CORPORATE GOVERNANCE IN THE SOUTH AFRICAN GOVERNMENT – A PERSPECTIVE ON STATE OWNED ENTERPRISES (PARASTATALS)

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SUBMITTED BY

BONOLO MODISE

STUDENT NUMBER: 70512205
SUPERVISOR: PROFESSOR V. MAKIN

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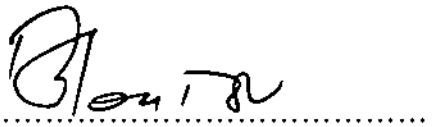
I declare that this research report is my own work and that all sources that I have used have been properly acknowledged and indicated by complete references. This report is submitted in partial fulfilment of the requirements for the degree of Masters of Business Leadership.



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EXECUTIVE SUMMARY

Corporate governance principles have been widely accepted as means of conducting business, allaying fears of conflict of interest between owners and managers and a way of attracting the much needed financial injection in depressed and developing economies. The application of corporate governance was seen for a long time as being only relevant to publicly listed entities, however, with the changing business and political landscapes in many parts of the world, the application has now become relevant to State Owned Enterprises (SOE) as well. SOEs occupy and play a significant role in economies where they still operate and it therefore becomes critical that their management and operation is of a sound standard.

There has been no single application/prescription of corporate governance that has been suitable for all countries, hence the development of various models such as the Cadbury Report, the Sarbanes-Oxley Act and the King II report. Individual countries face different challenges and the development and application of corporate governance in these countries has to take these unique situations into consideration. Countries have taken what they consider best practises from these guidelines and adapted them to suit their conditions.

South Africa, despite its classification as a developing nation, competes fairly well with most developed nations in its application and development of corporate governance.

The application of corporate governance in South African SOEs as recommended in the King II report has been remarkable. Challenges remain in areas such as the appointment of real independent board members, but compliance in areas such as the formation of board

committees and the separation of the role of Chairperson and Chief Executive is visible.

CHAPTER 1

1. INTRODUCTION

Corporate governance scandals in the recent past have called for the review of guidelines in its application in both the private and public enterprises. Many countries around the world have formulated guidelines and codes that have been considered 'best practises'. Other countries such as the US have legislated codes such as the Sarbanes-Oxley Act which was passed shortly after the Enron and WorldCom scandals and South Africa, through the King II Code, has developed the code to serve as guidelines to be practised. The Johannesburg Securities Exchange has however made some of the code's provision compulsory for listing purposes.

1.1. PROBLEM STATEMENT

Recent extensive corporate sector failures in the USA and Europe have reignited the need for a review of standards of corporate governance. These failures come despite development of systems and processes to ensure that the interests of shareholders and other stakeholders are safeguarded. Lack of corporate governance in these institutions explains these failures.

Africa, as a continent, generally lags behind other continents in the introduction and implementation of corporate governance good practices in many of its institutions (Armstrong, et al: 2005). This is in itself not terribly a great disadvantage. The absence of corporate governance in many African institutions could hinder the injection of the necessary and required foreign investment in many of the African states because investors would lack the confidence that their capital would be properly managed and would generate them the necessary returns expected. However, the absence of corporate governance in Africa allows the continent to learn from experiences in other

parts of the world. These experiences could allow Africa to implement corporate governance principles within the right context and perhaps adapt those principles to suit the economic and political situation in many states.

The advent of democracy in South Africa in 1994 brought with it many imperatives, most of which, could be argued, were for the better and benefit of this country. At the same time, there were some people who were not sure what changes the new government would bring about and as a result their confidence level on the ability of the country to perform well on the international stage was very low. With these changes came a need to ensure that governance in all spheres of the economy is sound in order to attract the much needed foreign investment. Corporate governance, being seen as an imperative in any successfully run enterprise, became a feature of the new South Africa. South Africa has emerged as a favourite destination for many multinational corporations for a number of reasons. These include the rule of law in the country and the favourable $/Rand exchange rate. However, these reasons alone would not guarantee an influx of foreign investment in the country. The application of corporate governance principles in both the public and private sectors would influence the decision of investors to come into the country.

In South Africa, the work done by Judge M King under the auspices of the Institute of Directors in formulating King I and II reports has changed the landscape of how business is done. King II has made some compulsory requirements for listed companies to adhere to.

1.2. PURPOSE OF THE STUDY

This purpose of the study is to investigate the existence and application of corporate governance in parastatals or state owned enterprises (SOEs) in South Africa. This study intends to dispel the perception that no corporate

governance exists in these institutions and will demonstrate how these institutions compare with similar institutions in developed nations. The study will look at the application of corporate governance in SOEs in mostly Organisation for Economic Co-operation and Development (OECD) countries.

1.3. IMPORTANCE OF THE STUDY

South Africa faces service delivery challenges that cannot be taken care of by its limited budget alone. Factors such as good corporate governance practises have the potential to attract private investors into the public sector and help contribute towards service delivery in the country.

Most SOEs are located in strategic sectors of our economy and therefore are crucial in economic development. The hosting of the 2010 FIFA World Cup by South Africa poses unique challenges for SOEs that deliver service in transportation sector. Huge investment in this sector to assist with improvements of transportation network is crucial and this investment will only flow in when investors are confident that governance processes in these SOEs are sound. Private sector involvement in assisting government in carrying out this mandate is very important. The formation of Public Private Partnerships (PPP) is one of the approaches to assist in realisation of this objective.

If this research/study can indicate that corporate governance is taken seriously in the government sector, private investors would not hesitate partnering with government by investing capital in much needed sectors.

The results of this study could also allow other institutions that lag behind in implementing corporate governance to consider adopting best practices as used by other institutions. The results of this decision would be clear to these institutions to see. The study could therefore benefit a larger section of society.

1.4 LIMITATIONS OF THE STUDY

The respondents to my questionnaire are situated in major cities that are very far from where I stay. The cost of travelling to these centres is enormous and would not always guarantee me securing the appointments I might have made due to the nature of the work of respondents targeted. I stay in a rural area and access to varied sources of information in the form of textbooks is a challenge.

Relying on internet mail communication has proved to be very difficult and sometimes unreliable. I find it extremely difficult to receive feedback for my enquiries because it is difficult for me to make the necessary face-to-face contact that might be necessary once in a while.

I am concerned that I might have to rely on some more 'junior' officials to assist me in sourcing the information that I need. I am also worried that the responses I receive might not be enough for me to make any 'real' conclusion on my study as my sample might be considered insufficient.

CHAPTER 2

2.1 LITERATURE REVIEW

This chapter will look at the history of corporate governance worldwide. The narrow view of corporate governance in South Africa would then be taken and the study would investigate how corporate governance is applied in the public sector in South Africa. This application would be contrasted to the application in a European context.

'*Corporate governance is concerned with holding the balance between economic and social goals, and between individual and social goals. The aim is to align as nearly as possible the interests of individuals, corporation and society*'. Sir Adrian Cadbury – Corporate Governance Review. One could argue that this statement complements the assertion of King II that corporations need to look at the triple bottom line (economic, environmental and social aspects of its operations).

Corporate governance has reached centre-stage in the global agenda (Reddy: 2001). The debate on corporate governance has mostly focused on publicly listed companies. According to Reddy, three factors can explain this phenomenon. The first factor was the study of Berle and Means, which had referred to the shifting of control when a company's ownership gets spread over a number of interest groups. This necessitated the need for structures and processes to be put in place to ensure proper governance and management. The problem identified was of a possible conflict between the interests of owners and management. Reddy contends that the contribution of the work done by Berle and Means is evident in the many principles and codes, including King II, that advise for the separation of the position of Chairman from that of Chief Executive.

The second factor was the Cadbury Committee report, which has been acclaimed for the way it dealt with financial issues of companies listed in the London Stock Exchange. This code addressed the prominent concerns of corporate failures. The third factor has been the hope of market efficiency as an ultimate solution to corporate conduct and performance. This according to Reddy, created a market for corporate control that allowed owners to freely enter and exit companies based only on returns.

According to Jean-Florent Rerolle, a partner at Ernst & Young, corporate governance should not be seen as an end in itself. Instead, corporate governance should be seen as a tool offering companies the means to reassure their shareholders as to the way in which decisions are taken and monitored. He further states that creating and maintaining shareholder confidence means reassuring shareholders that a corporate governance system exists to ensure that any decisions taken keep three fundamental principles in mind. These principles are efficiency, accountability and equity.

- Efficiency would assist in optimizing decision making in the organisation, thus making it extremely difficult for the 'autocratic' boss to make unilateral decisions. Rerolle contends that 'the contribution of an active, independently minded and competent Board of Directors is a critical component in ensuring that the company takes high quality strategic decision'.
- Rerolle argues that any corporate governance system should create the conditions for 'genuine accountability of decision making and oversight bodies'. He defines the principle of accountability as entailing a clear separation of duties between executive management and oversight bodies.
- Rerolle states that any corporate governance system should aim for equity. In this case, equity relates to all types of shareholders. Equity would ensure that decisions taken are in compliance with expressed commitments.

The three principles outlined above do not differ greatly from some of the provisions contained in the King II report.

Corporate governance is most often viewed as both the structure and the relationship which determine corporate direction and performance. Corporate governance is one of the critical issues in business today. For companies, good governance means securing access to broader-based, cheaper capital. For investors, a commitment to good governance means enhanced shareholder value. For both, good governance equals good business. The board of directors is typically central to corporate governance. Other primary role players are the shareholders and top management of the enterprise. The board is the platform where different players in governance convene to decide how the enterprise should be governed and for whose interest. The relationship of the board to the other primary participants, typically shareholders and management, is critical. The board's role has been summarized by Tricker (1994) as an 'assurance of performance and conformance'. The board ensures performance by setting strategies for the enterprise and contributing to the performance of the organization. Conformance is ensured by 'supervising' management and checking that agreed standards and targets are met.

Secondary participants include employees, customers, suppliers, and creditors. The corporate governance framework also depends on the legal, regulatory, institutional and ethical environment of the community. Whereas the 20th century might be viewed as the age of management, the early 21st century is predicted to be more focused on governance. Both terms address control of corporations but governance has always required an examination of underlying purpose and legitimacy" (McRitchie. 8:1999)

The above definition of corporate governance indicates a relationship that should exist amongst all stakeholders in an institution, be it private or public.

It is this definition that sets the scene for the distinction in the relationship and roles of board members, CEO, employees and shareholders.

Corporate governance issues are linked to the 'agency problem' where managers, as custodians of information, 'hide' it from shareholders in order to reap maximum personal benefit from it. A workable corporate governance framework is necessary to ensure that the relationship between/amongst all stakeholders is healthy for the sustainability of the enterprise. Corporate governance is concerned with the structures within which a corporate enterprise receives its orientation and guidance. According to Rwegasira (2000), corporate governance as an independent field study, is a recent phenomenon as it includes several disciplines such as law, economics, finance, organizational behaviour, management, ethics and politics.

In less developed countries where most systems are not in place, agency problems are not the only issues. In this instance, ownership tends to be concentrated in the hands of the controlling shareholders and minority shareholders tend to suffer what Ararat and Ugur (2003) term the 'expropriation problem'.

Corporate governance reform in emerging or developing countries has suddenly become of interest to equity holders due to problems experienced in some large US and European corporations. These reforms relate to the promotion of best practices and assume that the market will regulate and enforce laws due to the existence of legal systems. Unfortunately, in many emerging economies, both legal and regulatory structures are not adequate to deal with issues of non-compliance. This makes it difficult for institutional investors to invest in these economies.

Why has corporate governance become such a prominent topic in the past two decades or so and not before? A number of reasons have been identified

and include: i) the world-wide wave of privatization of the past two decades; ii) pension fund reform and the growth of private savings; iii) the takeover wave of the 1980s; iv) deregulation and the integration of capital markets; v) the 1998 East Asia crisis, which has put the spotlight on corporate governance in emerging markets; vi) a series of recent USA scandals and corporate failures that built up but did not surface during the bull market of the late 1990s (Becht, et al:2003). The recent collapse of organisations such as Enron, WorldCom, Regal Bank and Leisurenet has been the cause of renewed interest in the control and management of organisations.
Despite the debate worldwide on corporate governance, there has not been an agreeable definition of what it constitutes.

Bhasa (2004) asserts that four corporate governance models exist in practice. Proper understanding of these models is key to understanding global corporate governance. The four models are the market centric, relationship based model, transition governance model and the emerging governance model.
The market centric model refers to mostly US and UK based models that are shaped by the 'diffusion of ownership'. In this model, ownership is separated from control, capital markets are strong and liquid (NYSE, FTSE) and the required managerial skills to run corporations are in abundance.

The market centric model allows for shareholders to diversify their ownership of interest in many corporations. This makes it difficult for shareholders to take control in many of these corporations. As a result, well trained professional managers are contracted by these shareholders to run the affairs of these corporations. The benefit of this model is easy access to finance and the diversification of the risk among many shareholders.
Bhasa states that many academic researchers consider this model the most successful but it is riddled with many problems. Insider trading and excessive managerial compensation are regular features of this model. Recent

scandals at Enron, Worldcom and other major corporations in the US have shown how frivolous this model is.

In the market centric model, management creates what Bhasa terms 'information asymmetry' where information that benefits them is kept safely and only known to them and that which does not materially benefit them is passed on to shareholders and other interest groups. As an attempt to counter this, shareholders have to incur agency costs. These agency costs are made up of three components, viz.; monitoring costs, bonding costs and residual loss. Monitoring costs relate to costs of trying to keep managers from being devious, bonding costs relate to costs of ensuring that managers take decisions that are favourable to shareholders and shareholders incur residual loss when the two above costs fail to discourage managers from being unscrupulous and self-benefiting. Excessive compensation packages for executives have made agency costs a matter of concern. Managers are fully aware that shareholders would reward them favourably for excellence in the short term. As a result of this, long term and sustainable growth of the corporation is often traded for the more beneficial short term and more rewarding strategies. Decisions taken by the former Chief Executive of the South African Airways, Mr. Coleman Andrews in selling off some of the national carriers' assets and 'artificially' turning around the situation is an example of a short term decision with huge material benefit for the manager. The exit package paid to him brought about debates related to agency costs. The retirement package of the former Chief Executive of General Electric, Mr. Jack Welch has also been cited as an example.

The market for corporate control has made it possible for non-performing managers to look at the way they do business. Threats of takeovers, role played by institutional investors, banks and independent directors help motivate managers to want to increase/maximize shareholders' value. Institutional investors may direct that they have representation on the board to

ensure that the executive/management serves the interest of shareholders. Banks and institutional investors may also threaten to withhold their equity holdings in the firm, thereby sending a signal to the market of the non-performance of the firm and forcing management to reconsider its performance.

Relationship based governance model is shaped by 'concentrated stock ownership and illiquid capital markets' (Bhasa: 11). In this model, agency costs are minimised because shareholders are able to monitor the performance of management. Banks dominate the ownership structure by owning large amounts of equity. Unlike in market centric models where banks threaten to withhold their equity positions and expose the poor performance of managers, here banks commit to ensure the sustainability of non-performing enterprises.

This governance model is considered to be the 'most effective model of governance' despite weak and illiquid capital markets. This system largely exists in Germany and Japan. Dominance by banks takes away the professional managerial expertise that could have been brought about by managers contracted to manage corporations. In this type of governance model, no separation of ownership and control exists. As a result of this, no minimization of shareholder value is created. There is sometimes a conflict of interest amongst the various shareholders. The German system of employee representation on the supervisory board and the Japanese system of promoting employees to the board of directors ensure that executive compensation is kept to a minimum. Although the market for corporate control is not necessary in this instance, there is at times a tendency for large shareholders 'expropriating' the value of minority shareholders. This system has often been credited with being a shield against short term earnings pressure from the capital market. This system has its share of problems as illustrated by the 1993 German Metallgesellschaft derivatives loss scandal.

Despite representation on the supervisory board by two representatives of two of Germany's largest banks, it was alleged that information about hazardous oil derivatives trading losses was withheld by management board (Rwegasira: 2000).

Transition governance model relates to enterprises that were state owned and have now been privatised. These enterprises try to follow the path of market centric model enterprises.
Transition governance model is mostly applicable in Central and Eastern European countries and former Soviet Union states. These are mostly states that want to open up their markets for foreign investment and equity injection. This model is characterized by weak and illiquid equity markets in transition from being state owned and controlled. The transition is towards more functional and competitive legal systems, the model does not have in place mechanisms to deal with governance problems.

The theory of the separation of ownership and control of corporations as understood today, can be traced back to the sterling work done by Merle and Beans (1932) who observed then that corporations had grown too big to require professionally trained individuals who would run the daily affairs of corporations.

Finally, the emerging governance model is characterized by the existence of vibrant capital markets and the successful transformation of enterprises from being state held to being privately and widely owned. This model is differentiated from others by the realisation of the state in governance matters. In this model, the state continues to find legislative ways to ensure that corporate governance issues are properly addressed and that powers are increasingly given to market regulators to 'check corporate anomalies'.

2.2CORPORATE GOVERNANCE IN EUROPE

Most European states have adopted a principle-based approach to corporate governance. This approach does not force compliance on companies through legislation but rather encourages companies to adopt principles that would encourage corporate governance.

In Europe, where countries are mostly governed by Roman-Dutch civil law codes, bringing into place a voluntary code to promote governance is harder. Most companies view the application of codes as a choice of either 'complying' or facing the consequences.

In Finland, many large corporations are governed by both the supervisory board and board of directors. The supervisory board oversees the administration of the company and could be said to represent the external interest and influence to the company. All companies registered in the Helsinki Exchanges were bound by recommendations that were made in 1998 by a Committee on Corporate Governance appointed to investigate corporate governance issues for Finland. Two common structures of governance are found in Finnish corporations, viz.; the structure where there is a supervisory board and the board of directors and the structure where there is only a board of directors. The Finnish Corporate Act of 1978 dictates that companies with a share capital of £ 56 000 should establish a supervisory board (Halla: 146). The supervisory board is appointed at a meeting of shareholders and the managing director and members of the board of directors are not eligible for membership to this board. Its responsibilities include amongst others; supervising the administration of the company, advising the board of directors in broad matters of principle and appoint the board of directors, managing director and other senior director should the articles of association so determine. In performing its duties the supervisory board actually represents ``the outside influence'' to the company acting as an objective outside

supervisor and adding value to the company's strategic knowledge of special markets (Halla:146).

The administration and daily operations of the company fall under the Board of Directors. The Finnish Corporate Act specifically stipulates that it is the responsibility of the Board of Directors to ensure that the control of assets and accounting for the company is done by this board. The managing director is only allowed to become a member of the Board of Directors in Companies with a share capital of £ 56 000.

In Finland, the Committee on Corporate Governance made the following recommendations with regard to information disclosure in annual reports:

- special assignments of the members of the company's governance bodies;
- who appoints the board and the MD and when;
- information on competence, independence and disqualification of the board;
- information on directors' remuneration.(Halla: 147)

Internal Auditing is considered to be an integral part of good governance in Finnish corporations. However, the following are also considered important in ensuring that corporations are well governed.

- Good ethical climate, right values and internal control enhanced.
- Competent people who work hard and well together.
- Common understanding of control duties within the organization.
- Open, transparent governance process.
- Professional, effective, value-adding and sufficient internal audit, external audit and audit committee.

It does appear that some work towards compliance is encouraged in Finnish corporations and there is also a recognition that rules and regulations alone

would not guarantee good governance. The application of governance principles still seems to be far from those as seen in other developed nations.

2.3 CORPORATE GOVERNANCE GUIDELINES FOR OECD COUNTRIES

The OECD is a platform or discussion forum where thirty (30) democracies often meet to discuss and share thoughts and best practices on issues of common interest, which include social, environmental and economic aspects of the various states. The OECD member states are: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.

The OECD guidelines on corporate governance in SOEs have been developed as a tool to close the gap that exists in ways of dealing with corporate governance of these entities worldwide. SOEs are placed in strategic sectors of many economies and proper governance of these enterprises becomes important in sustainability and economic growth. In some countries, SOEs are dominant features of the state's economy. The OECD believes that good corporate governance of SOEs is crucial for privatization purposes as the entity would be financially attractive to those interested in taking it over when sold.

A major challenge is for the state, as owner of these enterprises, is to find a healthy balance between its ownership functions (which include nominating individuals to serve on these enterprises' boards) and refraining from undue political influence on the proper functioning of these enterprises. The state must also make sure that the market is ready for fair competition between SOEs and other similar private sector role players. In South Africa, this could mean making sure that the second telecommunication operator to compete with Telkom does not find undue and unnecessary barriers to it operating optimally and freely in

this industry. The state, as regulator and enforcer of legislative requirements, should learn to behave in a manner that would be exemplary to the private sector.

The OECD has identified the following as major challenges for corporate governance in SOEs (these would also apply to the South African situation): -

- Clarifying the ownership function within state administration
- Improving transparency in the SOE with regard to its strategic objectives
- Strengthening and empowering boards of SOEs

Guidelines developed by the OECD are non-binding on member states but offer a rich resource that can be used to reform corporate governance in SOEs and are also best practices. The following are guidelines in use in many OECD and non-OECD states that consider them useful:-

- **Ensuring an Effective Legal and Regulatory Framework for State-Owned Enterprises**

  Clear separation is needed between the role of the state as owner and its role as regulator. This is to ensure that SOEs owned by the state do not unfairly benefit from this confusion. The state should simplify the legal form under which the SOE operates. All SOEs should operate under similar laws that are binding to private sector enterprises. Dealings with SOEs by state funded financial institutions should be based on market factors only.

- **The State Acting as an Owner**

  The state, as owner of these enterprises, must make sure that it becomes an informed owner. All dealings pertaining to the SOE must be done in a fair and transparent manner. Just like in the private sector, the state should be accountable for everything that happens in the SOE and this can only be done if there is a measure of professionalism and competence in officials working in the SOE. The state should develop a policy that

indicates how it intends to run its ownership of the entity. In this way, it would be clear as to what the responsibilities of all stakeholders in the entity are. This clarification would also deter what could be termed as interference from the state in the administration of the entity and the affairs and independence of the board. The state should take active participation in the nomination of board members but should ensure that the nomination process is transparent.

- **Equitable Treatment of Shareholders**
  Rights of all stakeholders should be recognized by SOEs and the state. Shareholders should have easy access to all information of the enterprise. In South Africa, the Promotion of Access to Information Act could assist in this regard if any information is kept away from shareholders. The role of minority shareholders should also be recognized in order to afford them influence in corporate governance issues where possible.

- **Relations with Stakeholders**
  The state should formulate policy that compels SOEs to recognize their relationship with stakeholders and report to them accordingly. This would be in line with practices in the private sector where corporations hold regular and scheduled annual general meetings to report back to shareholders. This would be done if a policy on communication with stakeholders is put in place.

- **Transparency and Disclosure**
  SOEs should establish internal audit that regularly reports to the board and audit committee. Independent external auditors should be allowed to review the books of SOEs. The same rigorous auditing undertaken in private enterprises should be encouraged for SOEs as well.

- **The Responsibilities of the Boards of State-Owned Enterprises**
  Boards of SOEs should be given clear mandate and control for the performance of the enterprise. They should monitor the performance of management and give strategic direction for the functioning of the enterprise. The appointment and dismissal (if necessary) of the CEO should be the responsibility of the board. Members appointed to boards of SOEs should be independent and not be servants of any master. Just like the recommendations of King II, the role of the CEO should be separated from that of the Chair of the Board. The board should set up committees that assist it in fulfilling its responsibilities. There is also a need for annual appraisal of the performance of the board.

In analyzing SOEs in South Africa, the implementation of the above recommendations would be scrutinized to establish the extent to which the performance of South Africa's SOEs implements acceptable standards.

2.4CORPORATE GOVERNANCE IN CHINA'S SOEs

In China, the Fifteenth National Congress of the Communist Party of China held in 1997 gave clarity on the direction of enterprise reform in the country. The decision of the congress was to transform state owned enterprises (SOE) into profitable corporations. The driving force behind this decision was to improve the productivity and performance of SOEs and to end government's continued capital injection into them. If corporate governance is seen as a way of improving the performance of enterprises, then the choice made by the Congress was to introduce corporate governance in SOEs.

Wei (2003) states that productivity and performance of SOEs in China had always been unsatisfactory. Ownership structure of SOEs is seen as being incompatible with the managerial structures of modern corporations. In today's corporations, there is a clear separation between owners and managers. The

difference of interest between managers and investors (owners) make this separation necessary. Wei asserts that a modern corporation 'achieves these goals by dividing and balancing corporate powers among its internal organs: the shareholders' meeting, the board of directors and managers. In this sense, corporate governance is seen as a 'process of balancing powers and interests among corporate constituents'.

Ownership in SOEs is by government or the 'people as a whole'. This contrasts sharply with modern corporations where owners/investors are people known to the corporation. Ownership rights in SOEs are exercised by various government departments. Wei states that from a modern corporation perspective, this amounts to a 'de facto absence of ownership'. The owner of the SOE doesn't have real control and influence over the way the enterprise is run. Mechanisms available to the modern corporation owner to raise funds and grow the business are not available to the owner of the SOE. This arrangement has made it difficult for China to improve its economic performance at the firm level.

The Soviet Union chose privatization and corporatisation as a means of improving the performance of SOEs. This decision was not very popular because of its economic consequences and high social costs. This resulted in increased unemployment and rapidly rising inflation. The state, as the owner of the SOEs, could not offer permanent employment at all costs as it used to. China, having learned from the experiences of the Soviet Union, chose to gradually change the way its SOEs conducted business. This was done by 'delegating more powers to SOEs, carrying out experiments with corporatisation, building the stock market and completing the corporate legislation'(Wei:2003).

China has chosen to 'adopt' the western systems in its application of corporate practice. It uses the Anglo-American systems of limited companies and stock companies and the German two-tier system of board structures. According to Wei, China is faced with the task of finding an advanced, workable model of

corporate governance for the existing and future enterprises and to physically build such a corporate governance system within a legal framework.

China was a world leading economy until the 17th century. However, it has since been lagging behind the western economic powers of the industrial world. Corporate concepts have only been introduced to China in the 19th century by some leading Chinese scholars. They believed that the success and development of most western economies was due to their adopting the practice of corporate activities. They believed that this could increase the wealth of China and was the only way to go if China was to become powerful and modernize to the level of western societies. Commentators made statements such as '*Industry and commerce in China cannot progress if a corporate system is not developed. Then China will never become rich and strong. The corporation is one of the factors that enables British merchants to dominate the world. As a result, although other countries including France, Spain and Germany have spared no efforts in competition, they are not match*'. This statement indicates the extent to which it was believed by Chinese intellectuals that the only way to grow was to adopt corporate practices in Chinese enterprises.

Over time, the corporate concepts became well received in China. Corporate practice on the other hand, did not develop at the desired pace. External and internal reasons explained the slow pace. External reasons included social instability, weak and uneven economic development structure, political corruption and foreign economic monopolies. The gap between the western corporate experience and Chinese culture was the cause for the internal problems. There was generally a legal acceptance of the corporate practices in China but the deeds of individuals did not match the good intentions of the law.

An interesting feature of the corporate development in China was interference by the Qing government in corporate practices. This involved establishing a number of state owned companies where the state could appoint directors and

managers and decide on the disposal of corporate assets. This interference confused the arrival of corporate practice in China and motivated some business owners to ask government to protect their businesses by supervising them. This resulted in some companies being business-people but managed by government, often referred to as 'guandu shangban companies'.

The promotion of state capitalism was to follow this interference in corporate development. The intention was to curtail monopolization of key economic sectors by private enterprises. The result of this was the development of the 'most corrupt government in the world' (Wei: 28). State capitalism was used as a way for corrupt government officials to enrich themselves. This hampered the development of corporate practices in China. The coming into power in 1949 of the communist government saw all gains go up in smoke. Amongst the most radical change brought by the new regime was the transformation of privately owned enterprises into state owned enterprises. This resulted in China's economy failing to grow and match its western counterparts.

Having realized the consequences of state owned enterprises, China started moving back to corporatizing its enterprises in the 1980s. There were concerns raised with the decision of the government to corporatize state enterprises. Some viewed this as changing the ownership from state to private owners. They feared that economic reforms would come at the expense of social stability and could result in conflicts at a scale never experienced before in China. In those opposed to corporatizing SOE, de facto ownership of these enterprises would never be solved by corporatization. Despite these opinions, government decided to slowly promote corporatization. The establishment of two stock exchanges in Shanghai and Shenzheng and the passing of the Company Law in 1993 by the People's Congress were proof to the government's stance on corporatization of the Chinese economy.

According to Wei, 'a corporate governance system is shaped by the society in which it evolves'. In corporatizing China, special circumstances of the Chinese society must be taken into consideration. The admission of China into the World Trade Organization (WTO) dictates that it must transform to a level that would put it into the same level as other members of the WTO.

2.5 CORPORATE GOVERNANCE IN AFRICA

The intensity of the debate around corporate governance in emerging capital markets was fuelled by the impact of the 1997 Asian financial crisis. The financial crisis pointed to poor corporate governance structures and the inability of regulators to control financial institutions. The importance of corporate governance in Africa is driven by what the continent is evolving to be (Rwegasira: 259). Globalization of financial markets offers Africa the chance to increase investment, modernize technology, raise productivity and accelerate economic growth. It might be argued that it is premature to talk about corporate governance regulations in much of Africa, where the private sector is very small and capital markets are poorly developed (Armstrong, et al: 2005). Countries have to put in place minimum conditions that would make it attractive for both domestic and foreign investors to invest in a sustainable way in any country. This remains a challenge for many African states.

There is insufficient scholarly work done on corporate governance in Africa. Gibson (2003) points out that 'corporate governance in emerging markets has not been studied as intensively as in developed markets'. It is worth indicating that it is not easy to find articles on the existence or application of corporate governance in African states. This calls for extensive work to be done in this area. This work would go a long way in putting African institution in par with their counterparts in other parts of the world.

African economies have largely been ignored in the international debate about governance systems (Rwegasira: 2000). The debate about governance in Africa

is therefore important to a number of role players including multinational corporations, the IMF and the World Bank because of their presence in the continent. Rwegasira comments that the type of corporate governance system to suit Africa must consider the restructuring that some countries are still undergoing in order to fit into the global economy.

Okeahalam (2003) asserts that corporate governance has implication for economic revival and development in and for Africa. This observation makes the study of this field more necessary. Emerging markets remain the greatest challenge for effective governance. Most emerging economies do not have systems in place to enforce laws. Creating additional laws to enforce corporate governance would not work. The solution, according to Bleby, is to strengthen regulators, auditors, politicians and government machinery to ensure that compliance is encouraged. Phil Armstrong, head of the Global Corporate Governance Forum, says that 'given the hurdles all countries face in improving the environment to encourage better corporate behaviour, greater responsibility must be taken by institutional investors'.

Understanding the business environment in Africa is crucial in understanding corporate governance in the continent. International investors view Africa as a high risk business environment. This could be explained by the political instability in most African states, briberies that foreign multinationals are expected to pay to conduct business and other practices that the West might view as uncommon. Studies conducted also indicate that countries with weaker legal systems also had a 'below average firm level governance'.

The preponderance of closely held and owned family businesses in Africa is another major economic feature. In Nigeria for an example, most businesses are informal and government ownership of most enterprises makes corporate governance a daunting task. A study conducted in 1999 by the Development Policy Center showed that only 13.3% of companies randomly selected in six of

Nigerian states were listed on the stock exchange. This confirms that a high percentage of businesses are informal.

The role, size and diversity of the board of directors are vital elements in the implementation of corporate governance in any organization. The board of directors should serve as a bridge between all stakeholders in the organization, those that bring the needed capital to the firm and those tasked with the responsibility of maximizing shareholders' wealth.

It is expected that members of the board of directors bring wealth of experience to the board in which they serve. Studies indicate that a well diversified board can turn the fortunes of any company around. Williams (2001) found that a positive association existed between the percentage of female and non-white directors on the boards of directors of 84 publicly listed firms and the firm's intellectual capital performance. The diversity of board members brings with it different perspectives to decision making and this creates a dynamic environment. This could be lacking in European states where board members are not as diverse. According to Khoza and Adam, the inclusion of international (foreign) board members in local boards brings divergent views on the deliberations during board meetings. These board members are presumed not to have any 'associations/interests' in the affairs of the enterprise. Their interest is mainly on sharing their own countries' best practices for the benefit of the local enterprise.

The independence of members of board of directors and members of boards of parastatals remains a challenge in many emerging and transition economies, especially in Africa (Okeahalam:2004). Training given to board members is insufficient, if any, and board members do not even understand their fiduciary responsibilities. This gap makes these members vulnerable to 'manipulation' by unscrupulous managers and some chairpersons of these boards. This

manipulation transforms the role of these board members into tokenism. They cannot add any value to the development of the enterprise.

The Audit Committee plays an oversight role in all corporate governance matters and serves as an advisory body to the board of directors. This includes advising on the appointment and payments of internal auditors, the work done by them and giving advice to the board on any matter that might be material to the board. The King II report has made the establishment of an Audit Committee a listing requirement at the Johannesburg Securities Exchange. The same requirement applies to the Ghana and Nigerian Stock Exchanges.

A 2002 KPMG survey of 400 Chief Executive Officers (CEO) and Chief Financial Officers (CFO) suggested that fraud and corruption were on the rise in East Africa. Weak internal controls and poor corporate governance were considered to be reasons for the increase in fraud cases. In Nigeria, a subsidiary of a US oil giant, Halliburton, admitted paying an official a bribe of $2,4m to obtain favourable tax treatment. Incidents of this nature make conducting business in some developing countries a major challenge. This hampers the much needed economic development in some African states.
Slow deregulation of most state enterprises delays proper implementation of corporate governance. Where deregulation takes place, regulatory policy framework is normally put in place to address the public interest on the performance of the recently privatized entity. This is normally done at the expense of implementation of corporate governance principles. In South Africa, the implementation of legislation such as the Public Finance Management Act (PFMA) and the Municipal Finance Management Act (MFMA) can be seen as policy framework put in place to ensure proper functioning of state entities.

Privatization of state assets in Africa has not always been welcomed by all. In many instances, this move is seen as an attempt by government to enrich a few individuals with whom they have close relations. To manage this process, the

appointment of board members is not always as transparent as it should be and only members sympathetic to new owners normally serve in such boards. This, compromises the independence of board members and the implementation of corporate governance in those institutions. To add to the above, many African states do not have watchdog organizations to monitor the effectiveness of recently privatized entities. Where oversight bodies exist, political interference from superiors makes it difficult for these bodies to properly carry out their mandate.

The economic challenges of Africa call for a different approach to dealing with corporate governance issues (Okeahalam: 2004). The peculiarities of Africa which call for this approach include: the existence of a large number of state owned enterprises, the culture of corruption or the pursuit of easy wealth, the lack of transparency in the business environment and low financial intermediation. An African Consultative Meeting held in Kenya in 2002 agreed that corporate governance standards in the continent should be harmonized to take cognizance of the challenges it faces.

The following issues have been found to impact on corporate governance in Africa.

- **Political and legal governance**

Governments must commit to ensuring that the environment conducive for corporate governance is created to allow for the development and sustainability of enterprises. Rules that regulate the behaviour of management and board members must be developed. This would be done in order to secure the interest of shareholders and other stakeholders. In South Africa, the King II report could be seen as rules that have been developed to guide the operation of institutions and behaviour of both management and board members. I am aware that the King II is not legislated but it has generally been accepted as a good code of practice.

- **Regulating payment disclosures**

Payment of bribes and incidents of undisclosed payments do not assist in taking forward the implementation of corporate governance in Africa. A study by Global Witness indicates that some companies doing business in Angola, ChevronTexaco and TotalFinaElf, top the list of companies refusing to engage in discussions on transparency due to hidden contributions that they would not disclose. This requires the international community to call for mandatory payment disclosures by companies doing business in parts of the world. Full disclosure of payments and royalties to all national governments by natural resource companies should be a necessary precondition to deliver just and equitable development and is central to preventing the blatant exploitation of political disorder for private economic gain (Global Witness: 2002).

It is clear that none of the corporate governance systems discussed (by Rwegasira and Bhasa) is superior to the other or is free of problems. None of the systems can guarantee economic prosperity. According to Rwegasira (2000), the institutionally based and market based systems of governance have been 'dragged' into corporate governance systems of some countries. This is in spite of the fact that most of these countries are undergoing restructuring in the form of liberalising its markets. He asserts that the economic performance of enterprises cannot only be based on corporate governance systems.

The choice on the system of corporate governance to implement in many countries has been influenced by a number of factors ranging from political dominance as was the case in the US to stronger financial control as is the case in the German model. Rwegasira (2000) asserts that for Africa to decide on which corporate governance system to apply, it is not necessary for it to choose between the US-UK systems vs. the German-Japanese system. The choice should rather be about which direction corporate governance should take in Africa.

Parades (2005) does not believe that the US market based model of corporate governance is good for emerging and developing countries. He argues that developing countries lack the advanced markets necessary for market based governance system to work. Corporate governance reform, in his view, is about creating and developing securities markets. Most of the developing countries do not have the necessary skills to implement these reforms. Lack of appropriate judiciary system and legal experts is another feature of developing or emerging market economies.

It would seem that the institutionally based model of corporate governance might suit many African states. The reason for this choice is because of the low level of complexity of markets and that of shareholders. Surveys indicate that there are very low savings levels in Africa generally, thus making individual shareholding very low as well. This makes reliance on borrowed funds high, allowing banks and other financial institutions to take advantage of the situation and hold significant shareholding in corporation. Banks would be in a position to play a more significant role in corporate governance issues and in a way help in protecting the interests of the minority shareholders.

Given the role that banks could play in bringing about stability in the financial and capital markets, the institutional based system of governance could contribute in bringing about political stability that is required for economic stability. In this system, no individual or group would have an opportunity to dominate over the other and bring to the continent the unnecessary strife that has been experienced in the past. This model could bring together major stakeholders and open up dialogue in a manner that would allow Africa to economically develop with social equity (Rwegasira: 265). If this system is to be adopted in most states in Africa, banks and other financial institutions would need the requisite human skills to avoid similar experiences such as the Asian financial crisis.

Africa seems not to have a lot of choices with regard to implementation of corporate governance. According to Judge King, the private sector is the only way of 'energizing' economies in poorer countries, most of which are in Africa. The private sector needs real or perceived application of best practises with regard to corporate governance. A survey published in 2000 by McKinsey and Co. indicated that 84% of the 200 plus institutional investors interviewed indicated a willingness to pay a premium for the shares of a company that is perceived to be well run as compared to a poorly run one with similar financial standing. *The elimination of poverty begins with the creation of local jobs for local people. To do this, the private flow of capital to developing countries is necessary. However, the private sector will not invest money in markets characterized by corruption and poor corporate governance.*
-Ira Millstein (2002)

2.6 CORPORATE GOVERNANCE IN SOUTH AFRICA

South Africa's socio-economic landscape has changed radically since the all-inclusive general elections that took place in 1994. With these changes, international investors waited to observe the direction that the market would take in the wake of these changes. As could have been expected, investment at that time was not enough. International investors need the confidence in the governance systems of a nation before investing equity that might not bring the required returns, hence the need for corporate governance.

The legislative landscape has undergone major transformation in an effort to redress some of the ills of the past and making market ready to deal with corporate governance issues. Major pieces of legislation passed since the publication of King I are: -

- The Constitution of the Republic of South Africa (1996)
- Labour Relations Act (1995) which prohibits unfair labour practises and encourages collective bargaining between workers and employers

- Basic Conditions of Employment Act (1997) which encourages fair labour practises and regulates employment conditions.
- Employment Equity Act (1998) which promotes fair employment practises and eliminates unfair discrimination in employment
- Insider Trading Act (1998) which prohibits individuals with inside information on securities from trading in those securities
- Public Finance Management Act (1999) which regulates financial management in both national and provincial spheres of government and government entities
- Amendment to the Companies Act
- Amendments to the Banks Act
- Municipal Finance Management Act (2003) which regulates financial management of municipalities and any of its entities

With above legislative frameworks in place, corporate governance in many organisations has taken on a new meaning. These, according to Judge King, have allowed many previously disadvantaged individuals to participate freely in the mainstream economy.

"Within thirty six months, corporate governance has in South Africa changed from being a 'soft' mainly ethical issue to a 'hard' issue, recognised as pivotal to the success and revitalisation of the country's capital markets and, ultimately, the prospects of the corporate economy" (Malherbe & Segal, 2001:7). The King I and II reports on Corporate Governance have been hailed as having masterminded the way business management and board functioning have been transformed in the country. This sterling work by Judge M King and his committee has not gone unnoticed. To indicate the acknowledgement of the work being done by this country, the United Nations has recently appointed Judge King as Chairman of a high-level steering panel to evaluate governance at the United Nations (UN). This comes after the scandal over the UN's oil-for-food programme with Iraq, which damaged the international body's reputation. Despite these accolades, the achievements of South African companies in

implementing corporate governance have not gone without criticisms. Judge King, as champion of corporate governance, has been criticized for serving in the boards of Brait and JD Group where the responsibilities of the Executive Chair and CEO were not separated (Green, 2006).

Despite the efforts of the King Committee to encourage transparency and advocate good governance principles and the worldwide media coverage received by recent scandals, a South African engineering company Dorbyl has recently come under fire at its recent annual general meeting for poor corporate governance and conflict of interest. This related to poor disclosure on directors' benefits and sheer disregard for conflict of interest on the part of directors.

Armstrong et al (2005) argue that to ensure that the high standards of corporate governance are adhered to, it is equally imperative that institutional structures and financial resources are put in place to support this objective. They further argue that failure to ensure the necessary support for the implementation of corporate governance would only undermine the good intentions of the authorities.

An equally important consideration for corporate governance in South Africa is the ability of small enterprises to afford the implementation of corporate governance principles (Armstrong et al, 2005). Small businesses are integral towards the creation of jobs in many developed and developing countries, hence the importance of mentioning them here. This question is not unique to the South African situation, but 'illustrates the perverse consequences of adopting high-level global standards that do not always accommodate the difficulties facing emerging markets' (Armstrong et al, 2005:34). This is an area that can only be consolidated for the better of South Africa and to attract foreign investment into the country.

It would also seem irregular to discuss corporate governance in South Africa without looking at the contribution of King I and II reports on the subject and the way they have influenced the way business is done in the country.

Malherbe (2001) confirms that the most important driver for change towards corporate governance has been the market. The criticism levelled at South Africa by foreign institutional investors with regard to corporate culture, governance and performance has also played a major role. The need to comply with international standards accelerated the implementation of corporate governance in South African organisations. An unfortunate side effect of the great corporate scandals such as the collapses of Enron, WorldCom and Parmalat, is that while they have convinced people of the need for better governance, people have tended to see governance as something solved by creating new laws, rather than by guidelines (Bleby:2006). South Africa, along with Canada and the UK, was one of the first states to adopt best practises codes concerning corporate governance as part of the listing requirements and furthermore require disclosure and explanation of how corporate policies measure up to them (Rwegasira:2000).

2.7 KING I AND II REPORTS

According to Kakabadse & Korac-Kakabadse (2002), the publication of the King reports was in response of corporate scandals that arose due to poor corporate governance in South African corporations. Cited are the collapse of Masterbond, the scandals with the Nedcor share-incentive schemes, Regal Treasury Bank, SA Airways, MacMed and LeisureNet.

King I report on corporate governance was first published in 1994 and was aimed at promoting the highest standards in corporate governance in the country. It was the first publication of its kind and set the tone for subsequent publications on the subject. According to Cliffe Dekker Attorneys report on 'King Report on Corporate Governance in South Africa 2002', King I advocated a comprehensive

and inclusive approach to good governance for all stakeholders. Legislation passed subsequent to the publication of King I necessitated its revision, leading to the publication King II in 2002. Slayter (2005) asserts that King II has been acclaimed as the international benchmark for corporate governance.

What separates King II from King I is that it not only concentrates on the traditional aspects of reporting on financial and regulatory issues regarding corporate governance, but it encourages an approach that takes the interest of a wide spectrum of stakeholders which includes social, economic and environmental aspects of the company's activities. This approach is referred to as being a 'participative corporate governance system' by Judge King. King II also places fundamental importance on integrated sustainability reporting. This reporting allows for reporting from both internal (board and management) and external (shareowners and stakeholders) perspectives and both King I and II encourage the use of a commonly used language for reporting. King II used this reporting due to a lack of a globally mandated framework for reporting. This integrated sustainability reporting has been based on the Global Reporting Initiative's Sustainability Reporting Guidelines.

Issues that arose out of King I and required attention were: -

- Transparency – transparency seemed lacking in most SA corporations
- Interest of directors – problems with insider trading
- Ownership – difficulty with tracing shareholding ownership
- Family interests and controls – pyramid schemes being used to control business on behalf of families
- Non-executive directors' agenda – the majority of non-executive directors representing majority shareholders in corporations, thereby being unable to safeguard the interests of other shareholders.

These revelations made it necessary for the Institute of Directors to commission another review of corporate governance that would ensure that the above issues are addressed. This led to the birth of King II.

The King report considers the following principles as pillars of good governance:-

- **Discipline** – this relates to the behaviour and conduct of senior management of the company. It has to be in a manner that is considered acceptable to all and would not compromise the integrity of the company
- **Transparency** – relates to the ability and ease with which an interest party from outside would be able to gain access to information relating to the affairs of the company. This would give an indication of management's ability to provide timeous and accurate information to those asking for it. Possible investors need to get a sense of efficiency in the company.
- **Independence** – this is the extent to which conflict of interest can be minimized in the company. This includes appointments to the board and its committees. The need to take objective decisions in the interest of the company is encouraged.
- **Accountability** – decision makers and those who implement such must be able to account/give acceptable explanation for them. This allows investors to assess the board and its committees.
- **Responsibility** – ability of management to take decisive actions where there are problems and for the board to act responsively and responsibly towards stakeholders
- **Fairness** – systems in the company must be balanced to cater for the interests of all stakeholders. Mutual respect is necessary.
- **Social Responsibility** - the need to recognize the role that the company plays in society and be conscious of its actions and how they might affect others.

The first draft of King II was released for comment in July 2001. King II has been compared to the UK's Cadbury Report of 1992 in that it is non-prescriptive. However, the King II report recommends that reporting should not be on financial alone, rather on information that would give investors a sense of the

sustainability of the enterprise. It encourages corporations to adopt and implement its recommendations. In a move that was considered proactive, the Johannesburg Securities Exchange made some of the recommendations compulsory as part of its listing requirements.

King II aimed to review King I and its relevance given local and international developments that had taken place since its publication, to review the proposal for an inclusive approach, to recognize the importance of reporting on other non-finance issues and to find out how the balanced scorecard reporting could be used to assess the success of enterprises. A total of five (5) task teams were created to look at the various corporate governance issues. The teams were the Boards and Directors task team, the Accounting and Auditing task team, the Internal Audit, Control and Risk Management task team, the Integrated Sustainability Reporting task team and The Compliance and Enforcement task team.

King II report recognized that there were some recommendations in King I that were overtaken by political and legislative developments. However, most of the recommendations were repeated in King II. The report recognizes the important role that the board has to perform in ensuring that management implements an all inclusive strategy it has developed. This notes that corporations operate in an environment where most citizens rely on the economic benefits of society. It is within this background that the King Committee holds the view that an all inclusive approach is critical to doing business in South Africa.

As summarized by the King Committee, 'successful governance in the world of the 21st century requires companies to adopt an inclusive and not an exclusive approach. The company must be open to institutional activism and there must be greater emphasis on the sustainable or non-financial aspects of its performance. Boards must apply the tests of fairness, accountability, responsibility and transparency to all acts or omissions and be accountable to the company also

but responsive and responsible towards the company's identified stakeholders. The correct balance between conformance with governance principles and performance in an entrepreneurial market economy must be found, but this will be specific to each company (Institute Of Directors: 2002).

Armstrong, et al (2005) argue that discussion on corporate governance in South Africa would not be complete without looking at the effects of black economic empowerment on it. They contend that the efforts of government to ensure representation of blacks and other previously excluded groups from the mainstream of the economy is a phenomenon that is not well understood internationally and might also create corporate governance problems. Problems could be created by what they term 'the building of a capitalist class on the basis of artificial financing structures' which are foreign to international investors. The commendable progress achieved by policy-makers since 1994 will have to be sustained by a certain level of vigilance on their part, to ensure that important developments towards the development of a black business class do not circumscribe the drive for good corporate governance (Armstrong et al, 2005: 33).

2.8 PROTOCOL ON CORPORATE GOVERNANCE IN STATE OWNED ENTITIES

The first protocol was published by the Department of Public Enterprises in 1997 and later revised in 2002. The objective of the protocol was to guide SOEs on how to implement good governance. In line with the King Code, the protocol was not prescriptive but intended to foster good governance in SOEs. However, as Khoza and Adam (2005) point out, the protocol has 'regrettably failed to fulfil its main objectives'. The protocol is considered not to have brought any new ideas to the way good governance should be carried out. It is seen as merely emphasising what was contained in King II and the Public Finance Management Act.

2.9 CONCLUSION

No single model would provide the solution to any country's corporate governance problems (Khoza & Adam: 2005). According to Armstrong et al (2005), considerations for high standards of corporate governance should be weighed against other policy priorities, which are most often of a social nature in Africa. The successful implementation of corporate governance assumes the existence of well developed markets, something lacking in many African states. In the absence of well established markets, authorities need to find alternative ways of supporting the implementation of good corporate governance.

Armstrong et al (2005) suggest continued participation and influence by the state in commercial activities. This participation could be in the form of SOE that would operate along the lines of internationally recognised guidelines such as those adopted by the OECD. However, they contend that this would only happen to the benefit of the economy if there is sufficient political will, which has been lacking in most governments. They argue that problems frustrating the implementation of corporate governance in most African states can be overcome by identifying, through the New Partnership for Africa's Development (**NEPAD**), areas that would contribute to economic effectiveness. The platform must be created to allow for director development that would increase the strategic capacity of the enterprise.

Countries battling with governance issues must ensure that legislative and policy framework customised for their own conditions are created to make good corporate governance a reality. These must be self-regulatory in nature. A solid foundation is needed on which corporate governance can be built. This calls for the participation of all stakeholders in this effort and willingness of all to recognise the strength and weakness inherent in the current system.

CHAPTER 3
RESEARCH METHODOLOGY AND DESIGN

3.1 INTRODUCTION

This chapter will look at the type of research undertaken and explore the method used to collect data. The collection, collation, measurement and analysis of data collected will be dealt with in this chapter.

This study will take a qualitative research form. An existing questionnaire will be used to enquire on the application of corporate governance at institutions to be studied (Questionnaire developed by Prof. V Makin and M. Madisakwane). Where necessary, personal and telephonic contact with relevant officials would also take place.

3.2 LIMITATIONS

It has been extremely difficult controlling respondents and getting the necessary assistance from most of the targeted individuals. In an attempt to get around this problem, I contacted some individuals to assist me by introducing me to their acquaintances but this has not proven successful either. My location in the North West and lack of contacts at SOEs has hampered my research report. I am still hopeful that I would be able to receive more questionnaires before the final submission of the research report.

3.3 RESEARCH DESIGN AND METHODOLOGY

This chapter outlines the research methodology of this study. This research will be conducted by means of a qualitative research approach. This means that the hypothesis will be clearly stated and measurable through the use of a measuring instrument. The research will be

conducted with a view to testing the hypothesis and, ultimately, either accepting or rejecting the formulated hypothesis.

According to Burns and Grove (1997), the researcher's decisions culminate in the design of a study that would indicate how the study would be carried out/conducted. The researcher must develop a framework that closely resembles the design and gives direction necessary for the planning and implementation of the study. The design assists the researcher in conducting the study and gives room to optimize control over variables that could interfere with the validity of the findings.

De Vos et al (2002), define the qualitative research paradigm as research that evokes participant account of meaning, experience or perception. It is descriptive in form. The participant gives his/her own account in either written or spoken words. A qualitative study is concerned with non-statistical methods and a usually small selected sample.

The hypothesis for this study was constructed as follows:

Null hypothesis: H_0 = There is a compliance with the recommendation of the King II report on corporate governance and SOEs in South Africa apply good corporate governance practises and compares well with SOEs in other parts of the world

Alternative hypothesis: H_1 = SOEs in South Africa do not practise good corporate governance principles as recommended by the King II report on corporate governance

3.3.1 NATURE OF THE STUDY

The study looks at the implementation of corporate governance principles in SOEs. Given the ownership of SOEs and the historical interference by political principals in the governance of these institutions, it is believed in some quarters that SOEs don't implement good corporate governance principles.

The research report is guided by the Code of Corporate Practices and Conduct, referred to as the Code in the King II report. Questions asked in the questionnaire aim to determine the implementation of Code by the Board of Directors of SOEs. The questionnaire used looks at the following areas that relate to the functioning of the board:

- Size, composition and role. This section looked at the role of the board, training given to Board members, types of committees established by the Board, selection criteria and aspects of performance evaluation of both the Board and CEO
- Audit Committee. This section looked at the composition of the Audit Committee and functions performed by it.
- Strategy – The role played by the Board in formulating strategy for the enterprise
- Communication and information. This section looks at the information given and shared with Board members and how communication of discussion items is organized.

The questionnaire uses a scale or rating ranging from 1 – 5, with 1 indicating that no systems are in place and 5 signifying the existence of systems. A description/explanation is often requested in certain instances.

3.3.2 APPROACH AND DATA COLLECTION

The approach to gathering information/completing questionnaires was two fold, viz.; sending e-mail to possible respondents (most of the respondents were linked through friends in the corporate sector) and personally engaging with other respondents and completing the questionnaire in the process. Respondents using e-mail would electronically complete the questionnaire and send it back.

3.4 TARGET POPULATION

The target selected for this study was SOEs in the Republic of South Africa and municipal entities. SOEs and municipal entities offer services that are not offered by the mainstream government departments and municipal administration. A description of these is given under 3.4.1 below. The majority of these enterprises have their head offices in Gauteng and most municipal entities are established by the Metropolitan Council, three of which (out of six) are based in Gauteng.

3.4.1 PROFILE OF ORGANISATIONS SURVEYED

Targeted individuals to assist in completing these questionnaires included CEO, Managers responsible for Corporate Governance, Heads of Internal Audit/Chairperson of Audit Committees. Senior officials in organizations who have knowledge of corporate governance issues were contacted.

The study looked at state owned enterprises/parastatals. These include

- **SOUTH AFRICAN TOURISM**

  South African Tourism markets South Africa's scenic beauty, diverse wildlife, kaleidoscope of cultures and heritages, the great outdoors, sport and adventure opportunities, eco-tourism and conference facilities. The board of South African Tourism reports to the Minister of Environmental Affairs

- **INDEPENDENT DEVELOPMENT TRUST**

The Independent Development Trust (IDT) was established in 1990 by the national government. An original mandate was granted to disburse a grant of R2 billion in a manner which would best serve the development of disadvantaged communities in South Africa.

The strategic direction of the IDT is informed by the national development agenda and the strategic choices in the Corporate Plan reflect an interpretation of the relevance of its mandate to this agenda. Government is the sole shareholder in IDT.

- **INDEPENDENT ELECTORAL COMMISSION**

The Independent Electoral Commission (IEC) is a constitutional body established in terms of Chapter 9 of the Constitution of the Republic of South Africa as amended on 11 October 1996. It is one of the six (6) state institutions supporting democracy. The IEC is not a commercial enterprise but has a Commission that gives strategic direction to the way the body is managed.

- **ESKOM**

Eskom is a vertically integrated operation that generates, transmits and distributes electricity. Eskom generates 95% of the electricity used in South Africa.

Eskom Enterprises, the wholly-owned subsidiary of Eskom, together with its subsidiaries, serves as a means by which all the non-regulated activities of Eskom, both inside and outside South Africa, are carried out. Eskom Enterprises' core lines of business are infrastructure development, energy business operations, specialised energy services and the pursuit

of key opportunities in related or strategic businesses, such as information technology and telecommunications.

The ownership of Eskom vests in the South African government.

- **SENTECH**

Sentech began operations in 1992 under the auspices of the SABC, as a signal distributor for all transmissions related to the SABC. In its Triple Inquiry report published in August 1995, the Independent Broadcasting Authority (IBA) recommended that Sentech be split from the SABC and that Sentech become a public company, with all signal distribution facilities of the former TBVC states and staff also being transferred to Sentech. The IBA report was approved by Parliament in March 1996 and a Sentech Act to implement these measures was adopted by Parliament in November 1996.

Sentech now operates as a commercial state owned enterprise with its own board of directors.

- **BOTSHELO WATER**
- **SEDIBENG WATER**

Sedibeng Water, previously known as Goudveld/Goldfields Water, was established on the 1st of June 1979 (Proclamation 114 of 1979) mainly to serve the Free State Goldfields and parts of the former Western Transvaal. In 1996, the operational area was extended to include various other districts in the North West Province (Proclamation 612 of 1996), as well as Central Free State and Eastern Free State, i.e. Qwaqwa (Proclamation 1361 of 1996). Under Proclamation 612 of 1996 Sedibeng Water also obtained managerial responsibility regarding the provision of essential services for certain districts in the North West Province.

- **NORTH WEST HOUSING CORPORATION**

The North West Housing Corporation was established in terms of the North West Housing Corporation "NWHC Act". The legal mandate (powers, functions and duties) of the NWHC is to assess, determine and review, on a continuous basis, the position regarding homelessness and housing in the Province as regards shelter, accommodation and housing

- **INVEST NORTH WEST**

Invest North West has been incorporated under the Companies Act, 1973 (Act 61 of 1973) as a public benefit organisation under Section 21.

Invest North West is the official Investment Promotion Agency (IPA) for the North West Provincial Government and its founding purpose is to promote trade and fixed direct investment, create employment for the people of the North West Province and attract new and sustainable businesses by the deployment of grant-in-aid funds from the public sector and others.

- **NORTH WEST PARKS BOARD**

The North West Parks and Tourism Board has its roots in the development of the Pilanesberg National Park in the late 1970's. In terms of the National Parks Act No. 24 of Bophuthatswana, passed in 1987, the Board as it stands today was established "for the purpose of managing proclaimed parks and controlling the use of renewable natural resources outside such national parks".

- **NATIONAL ENERGY REGULATOR OF SOUTH AFRICA**

The National Energy Regulator (NERSA) is the regulatory authority established in terms of the National Energy Regulator Act, 2004 (Act No. 40 of 2004) with the mandate to undertake the functions of the Gas Regulator as set out in the Gas Act of 2001, the Petroleum Pipelines Regulatory Authority as set out in the Petroleum Pipelines Act of 2003 and the National Electricity Regulator as set out in the Electricity Act of 1987 as amended.

3.5 MEASURING INSTRUMENT

An existing questionnaire (developed by Prof. Makin and Mr. M Madisakwane) was used for the research study. The questionnaire enquired on the operations of the board under the following headings: Size, Composition and Role, Audit Committee, Strategy and Communication and information. The questionnaire is attached as Appendix A. The questionnaire was sent by e-mail to targeted individuals. This followed a verbal request made to the person I would have been referred to. In other words, there was no letter sent to any of the enterprise requesting that the questionnaire be completed.

The email introduced me to the respondent and indicated what the objective of my research study was. I further indicated my willingness to share the results of this study with respondents. In all instances where I could speak to the relevant official, the response was always positive and they were all willing to help.

Despite the promises made, not all questionnaires were sent back. The problem was mainly with respondents with whom I did not have a 'relationship' with or who I did not have associates in close relationship with.

CHAPTER 4
DATA ANALYSIS AND RESULTS

4.1 Background

Corporate governance is the set of procedures, practices, policies, rules and regulations applied by an organization in its administration. It also involves the relationships exists among the key players or stakeholders and the goals for which the organization is managed. In corporate governance, the key players are the shareholders, management and the board of directors. Other important players include employees, suppliers, customers, financial institutions, regulators, the environment and the community at large. The success of an organization depends on the constant engagement of these players.

Corporate governance is a subject with many faces. There are basically tow important areas that corporate governance focuses. One, it deals with issues of accountability and fiduciary duty, essentially advocating the implementation of guidelines and mechanisms to ensure good behaviour and protect shareholders. Two, it focuses on the economic efficiency view, through which the corporate governance system should aim to optimize economic results, with a strong emphasis on shareholders welfare.

This special report was designed to present a picture of the current status of the composition, scope of activities, and roles, in general, of a sample of Board of Directors in the Public Sector.

4.2 Objectives

The primary objective of this study is to identify the extent to which public entities apply the protocol on corporate governance in the public sector. Other objectives are:

- To gain an accurate understanding of the current state of corporate governance in the public sector.
- To assess perceptions held by Board Directors regarding issues of corporate governance in the public sector.
- To provide key policy recommendations for strengthening corporate governance and improving the efficiency in the public sector

4.3 Survey Methodology

The research obtained contact details for all the companies included in this study. The details were then verified by the researcher through telephone calls to ensure the status of companies and the accuracy of contact names, telephone numbers and addresses. The task of verifying the contact details of the companies took only a day to complete.

The questionnaire was designed as a self-administered survey instrument and was sent to all eligible companies by the researcher. Interviewers then arranged to visit the contact person at each company to review and complete the questionnaire. Those who got their questionnaire through email completed them and returned them to the researcher.

4.4 Respondents

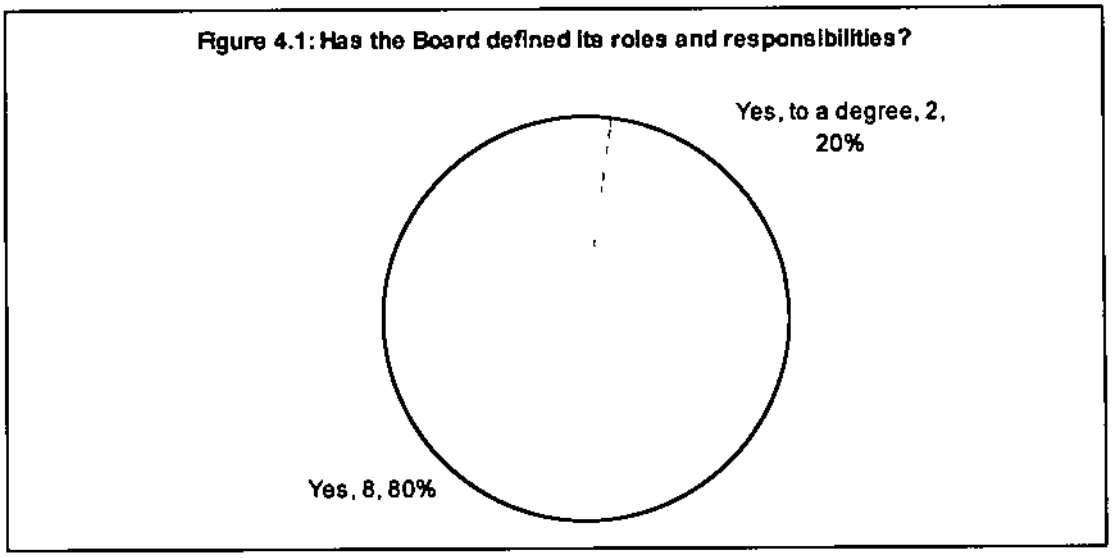
The survey was mailed out to 15 companies and was addressed to chief executive officers and company secretaries of such companies because it was believed that through that channel a higher sense of importance will be attached to the study. The survey was administered from March to May 2005. The respondents had the choice of not disclosing their identity. A total of 12 valid responses were received out of which were analyzable.

4.5 Study Findings

This section presents in detail findings from the analysis of the data. Pie charts and histograms have been used to facilitate the understanding of the findings.

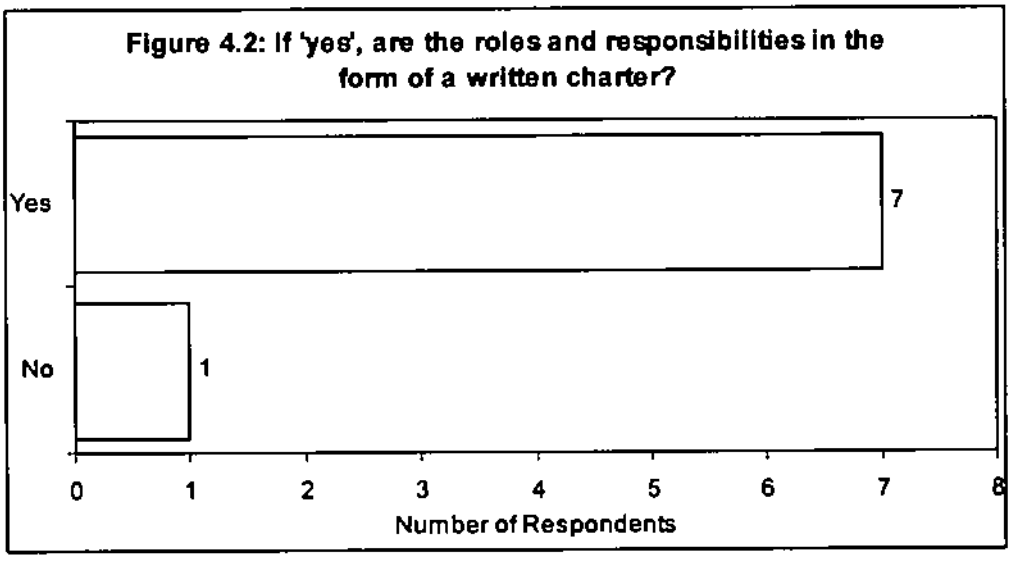
4.5.1 Size, Composition and Roles

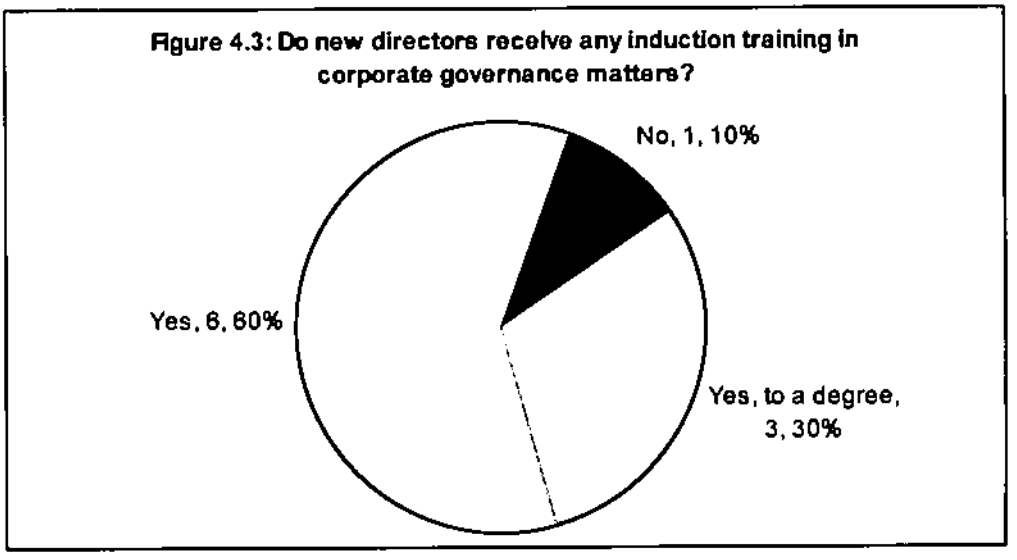
Of the 10 respondents, 8 (80%) indicated that their Boards had defined roles and responsibilities while the remaining 2 (20%) said 'yes' with a degree of uncertainty (Figure 4.1). Of these 8 respondents who indicated their Boards have defined roles and responsibilities, 6 (75%) said the roles and responsibilities are in the form of written charter while the remaining 2 (25%) said they were not (Figure 4.2).

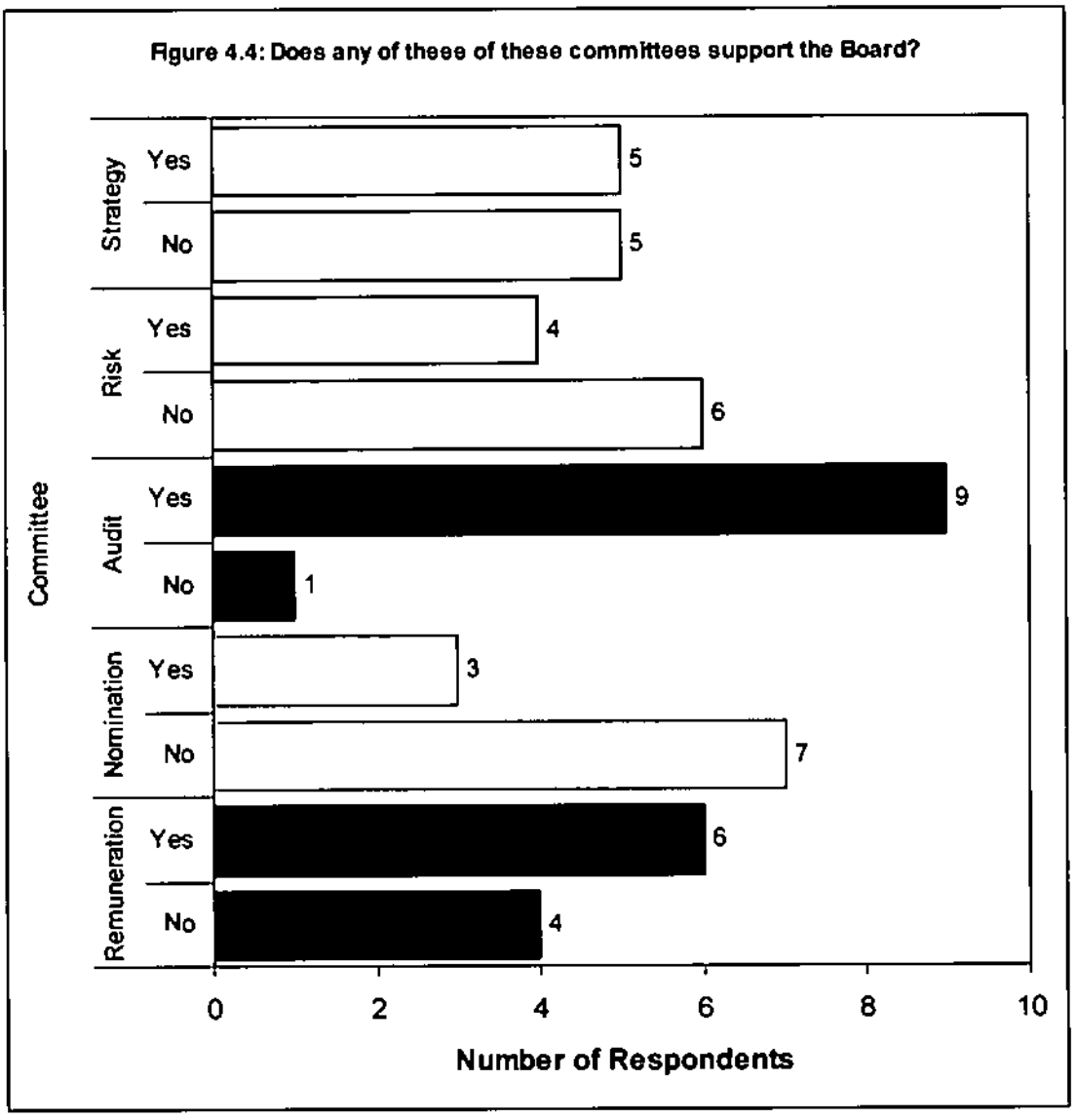


When respondents were asked whether new directors joining their companies receive any training in corporate governance matters, 6 (60%) responded in the affirmative while 1 (10%) said they never do that (Figure 4.3). The remaining 3 (30%) said 'yes' with some level of uncertainty. As to whether sitting directors receive any ongoing training in corporate governance, only 1 (10%) of the respondents indicated in the affirmative while 2 (20%) said 'no' (Figure 4.4). The

remaining 2 (20%) were unsure as to whether directors already with their respective Boards are given training regarding corporate governance.







When asked whether any of the five listed committees support the work of the Board:

- 6 of the 10 respondents said they have a remuneration committee that supports the work of the Board (Figure 4.4). The remaining 4 indicated either such a committee never existed to support the Board or that it existed but never supported the Board.

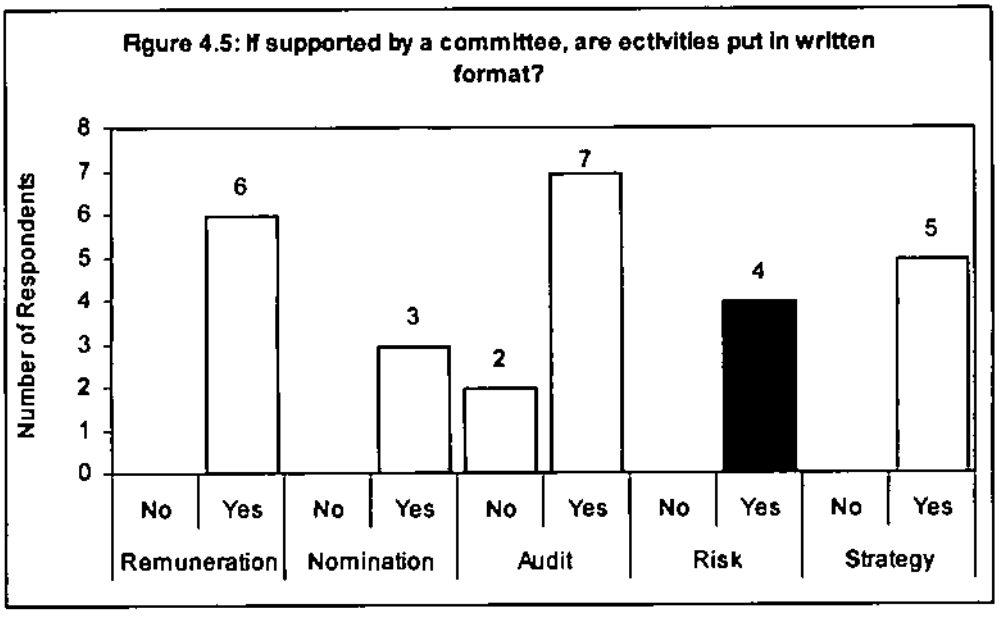
- Only 3 of the 10 indicated that their companies had nomination committees that supported the Board (Figure 4.4). The remaining 7 had such a committee to support the work.

- Except one respondent who indicated that there was no audit committee to support the work of the Board, all the remaining 9 indicated there was such a committee to assist the Board's work (Figure 4.4).

- 4 of the 10 respondents said there were risk committees that assisted the work of the Board while the remaining 6 said no support had been received from such a committee, even if it ever existed (Figure 4.4).

- 5 out of the 10 respondents said their companies had strategy committees that supported the Board's work (Figure 4.4).

Of those respondents who indicated that various committees had been put in place to provide supports for the Board, they were asked whether such supports are in a written format.



- All 6 respondents who indicated there were remuneration committees to support the work of the Board said such supports had been put in a written format (Figure 4.5).

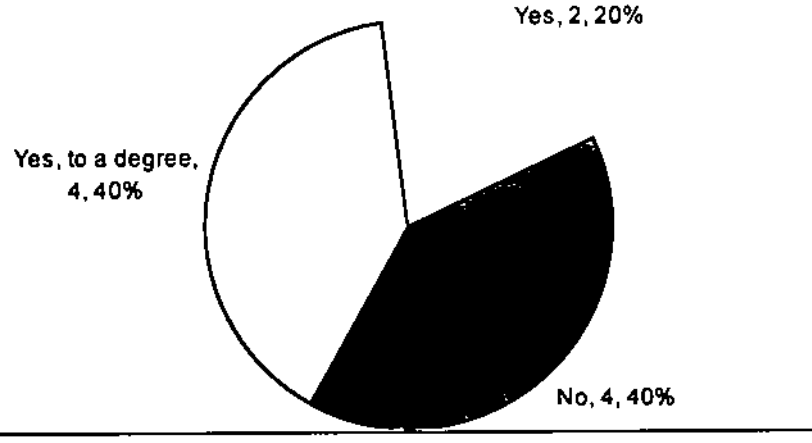
- All 3 respondents who indicated there were nomination committees to support the work of the Board indicated that such supports had been put in a written format (Figure 4.5).

- 7 of the 8 respondents who indicated there were audit committees to support the work of the Board said such supports had been put in a written format (Figure 4.5).

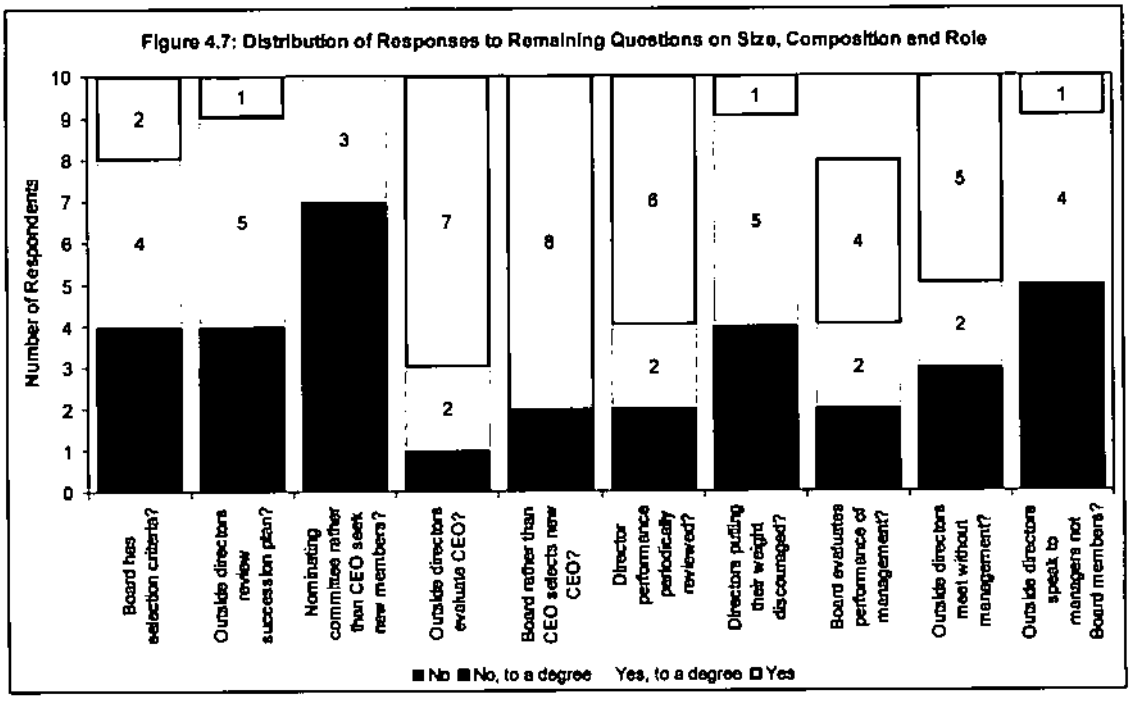
- All 4 respondents who indicated there were risk committees to support the work of the Board indicated that such supports had been put in a written format (Figure 4.5).

- All 5 respondents who indicated there were strategy committees to support the work of the Board said such supports had been put in a written format (Figure 4.5).

Figure 4.6: Has the Board designed selection criteria for Board membership?



When asked whether the Board has designed selection criteria for Board membership, only 2 of the 10 respondents responded in the affirmative while 4 said 'no' (Figure 4.6). The remaining 4 of the respondents said 'yes' with a degree of uncertainty.



- Of the 10 respondents included in the study, 4 said their companies had put in place selection criteria for Board membership while another 4 said their companies had never done that (Figure 4.7).

- While 5 of the 10 respondents indicated that their companies invites outside directors to review their succession plans, 3 others said their had nothing of this sort in place (Figure 4.7)

- Most of the 10 respondents included in this study (4 out of 10) said their nominating committees do not have the power to direct the research for new Board members and the power to invite the candidate to stand for election. It is the prerogative of the CEO (Figure 4.7).

- 7 of the 10 respondents also indicated that outside directors are often invited to evaluate the strengths, weaknesses, objectives, personal plans, performance of their CEOs every year, while 2 others said, 'yes, they do, but with some restrictions' (Figure 4.7).

- 8 of these respondents also said that the Board, rather than the CEO, selects the new CEO, in most cases (Figure 4.7).

- Of the 10 respondents, 6 indicated that the performance of the companies directors are periodically reviewed while 1 said his/her company never does that (Figure 4.7).

- Only 1 of the respondents said that from his/her personal view, directors who tend to be pulling their at work are often discouraged from standing for re-election while 5 were reluctant to say such a practice seem to occur at their respective companies (Figure 4.7). The remaining 4 said such a practice never happens.

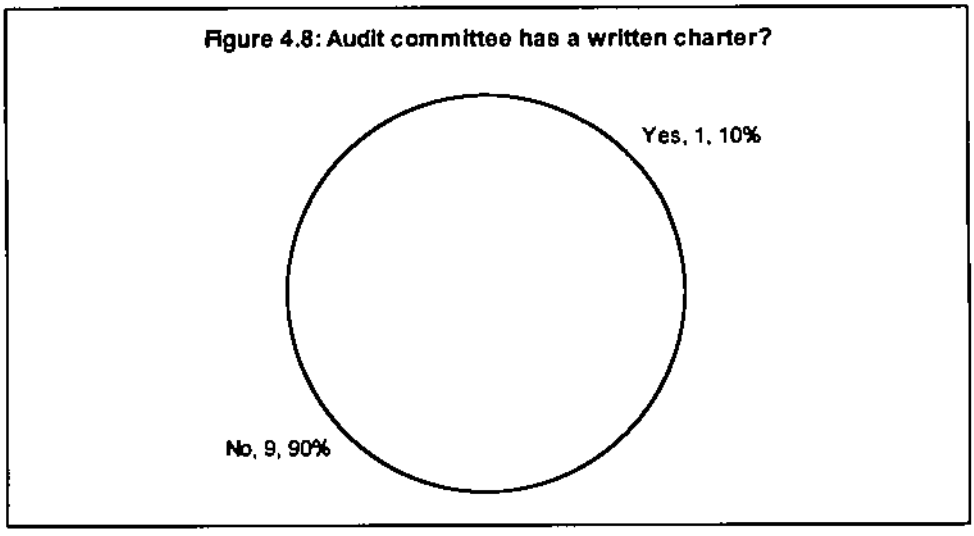
- 4 of the respondents said the Board regularly evaluates the performance of other senior management while 2 said their Boards of directors never did that (Figure 4.7). The remaining 4 of the respondents said 'yes, but not as regular as it is supposed to be'.

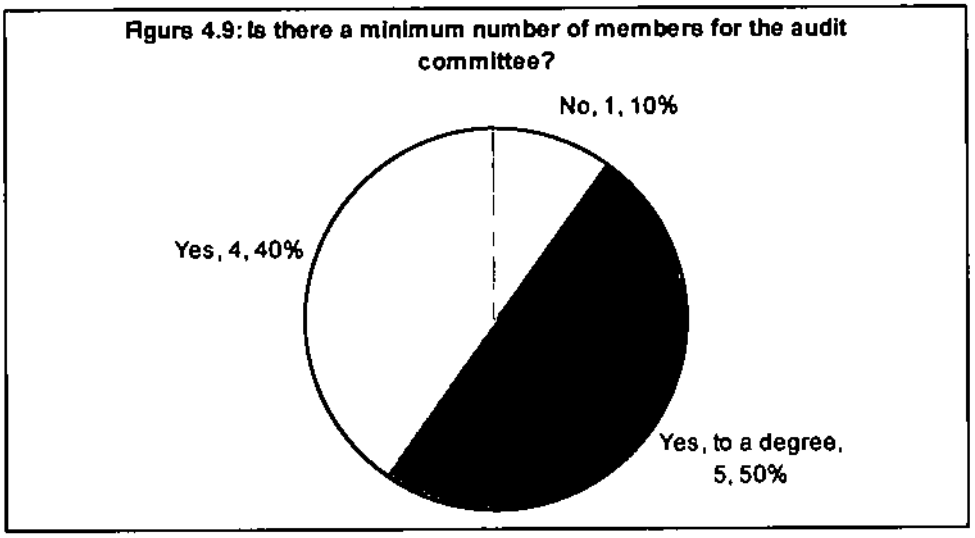
- As to whether outside directors meet without management on a regular basis, 5 of the 10 respondents responded in the affirmative while 3 had an opposing view (Figure 4.7).

- 5 of the respondents said it had never been a practice outside directors would routinely speak to senior managers who are not represented on the Board.

4.5.2 Audit Committee Related Issues

This section focuses on presenting the distribution of responses provided to some eight questions related to audit committees of the 10 companies included in the study. Of the 10 respondents 9 of them said their respective companies have a written charter that appoints the audit committee (Figure 4.8). As to whether there exists a minimum number of members for the audit committee, 4 said 'yes' while 1 said 'no' (Figure 4.9). The remaining 5 of the respondents said 'yes, but the decision often depends on other factors'.



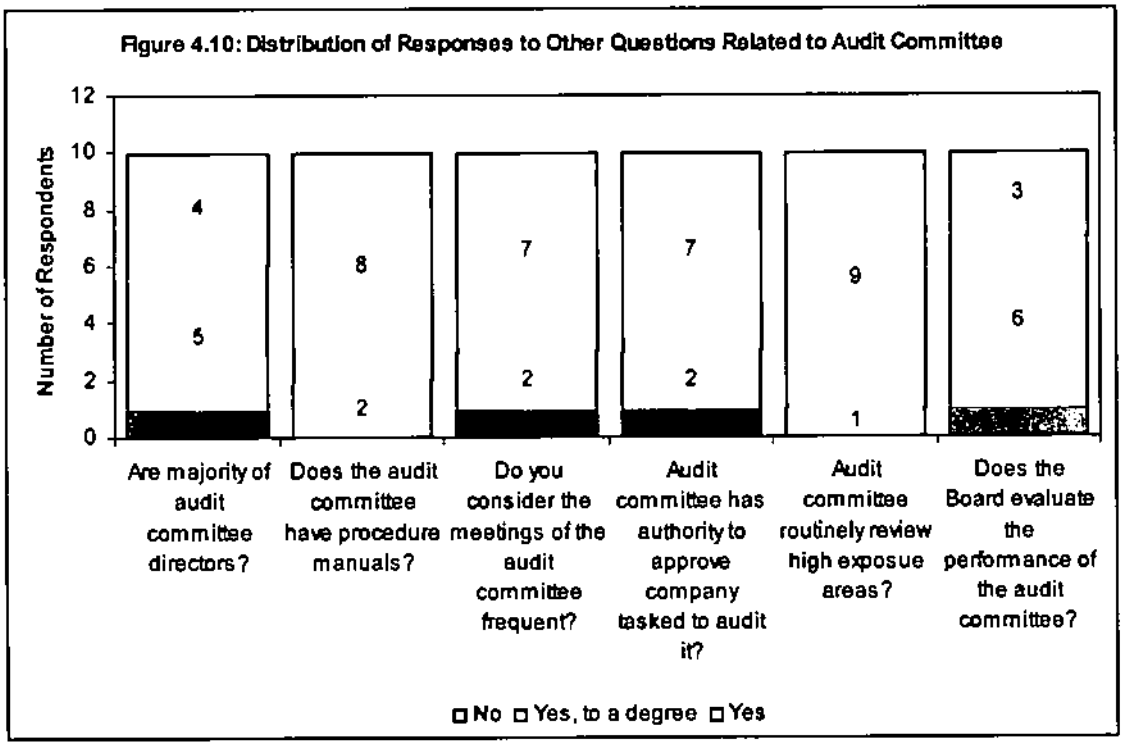


- Four of the respondents indicated that the majority of the members of the audit committees in their respective companies were directors while 5 also agreed that most of the members were directors, but to an extent (Figure 4.10).

- 8 of the 10 respondents the audit committee from their respective companies have procedure manuals (Figure 4.10).

- 7 out of the 10 respondents also consider meetings of the audit committees frequent while 1 said their meetings were not as frequent as they were supposed to be (Figure 4.10).

- Most of the respondents also indicated that the audit committees in their respective companies have the authority to approve the company in charge of auditing the company (7 out of 10; Figure 4.10).



- Nine of the 10 respondents also said their companies audit committees routinely checks and reviews high exposure areas in the company (Figure 4.10).

- Only 3 of the 10 respondents indicated that the performance of the audit committee is evaluated by the respective Boards (Figure 4.10).

4.5.3 Strategic Issues

This section assesses respondents view regarding strategic management of the 10 companies included in this study. Of the 10 respondents, 5 were of the view that respective Boards of Directors are actively involved in formulating long-term strategic plans while 1 disagreed to some extent (Figure 4.11).

- When asked, 5 of the 10 respondents indicated that the Board of Directors of their respective companies are actively involved in formulating long-

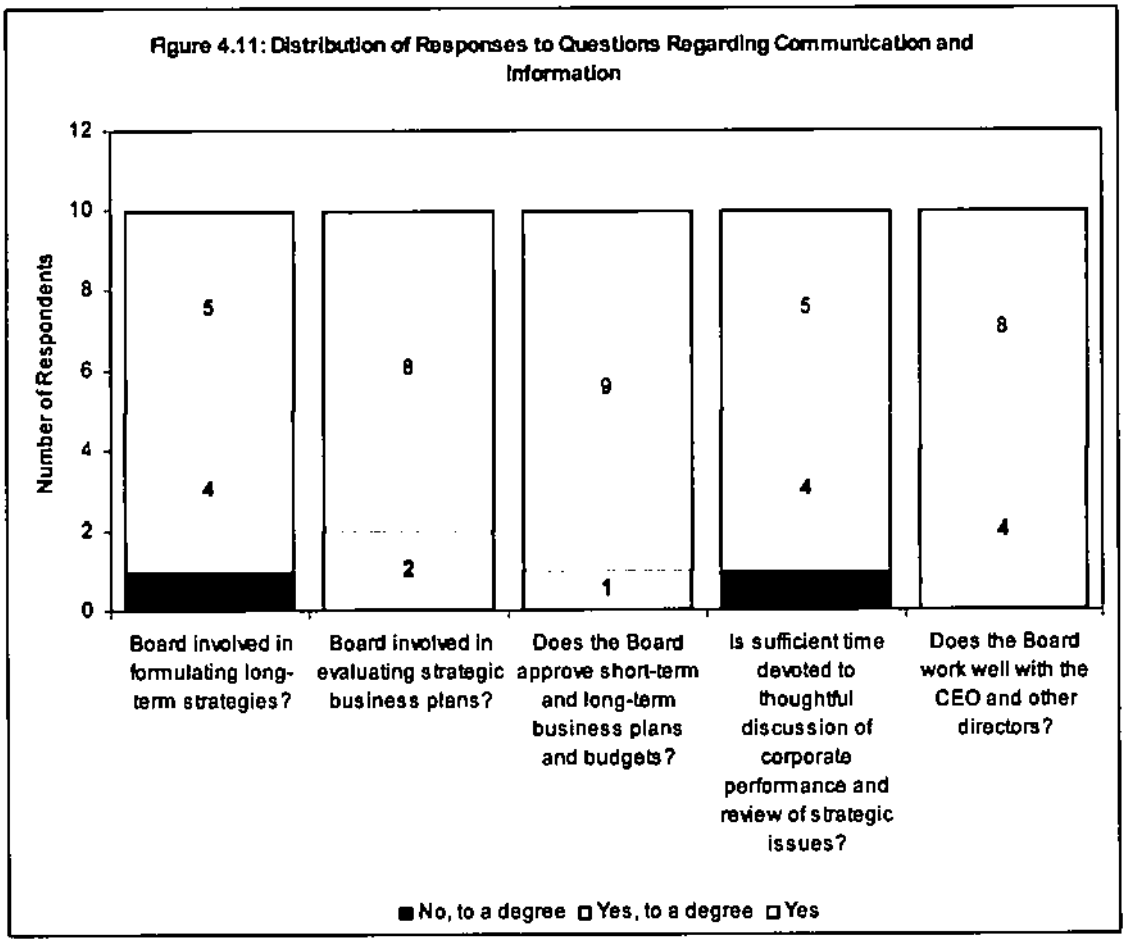
term business strategies for their companies while 1 said their Board of Directors are normally excluded from such an exercise (Figure 4.11).

- Almost all the 10 respondents indicated that the Boards of Directors at their respective companies are normally involved in evaluating their companies strategic business plans (Figure 4.11).

- Almost all the 10 respondents also indicated that the Boards of Directors at their respective companies have the power to approve short-term and long-term business plans and budgets (Figure 4.11).

- 5 of the 10 respondents were of the view that sufficient time is usually devoted to thoughtful discussion of corporate performance and review of strategic issues (Figure 4.11).

- 6 of the 10 directors interviewed indicated that the Boards of Directors work very well with their respective CEO and other directors while 4 agreed to this statement to some extent (Figure 4.11).



4.5.4 Communication and Information Issues

Respondents were asked a number of questions relating to communication and free flow of information.

- Of the 10 respondents, 7 of them said there was a way for outside directors to alter meeting agenda set by the CEO while 2 said there was no such a chance for outside directors.

- Seven of the 10 respondents were also of the view that such Board and Committee meetings are productive (Figure 4.12). The remaining 3 of the respondents agreed but with some reservations.

- As to whether the Board requests appropriate and relevant information for thoughtful discussions, 7 of the respondents provided a 'yes' response while though the remaining 3 also provided a 'yes' response, they did so with some degree of reservation (Figure 4.13).

- Five of the 10 respondents were also of the opinion that there exist communication gaps while the remaining 5 said they did not see the existence of such gaps (Figure 4.14).

Figure 4.12: Distribution of Responses to Questions Relating Communication and Information

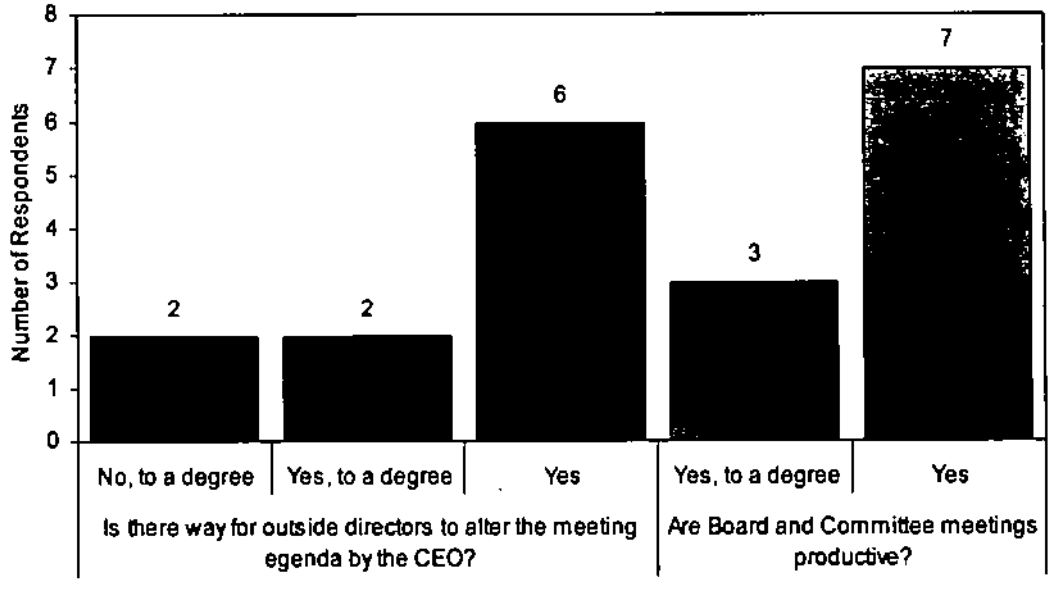


Figure 4.13: Does the Board request apprpriate and relevant information?

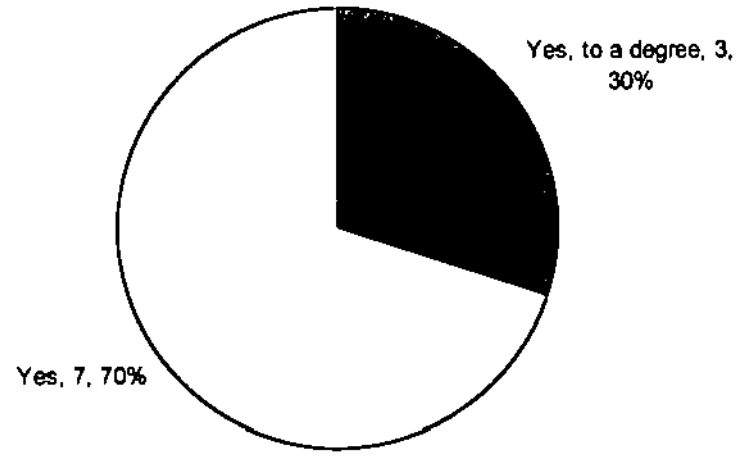
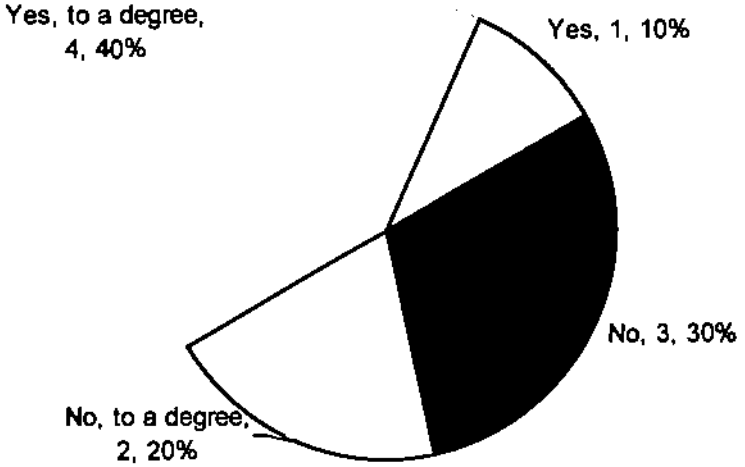


Figure 4.14: Do you see any communication gaps?



4.6 Conclusion

This chapter has focused on the analysis of the data. Pie charts and histograms have been used to make the interpretation of the results easier. Summary of the findings and recommendations are presented in Chapter 5.

CHAPTER 5
FINDINGS AND RECOMMENDATION

INTRODUCTION

The survey indicated that many enterprises attempt to comply with the provisions of the King II code. This is supported by findings of the survey that indicated that these enterprises. There are other areas that need attention and focus to ensure that corporate governance standards come in par with those of enterprises in the private sector. Ongoing corporate governance scandals also serve as an opportunity for SOEs to review their practises and tighten up in areas that need attention.

The survey indicated that SOEs boards fared well in the following areas:

- Clearly defined roles and responsibilities for Boards
- Training for Board members
- Establishment of the Remuneration Committees
- Establishment of Audit Committees
- Written charter for the appointment of the Audit Committee members
- Frequently meeting Audit Committee
- Evaluation of the CEO by outside directors
- Selection of the CEO by the Board
- Annual review of the performance of the Board
- Evaluation of the Companies strategic plans
- Approval of short and long term business plans and budget

RECOMMENDATIONS

Areas indicated above do not cover all areas of corporate governance as outlined in the questionnaire. This indicates that there exists gaps in the implementation of corporate governance principles as recommended by the King II report.

Chapter 4 has detailed the results of the research and it therefore not my intention to duplicate them in this chapter. Given the results and subsequent analysis as provided in Chapter 4, I recommend that SOEs focus improving the following areas.

- **Training of Directors in Corporate Governance**
  An assumption is made that appointed directors have been offered training in issues of corporate governance, which is not always the case. It could be a fact that a significant number of directors serve or have served in other boards before. However, there could also be a number that has never served anywhere in this capacity before. A proper orientation programme for directors needs to be developed in order to ensure that all directors understand the operations of the enterprise and what their fiduciary duties and obligations are. This could also serve as a refresher course for 'old' directors. The survey indicated that only 10% of SOEs surveyed provided directors with the requisite training

- **Establishment of the Nominations Committee**
  The King II code recommends the formation of the nominations committee. Only 30% had a nomination committee to support the work of the board. This makes the work of the Board difficult when having to deal with the appointment of new board members. SOEs should be encouraged to establish nomination committees to allow the Board to make informed decision when it comes to appointments to the board.

- **Selection criteria for Board members**
  Only 20% of enterprises surveyed indicated that the Board had a selection criterion for new board members. The development of a criterion would assist the board to ensure that it recruits the right skill and knowledge for the enterprise. The risk of not crafting the selection criterion is that the board might not be able to diversify its skills pool and therefore not be able to advise on other areas of the enterprise and rely on either management

advise or outside consultants (I am aware that this is advisable where necessary).

- **Review of the performance of senior management**
  Only 40% indicated that the performance of senior management is reviewed regularly and annually. Lack of annual review of the performance of managers would result in lack of accountability on their part. Poor performance would also not be detected and corrective measures cannot be put in place. It is advised that the board enters into annual performance agreements with senior management in order to assess whether what the boards intends to achieve in the particular year is achieved and to review what problems, if any, were encountered.

CONCLUSION

The research study has indicated that boards of SOEs have gone a long way in implementing good corporate governance practises. There are still areas that need improvement. With the right calibre of board members, these areas can be improved and corporate governance in SOEs can match that in privately owned enterprises. Succession planning by the board and good strategy crafting would ensure the survival of SOEs. The implementation of the King Code by the private sector has rubbed off on SOEs. It is perceived to be a good practise. The important role played by SOEs in the economy of South Africa dictates that boards of SOEs should implement good corporate governance principles. This would encourage partnership with the private sector where necessary in projects that the SOE might want to implement.

The results of the survey indicate that the hypothesis that 'corporate governance exists in SOEs' is supported.

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APPENDIX A

1 Corporate Governance in Public Sector

Assessing **Your Organisation** In Terms Of Corporate Governance: Currently - "Where Are You At"? The King Report defining the scope of Corporate Governance contains a comprehensive and erudite questionnaire for evaluating the Board of Directors of a n Organisation. The condensation below is a snapshot view, designed to give a picture of the current status of the composition, scope of activities and roles in general of a sample of Boards of directors. Its purpose is to identify the to extend which public enti ties apply the protocol on Corporate Governace. The results will form the foundation of a thesis being prepared by a UNISA Master of Business Leadership student, under the guidance of Professor V. Makin. We do not presume to replace the King Questionnaire with the questionnaire below, as we believe that each Board should undergo the thorough evaluation designed by the King team.

		No 1	To a degree 2,3,4			Yes 5
	SIZE, COMPOSITION AND ROLE					
1	Has the Board defined its role and responsibilities?					
	Is this in the form of a written charter?					
	Notes:					
2	Do new directors receive any induction training in corporate governance matters?					
	Notes:					

3	Do directors receive any ongoing training in corporate governance matters?					
	Notes:					

		No 1	To a degree 2,3,4			Yes 5
4	What committees do you have to support your Board?					
	- Remuneration committee					
	- Nomination committee					
	- Audit committee					
	- Risk committee					
	- What is the range of activities carried out by this committee					
	- Have these been put into written format?					
	- Strategy committee					
	Notes:					
5	Has the Board designed selection criteria for Board membership?					
	Notes:					
6	Do outside directors annually review succession plans for senior management?					

	Notes:					
7	Does a nominating committee rather than the CEO direct the research for new Board members and invite the candidate to stand for election?					
	Notes:					

		No 1	To a degree 2,3,4			Yes 5
8	Do outside directors formally evaluate the CEO's strengths, weaknesses, objectives, personal plans, and performance every year?					
	Notes:					
9	Does the Board, rather than the CEO, select the new CEO?					
	Notes:					
10	Is the performance of your directors periodically reviewed?					
	Notes:					

11	Are directors who are not pulling their weight discouraged from standing for re-election?					
	Notes:					
12	Does the Board regularly evaluate the performance of other senior management?					
	Notes:					

		No 1	To a degree 2,3,4			Yes 5
13	Do outside directors meet without management on a regular basis?					
	Notes:					
14	Do your outside directors routinely speak to senior managers who are not represented on the Board?					
	Notes:					
	AUDIT COMMITTEE					
15	Who appoints the audit committee?					
	Notes:					

16	Is there a written charter?					
	Notes:					
17	Who nominates its chairperson?					
	Notes:					
18	Is there a minimum number for this Committee?					
	Notes:					

		No 1	To a degree 2,3,4			Yes 5
19	Do non-executive or executive directors carry the majority of this committee?					
	Notes:					
20	How long do they hold office?					
	Notes:					
21	Do you have procedure manuals?					
	Notes:					

22	How often do they meet?					
	1.1 Do you consider this to be sufficiently frequent?					
	Notes:					
23	How often does the audit committee report to the Board?					
	Notes?					

		No 1	To a degree 2,3,4			Yes 5
24	Does your audit committee, not the management, have the authority to approve the company in charge of auditing the company?					
	What other services do your audit committee approve?					
	To what extent does the Board vet the decisions taken by the audit committee?					
	Notes:					
25	Does your audit committee routinely review "high exposure" areas?					

	Notes:					
26	Does the Board evaluate the performance of the audit committee?					
	Notes:					
	STRATEGY					
	Given the principle that "managers manage and the Board directs":					
27	Is your Board actively involved in formulating long-range strategy?					

		No 1	To a degree 2,3,4			Yes 5
28	Is your Board actively involved in evaluating strategic business plans?					
	Does the Board approve short- and medium-term business plans and budgets?					
	Notes:					
29	How does the Board ensure appropriate consideration for the treatment of the various					

	stakeholders?					
	Notes:					
30	Is sufficient time devoted to thoughtful discussion of corporate performance and review of strategic issues?					
	Notes:					
31	Does the Board work well with the CEO and the other directors, e.g. in the form of an open culture with frank discussion?					
	Notes:					
	COMMUNICATION AND INFORMATION					
32	Is there a way for outside directors to alter the meeting agenda set by the CEO?					

		No 1	To a degree 2,3,4			Yes 5
33	How long before a Board meeting is the agenda sent to the outside directors?					
	Notes:					
34	Are Board and committee meetings productive?					

	Notes:					
35	Does the Board request appropriate, relevant information?					
	What specific reports does the Board request?					
	Notes:					
36	Do you see any communication gaps?					
	Notes:					