

Governance Issues and State Capture at Eskom and Transnet: A Kingdon's Multiple Streams Theory for Policy Studies

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Abstract

Governments across the globe establish State-Owned Enterprises (SOEs) or businesses with a view of participating in commercial activities and contribute to the state purse. If successfully established and operated, such enterprises significantly contribute to the socio-economic development as contemplated by the National Development (Vision 2030). This is done through ensuring that government possess substantial control by means of majority ownership of shares. On the basis of this background, this paper argues that SOEs in South Africa in general and Eskom and Transnet in particular are enormously failing in executing their developmental directives due to governance failures and state capture. It is therefore the aim of this paper to interrogate the phenomena of governance and state capture prevalent to certain South African SOEs in order to provide practical recommendations to remedy the situation. 'Bad governance' and state capture at SOEs is worsened by the fact that these entities continue to exist at the 'mercy' of National Treasury through guarantees and bailouts. This of course has undesirable impact on the fiscus and the economy, thereby reducing government's capability in service delivery. Some of these anomalies manifest despite the existence of constitutional and other legislative prescripts such as the Public Finance Management Act (1 of 1999) amongst others. The paper is theoretical and adopts the Kingdon's Multiple Streams Theory to point out both the governance mishaps and state capture in SOEs in the South African context using Eskom and Transnet as unit of analysis. It was successfully established through



literature that SOEs in South Africa are prone to state capture and grand corruption as perpetrated mostly by those who are politically connected and affiliated particularly to the ruling African National Congress. The paper concludes by providing recommendations for the 'relooking' and properly reexamining the relevance of SOEs taking into consideration that they cater for the needs of various social strata.

Keywords: State-Owned Enterprises, Eskom, Transnet, Governance, Politics, State Capture

Introduction and Rationale

The Commission of Enquiry into State Capture was set up to investigate, make findings and propose recommendations in relation to alleged systemic political corruption in which private interests significantly influenced the state's decision-making processes to their own advantage (Godinho & Hermanus, 2018). More specifically, the reasoning behind the setting up of the Commission which became known as the Zondo Commission was to further carry out inquiries on suspected state capture especially by the Gupta family and former President of South Africa Jacob Zuma. The focus of this paper is however on State Owned Enterprises (SOEs) and specifically Transnet and Eskom.

This study on SOEs and state capture is timely as the poor performance of SOEs continues to reflect crumbling infrastructure, poor and everchanging leadership, corruption, wasteful expenditure and mismanagement of funds. Further, Haffejee (2021) states that,

“The ongoing financial and operational crises faced by a number of major SOEs casts doubt on their practicality and survival. Total SOE debt stands at a staggering R692.9bn. The most recent budget review indicated that SOEs have reported poor growth, high costs and elevated debt servicing costs, and several appear to be at risk of defaulting on their debts”.

Although previous studies have revealed the challenges experienced by SOEs (Naidu, 2009; Florio & Fecher, 2011; Sunita, 2019), limited studies exist with regards to the extent of the contribution of state capture to the challenges facing these enterprises.



Prospective reforms and any potential infusion of private-sector participation into these enterprises has to take into context the phenomenon of state capture.

The paper is theoretical and aims to rely on literature and newspaper secondary data to point out to the manifestation of state capture and governance failures in South Africa. The paper adopts the Kingdon's Multiple Streams Theory as a framework with which the inherent identified problems can be studied. The paper is divided into parts which together culminate to a sole aim of interrogating the phenomenon of state capture and bad governance anomalies within the auspices of Eskom and Transnet amongst other SOEs in the South African context. It is structured as follows: the Kingdon's Multiple Streams Theory as the appropriate and applicable theoretical framework, research methodology, defining and contextualizing SOEs, interrogating issues of state capture and grand corruption and therefore coming up with conclusions and recommendations.

Applicable Theoretical Framework

Schurink (2009: 807) states that a theoretical framework is used to inform the research design and guide the methodological approach. Public Administration as a discipline and applied science has to relate to theory/ies applied in practice (Thornhill & Van Dijk, 2010:97). The Kingdon's Multiple Streams Theory (KMST) is used in this paper to understand issues of governance and state capture which is sometimes referred to as grand corruption in South African SOEs and the policy implications thereof. It must be stated that theory has not been applied in the study of state capture and governance specifically on issues of South African SOEs such as Eskom and Transnet. Its origin can be traced to the work of the American political scientist John Kingdon. The theory has usually been used in the analysis of national policy development with the aim of understanding policy and decision-making processes under conditions of ambiguity (Rossiter & Price, 2013). Interestingly, the theory has not been used in the context of low-income countries around the world and African countries (Mathebula, 2015; Mathebula, 2017).

Therefore, the KMST can be used as a framework to predict for future policy trends (Lovell, 2010) and answer to the inherent challenges. The authors however adopt the



theory to understand the phenomenon of state capture and inherent challenges in SOEs such as Eskom and Transnet and the governance loopholes thereof. Traditionally, the KMST consist of the following structural elements; the problem stream, the policy stream, and the political stream (Burgess, 2002; Young, Shepley & Song, 2010; Larkin, 2012; Rossiter & Price, 2013). However, there are additional elements such as; policy window and coupling (Zhou & Feng, 2014), policy entrepreneur (Rossiter & Price, 2013), and window of opportunity (Riddle, 2009) which Lovell (2010) refers to as the coming window. Due to the nature and scope of the current discourse as well as issues unfolding at the Commission of Inquiry into State Capture, the traditional elements of the KMST will be discussed in relation to grand corruption and bad governance together with the solutions stream as advocated by (Teodorovic, 2008).

The Problem Stream

It is with no doubt that Eskom and Transnet are possessed by huge governance failures, lack of accountability, lack of transparency and indeed huge magnitudes of looting and cronyisms (Godinho & Hermanus, 2018). Eskom for instance has relied in what came to be known as load-shedding in order to maintain the cashflow while the power provision capability has collapsed. The problem stream seeks to evaluate the notion of political and social problems which calls for the creation of new policies if it can reasonably be argued that they are solving a problem (Lovell, 2010). This is not to conclude that SOEs in South Africa operate in an unlegislated environment, but ignorance of such pieces of legislation by those who are meant to be custodians (Mathebula, 2014). According to Rossiter and Price (2013: 855), the problem stream relates to the manner in which issues are acknowledged as challenges requiring a policy response. Central to the problem streams, Kingdon (1995) asked this question;

‘Why do some problems come to occupy the attention of decision makers rather than other problems?’

The response to this question relates to a manner in which policy makers learn about conditions around them through indicators, crisis, experience and research (Rossiter & Price, 2013). According to Zhou and Feng (2014:2), these mechanisms of learning about conditions must be urgent and easily attract government official’s attention to



addressing the problem. In this view, it can be argued that the severity and magnitude of corruption and collapse in governance structures, rules, procedures and legislation ought to be viewed as a societal problem that requires progressive policy intervention. According to Porter (1995) in Teodorovic (2008), for a societal condition to be a problem, it must be perceived as such and be seen as a condition enabling government action. There is a plethora of literature and empirical evidence (i.e. Commission of Inquiry into State Capture) pointing out to massive control of almost all organs of state by private individuals, groups and business at a compromise of SOEs in South Africa which has since reached policy makers, law enforcement agencies and conditions around the matter requires adequate thoughtfulness and timeous response mechanisms.

The Policy Stream

According to Rossiter and Price (2013:857), the policy stream describes activities relating to the identification of potential policy solution(s). It is along these lines that this paper firmly argues that bad governance and state capture in South African SOEs rings a bell to policy makers for the formulation or even the amendment of existing policies or pieces of legislation, and codes of conduct. The policy stream contains all the possible solutions to the problems as brought to the picture by policy experts, scholars, government officials and politicians (Chow, 2014: 56). However, this argument does not seek to impose that the stream or the theoretical framework should be viewed as providing all the answers to any existing policy problem. The policy stream advocates for the legislator to produce alternatives and proposals which are viable and seek to address the realities and ideals on the ground (Burgess, 2002). This is so because such policy must be technically feasible and value accepted for it to survive. In that view, ideas may be proposed, developed, reworked and combined on an ongoing basis (Rossiter & Price, 2013), however, bad governance and state capture may continue to be pervasive and rampant until such time that they receive the necessary attention for a lasting solution. A common error that is usually committed by policy makers is taking time to respond to matters of national importance by procrastinating until the problem manifests itself.



The Political Stream

Similar to the problem stream, the political stream can be understood as flowing along independently of the problem and policy streams composed with public mood, campaigns from pressure groups, elections, partisanship, change in administration, change in jurisdiction, turnover in positions which has the potential to gradually strengthen the urgency of the problem (Burgess, 2002; Young, Shepley & Song, 2010; Kroliczek, 2013; Chow, 2014; Zhou & Feng, 2014). According to Burgess (2002), the political stream reflects the ongoing breakdown between policy and monopoly. It is in this regard that issues of bad governance and state capture whereby political power is used as a mechanism to loot public funds dedicated to SOEs. It must be borne in mind that politicians are responsible for policy making including policies which are at times not favourable to all the citizenry within a nation-state. Governance challenges, state capture and corruption in particular in relation to SOEs management has resulted in finger-pointing whereby high-ranking politicians refuse to take responsibility and therefore be held accountable for wrong-doing. Although the political stream of the KMST seeks to separate the problem stream and the policy stream from the political stream, this paper argues for the integration of the streams if policy initiatives are to address challenges inherent in South African SOEs and particularly Eskom and Transnet.

The Solutions Stream

Besides the orthodox structural elements of the KMST of the problem stream, policy stream, and the political stream, Teodorovic (2008) proposed the solutions stream. This is in line with the view that in as much as all streams can be applied to a societal problem such as state capture and the governance of SOEs in context of the South African prevalence, solutions must be sought for.

Research Methodology

This research uses a qualitative research approach to make an in-depth examination of state capture in South African SOEs and the consequences of this capture on the institutions using descriptive secondary sources. Eskom and Transnet were selected as case studies because they are among the top SOEs identified by the Zondo Commission



as experiencing corruption and gross financial mismanagement. Holden (2021) is also of the view that Transnet and Eskom together with the Free State Provincial Government were the primary sites of state capture.

A case study design was selected as it is a design which can provide in-depth detail which addresses the how or why questions concerning the phenomenon of interest Yin (2002). In addition, Kumar (2014) argues that a case study provides a chance to gain a thorough understanding of the real issues, processes and systems at play. In this study, documentary evidence was utilised. This approach facilitated the assessment of critical documents such as Annual Reports which create a larger narrative of SOEs in the context of state capture. Data was collected from literature sources on performance of SOEs and state capture. This is because a significant body of literature which focuses on SOEs and their performance exists.

Thematic data analysis was used to analyse the data. Braun and Clarke (2006: 79) define thematic analysis as: “A method for identifying, analysing and reporting patterns within data.” Thematic analysis was used because it is simple and flexible. It is also not closely tied to specific theories as in the case of other methods of analysis. Flexibility of thematic analysis provides for the rich, detailed and complex description of research data. According to Braun and Clarke (2006:79), “thematic analysis is a method for identifying, analysing and reporting patterns (themes) within data”. This method “aims to explore the understanding of an issue or the signification of an idea” (Attride-Stirling, 2001: 387).

What are State-Owned Enterprises?

Several academic writings tend to undermine the value of conceptualising central concepts underpinning any study due to an assumption that such concepts are generic and are well known to the general reader. SOEs were introduced in Europe at the back of World War II for the purposes of reducing market and capital deficits, reduce high unemployment and ensure the control of the national economy (Lwanga & Vyas-Doorgaperesad, 2008). SOEs refer to firms initiated and run by the state (Godinho & Hermanus, 2018).



Toninelli (2000) identifies three major reasons for the establishment of SOEs. The first reason is political and ideological. In this regard, reference is often made of the Communist bloc countries and early independence African countries. State interventionism through SOEs assumes that it promotes the redistribution of power within society, and facilitates empowerment of the working class (Aravacik, 2018). SOE managers are believed to be accountable to society as a whole.

The second commonly identified reason for SOEs is social. Establishment of SOEs is sometimes done as an employment creation strategy as well as a strategy to improve employment conditions for the working class. For example, the social importance of SOEs can be illustrated by a declaration by Austrian chancellor Kreisky in the 1960s who stated that with respect to SOEs: “....I prefer to run a budget deficit of a few billion than to have a few thousand unemployed” (Stiefel, 2000:247).

The third common reason for the establishment of SOEs is economic. They are used to create a strong public sector. As highlighted earlier, SOEs are a useful means of addressing market failures (Mathebula, 2016). Often state monopolies, in strategic economic sectors such as electric power generation ensure fair and affordable tariffs and adequate service quality. However, of late, the private sector is increasingly getting involved in such sectors but with some kind of regulator being used to ensure that prices and tariffs are not prohibitive as well as to monitor service quality. SOEs are also used as a tool to promote economic development and social transformation in underdeveloped areas (Godinho & Hermanus, 2018). Huge infrastructural development is often done through SOEs. Historically railways and highways for example were a state responsibility.

Furthermore, SOEs are used as a mechanism for bailing out companies that would easily go down without state intervention. For example, the state may do this in order to protect jobs. Promoting SOEs is sometimes also justified based on strategic and political reasons. In this context Sanchez (2016) argues that,

“Norway firmly believes that the state can be as good a capitalist as anyone. It justifies the state’s presence as necessary for redistributing actors throughout



enterprises and for keeping companies in Norwegian hands to address market failures or safeguard revenues that accrue from the exploitation of natural resources”.

However, following the advent of New Public Management, SOEs are now mainly in the infrastructure sectors, often through public–private partnerships. New Public Management can be viewed as focused and entrepreneurial management that is opposed to the traditional public administration (Kalimullah *et al.* 2012). This is the type of management required for South African SOEs as opposed to what currently transpires. Existence of SOEs is justified to protect the public interest where such cannot be adequately protected using available instruments, such as regulation. However, questions about the management of SOEs in developing countries such as South Africa has caused controversy around their suitability in solving the problems that in theory should be resolved by their creation.

In South Africa, SOEs operate on the basis of production plans and targets as per the country’s national plan (Madumi, 2018), the National Development Plan (NDP) (Vision 2030). The NDP states that SOEs play or at least need to be at the center of development and transformation (Gumede & Asmah-Andoh, 2016). However, the NDP fails to explicitly state the methodology through which SOEs are to play a developmental and transformative role and consequently result to the envisaged infrastructural development. For Eskom, development would include amongst others, ensuring the electrification of households especially in previously disadvantaged economies while also ensuring the strengthening of the energy system which is currently under pressure. On the other hand, Transnet through the Passenger Rail Agency of South Africa ought to be responsible for developing a proper railway network to cater for the poor and the working class. Kanyane and Sausi (2015) attributes constraints and failures of these SOEs not only to the NDP but to the fragmentation in policy and legislative frameworks underpinning the governance of state companies.



Issues of State Capture and Gross Corruption in State-Owned Enterprises

In the unapologetic words of Madumi (2018), SOEs in South Africa are ‘misgoverned’. It is in this context that the concept of governance which has been subjected to varying and sometimes confusing interpretations will be interrogated within the auspices of SOEs. The concept of governance is ‘in nature not easy’ to define as it is subjected to complex interpretations (Mathebula, 2017). Hence scholars who have attempted to interrogate the concept acknowledge the daunting exercise of adequately defining the term (Mathebula & Munzhedzi, 2017). *“Governance is a structure and process in which institutions on every level take decisions, determine who to involve in the process of decision making and implementation of decisions, and determine the person or persons to be held accountable and responsible for the outcomes of the implementation of decisions affecting numerous different actors”* (Kanyane & Sausi, 2015: 29). For Mathebula and Munzhedzi (2017) good governance is all about the exercise of power for a good cause. Governance and especially good governance is an exercise and an activity of governing for the purposes of ensuring efficiency, effectiveness and economic delivery of resources in state institutions (Mathebula, 2017) including SOEs such as Eskom and Transnet. For Matshabaphala (2014), it has to do with participatory democracy, transparency, responsiveness, equity, honesty and integrity while also ensuring ethical leadership. According to Thabane and Deventer (2018), good governance in the context of SOEs refers to the process of governing such entities with sound corporate controls similar to those of profit motivated companies while ensuring that they fulfil the social responsibility owed to government. Sound corporate governance include inter alia issues of efficiency and effectiveness which are currently a thorn in the head for South African SOEs.

According to February (2019: 2), SOEs in South Africa are in a ‘parlous state’, and it is not clear how such a situation will be turned around as most civil servants accused of state capture are still in office. SOEs faces major challenges of extensive social and economic growth (OECD, 2018). SOEs are critical in fostering economic growth, not only in South Africa but globally. According to Madumi (2018), South Africa is plagued with socio-economic challenges ranging from lack of service delivery, poor financial management, weak business confidence, low growth, high unemployment rates,



massive corruption and state capture which threatens financial sustainability of the South African economy in general and SOEs in particular. Mathebula (2014) blames all these challenges, not only to lack of compliance but precisely to lack of coherence between pieces of legislation, morality and the culture of lack of deterrence (Mathebula, 2016).

In the context of a mirage of SOE governance challenges, the concept of state capture has gained currency in South Africa. The concept state capture is derived from the economic concept of regulatory capture (Mulenga & Mulenga, 2018). State capture is a manipulation of rules and procedures by political and business elites through family ties, friends and social groups (Mulenga & Mulenga, 2018). State capture according to Mamokhere (2018), is a condition of corruption by powerful external or internal actors influencing policies, laws and the economy to benefit 'their private interests'. It can be drawn from Mamokhere's definition that, state capture targets law making processes with a view of influencing direction and the execution thereof.

In South Africa, political influence spills into white monopoly capital which refers to influence by white wealthy families on key government processes (De Klerk & Solomon, nd). However, the scale and magnitude of state capture or grand corruption deepened during the Zuma Administration. The Gupta-family, who was a strong ally of former President Jacob Zuma are known as the 'state capture mastermind' in South Africa (Mulenga & Mulenga, 2018). The Guptas specifically focused on SOEs for tenders and influencing procurement processes.

The capture in SOEs and the revelations thereof are said to have started in 2009, whereby Vytjie Mentor was invited to the Gupta residence in Saxon World and offered position of Public Enterprises Minister (City Press, 2018). This is a Ministry responsible for most SOEs in South Africa. The offer was later made and accepted by Malusi Gigaba, who within a very short space of time restructured Boards in SOEs. For the purpose of this, it is important to note that that Iqbal Sharma, a Gupta family associate and Brian Molefe were appointed Board Chairperson and CEO of Transnet respectively. This became known as a ploy to deliberately loot billions of rands through Transnet. Within a short space of time, Molefe was shifted from Transnet to being Eskom CEO.



According to Godinho and Hermanus (2018), Eskom became the primary target of state capture in South Africa. This is unsurprising as it is one of the largest power utilities in the world. Eskom makes annual revenue which is three times more than that of Transnet, making it the largest SOE in South Africa. While giving evidence before the Zondo Commission, Paul Holden who works with Corruption Watch in the United Kingdom made the following revelations which clearly indicates the rot at both Eskom and Transnet orchestrated by Gupta-linked companies and subsidiaries through the manipulation of the procurement system:

- R12.3 billion was paid through irregular and unlawful contracts at both Eskom and Transnet the so-called T-system;
- Neotel was also paid R5.581 billion by Transnet;
- Eskom paid Tegeta Exploration and Resources, another Gupta-linked subsidiary, R4 124 550;
- Mckinsey was paid R1 898 659 while Regiments earned R784 287 from Transnet and R1 108 164 from Eskom (Holden, 2021).

However, Eskom has a legacy of lack of accountability and transparency dating far back from the apartheid administration (Godinho & Hermanus, 2018). Enquiries into Eskom for instance unearthed evidence of more than R140 billion per annum due to corruption which can be traced to Gupta-linked companies and subsidiaries whereby according to De Klerk and Solomon (nd), procurement processes were undermined. Saving SOEs from this rampant corruption include appointing credible leadership in Boards of Directors (Holden, 2021). According to Mulenga and Mulenga (2018), state capture bears implications for democratic consolidation, eroding democratic processes, undermining elections and hampering socio-economic transformation.

Private Sector Vs State-Owned Entities

The aim of this section of the paper is not to advocate for the privatization of SOEs but to point to significant differences in relation to how they operate and lessons to be learnt from one another. This is in consideration of the fact that the South African President, Cyril Ramaphosa has taken a firm stand against the privatization of SOEs stating that they are strategic for the development of the economy (Omarjee, 2019). SOEs can only be privatized if such entities are no longer needed for public purposes



or are unable to fulfil their socio-economic objectives (Organisation for Economic Co-operation and Development, 2018). It can be argued that, while Eskom and Transnet remains relevant for public purposes, very little can be said about the fulfilment of the socio-economic objectives they were initially established to carry out. The table below attempts to draw differences on how private sector entities and SOEs operate in relation to their objectives, agency issues and incentives or discipline.

Table 1: Private entities and State-Owned Enterprises

	Private sector entities	SOEs
OBJECTIVES	Clear focus on value maximization	Pursues commercial and non-commercial objectives
AGENCY ISSUES	Single agency—concerned about self-interested behaviour by managers or controlling shareholders	Double agency—concerned about self-interested behaviour by managers and politicians/ bureaucrats
INCENTIVES/ DISCIPLINE	Strong market-driven incentives and discipline (e.g., threat of takeover/bankruptcy, termination of under-performing staff, availability/ use of restricted stock, and other performance-based pay	Limited mechanisms to incentivize and discipline (e.g., insulation from takeover/ bankruptcy, stronger job protection for staff, limited use of performance-based remuneration tools)

Source: Wong (2018)

Agency issues

While it can be expected of SOEs across the globe to be characterised by self-interest conducts and political interference, these enterprises in South Africa are in a state of dismay where corruption features immensely (Madumi, 2018). The SOEs used as case studies in this paper (i.e. Eskom and Transnet) have also been victims of state capture.



State capture is a political-economic scheme whereby public and private parties conspire to establish underground networks that cluster around state institutions to accumulate unrestrained power, subverting the constitutional state and social contract by operating outside and seeking to avoid public accountability (Godinho & Hermanus, 2018).

Recommendations

In the light of the discussions from the preceding sections of the paper, it is apparent that SOEs large or small need to be guarded against acts of corruption and deliberate capture. This paper therefore proposes the following recommendations. Firstly, there needs to be a legal separation of SOEs from government through incorporation under the Companies Act 71 of 2008. This would go a long way in shielding SOEs from exerted political interference by political heads. Secondly, there needs to be clarity and limits on intervention rights if ever it becomes impossible from separating SOEs from political powers. As corruption takes place in the dark and behind closed doors, transparency becomes very crucial in ensuring that the general public is kept on the loop on the operations of SOEs. Lastly, benchmarking with private sector competitors is equally important. This seeks to ensure that overall performance of SOEs are aligned with other role players in the market.

Conclusion

State capture in South Africa especially in SOEs such as Transnet and Eskom supports the rationale for the application of the KMST as it is more of policy issue than any other. Definitions of the concept state capture continues to be elusive as a plethora of literature simply conceptualise it as some form of corruption. However, the paper argued that unlike corruption and clear governance loopholes, state capture is a carefully crafted, systematic and well-orchestrated institution of controlling public affairs in all aspects possible by those having exerted influence over persons responsible for guarding of government entities including SOEs. The paper argues that while there is a strong linkage between 'bad' governance and state capture, the



ramifications of the two directly contribute to SOEs lack of capacity to deliver on their constitutional mandates. If sustained, intense and institutionalized corruption in SOEs and the government departments, South Africa will be unable to redress the imbalances of the apartheid era and address severe poverty confronting majority of the citizenry but most importantly undermine governance mechanisms and structures put in place to guard against cronyism, greed and theft by the elite minority.

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