other sectors certain SOEs (particularly in ICT) function on a cost-recovery basis and earn profits. The government reports that SOE debt accounts for 7 per cent of GDP or 12.5 per cent of total public debt in 2010.

2. History of SOE reform

The SOE reform process was initiated in the early 2000s as part of broader corporate governance reforms by the National Committee on Corporate Governance (NCCG). The NCCG has put in place a Corporate Governance Code, and related institutions with the aim of strengthening the corporate governance framework and improving corporate transparency.

This was accompanied, in 2007, by the Public Enterprise Reform Programme focused on centralising revenue collection, removing subsidies to specific agricultural SOEs, and closing down a number of redundant operations through a three-phased approach. The first step was aimed at improving the oversight and operation of SOEs in specific sectors. The second phase established a coordinating body in charge of ownership policy (i.e. the Office of Public Sector Governance) and which seeks to encourage better compliance with the National Code of Corporate Governance. As of 2009, as highlighted in a NCCG survey, SOE compliance with the Code reached only 44% (much lower than for private enterprises listed on the stock exchange). Thanks to recent reform efforts compliance has since reached over 50% by end 2012. The final phase, which is currently underway, is to roll out an action plan aimed at more structured reforms targeting the largest SOEs.

Although these changes have reportedly met some opposition, the phased approach has allowed time to consult with stakeholders and to evaluate the benefits (i.e. efficiency gains) arising from the state enterprise reform process. It has also generated further support for future reform.

3. Institutional, Legal and Regulatory Framework

Institutional framework

The Office of Public Sector Governance (OPSG), which is attached to the Office of the Prime Minister, coordinates the Mauritian ownership policy. Ownership is still decentralised with the relevant line ministries exercising the ownership function. For SOEs in the agricultural sector (e.g. sugar), additional institutional structures in the form of joint Public-Private Steering Committees have been established to oversee the restructuring process.

Under the third phase of its reform agenda, the OPSG is developing a classification of SOEs, in order to identify those with a commercial and non-commercial purpose. A Parastatal Information Management System (PIMS) is being established to track and monitor SOE performance. The online database keeps track of 40 enterprises, with plans to include an additional 100 to benchmark SOEs performance. The data on performance will inform restructuring plans for those SOEs which are documented as consistently underperforming in the PIMS.

The OPSG is also developing tools to ensure that sector Ministries and SOEs are further accountable according to agreed objectives. As a part of the third phase of reforms, each SOE is to develop a "Corporate Objectives Statement" (COS) agreed by the board and parent Ministry, and on the basis of which its performance will be monitored. The COS will also include objectives for company output, financial performance, and will be time bound to ensure that performance can be measured and evaluated.

Legal and regulatory framework

There are two main types of SOEs operating in Mauritius. The first types are parastatal bodies, regulated by their own acts of parliament; the second are public limited liability companies incorporated according to Company Law or statutory legislation. Among the limited liability companies, some SOEs are partially state-owned and listed on the Stock Exchange of Mauritius; in a number of these companies the state exercises effective control. The legal framework for SOEs (but not parastatals) is based on the Companies Act of 2001. (World Bank/IMF, 2002 and APRM, 2010) SOEs and parastatals are subject to competition laws and policies – since the establishment of the Competition Commission of Mauritius, a number of cases have involved inquiries of SOEs impact on the competition landscape (such as Mauritius Telecom).

The *2006 Guidance Notes for State-Owned Enterprise* is the main framework applicable to all SOEs, statutory corporations and parastatal bodies and derived from the national *Code of Corporate Governance* (based on the OECD Principles for Corporate Governance). The Guidance Notes are issued under the Financial Report Act of 2004 and cover a range of issues concerning SOE governance including accountability, disclosure, monitoring board performance, risk management, internal control and audit, stakeholder communication, etc. The code is an obligation for SOEs, and is based on the principle of "comply or explain." The OPSG has carried out some surveys on the degree of compliance of SOEs to the Code of Corporate Governance.

4. Challenges as reported by authorities

Some of the challenges reported by the authorities are as follows:

- SOEs are operating in areas where they do not address market failures or provide public goods, as such the rationale for maintaining a government stake should be reconsidered;
- Some SOEs inadequately price goods or services, and this affects the sustainability of their operations, in addition to posing a financial strain on public sector investments;
- The current demarcation between the ownership and oversight function is opaque, as such it take away from transparency and accountability (i.e. strategic planning, performance targets, etc.); and,
- SOEs may not systematically publish annual reports, and may not face consequences in the case of non-compliance.

MOZAMBIQUE

1. Size and Composition of the State Sector in the Economy

In Mozambique the State holds significant shares in 131 enterprises, of which 14 are wholly-owned and another 15 where the State has majority (over 50%) participation. The State also has an unusually large share of minority shareholdings. The largest SOEs operate in a wide range of key sectors including in electricity, hydrocarbon, and transportation.

2. History of SOE reform

As a part of an overall structural reform programme in the 1990s, the government initiated a privatisation programme and took steps to deregulate a number sectors previously dominated by state-owned monopolies. Deregulation was thought to be the appropriate first step toward improving service quality, while also serving as a short term substitute for privatisation, based on the need to reduce pressure on the budget from financially insolvent state-owned enterprises. (AfDB, 2005 and OECD, forthcoming)

In 2001, an ownership policy was adopted, in the shape of a policy document stating the role of the state as a shareholder, through a resolution of the Council of Ministers. The ownership policy provided a mandate to restructure SOEs and determine strategic sectors where state ownership was considered necessary. An ownership entity (IGEPE) was established at the same time in order to carry out the policy. Since 2009 the government has shifted its reform focus towards improving SOE performance, including through corporate governance.

3. Institutional, Legal and Regulatory Framework

Institutional framework

The State ownership function is coordinated by the *Instituto de Gestao das Participacoes do Estado* (IGEPE), in other words the State Shares Management Agency, which is accountable to the Ministry of Finance. IGEPE manages a portfolio of 117 companies; the remaining wholly-owned enterprises are owned by the Ministry of Finance (National Treasury) and under the technical tutelage of the related sector ministry.

IGEPE coordinates with relevant government ministries, government stakeholders and SOEs on reform priorities. Part of its activities including managing State shares in business partnerships; helping SOEs (via their boards) to improve their management and strategic planning; identifying and appointing boards of directors (in enterprises where the state is a majority shareholder); and training SOE management. IGEPE plays an oversight role, by monitoring and assessing SOE performance; it also advises the government on draft legislation pertaining to SOE matters.

In 2009, IGEPE developed the Guide on Corporate Governance Best Practices in State Shareholding Enterprises, which provides guidance for SOE governance practices. The guide introduces the philosophy guiding the ownership entity vis-à-vis state ownership, the corporate governance values on which it is based, and the role of State in the economy. It is followed by

substantive recommendations covering eight key areas, including the State as shareholder, general assemblies and the treatment of minority shareholders, management and board supervisory structures, special committees; audit, relationship with stakeholders, and other company practices related to the functioning of the company. The ownership agency has been disseminating the guide, and reviewing the articles of association and governance models of individual SOEs to ensure that it is compliant with the guide. The government, via IGEPE, has also revisited its investment portfolio to determine the strategic sectors in which it will invest, and those from which it will gradually divest.

Legal and regulatory framework

The governance of SOEs is rooted in the Commercial Code which governs the establishment, operation and governance of enterprises. Other relevant laws and frameworks include the Directors Regulations (28/2005); and the Procurement Decree which regulates the procurement of goods and services by public entities.

As a part of IGEPEs push to improve SOE governance, a package of reforms has gone into effect aimed at improving SOE governance. This includes the *Best Practices Guide for Corporate Governance* which will be a requirement as of 2013 (see above), a scheme regularising employee shares in SOEs, a code of ethics, and a new SOE law. These are described as follows:

- A 2011 Decree established a scheme to regularise equity shares held by employees, dating from the 1990s privatisation programme. A remnant of the privatisation process, the government of Mozambique had reserved 20 per cent of shares for employees, to ensure minority rights; however, most employees could not afford to pay for their shares. As such the 2011 scheme provides the option for employees (over the course of an 18 month fixed term period) the possibility to acquire their reserved share.
- The code of ethics has been introduced for the private sector by the Institute of Directors, but its content is applicable to SOEs.
- A new SOE law applicable as of 2012 to the largest public enterprise, among other things, establishes a four year "performance contract" between sector ministers and SOEs governing bodies. The contract aims to improve SOE performance, to communicate and quantify objectives, and to establish an investment strategy. The law sets forth stricter financial control and monitoring over SOEs by the ministry exercising the ownership function (and Ministry of Finance), and establishes a system of internal control based on internationally agreed auditing principles. A monthly reporting system is intended to improve performance monitoring and to minimise fiscal risk by the Treasury. (See Box 4, Part I).

4. Challenges as reported by authorities

Some of the challenges reported by the authorities include:

- SOE board practices are still not in line with the standards promoted by IGEPE, as it relates to the identification and selection of candidates, criteria for board appointment and remuneration practices;
- SOEs' articles of association or corporate governance models may still be inconsistent with the Best Practice Guide for Corporate Governance; and,
- The current legal and regulatory frameworks may not be adapted to the commercial and non-commercial priorities of SOEs.

NAMIBIA

1. Size and Composition of the State Sector in the Economy

The State owns 86 state-owned enterprises, which represent a mix of commercial and non-commercial entities. Some of these “enterprises” are fulfilling regulatory functions, while others are producing goods and services. These include commercial enterprises, lending and other financial institutions, regulatory agencies and boards, media companies, and social policy, educational and cultural institutions. (Sherbourne, 2009)

2. History of SOE reform

Since 2001,the government has undergone a reflection process on how better to manage and govern its SOEs. A survey was conducted with SOE executives with the objective of assessing the strengths and weaknesses of SOE governance; to benchmark SOE performance against international standards and to provide some recommendations. The survey indicated a number of concerns including the risk of: inconsistent governance practices; undue political interference; unsatisfactory performance of boards of directors. Moreover, the survey found that there was no overarching ownership policy that would make sense of a dispersed legal and regulatory framework. The survey informed the development of recommendations and led to the establishment of a coordinating entity (SOE Governance Council Secretariat) to oversee implementation of the recommendations.

Most recent reform efforts have focused on improving the remuneration and incentive frameworks for SOE managers, including boards of directors and CEOs.

3. Institutional, Legal and Regulatory Framework

Institutional framework

The Namibian government has a dual, but coordinated model of ownership, with the State-Owned Enterprise Governance Council Secretariat (SOEGC), operating out of the Office of the Prime Minister, assuming the coordinating function. The direct oversight of SOEs is assured by the relevant line/portfolio ministers. State-Owned Enterprises Governance Council, established in terms of Article 2 (1) of the State-Owned Enterprises Governance Act, 2 of 2006 is the agency overseeing SOEs.

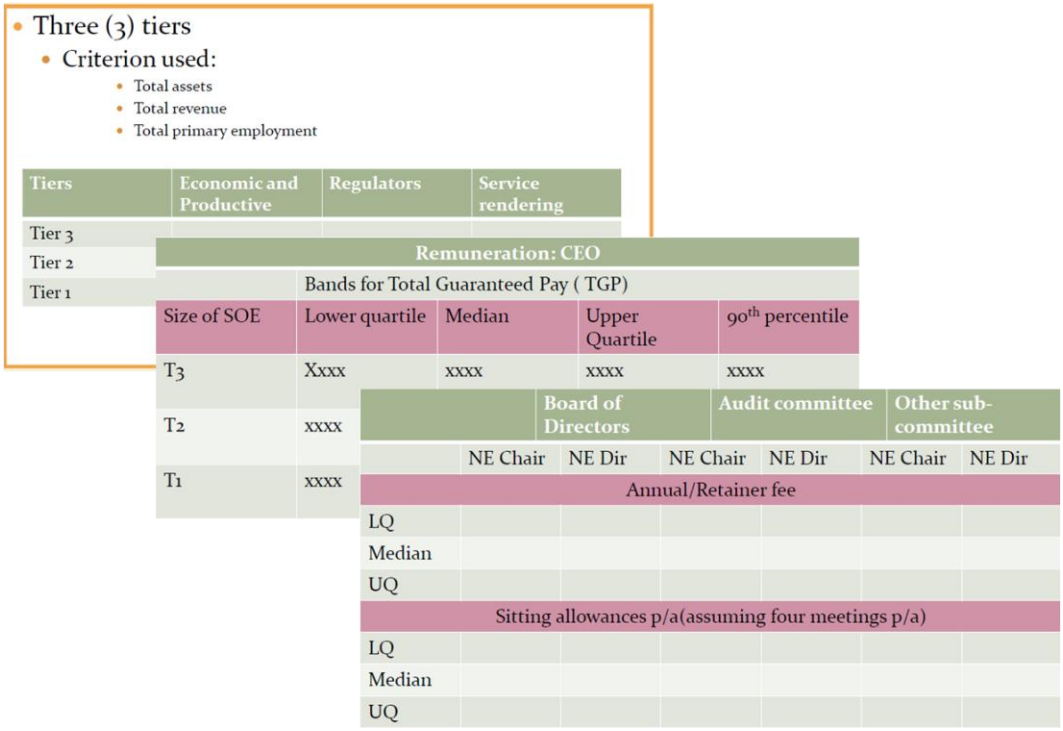
In May 2010 the Governance Policy Framework on SOEs (based on the 2001 survey and resulting report) was approved in Parliament requiring performance agreements for SOEs to improve transparency and disclosure of SOEs. An investment policy is to be agreed, in this regard, and approved by the SOE Governance Council Secretariat, and SOE executive management and boards are required to enter into five-year performance agreement with Government to ensure good performance. The framework also sets out practices on board recruitment and appointment. (Government of Namibia, 2010)

Legal and regulatory framework

Most of these SOEs are registered under the Companies Act but are also subject to the 2006 SOE Act (amended under the 2008 SOE Governance Act); a smaller set of owned companies are established under a separate statutory legislation. In accordance with the 2006 SOE Act (amended in 2008), the remuneration policy for boards of directors follows specific procedures. SOEs are classified into three categories (assets, revenue, and employment) for the purpose of determining remuneration of CEOs, senior managers and boards of directors (see figure).

Figure 2. Namibia: 2010 Remuneration Framework for SOEs

Classification for SOEs and remuneration levels of senior managers and boards of directors



The SOEGC is currently drafting a policy guidance document entitled, *Framework, Policies and Guidelines for SOEs*, to enable the implementation of the SOE Act.

4. Challenges as reported by authorities

Some of the challenges reported by authorities include:

- The structure of the ownership function (SOE Governance Council) poses a challenge, in that it is too small to manage the large portfolio of SOEs, which may be more efficiently organised if under dual as opposed to centralised ownership;
- The SOE Governance Council operates without a clear legislative mandate, and is unable to retain or attract skilled persons; and,
- There is a lack of compliance by SOE with existing corporate rules, and guidelines for SOE are lacking.

SEYCHELLES

1. Size and Composition of the State Sector in the Economy

The Government owns 9 SOEs and 58 other corporate bodies totalling at 1bn US$ in assets (2012). The State has legal monopolies in the energy sector (i.e. electricity, petroleum), most forms of public transport (85 per cent of the public transportation market), and water. It is also present in the banking sector, and a range of other types of businesses.

2. History of SOE reform

Following the country's independence in the 1970s parastatal companies proliferated in many sectors of the economy under the then socialist regime. These enterprises accounted for more than half the country's GDP and about two-thirds of formal employment. Due to mixed success, by the 1990s the government had begun to divest from a number of enterprises. (Global Markets Investment Centre, 2013)

Since the early 2000s, the government has streamlined the SOE sector, divesting from enterprises including non-performing SOEs.

3. Institutional, Legal and Regulatory Framework

Institutional framework

The Public Enterprise Monitoring Division (PEMD) in the Ministry of Finance, Trade and Investment was established in 2009, reporting to the Minister of Finance, and coordinating ten line ministries holding their respective portfolio of SOEs. As from March 2013, the PEMD Act was repealed and replaced with a new Act and empowering a new Public Enterprise Monitoring Commission (PEMC) (previously the PEMD) which is an arms-length body reporting to the Ministry of Finance, Trade and Investment and upon request, to the President. The PEMC monitors only commercial bodies, whereas all subsidised SOEs are overseen under the terms of the Public Finance Management Act. Line ministries maintain responsibility for policy formation and other technical aspects of SOE operations.

The PEMC is working towards sensitising both line ministries and SOEs management on their duties, responsibilities and ethics. This is due in part to misconceptions as to how the SOEs are to be run (i.e. as extensions of the line Ministry or as part of overall political priorities). The government is currently devising specific trainings offered through the Institute of Management (through the University of Seychelles), and is working towards establishing the support of line Ministers to promote good governance practices between and better working relations with the SOEs.

Legal and regulatory framework

The stated objectives of the 2013 PEMC Act is to have properly controlled and managed SOEs, to ensure better performance, transparency and accountability; and to improve efficiency and competitiveness of the economy.

The Public Enterprise Act covers aspects that may not have been applicable previously to public enterprises incorporated under the Companies Act. This includes the role and liabilities of boards of directors, financial and non-financial reporting, audit requirements, executive and supervisory nomination and appointment, etc.

4. Challenges as reported by authorities

Some of the main challenges highlighted by the authorities include:

- Ensuring proper oversight of SOEs currently under management contracts;
- Board remuneration practices, especially for government employees on boards;
- Board duties and responsibilities, including liability of individual board members; and,
- Multiple and competing objectives for SOEs, especially between line ministries and the Ministry of Finance.

SOUTH AFRICA

1. Size and Composition of the State Sector in the Economy

There are over 300 publicly owned SOEs across all levels of government (500 if subsidiaries are included). The eight major public companies are under the oversight of the Department of Public Enterprises, and one (Telkom) is listed on the Johannesburg Stock Exchange (JSE) which is under the oversight of the Department of Communications. At the sub-national level a number of SOEs and parastatals are active in a broad range of activities, of both a commercial and non-commercial nature. The economic importance of SOEs is concentrated in the top 30 companies, with four accounting for 91% of the assets, 86% turnover, and 77% of SOE employment. (Government of South Africa, 2011)

2. History of SOE reform

In the early 2000s, the government's SOE agenda shifted away from privatisation policies towards corporate restructuring. Improving efficiency and effectiveness; and reorienting SOEs to achieve social objectives and other wider economic development goals became a top priority. Subsequently the government devised a policy to restructure SOEs through a "Policy Framework: An Accelerated Agenda towards the Restructuring of SOEs," as an alternative to the "sell-off" strategy it has previously pursued. In parallel it also went through with an initial public offering of the state-owned telecommunications monopoly, Telkom, on the JSE. (APRM, 2007) The 2003 listing of Telkom was reportedly not a popular move, for a number of reasons, including with trade unions due to job losses incurred following listing. (APRM, 2007) Thus the government refocused its efforts more on reinforcing the sustainability of SOEs and delivering on specific strategic mandates.

In 2010, President Zuma established "The Presidential SOE Review Committee," (PRC) with aim of strengthening the role of SOEs to ensure that they respond to a clearly defined public mandate and support the "developmental State" aspirations of government. The PRC mandate emanated out of a broader government strategy as stated in the long-term National Development Plan and the Medium-Term Strategic Framework for 2009-2014 of the ruling (ANC) party to place SOEs and state-owned development finance institutions at the heart of the economic development agenda. The recommendations emerging from the Committee were made public in 2013 after being approved by the Cabinet. The Review articulates that the State should:

- Clearly define and communicate a consistent strategy for SOEs.
- Ensure that governance policies and practices are in place and that effective contact between regulators, agencies, Government and SOEs are maintained.
- Define the purpose of SOEs. Standardised monitoring and evaluation criteria modeled on best practice should be adopted to make it more effective.
- Enable high operational performance of SOEs so that they are able to meet economic and developmental objectives in a cost effective manner.

- The Government should develop a consolidated funding model for commercial SOEs and Developmental Finance institutions (DFIs).

3. Institutional, Legal and Regulatory Framework

Institutional framework

The eight major SOEs in the network industries fall under the jurisdiction of the Department of Public Entities (DPE). The ownership of the remaining SOEs is dispersed across a number of line ministries including those that cover sector policies in telecommunications, agriculture, transport, water affairs, defence, trade and industry, minerals and energy and finance. (APRM, 2007) DPE is responsible for reporting to the cabinet and which in turn reports to the Parliament. The Ministry of Finance and Treasury play a financial oversight role.

For those SOEs under DPE's oversight, the Department is responsible for overseeing the government's shareholders interest in the company, including co-ordinating with SOEs to maximise financial performance, as well as on strategic non-commercial objectives that it has been assigned. The government expresses its policy objectives through a "Strategic Intent Statement" which in turn informs the shareholder's compact communicated by DPE to the SOE Boards and executive management. The Board sets a "Corporate Plan" with specific objectives and performance targets to which all board members commit and includes possible remedial action in the case of non-performance. It also holds boards accountable to the transparency and disclosure requirements of the JSE. (See Figure 1, Part I) Performance is monitored through an electronic "dashboard."

DPE, as the coordinating body of the eight enterprises under its portfolio, also is involved in a host of other aspects of SOEs governance including informing the public procurement policies of SOEs, overseeing the implementation of skills development; board appointment processes; board induction; and determining board remuneration. The recommendations of the Presidential Review Commission alluded to new institutional arrangements that could be considered, consolidating the oversight of SOEs falling outside the current portfolio of the Department of Public Enterprises.

Legal and regulatory framework

The relevant SOE legislation includes SOE Enabling legislation, the Companies Act, the Public Finance Management Act (PFMA) (1999) and other Treasury regulations (TR), sector legislation and policies (e.g. Electricity Act, Electronic Communications Act), Public Audit Act, and other general legislation. SOEs are encouraged to adhere to the King III Corporate Governance Code (which is mandatory for listed companies).

The PFMA provides the financial framework which gives managerial and operational autonomy to the SOE. It also establishes reporting mechanisms (such as the shareholder compact) to guide the SOE in its strategic thinking. Not all PFMA provisions apply to all SOEs, different types of entities with various commercial or non-commercial objectives are categorised according to "Schedules" under the Act. (See Box 6)

Box 12. SOEs according to the Public Finance Management Act in South Africa

SOEs can be categorized as they pertain to the PFM Act:

- Schedule 1: *Constitutional Institutions* (listed in Schedule 1 of the PFMA), for example the Municipal Demarcation Board or the Commission for Gender Equality;
- Schedule 2: *Government Business Enterprises* , which include *State Owned Companies* in which the state is the sole shareholder, for example Transnet and ESKOM; *State Interest Companies* in which the state owns a partial share, for example, Telkom; and the *Development Finance Institutions* – for example the Development Bank of Southern Africa or the Industrial Development Corporation. These are listed under Schedule 2 to the PFMA;
- Schedule 3A: *Public entities* including *Statutory Corporations* (listed in Schedule 3A of the PFMA), which includes service delivery entities, stewardship bodies, regulators and advisory bodies, for example, museums, the National Energy Regulatory and the Human Sciences Research Council; as well as statutory corporations such as Rand Water and the South African Bureau of Standards; PRASA, etc.; and,
- *Public Sphere Institutions*, which includes institutions of higher learning or other tertiary institutions.

Source: ANC (2012).

4. Challenges as reported by authorities

Some of the main challenges highlighted by the authorities include:

- Multiple and competing objectives for SOEs which may hinder from optimal performance of SOEs (i.e. commercial orientation with aim to support developmental objectives);
- Financial management within SOEs and the inability to meet reporting standards as laid out in relevant legislative and regulatory requirements;
- Proliferation and/or duplicative regulation and statutory obligations; and,
- Board and management remuneration and incentive practices are complex and contentious issues.

SWAZILAND

1. Size and Composition of the State Sector in the Economy

The government wholly owns 40 SOEs across 12 sectors of the economy, including in public utilities, agricultural development, tourism, finance, health, education, and transportation. The government holds minority shares in another 16 businesses. SOEs account for 8 per cent of GDP and in 2011 had assets worth almost 10 billion Euros. Only 17 of the enterprises are self-sustained by their commercial operations; with the remainder relying to some extent on government subsidies. Total income from the SOE sector in 2011 accounted for 330 million Euros while 550 million Euros in subsidies were transferred to non-performing or government-supported SOEs that same year.

2. History of SOE reform

Reforms of the SOE sector began in the late 1990s based on the government's "Economic and Social Reform Agenda." The Agenda called for the privatisation of services offered by SOEs, and assigned the Public Enterprise Unit in the Ministry of Finance to establish a policy to carry out the reforms. The privatisation policy remained pending in the government's implementation agenda due to an unfavourable economic environment.

On the basis of a 2004 Privatisation Policy, the Ministry of Finance is pursuing a "privatisation roadmap" identifying which SOEs it will seek to divest. The government is focused on corporatising some SOEs (e.g. electricity provider, transport administration), and restructuring others with the aim of attracting investors. At the same time it has recently established a competition authority and is working toward the establishment of a number of sector regulators. (Dlamini, 2005)

3. Institutional, Legal and Regulatory Framework

Institutional framework

The ownership of SOEs is dispersed across 12 government line ministries. The Public Enterprise Unit (PEU) in the Ministry of Finance (established under the Public Enterprise Control and Monitoring Act) ensures oversight and monitoring of SOE performance. It also provides technical advice to line ministries and the Cabinet concerning the management and operations of SOEs. A draft bill is currently under review with the aim of establishing a Public Enterprise Agency.

Ministries with a portfolio of SOEs are politically responsible for the enterprises under their control. SOEs submit financial and non-financial information both to the line ministry and the PEU; ultimately line ministers submit audited statements to Cabinet and Parliament at the end of the financial year. PEU in parallel submits a consolidated report to the Cabinet on a quarterly basis.

Board appointment is made by line ministers in consultation with Cabinet. Board fees are regulated by Cabinet and are based on the advice provided by PEU.

Legal and regulatory framework

There are two types of SOEs operating at the national level namely statutory corporations and companies established under the 2009 Company Law. Most statutory SOEs were created by Acts of Parliament, and are also governed by the Public Enterprises Act of 1989, but recently corporatised companies are governed by the more recent Company Law.

Public Finance Management Act is currently under revision to ensure wider coverage of all government entities that are recipients of public funds, including SOEs. The South Africa King III principles have also recently been adopted, mandating standards of transparency and accountability for listed companies on the Swaziland Stock Exchange. Still public enterprises have yet to fully implement the transparency and disclosure requirements of the King code. (Humayun and Adelopo, 2012)

4. Challenges as reported by authorities

Some of the main challenges highlighted by the authorities include:

- Board appointment, remuneration and composition is a challenge;
- SOEs perceive government policy measures as interference in their operations; and,
- Reigning in the activities of SOEs which are not optimally performing, especially those which are reliant on government subsidies.

TANZANIA

1. Size and Composition of the State Sector in the Economy

There are 238 SOEs, a large proportion of which are majority-owned by the government. SOEs can be categorised as commercial and non-commercial entities operating in a range of activities and sectors; they can be broadly categorized as large corporations, financial institutions, pension funds, state institutions, parastatals, and regulatory authorities. The total government equity in SOEs accounts for 10.3 trillion shillings, in other words 30 per cent of GDP. Most of the large parastatals are in key sectors – such as finance, water, agriculture, electricity, rail, and air transport. (Kabwe, 2011)

2. History of SOE reform

Tanzania started its privatisation programme in 1992 and established the Presidential Parastatal Sector Reform Commission (PSRC), to oversee the "Privatisation Master Plan" programme. The initial programme (1993-99) focused on divesting small manufacturing and service-oriented parastatals, while the second phase (2000-2004) focused on larger enterprises in telecommunication, transport, energy and mineral, water and notably in the banking and finance sectors. (AfDB, 2003) The Master Plan thus resulted in the divestiture of 336 public enterprises by 2010. However, some privatisations have, reportedly, not been successful. In several cases, privatised SOEs (notably in water and electricity) have been subsequently re-possessed by government on the grounds that they were better placed in the public sector to provide strategic services. (OECD, 2013)

Privatisation efforts were complemented with other major structural reforms with the aim of transforming the economy's main driver from the state-owned sector and central planning to the private sector-led. (OECD, 2013)

3. Institutional, Legal and Regulatory Framework

Institutional framework

SOEs and parastatals' ownership is dispersed across line ministries and departments. A holding company, the Consolidated Holding Corporation, has been established (replacing the PSRC) to evaluate the performance of privatised entities on behalf of the Government under the National Bank of Commerce Act 2007. Tanzania's Controller and Auditor General (CAG) is charged with evaluating the performance of existing public authorities and other bodies, as well as privatised entities. Since 2008, a parliamentary oversight committee has also been established to monitor the performance of parastatals. (OECD, 2013)

Legal and regulatory framework

SOEs can be categorised as publicly funded bodies, commissions, state-owned enterprises, or authorities whose establishment is backed by an Act of Parliament, by Presidential order, or the 2002 Companies Act. The 1992 Public Corporations Act (Amended in 1993), is applicable to

all companies in which the government or its agent owns majority of the shares or is the sole shareholder (and is in some cases applicable where the government is a significant minority shareholder). The Public Corporations Act lays out specific accountability and transparency requirements, in addition to defining the commercial orientation of such companies. (Melyoki, 2005)

4. Challenges as reported by authorities

Some of the reported challenges include:

- The competition authority's scope does not extend to state-owned firms that fall under the regulatory authority of other parts of government; and,
- Some SOEs may still be dependent on government subsidisation to deliver on non-commercial obligations.

ZAMBIA

1. Size and Composition of the State Sector in the Economy

SOEs in Zambia operate in a range of industries and include some of the largest employers. They dominate key sectors, including energy, communications, transportation, and media. SOEs also play a major role in finance and mining. The public sector is the sole owner of 27 SOEs, of which one is held at the local level of government (the Lusaka Water and Sewage Company). The government shares ownership in 14 enterprises, half of which are majority owned. In addition to its direct stakes, the government has relatively small scale indirect ownership through the Zambian Privatization Trust Fund (ZPTF), and state-owned financial companies. (World Bank, 2007)

2. History of SOE reform

Through mass privatizations in the 1990s, the government significantly reduced the number of enterprises it owned. It does apparently not wish to take its privatization programme any further and instead has implemented a range of reforms to improve the performance of its state-owned sector. A number of SOEs have been commercialised and restructured. Transfers from the government to SOEs have been reduced and financial discipline increased.

3. Institutional, Legal and Regulatory Framework

Institutional framework

The ownership structure in Zambia is a dual, with 14 line ministries in sharing ownership of a portfolio of companies with the Ministry of Finance. The Ministry plays a key role in SOE governance, sitting on most SOE boards, and with the authority to vet board candidates before parliamentary approval. The Ministry is empowered to oversee SOE liquidation and receivership. The Ministry also provides credit to SOEs.

The Investment and Debt Management Unit of the Ministry of Finance carries out or supports many of the Ministry's governance and finance functions related to SOEs;[5] whereas sector ministries develop policy goals and objectives for their individual SOEs, together with their board. The relative power of the line ministry, the Ministry of Finance, and the board of the SOE varies across enterprises. For example, the incumbent energy supplier, ZESCO, operates under the executing authority of the Ministry of Energy, Mines & Water Development, which is also responsible for board appointments; whereas the Ministry of Finance represents the government of Zambia as the sole shareholder.

[5] During the Privatisation process a Privatisation Agency was established and later merged with the Development Authority according to the 2006 Development Act, thus some SOE still have a representative of this body on their boards.

Legal and regulatory framework

SOEs have two basic legal forms. Almost three-quarters are founded under the Companies Act, and are required to follow the same rules and procedures as other companies. 11 SOEs are statutory corporations established by an Act of parliament. A number of companies are further subject to sector legislation and subordinate regulation. (OECD, 2012)

The Public Finance Management Act of 2004 sets certain transparency and disclosure requirements, with special provisions for statutory corporations (which are not under the requirements of the Company Law). The PFM Act requires the SOE to report to the Treasury on its finances, through an Audit Committee. The Treasury has the ability to set conditions for providing grants, oversee valuation of assets, ensure efficient management, protect the interest of the government during privatization, and oversee the winding up of statutory corporations.

4. Challenges as reported by authorities

Some of the main challenges highlighted by the authorities include:

- SOEs are subject to multiple and often competing objectives; public service obligation, which require pricing at below costs, may hinder from pursuing more profitable commercial activities, and are often political decisions made by elected authorities;
- Political interference in the operation of companies is a hindrance, including where political leadership changes (i.e. dissolution of boards of directors of SOEs in an election year); and,
- Supervision on loss-making SOEs is lacking (i.e. untimely receipt of audited financial statements, or inadequate capacity to monitor SOEs).

ZIMBABWE

1. Size and Composition of the State Sector in the Economy

The country's 78 parastatals and SOEs operate in virtually all aspects of economic activity including in oil, infrastructure, agriculture, transport, public utilities, telecommunications and more. SOEs' economic weight is significant accounting for approximately 40 per cent of GDP. The categorisation of SOEs is very encompassing. SOEs are commercial entities; entities which are used as conduit for the attainment of social objectives; and regulatory entities responsible for sector regulation.

2. History of SOE reform

Zimbabwe adopted public enterprise reforms as a component of structural adjustment programmes in the 1990s. As such, public enterprise reforms were included as a part of the Framework for Economic Reforms (1991-95) and later in the Programme for Economic and Social Transformation (1996-2000). The aim was to reign in government expenditure, particularly subsidies to the parastatal sector which were constraining the fiscal capacity of the Treasury.

The Zimbabwe Privatisation Agency was established via the Privatisation Act in 1992, to manage the privatisation of SOEs. The Agency, together with a Cabinet-level Committee, the National Economic Planning Commission and the Department of State Enterprises were the institutions guiding the privatisation process (Zhou, 2000). However, the privatisation process was not completed due to economic pressures, and the government shifted its strategy in the 2000s towards SOE restructuring. A number of parastatals have been structurally separated into smaller business oriented units and organised under a wholly state-owned holding company. The Privatization Agency of Zimbabwe was reconstituted into State Enterprise Restructuring Agency (SERA). (Zhou, 2012)

In 2009, with the formation of a new inclusive government (comprising of the three main political parties), public enterprise reform regained attention especially in the development process. The former Department of State Enterprises was transformed into a Ministry with a broader coordination role. The Mid-Term Plan for 2011-2015 underscores restructuring of SOEs as a policy priority. Following the 2013 elections, the Ministry was disbanded and responsibility for SOE coordination has shifted back to line ministries.

3. Institutional, Legal and Regulatory Framework

Institutional framework

In the decentralised ownership model in Zimbabwe, the implementation of public enterprise reforms is heavily institutionalised as there is a multitude of state institutions that are directly involved in policy formulation and implementation, starting from the line ministries. The previous government had established the Ministry of State Enterprises and Parastatals as the main entity responsible for coordinating the management of parastatals and state companies. Since the formation of the new government in mid-2013 this Ministry and its coordinating responsibilities have moved back to line ministries. SERA serves as a semi-autonomous body responsible for

the implementation of the SOE restructuring programme; it serves as the technical arm to the Ministry Finance as well as the secretariat of an Inter-Ministerial Committee on Commercialisation and Privatisation of Parastatals.

Sector ministries exercise direct control over public enterprises under their purview. In some cases sector ministries also regulate the sectors in which their SOEs are operating. (As mentioned, some SOEs are essentially regulatory bodies; others play a dual role as regulator and commercial undertaking).

Legal and regulatory framework

Most SOEs and parastatals are statutory corporations; but some are incorporated under the Company Act. Even public enterprises commercialised or registered under the Company Act, may still come under Acts of Parliament. These provisions allow for responsible ministries to continue exercising direct control over public enterprises, at both the micro and macro policy levels. (Zhou, 2000 and 2012)

Prior to being disbanded, the Ministry of State Enterprises and Parastatals was working towards developing a Draft Regulative Framework for State Enterprises. The proposal would have given consideration for the separation of regulatory from commercial functions of SOEs. A number of regulatory bodies are currently being established in priority sectors with the purpose of ensuring a level field .In 2010, the former Ministry of State Enterprises and Parastatals issued the *Corporate Governance Framework for State Enterprises and Parastatals*, which is a guidance document aimed at improving the accountability and transparency of SOEs. It outlines the objectives, principles, guidelines and ethical standards that bind SOEs. It also complements the existing legislation (i.e. Companies Act and Acts of Parliament) that govern the operation of SOEs.

The 2009 Public Finance Management Act bears on the financial responsibilities and management of public finances; it also includes provisions bearing on the activities of SOEs.

4. Challenges as reported by authorities

Some of the main challenges highlighted by the authorities include:

- Lack of clearly defined lines of responsibility and coordination among the multitude of state institutions involved in SOE policy formation, implementation and oversight (i.e. for procurement, board practices; budget approvals);
- Political interference from the executive office and from line ministries allow intervention directly in the commercial operation of enterprises;
- Performance management inadequacies (absence of formal performance agreements; or performance contracts); and,
- Governance challenges (including lack of separation from the regulatory and commercial functions.)

BIBLIOGRAPHY

African Development Bank (AfDB)*, et al.* (2012), *African Economic Outlook 2012: Promoting Youth Employment*, OECD Publishing.

AfDB (2005), *Republic of Mozambique: Country Governance Profile*.

Africa Peer Review Mechanism (APRM) (2010), *Mauritius: Country Review Report no. 13*. APR Secretariat, Midrand.

APRM (2007), *South Africa: Country Review Report no. 5*. APR Secretariat, Midrand.

African National Congress (ANC) (2012), "Policy Discussion Paper on State Owned Entities and Development Finance Institutions," Economic Transformation Discussion Document, January 2012.

Aguilar R. (2003), "Angola's Private Sector: Rents Distribution and Oligarchy," Lusophone Africa Conference: Intersections between the Social Sciences, Cornel University, 2-3 May.

Dlamini MP, (2005). Public Enterprises and the Challenges of Privatization in Swaziland. Afr. J. Publ. Admin. Management, 16(2): 29-49.

Global Markets Investment Centre (2013), *Seychelles: Business Law Handbook,* Volume 1, International Business Publications, Washington, D.C.

Government of Angola (2008), *Strategy and Privatisation Policies*, Angolan Privatisation Agency, Ministry of Finance.

Government of Mauritius (2006), *Code of Corporate Governance for Mauritius: Guidance Notes for State-Owned Enterprises*, National Committee on Corporate Governance.

Government of Namibia (2010), "Assessing the Performance of State Owned Enterprises in Namibia – Financial Regulation Point of View," Hon. C. Schlettwein, Deputy Minister of Finance, delivered on 4 August 2010.

Government of South Africa (2011), "Presidential SOE Review Committee," Interim report presentation, September 2011.

Humayun K., and Adelopo I. (2012), "Corporate governance disclosure practices by Swaziland public enterprises," African Journal of Business Management Vol. 6(24), pp. 7136-7148, 20 June, 2012

Herderschee J., Kaiser K., Samba D. (2011), *Resilience of an African Giant*, World Bank Publishing.

Kabwe Z. (2011), "Public Enterprises in Tanzania: Challenges and Prospects," CEO Roundtable Dinner, 11 October 2011.

Kungo K., (2012) "Ministère du Portefeuille : Jeannine Mabunda sort avec un bilan positif ", *L'Observateur*, 13 mars 2012.

Melyoki L. (2005), Determinants of Effective Corporate Governance in Tanzania, University of Twente, The Netherlands.

Mothusi B. and Dipholo K. (2008), Privatisation in Botswana: The Demise of a Developmental State?, Public Admin. Dev. 28, 239–249.

OECD (2005), OECD Guidelines on Corporate Governance of State-Owned Enterprises.

OECD (2012), OECD Investment Policy Reviews: Zambia 2012, OECD Publishing.

OECD (2013), OECD Investment Policy Reviews: Tanzania 2013 – Working Draft, OECD Publishing.

OECD (forthcoming), OECD Investment Policy Reviews: Mozambique, OECD Publishing.

OECD (forthcoming), OECD Investment Policy Reviews: Botswana, OECD Publishing.

Sherbourne R. (2009), *Guide to the Namibian Economy 2009*. John Meinert Printing: Windhoek.

World Bank/IMF (2002), *Report on the Observance of Standards and Codes (ROSC): Corporate Governance Country Assessment, Malawi,* June 2007.

World Bank/IMF (2007), *Report on the Observance of Standards and Codes (ROSC): Corporate Governance Country Assessment, Mauritius,* October 2002.

World Bank (2007), *Corporate Governance Policy Practice: Corporate Governance of State-Owned Enterprises in Zambia*, April 2007.

WTO (2009) SACU Trade Policy Review, Annex 2 Lesotho.

Zhou G. (2000), Public Enterprise Sector Reforms in Zimbabwe: A Macro Analytical Approach, *Zambezia*, XXVII (ii).

Zhou G. (2012)," Three Decades of Public Enterprise Restructuring in Zimbabwe a will-Of-The-Wisp Chase?", *International Journal of Humanities and Social Science*, Vol. 2 No. 20, October 2012.