

Challenges to the Effective Implementation of Corporate Governance Principles in Military Enterprises in Uganda

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Abstract: This study assesses the adequacy of the legal and institutional frameworks governing corporate governance in Uganda's military enterprises, with particular reference to the National Enterprise Corporation (NEC) and its subsidiaries. It is motivated by the growing tension between corporate governance norms and the unique operational environment of military-linked commercial entities, which are characterised by national security imperatives, executive dominance, and limited transparency. The study adopts a doctrinal research methodology, relying on a systematic analysis of primary sources, including the Constitution of the Republic of Uganda (1995), the National Enterprise Corporation Act, the Companies Act, the Uganda Peoples Defence Forces Act, the Competition Act, and the Public Finance Management Act, as well as relevant judicial decisions. Secondary sources, such as journal articles, policy documents, legal commentaries, and international governance standards, particularly the OECD Guidelines on Corporate Governance of State-Owned Enterprises (2024), are also utilised to provide comparative and analytical depth. Findings reveal that while Uganda's legal framework contains formal corporate governance provisions, their effectiveness is significantly weakened in military enterprises due to statutory concentration of power, expansive national security exemptions, politicised board appointments, weak regulatory enforcement, and fragmented institutional oversight. This study concludes that these deficiencies undermine board independence, accountability, and transparency. It recommends targeted legal and institutional reforms, including strengthening board autonomy, narrowing security-based exemptions, and establishing an independent state-ownership coordination framework to enhance corporate governance in military enterprises.

Keywords: Corporate governance, Military enterprises, Legal Framework, Institutional framework, Uganda.

1. Introduction

Corporate governance has become a central concern in the management of state-owned enterprises (SOEs), particularly in developing economies where the state remains a dominant economic actor. In Uganda, this is more pronounced in military-linked commercial entities such as the National Enterprise Corporation (NEC), which operates as the commercial arm of the Uganda People's Defence Forces (UPDF).¹ These enterprises occupy a hybrid space where commercial objectives intersect with national security imperatives, creating complex governance challenges that differ significantly from those in ordinary corporate entities governed under the Companies Act. The legal and institutional framework governing corporate governance in Uganda is drawn from a range of instruments, including the Constitution of the Republic of Uganda (1995), the Uganda Peoples Defence Forces Act, the NEC Act, the Companies Act, the Public Procurement and Disposal of Public Assets Act, and the Competition Act, among others. In principle, these laws establish mechanisms for accountability, transparency, fiduciary responsibility, and institutional oversight. However, their application in military enterprises raises critical questions regarding their adequacy, coherence,

and practical enforceability in environments shaped by security considerations and executive control.²

Military enterprises such as NEC operate under a dual mandate: commercial engagement and support for national defence objectives. This duality often results in governance arrangements that prioritise command structures, confidentiality, and executive discretion over board independence and corporate accountability. Consequently, tensions arise between traditional corporate governance principles—such as transparency, independent oversight, and shareholder or stakeholder accountability—and the operational realities of military-commercial entities.³ The objective of this study is thus to critically assess the effectiveness of Uganda's legal and institutional frameworks governing corporate governance in military enterprises. It seeks to identify the key legal and institutional inhibitions that undermine good governance practices within NEC and similar entities, and to evaluate whether existing frameworks sufficiently balance national security imperatives with corporate accountability requirements.

2. Methodology

¹ National Enterprise Corporation Act, Cap 199; Constitution of the Republic of Uganda 1995, art 209(d).

² Companies Act Cap 106; Public Procurement and Disposal of Public Assets Act Cap 205

³ OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (2024).

Methodologically, the study adopts a doctrinal approach, involving a detailed and systematic analysis of primary legal sources, including statutes, constitutional provisions, and case law, complemented by secondary sources such as academic literature, policy reports, and international governance standards, particularly the OECD Guidelines on Corporate Governance of State-Owned Enterprises.⁴ This approach enables a critical evaluation of both the normative content and practical application of corporate governance rules in Uganda's military enterprises. The study is structured around the premise that while Uganda's legal framework formally incorporates key elements of corporate governance, significant institutional and structural constraints limit their effectiveness in practice. It therefore assesses the extent to which military enterprises conform to established governance standards and proposes reforms to strengthen accountability, enhance board autonomy, and improve institutional coordination within the state-ownership framework.

3. Discussion

This study assesses the legal and institutional challenges that affect the effective implementation of corporate governance principles in military enterprises in Uganda, as discussed in detail below.

3.1 Legal Challenges to the Implementation of Corporate Governance Principles

Uganda's corporate governance framework provides a general legal foundation for regulating companies and public enterprises. However, the framework remains insufficiently responsive to the distinctive governance challenges posed by military-commercial entities such as the National Enterprise Corporation (NEC). This section therefore examines the principal legal challenges ranging from the incompatibility between the NEC legal framework and the Companies Act, the tension between corporate governance requirements and national security imperatives, opacity in defence procurement, and anti-competitive practices as examined in detail below.

3.1.1 Incompatibility with the Companies Act

The Companies Act (the Act), under its code of corporate governance, sets out the core principles applicable to all companies in Uganda, focusing on the authority of the board, fiduciary responsibility, and managerial oversight.⁵ Under sections 187 to 194, the management of a company's affairs

is entrusted to its directors, who should exercise all the powers of the company in accordance with the Act and its constitution. These provisions, as noted in *Ceva Sante Animale v MTK Uganda Ltd*,⁶ further stipulate that the actions of a director or manager remain valid, even if defects in their appointment or qualifications are subsequently discovered. This reinforces the principle rooted in *Royal British Bank v Turquand*⁷ that third parties should not suffer from internal irregularities of a company because directors have a fiduciary duty. Section 194 of the Act codifies directors' fiduciary duties, requiring them to act within their powers, promote the success of the company, exercise independent judgment, and avoid conflicts of interest.⁸ In *Pastor Daniel Walugembe v Moses Besimira Karenderere*,⁹ the High Court reaffirmed these principles, stressing the duty of care and conflict avoidance, and drawing clear parallels with directors' obligations under section 194. In the context of military enterprises, these duties often clash with entrenched practices of secrecy, concentrated ownership, and political influence, which weaken enforcement and prioritise confidentiality over transparency. This study agrees with Musabi to the extent that codification strengthens accountability in theory but remains ineffective where institutional oversight is compromised¹⁰. To avert willful infringement of directors' duties, the United Kingdom, in the case *Regal (Hastings) Ltd v Gulliver*¹¹, imposed strict liability for conflicts of interest, underscoring the uncompromising nature of fiduciary duties. Be that as it may, applying such standards to military-linked companies remains problematic because conflicts are systemic and disclosure is most unlikely for security reasons. As such, while section 194 embodies modern corporate governance ideals, its effectiveness in military enterprises is undermined by structural and political realities that cloud accountability and weaken the very fiduciary obligations it seeks to enforce.¹²

Considering the above, it is worth noting that the traditional corporate governance system, positions the board of directors as the apex organ responsible for strategic direction, supervision of management, and stewardship of corporate assets. No wonder, the Companies Act envisages a governance architecture insulated from undue external interference and animated by professional judgment and collective decision-making. To achieve this, directors are appointed through shareholder-driven processes, subject to procedural safeguards such as written consent to act.¹³ The Act's code of corporate governance promotes transparency in board nominations, ensures a balanced composition of executive and non-executive directors, mandates the inclusion

⁴ *ibid*; see also Companies Act 2012 (Uganda); National Enterprise Corporation Act, Cap 199 (Uganda).

⁵ Companies Act (n 2) Table F.

⁶ *Ceva Sante Animale v MTK Uganda Ltd* [2026] UGCommC 258.

⁷ *Royal British Bank v Turquand* (1856) 6 E&B 327.

⁸ *Ibid* (n 3).

⁹ *Pastor Daniel Walugembe v Moses Besimira Karenderere* [2026] UGHCCD 163.

¹⁰ C Musabi, *Analysis of the Role of the Board of Directors in Corporate Governance under the Companies Act, 2012* (LLM Thesis, Makerere University 2023).

¹¹ *Regal (Hastings) Ltd v Gulliver* [1942] 1 All ER 378.

¹² Musabi (n 8).

¹³ Companies Act (n 2), s 188

of independent directors, and requires the establishment of specialised committees for audit and nominations.¹⁴ Collectively, these mechanisms are designed to enhance board independence, accountability, and effectiveness. However, the practical operation of these principles is significantly diluted in the governance of state-owned enterprises (SOEs), particularly military-owned ones. For instance, whereas NEC is a body corporate established by the National Enterprise Corporation Act, its subsidiaries are governed by the Companies Act, which lays down the governance structure. This has created a parallel regulatory framework, further undermining oversight. Sections 6 and 7 of the NEC Act vest the power to appoint, re-appoint, and remove all board members-including the chairperson and vice-chairperson-in the Minister responsible for Defence, on terms specified in the instruments of appointment.¹⁵ This statutory design fundamentally reconfigures the governance equilibrium envisaged under sections 187 to 194 of the Companies Act, as board tenure and continuity of board members become closely tied to executive discretion rather than fiduciary performance or stakeholder accountability.¹⁶ The concentration of appointment and removal powers in a single ministerial office facilitates political and bureaucratic influence over board composition, thereby undermining the independence required for effective fiduciary oversight. This concern was echoed in *Musa Farouk v Attorney General*, where the High Court of Uganda cautioned that unchecked ministerial discretion in governance matters risks eroding statutory safeguards for independence and accountability.¹⁷ The Supreme Court of Kenya in *Kenya Railways Corporation v Bilal & 14 others*, just as noted by Shezi,¹⁸ equally underscored that political interference in SOE governance undermines fiduciary oversight and weakens accountability mechanisms.¹⁹ No wonder, the South African Constitutional Court in *Minister of Defence and Military Veterans v Zeal Health Innovations* has since warned against executive overreach in SOE governance, stressing the need for independent boards insulated from political control.²⁰ Whereas these case scenarios do not address military enterprises in the strict sense, this study contends that the same reflect the tension that exists in the governance of military enterprise where commercial considerations tend to

conflict with national security imperatives or executive preferences.

In military enterprises, this tension is worsened by rigid command structures that emphasise obedience and unity of command. While these qualities are vital in military operations, they often come at the expense of open discussion and constructive debate-both of which are essential for effective board governance. These institutional arrangements stand in sharp contrast to international best practice as articulated in the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*.²¹ The Guidelines require SOE boards to exercise 'objective and independent judgement' and to include an appropriate number of independent members capable of resisting political pressure and managing conflicts of interest.²² They further discourage the appointment of serving politicians or senior public officials to SOE boards and recommend cooling-off periods, integrity vetting, and transparent, merit-based appointment processes conducted through professional nomination mechanisms.²³ The purpose of these safeguards is not merely to depoliticise boards, but to enhance diversity of expertise, gender representation, and strategic oversight capacity. Measured against these standards, NEC's governance framework exhibits systemic deficiencies. The NEC Act neither mandates the inclusion of independent directors nor prescribes transparent criteria for board nominations, nor does it require formal board performance evaluations. Additionally, it provides insufficient protection for directors against discretionary removal.²⁴ The argument that Parliament exercises implied oversight over all public enterprises through the Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) is unconvincing, as the Committee's decisions are susceptible to patronage and elite capture. As highlighted by Ugandan scholarship, these gaps undermine the board's ability to act as an effective check on management and executive influence, particularly in critical areas such as risk management, procurement oversight, and subsidiary governance, resulting in a persistent governance deficit.²⁵ Wanyama's stakeholder-based analysis shows that concentrated state ownership in Ugandan SOEs correlates with weak protection of stakeholder interests, increased board politicisation, and reduced accountability, all of which negatively impact enterprise

¹⁴ *Ibid* (Table F)

¹⁵ National Enterprise Corporation Act (Cap 199)

¹⁶ The Companies Act

¹⁷ *Musa Farouk v Attorney General* (Misc. Application No. 1302 of 2024) [2026] UGHCCD 165 (ULII).

¹⁸ Mthokozisi G Shezi, *Scrutiny of the intricacies of corporate governance and public accountability mechanisms in South African state-owned companies* (LLM Thesis, University of Cape Town 2025) 42; OECD, *Principles of Corporate Governance* (OECD Publishing 2015).

¹⁹ *Kenya Railways Corporation v Bilal & 14 others* (Petition (Application) E023 of 2025) [2026] KESC 14 (KLR).

²⁰ *Minister of Defence and Military Veterans v Zeal Health Innovations (Pty) Ltd* (CCT 06/25) [2026] ZACC 21 (SAFLII).

²¹ OECD (n 1), Guideline VI.C.

²² *Ibid*.

²³ *Ibid*,

²⁴ NEC Act (n 13)

²⁵ N Turyakira and others, 'Corporate Governance and Performance of State-Owned Enterprises in Uganda' (2022) *African Development Finance Journal*.

performance.²⁶ This is emphasised by other empirical studies which show that board composition, audit committee independence, and governance autonomy are positively correlated with organisational performance and financial discipline.²⁷ These findings are directly relevant to NEC, whose subsidiaries operate in commercially sensitive sectors yet remain shielded from market and shareholder discipline.²⁸

3.1.2 National Security Imperatives

The constitutional framework of Uganda clearly establishes that the Uganda People's Defence Forces (UPDF) are primarily tasked with safeguarding sovereignty and territorial integrity under Article 209(a) of the 1995 Constitution and section 6(a) of the UPDF Act, while their involvement in productive activities under Article 209(d) and section 6(d) remains ancillary.²⁹ This dual mandate inevitably produces hybrid governance structures in military enterprises such as the National Enterprise Corporation (NEC), where executive dominance is not accidental but rather a deliberate response to the intersection of defence policy, national security, and economic activity. Scholarly commentary on civil-military relations, notably Huntington's theory of objective civilian control, underscores that military institutions must remain subordinated to civilian authority. Yet, in contexts like Uganda, executive oversight is rationalised by the imperative of national security.³⁰ Ugandan jurisprudence, particularly *Uganda v Commissioner of Prisons, ex parte Matovu*, illustrates judicial recognition of military necessity in governance.³¹ At the same time, more recent constitutional petitions have cautioned against excessive militarisation that undermines democratic oversight.³² Unlike traditional corporate governance under the Companies Act, where boards of directors exercise autonomy, military enterprises adopt executive-led structures designed to ensure rapid decision-making, safeguard sensitive information, and maintain alignment with national defence imperatives. This divergence reflects the constitutional reality that national security considerations outweigh commercial autonomy, thereby legitimising executive-dominated governance in Uganda's

military enterprises. Moreover, such entities frequently operate in domains where secrecy, speed, and command responsiveness are not mere operational conveniences but entrenched governing principles. These imperatives naturally displace the more deliberative and consultative processes characteristic of civilian corporate boards under the Companies Act³³, highlighting the distinctive hybridity of military-commercial governance in Uganda.

Reflecting this reality, U.S. courts have historically afforded broad deference to the executive branch in matters of national security. A landmark example is *United States v. Curtiss-Wright Export Corp*, where the Supreme Court underscored the necessity of unified executive action in delicate security affairs.³⁴ Building on this tradition, Verstein has documented the emergence of 'national security corporate governance,' a framework that justifies departures from shareholder-centric models in favour of state-driven imperatives.³⁵ Apart from national security imperatives discussed above, civil-military relations and regime stability also shape governance choices. In many developing states, military enterprises serve political as well as economic functions, including sustaining military welfare and reinforcing loyalty to the civilian executive. Concentrated appointment powers are therefore perceived as mechanisms for maintaining control over strategically powerful economic actors. This aligns with broader political economy analyses of Ugandan SOEs, which show that concentrated state ownership often reflects governance concerns beyond efficiency alone.³⁶ On the other hand, military command culture exerts a significant influence, being aware that, military institutions are historically grounded in hierarchical authority, discipline and values that sit uneasily with corporate governance norms emphasising independence, collective responsibility, and dissent. As a result, governance structures in military enterprises frequently replicate command hierarchies rather than shareholder or stakeholder-oriented accountability frameworks, further marginalising the board's autonomous role.³⁷ The above notwithstanding, Dewatripont shows reluctance to be swayed by national security imperatives as a justification for disregarding

²⁶ F Wanyama, 'State Ownership, Corporate Governance and Enterprise Performance in Uganda' (2019) *Journal of African Business*.

²⁷ A Vivien, *Corporate Governance and Performance: A Case Study of National Water and Sewerage Corporation* (UMI Space 2014).

²⁸ John Kiggundu and Sarah Nabunya, 'Corporate Governance and Performance in African SOEs: An Empirical Analysis' (2023) 15 *African Journal of Business Ethics* 101, 115.

²⁹ Constitution of the Republic of Uganda 1995, art 209(a) and (d); Uganda People's Defence Forces Act Cap 330, s 6(a) and (d).

³⁰ Samuel P Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Harvard University Press, 1957).

³¹ *Uganda v Commissioner of Prisons, ex parte Matovu* [1966] EA 514 (Uganda High Court).

³² See e.g. Constitutional Petition No 8 of 2003, *Ssemogerere and Others v Attorney General* [2004] UGCC 1, where the Constitutional Court emphasised adherence to constitutional supremacy in governance structures.

³³ *United States v Curtiss-Wright Export Corp* 299 US 304 (1936).

³⁴ *Ibid*.

³⁵ Andrew Verstein, *The Corporate Governance of National Security*, Washington University Law Review, Vol. 95, No. 4, pp. 775-834 (2018).

³⁶ Wanyama (n 24).

³⁷ NEC Act (n 13), ss 6 & 7.

corporate governance principles in military enterprise.³⁸ He notes that security-oriented governance preferences need to be compatible with core corporate governance tenets. No wonder, some countries have since adopted hybrid models that preserve strategic state oversight while strengthening board professionalism and fiduciary accountability. In Turkey for instance, defence enterprises such as ASELSAN operate under strong state influence but incorporate independent directors and professional nomination processes.³⁹ Similarly, defence-related SOEs in France maintain government shareholding and strategic direction while subjecting boards to rigorous corporate governance standards, including independent audit committees and transparent appointment criteria.⁴⁰

Equally, the OECD Guidelines on Corporate Governance of State-Owned Enterprises explicitly recognise the delicate balance between state ownership objectives and corporate autonomy. They affirm the legitimacy of state ownership goals, including those grounded in national security, but emphasise that boards must retain ultimate responsibility for enterprise performance. In doing so, the Guidelines insist that boards be empowered to exercise independent judgement, thereby ensuring *functional equivalence* with private-sector governance rather than imposing rigid uniformity.⁴¹ This approach underscores the principle that while state ownership may be justified by strategic imperatives, effective governance requires boards to operate with sufficient autonomy to safeguard accountability and performance outcomes.⁴² In other words, governance arrangements may differ in form, provided they achieve comparable outcomes in accountability, transparency, and fiduciary discipline.⁴³ Applied to NEC, this approach suggests that ministerial appointment powers and defence oversight can be retained, but only if accompanied by countervailing safeguards. These include statutory requirements for independent and professionally qualified directors, secure tenure linked to performance rather than executive discretion, mandatory

board evaluations, and robust conflict-of-interest management mechanisms.⁴⁴

3.1.3 Opacity in Defence Procurement

Section 2 of the Public Procurement and Disposal of Public Assets Act (PPDA Act) defines a procuring and disposing entity broadly to include ministries, statutory bodies, and government-controlled companies.⁴⁵ This definition brings military enterprises in Uganda within the Act's ambit. Such inclusion is significant because defence procurement has long been characterised by opacity, which poses serious challenges to accountability and corporate governance. The National Enterprise Corporation (NEC), as the commercial arm of the Ministry of Defence and the Uganda People's Defence Forces (UPDF), clearly falls within this ambit.⁴⁶ Consequently, NEC and its subsidiaries are bound by section 46 of the PPDA Act, which prescribes principles of non-discrimination, transparency, accountability, fairness, maximisation of competition, confidentiality, efficiency, economy, and ethical conduct.⁴⁷ Ugandan jurisprudence has reinforced these principles. In *Geo Jet Placements Ltd v Mbarara City Council*, the Tribunal held that unlawful disqualification violated fairness and transparency in procurement.⁴⁸ Similarly, in *Tisco Construction Uganda Ltd v Mukono Municipal Council*, the Tribunal emphasised accountability by ruling that the expiry of the bid validity period extinguished the bidder's status.⁴⁹ In *D & D Law Publishing House Ltd v Electoral Commission*, strict adherence to procurement requirements was upheld in sensitive election printing contracts.⁵⁰ Scholarly commentary also highlights the tension between secrecy in defence procurement and the need for corporate governance. Mwenda argues that while Uganda's procurement reforms sought to curb corruption, defence enterprises often operate under opacity that undermines efficiency.⁵¹ Kakumba stresses that transparency and accountability are indispensable in public enterprises

³⁸ M Dewatripont and others, *Balancing Commercial and Strategic Objectives in Defence SOEs* (European Commission 2019).

³⁹ OECD, *Boards of Directors of State-Owned Enterprises: An Overview of National Practices* (OECD 2018).

⁴⁰ Dewatripont (n 34).

⁴¹ OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (OECD Publishing 2015).

⁴² Mariana Pargendler, 'State Ownership and Corporate Governance' (2012) 80 *Fordham Law Review* 2917, highlights the tension between state objectives and board autonomy in SOEs.

⁴³ OECD, *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices* (OECD 2015).

⁴⁴ Turyakira (n 12).

⁴⁵ Public Procurement and Disposal of Public Assets Act (PPDA Act), Cap 205

⁴⁶ NEC Act (13).

⁴⁷ PPDA Act (n 42).

⁴⁸ *Geo Jet Placements Ltd v Mbarara City Council* (Application No. 36 of 2025) [2025] UGPPDPAAT 48 (ULII).

⁴⁹ *Tisco Construction Uganda Ltd v Mukono Municipal Council* (Application No. 14 of 2026) [2026] UGPPDPAAT 15 (ULII).

⁵⁰ *D & D Law Publishing House Ltd v Electoral Commission* (Application No. 35 of 2025) [2025] UGPPDPAAT 46 (ULII).

⁵¹ Andrew Mwenda, *Public Sector Reform in Uganda: Radical Change or Business as Usual?* (Fountain Publishers 2006).

where government controls boards of directors.⁵² Sabiiti further contends that PPDA principles are binding standards, not aspirational ideals, and should guide entities like NEC in balancing commercial objectives with public accountability.⁵³ Together, these cases and scholarly insights demonstrate that adherence to PPDA principles is central to legitimising corporate governance in military enterprises.

Having established the foregoing, this study emphasises that the intersection of military enterprises and public procurement in Uganda presents a complex challenge to the said principles. As the commercial arm of the Uganda People's Defence Forces (UPDF), NEC exemplifies this tension. It operates in sectors such as construction, agriculture, manufacturing, and infrastructure, while frequently invoking national security exemptions to bypass standard procurement norms.⁵⁴ Building on this observation, the PPDA Act introduces a dual-list system under section 45(2) and (3), whereby defence and national security organs annually enter into an agreement with the Authority on the category of items to be included on the restricted list and the restricted procurement and disposal methods to be applied.⁵⁵ This allows open procurement for non-sensitive items and restricted methods such as direct negotiations or limited bidding for classified procurements. Whereas section 45(4) requires that the restricted list of items be subjected to a classified audit by Parliament, reports by the Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) have raised serious concerns regarding the effectiveness of this procedure. The Committee contends that the process remains highly susceptible to manipulation by military commanders, who may invoke national security reasons to pursue personal or sectional interests, thereby undermining fair competition and the integrity of the procurement process.⁵⁶ Although the legal framework allows for legitimate security exemptions, NEC's hybrid military-commercial model frequently exploits these provisions, classifying purely commercial activities as security-related to avoid regulatory oversight.⁵⁷ For example, NEC's

subsidiaries and joint ventures frequently secure contracts through presidential directives or on the basis of national security claims, thereby circumventing mandatory public tendering processes and PPDA oversight.⁵⁸ This structural opacity directly contravenes the Act's emphasis under sections 43, 44, and 45 on objective criteria, e-procurement, and post-award audits aimed at fostering transparency and eliminating inefficiency and abuse. Given its position as the commercial arm of the military, NEC is particularly well-positioned to exploit the broad and indeterminate nature of these provisions for obscure purposes.

Ugandan courts have consistently reinforced the mandatory nature of PPDA compliance, even where public entities seek to rely on exceptions or urgency. In *B J Consults Ltd v Attorney General*, the High Court held that a contract awarded without invitation to bid, bidding documents, or proper process was invalid and unenforceable. The court relied on the Supreme Court precedent in *Galleria in Africa Ltd v Uganda Electricity Distribution Company Ltd*, affirming that procurement must strictly follow PPDA procedures because non-compliance renders any purported contract void.⁵⁹ Scholarly literature and international assessments show that such exemptions in defence-related entities create serious systemic risks. For instance, Transparency International's Government Defence Integrity Index (GDI) places all assessed Sub-Saharan African countries, including Uganda, in the high-to-critical risk category for defence corruption. The report notes that vague national security exemptions are often used to shield non-sensitive commercial procurements and facilitate patronage.⁶⁰ Considering the foregoing, this study recommends amending section 45 of the PPDA Act to include a detailed schedule specifying the items reasonably required for each financial year. The amendment should further provide for a supplementary list to address exceptional or emergency circumstances, which would remain subject to classified parliamentary audit. Such a framework would significantly strengthen corporate governance in Uganda's military enterprises by enhancing transparency, promoting

⁵² Umar Kakumba, 'Public Sector Management and Governance in Uganda' (2008) *African Journal of Public Administration and Management* 19(2).

⁵³ Sylvia Sabiiti, 'Public Procurement in Uganda: A Tool for Promoting Transparency and Accountability' (2019) *Journal of African Law* 63(1).

⁵⁴ Office of the Auditor General, 'Report of the Auditor General to Parliament on the Financial Statements of National Enterprise Corporation (NEC) for the Financial Year ended 30 June 2019'.

⁵⁵ PPDA Act (n 1) s 45(2) and (3).

⁵⁶ Parliament of Uganda, Committee on Commissions, Statutory Authorities and State Enterprises (COSASE), 'Report on the Auditor General's Findings on the National Enterprise Corporation for the Financial Year ended 30 June 2019' (2020).

⁵⁷ COSASE, 'Report on NEC and Related Government Contract Awards for the Financial Year ended 30 June 2021' (2022).

⁵⁸ National Enterprise Corporation, official website statements on presidential directives and defence manufacturing partnerships (2019-2022).

⁵⁹ *B J Consults Ltd v Attorney General* (Civil Suit 365 of 2020) [2024] UGCommC 328 (High Court, Commercial Division); *Galleria in Africa Ltd v Uganda Electricity Distribution Company Ltd* (Supreme Court of Uganda, 26 April 2018).

⁶⁰ Transparency International Defence & Security, 'Government Defence Integrity Index 2025: Sub-Saharan Africa Results'

fair competition, and reducing opportunities for abuse of national security exemptions. By imposing clearer and more accountable procurement rules on hybrid military-commercial entities such as NEC, this reform would minimise conflicts of interest, improve oversight, and foster a culture of integrity, while still safeguarding legitimate national security imperatives.⁶¹

3.1.4 Anti-Competitive Practices

Corporate governance is concerned with the systems, structures and processes through which an enterprise is directed and controlled to promote accountability, transparency, efficiency, board autonomy and responsible resource utilisation. In the context of military-linked state-owned enterprises (SOEs), such as Uganda's National Enterprise Corporation (NEC), anti-competitive practices undermine these core governance functions. Broad security exemptions under the Public Procurement and Disposal of Public Assets (PPDA) Act, coupled with institutional weaknesses in the enforcement of the Competition Act 2024, enable NEC to enjoy preferential access to state contracts, subsidies, land and military-linked labour across sectors including construction, manufacturing and logistics.⁶² This preferential treatment creates soft budget constraints by insulating the enterprise from the discipline ordinarily imposed by competitive markets. Consequently, operational inefficiencies, including project delays and inadequate asset management, may persist, while incentives for cost control, innovation and improved performance are diminished. Management may therefore face reduced pressure to maintain rigorous internal controls, thereby weakening the governance mechanisms responsible for efficient resource allocation and effective risk management. Moreover, the absence of competitive pressure may exacerbate agency problems, as directors and executives may have greater scope to prioritise

political or personal interests, creating opportunities for moral hazard and rent-seeking behaviour that undermine ethical standards and board autonomy.⁶³

These governance concerns are further illustrated by Ugandan jurisprudence, which has consistently emphasised the importance of transparency and fairness in public procurement. Cases such as *China Railway No.3 Engineering Company Limited v Kampala Capital City Authority*,⁶⁴ *Dentons Advocates v Uganda Electricity Transmission Company Limited*⁶⁵ and *D & D Law Publishing House Ltd v Electoral Commission*⁶⁶ underscore the need for strict compliance with established evaluation criteria and the setting aside of awards tainted by procedural irregularities. Scholarly literature by Basheka, Sabiiti,⁶⁷ Kakumba⁶⁸ and Kaunda⁶⁹ similarly highlights the manner in which political interference and opacity in defence-related procurement may compromise enterprise governance and performance. Against this background, the Competition Act provides an important framework for addressing the competitive effects of such practices.⁷⁰ Section 9 prohibits anti-competitive agreements, while section 11 targets the abuse of a dominant position, taking into account factors such as market share thresholds,⁷¹ vertical integration⁷² and advantages derived from government ownership.⁷³ NEC's position in relevant sectors arguably satisfies these criteria, potentially resulting in market foreclosure for private competitors and undermining the principle of competitive neutrality.

The effectiveness of this framework, however, remains constrained by significant enforcement weaknesses. The Ministry of Trade, Industry and Cooperatives administers the Act without the support of a fully independent competition authority, creating risks of regulatory capture. These institutional weaknesses are compounded by additional gaps, including the absence of published merger thresholds under section 15 and unclear guidance on the assessment of

⁶¹ See also Emanuele Colonnelli and others, 'Construction and Public Procurement in Uganda' in 'Mining for Change: Natural Resources and Industry in Africa' (Oxford University Press 2020).

⁶² OECD, 'Guidelines on Corporate Governance of State-Owned Enterprises' (2015); Auditor General of Uganda, Report on NEC Construction Works and Engineering Limited (2024).

⁶³ Auditor General reports on NEC operations (2024-2025); Martin Muzaale and related parliamentary concerns regarding NEC's preferential treatment in construction (July 2024)

⁶⁴ *China Railway No.3 Engineering Company Limited v Kampala Capital City Authority* (Application No 46 of 2025) [2025] UGPPDPAAT.

⁶⁵ *Dentons Advocates v Uganda Electricity Transmission Company Limited* (Application No 39 of 2025) [2025] UGPPDPAAT.

⁶⁶ *D & D Law Publishing House Ltd v Electoral Commission* (Application No 35 of 2025) [2025] UGPPDPAAT 46.

⁶⁷ Sylvia Sabiiti, 'Public Procurement in Uganda: A Tool for Promoting Transparency and Accountability' (2019) 63(1) Journal of African Law 89.

⁶⁸ Umar Kakumba, 'Public Sector Management and Governance in Uganda' (2008) 19(2) African Journal of Public Administration and Management 67.

⁶⁹ Elias Kaunda, 'State Ownership and Corporate Governance in Africa: Lessons from Uganda' (2015) 7(1) African Governance Review 112.

⁷⁰ Competition Act Cap 66.

⁷¹ Share thresholds are indicative benchmarks used to assess market power and anti-competitive conduct.

⁷² Vertical integration means that the company controls more than one step in producing and selling a product, e.g., produces raw materials, manufactures the product, and distributes or sells it.

⁷³ *Ibid.*

advantages conferred by the State.⁷⁴ When combined with broad national security exemptions under the PPDA Act, these deficiencies limit effective scrutiny of the commercial activities of military-linked enterprises and perpetuate opacity. Comparative experiences from other jurisdictions further reinforce these governance concerns. Nigeria's Bureau of Public Enterprises has documented significant efficiency losses in defence-linked SOEs associated with political patronage,⁵ while South Africa's Zondo Commission exposed how state capture at Eskom resulted in substantial value destruction through irregular procurement and weakened oversight.⁶ These experiences demonstrate the broader governance risks that arise when state protection and political influence weaken the accountability mechanisms ordinarily required to ensure efficient enterprise management. In essence, anti-competitive practices do not merely distort external markets; they may also internally corrode the governance of the enterprise by substituting state protection for market accountability. By insulating the enterprise from competitive discipline, such practices may weaken incentives for efficient operation, prudent risk management, innovation and long-term sustainability. They may also exacerbate agency problems by reducing the external pressures that constrain managerial discretion and encourage responsible performance. Targeted reforms, including narrower and independently reviewable security exemptions, the establishment of an autonomous competition authority, explicit standards for assessing state-derived dominance and enhanced board independence, are therefore essential to strengthen the implementation of corporate governance principles in Uganda's military-linked enterprises.

3.2 Institutional Inhibitions

Institutional frameworks are central to the effective implementation and oversight of corporate governance principles in Uganda. Various institutions, including the Uganda Registration Services Bureau, the Auditor General, Parliament, and the Ministry of Defence and Veteran Affairs (MODVA), play important roles in promoting accountability, transparency, and responsible governance. However, the effectiveness of these institutions, particularly in overseeing military enterprises such as the National Enterprise Corporation (NEC), is constrained by persistent institutional weaknesses that undermine the coherent and effective implementation of corporate governance principles, as demonstrated below.

3.2.1 Constraints within the Uganda Registration Services Bureau (URSB)

The Uganda Registration Services Bureau (URSB) is established under section 3 of the Uganda Registration Services Bureau Act as a body corporate with perpetual succession, capable of suing and being sued in its corporate name.⁷⁵ Its statutory functions under section 4 include administering and giving effect to registration laws, providing registration services, and collecting and accounting for revenue accruing under those laws. The Bureau is further mandated to advise the Government on matters relating to registration services, contribute to policy formulation on revenue collection, and periodically evaluate the efficacy and practicability of the applicable legal framework. In the discharge of its functions, the URSB is subject to the written directions of the Minister responsible for finance, which embeds executive oversight within its institutional design. The Bureau exercises its mandate under the Companies Act through the Registrar General, appointed pursuant to section 13 of the URSB Act, who serves as the chief executive officer responsible for the Bureau's day-to-day administration.⁷⁶ The Registrar General bears the primary responsibility for company registration, regulatory compliance, and enforcement oversight. Under section 168 of the Companies Act, the Registrar is empowered to ensure adherence to statutory obligations. In contrast, sections 170-176 confer investigatory powers, including the appointment of inspectors to inquire into company affairs.⁷⁷ Notably, section 171 extends such investigations to related corporate entities where necessary, thereby enabling a group-wide scrutiny of corporate conduct. In principle, these provisions furnish a robust legal framework capable of addressing fraud, mismanagement, and abuse of corporate form, including within military-linked enterprises.

Judicial authority underscores the importance of such investigatory powers in safeguarding corporate accountability. In *Re Pergamon Press Ltd*, the court emphasised that inspectors' investigations serve a vital public function in uncovering corporate misconduct and protecting stakeholder interests.⁷⁸ Notwithstanding this formal framework, acute institutional constraints significantly undermine URSB's regulatory effectiveness. Chronic budgetary limitations, staffing shortages, and weaknesses in digital systems impair the Bureau's capacity to discharge its regulatory and enforcement functions effectively.⁷⁹ The URSB reported a 7.5 per cent staffing gap in the financial year 2023/24, while the Ministry of Justice and Constitutional Affairs has acknowledged partial or delayed releases of development funding that have affected the timely

⁷⁴ *Ibid.*

⁷⁵ Uganda Registration Services Bureau Act Cap 217, s 3.

⁷⁶ *Ibid.*

⁷⁷ Companies Act (n 2), ss 168, 170-176.

⁷⁸ *Re Pergamon Press Ltd* [1971] Ch 388 (CA).

⁷⁹ World Bank, *Corporate Governance of State-Owned Enterprises: A Toolkit* (World Bank 2014) 20.

implementation of retooling initiatives intended to strengthen the Bureau's institutional capacity.⁸⁰ In addition, research on URSB's electronic systems identified inadequate utilisation of those systems, difficulties in system integration, inadequate internet connectivity, insufficient management support, and inadequate training as factors affecting their effectiveness.⁸¹ Further challenges arise from jurisdictional overlaps between URSB and the Ministry of Defence in relation to military-owned enterprises. This institutional fragmentation produces dual reporting lines and dilutes the Registrar's statutory authority, thereby weakening oversight coherence. Kiyaga et al. similarly note that political patronage and weak institutional autonomy impede effective governance of SOEs in Uganda.⁸² To create sanity, the OECD Guidelines on Corporate Governance of State-Owned Enterprises call for strengthening ownership functions and enhancing transparency, digital monitoring, and institutional capacity.⁸³ Uganda could operationalise these principles by investing in secure digital compliance systems capable of handling sensitive or classified filings, thereby reconciling transparency with national security concerns.⁸⁴ Comparative experience from South Africa is instructive. The Companies and Intellectual Property Commission (CIPC) demonstrates how digitalised regulatory systems can improve compliance monitoring and reduce information asymmetries, while the Public Finance Management Act framework has imposed stricter financial discipline on state-owned entities such as Denel.⁸⁵ Reform efforts should therefore prioritise strengthening the Registrar General's operational independence and technical capacity. Establishing specialised SOE oversight units within URSB, coupled with enhanced inter-agency coordination mechanisms, would mitigate jurisdictional fragmentation. Financial accountability can be reinforced through mandatory independent audits accompanied by redacted public disclosures, ensuring transparency without compromising sensitive information.⁸⁶ As such, while Uganda's statutory framework provides a

theoretically sound basis for regulating military-linked enterprises, its effectiveness is contingent upon addressing entrenched institutional weaknesses and political constraints.

3.2.2 Constraints on the Auditor General's Oversight.

The Auditor General occupies a central position in safeguarding corporate governance within state-owned enterprises (SOEs), including Uganda's military-commercial entities such as the NEC.⁸⁷ As the supreme audit institution, its mandate extends beyond routine financial scrutiny to encompass value-for-money audits that promote transparency, efficiency, and accountability-core tenets of sound corporate governance.⁸⁸ However, where SOEs operate within the military sphere, this oversight role becomes structurally constrained. The fusion of commercial activity with national security imperatives introduces institutional resistance that weakens the enforcement of audit findings. Consequently, although Uganda's legal framework appears normatively robust, its effectiveness is mediated-and often undermined-by political sensitivities and structural opacity within military-linked enterprises.⁸⁹ This tension becomes clearer when the formal legal framework is read alongside judicial interpretations of accountability. Constitutionally, Article 163(3) mandates the Auditor General to audit all public accounts, including those of public corporations such as NEC, and to conduct value-for-money audits.⁹⁰ This is reinforced by sections 9 and 13 of the National Audit Act, which guarantee independence and empower comprehensive audit reporting, as well as section 48 of the Public Finance Management Act, which embeds internal audit accountability within public institutions.⁹¹ In principle, these provisions establish a coherent system of financial discipline. However, jurisprudence cautions against equating formal authority with practical effectiveness. In *Attorney General v Tinyefuza*, the Supreme Court affirmed that even institutions associated with national security remain subject to constitutional principles,

⁸⁰ Uganda Registration Services Bureau, *Annual Report 2023/2024* (2024) 12; Ministry of Justice and Constitutional Affairs, *Ministerial Policy Statement for Financial Year 2026/2027* (2026) 83.

⁸¹ Best Kengonzi, 'Examining the Effectiveness of Electronic Systems in Uganda Registration Services Bureau' (MBA dissertation, Makerere University, 2018).

⁸² Barbara Kiyaga-Nsubuga and Augustus Nuwagaba, 'State-Owned Enterprises and Governance Challenges in Uganda' (2020) 12 *Journal of Public Administration and Governance* 45.

⁸³ *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (2024), Guidelines II.E and II.F.

⁸⁴ *Ibid.*

⁸⁵ Public Finance Management Act 1 of 1999 (South Africa); see also CIPC regulatory framework.

⁸⁶ Institute of Directors in Southern Africa, *King IV Report on Corporate Governance for South Africa* (2016); OECD (n 13) Guideline II.F.2.

⁸⁷ Office of the Auditor General, Report of the Auditor General on the National Enterprise Corporation (Headquarters) for the Audit Year Ended December 2024; Office of the Auditor General, Annual Report of the Auditor General to Parliament for the Audit Year Ended 31 December 2024.

⁸⁸ Constitution of the Republic of Uganda 1995, art 163(3) (value-for-money audit mandate); Office of the Auditor General, Report of the Auditor General on the NEC for the Audit Year Ended December 2024.

⁸⁹ Ronald Kayizzi, 'Corporate Governance Practice and Performance of State Enterprises in Uganda: A Case Study of Uganda Broadcasting Corporation (UBC)' (dissertation, Makerere University 2024).

⁹⁰ Constitution (n 81).

⁹¹ National Audit Act 2008, ss 9, 13; Public Finance Management Act 2015, s 48.

including accountability.⁹² This reasoning is critical because it dismantles any assumption that military-linked entities such as NEC are beyond civilian oversight. Yet, the persistence of governance failures suggests that constitutional supremacy alone is insufficient to overcome entrenched institutional resistance. The limits of audit effectiveness are further illuminated through administrative law. In *Pastoli v Kabale District Local Government Council*, the court held that a public authority must conform to legality, rationality, and procedural propriety.⁹³ Audit reports, particularly those exposing procurement irregularities or unaccounted expenditures, provide the evidentiary basis for enforcing these standards. However, where such findings are not acted upon, the broader system of administrative accountability is weakened. This is empirically demonstrated in successive Auditor General reports on NEC and its subsidiaries, which consistently highlight financial management weaknesses across multiple financial years. Reports on NEC Construction Works and Engineering Limited and NEC Headquarters have, for example, repeatedly identified deficiencies in internal controls, unsupported expenditures, and procurement anomalies across audit cycles from 2018 to 2024.⁹⁴ The recurrence of similar audit queries across years illustrates not merely administrative lapses but a systemic failure to implement corrective measures. Thus, the issue is not the absence of audit scrutiny, but the institutional inertia that neutralises its impact.

Comparative jurisprudence reinforces this diagnosis by demonstrating that accountability deficits in politically sensitive sectors follow a recognisable pattern. In *President of the Republic of South Africa v South African Rugby Football Union (SARFU)*, the Constitutional Court held that all exercises of public power are subject to constitutional scrutiny, regardless of their institutional origin.⁹⁵ This reasoning directly challenges any claim of functional exceptionalism for military SOEs. Similarly, in *Auditor-General for India v K.S. Jagannathan*, the Indian Supreme Court emphasised that audit institutions play a proactive role in preventing misuse of public resources rather than merely documenting it.⁹⁶ When read together, these authorities underscore that the effectiveness of audit oversight depends not on the existence of legal mandates, but on the extent to which state institutions internalise and enforce accountability

norms. Scholarly analysis provides further insight into why such internalisation often fails. Mbaku argues that SOEs are inherently prone to agency problems, where political actors and managers exploit weak monitoring systems to pursue private or institutional interests.⁹⁷ The Auditor General is intended to mitigate these risks by reducing information asymmetry and exposing inefficiencies. However, as Dye and Staphenurst observe, the effectiveness of Supreme Audit Institutions ultimately depends on the responsiveness of downstream accountability mechanisms, particularly Parliament.⁹⁸ Where parliamentary follow-up is weak—as evidenced by the persistent recurrence of audit findings in NEC-related reports—the deterrent effect of audits diminishes. This aligns with Wang and Rakner’s observation that in many African jurisdictions, politically sensitive sectors such as defence and military enterprises remain resistant to audit enforcement, thereby creating enclaves of limited accountability.⁹⁹ This structural resistance is especially pronounced in NEC due to its hybrid institutional character. Unlike conventional SOEs, NEC operates at the intersection of military command structures and commercial governance frameworks. This dual identity complicates accountability in two respects. First, military hierarchy prioritises confidentiality and command discipline, can limit transparency and restrict access to information necessary for effective audit scrutiny. Second, the application of corporate governance norms under the Companies Act to NEC subsidiaries creates a fragmented oversight regime in which accountability obligations are diffused across legal and institutional boundaries. As a result, even where the Auditor General identifies irregularities, enforcement is often diluted by competing institutional logics.

The cumulative effect of these dynamics is the emergence of a ‘fear of detection deficit,’ where exposure of irregularities does not translate into sanctions or reform. This is not merely theoretical; the persistence of recurring audit queries across NEC entities over multiple financial years demonstrates a pattern of limited compliance with audit recommendations.¹⁰⁰ Without credible enforcement mechanisms, audit processes risk becoming mere procedural formalities rather than effective governance tools. To address the institutional constraints undermining oversight of Uganda’s military-linked enterprises such as the National Enterprise Corporation

⁹² *Attorney General v Tinyefuza* Constitutional Appeal No 1 of 1997 (Supreme Court of Uganda).

⁹³ *Pastoli v Kabale District Local Government Council and Others* [2008] 2 EA 300 (High Court of Uganda).

⁹⁴ Office of the Auditor General, *Report of the Auditor General on the Financial Statements of National Enterprise Corporation (NEC) and its Subsidiaries* (Financial Years 2018-2024).

⁹⁵ *President of the Republic of South Africa v South African Rugby Football Union* 2000 (1) SA 1 (CC).

⁹⁶ *Auditor-General for India v K.S. Jagannathan* AIR 1987 SC 537.

⁹⁷ John Mukum Mbaku, *Bureaucratic and Political Corruption in Africa: The Public Choice Perspective* (Kluwer Academic Publishers 2000).

⁹⁸ Kenneth M Dye and Rick Staphenurst, ‘Pillars of Integrity: The Importance of Supreme Audit Institutions in Curbing Corruption’ (World Bank 1998).

⁹⁹ Vibeke Wang and Lise Rakner, ‘The Accountability Function of Supreme Audit Institutions in Malawi, Uganda and Tanzania’ (2005) Chr Michelsen Institute Working Paper.

¹⁰⁰ Wang (n 94).

(NEC), targeted reforms are essential. These draw on broader African SOE governance principles, particularly those advanced by Ackers and Adebayo within the framework of Agenda 2063, tailored to Uganda's context of political interference, restricted audit access, and poor implementation of recommendations.¹⁰¹ Key measures include enhancing the Auditor General's (AG) independence through adoption of global best practices; amending the National Audit Act to mandate timed parliamentary follow-up on Auditor General findings, backed by sanctions under the Public Finance Management Act; and establishing joint military-civilian audit committees under the NEC Act to improve transparency and access while aligning with OECD Guidelines on SOE governance.¹⁰² Further reforms should mandate full adoption of the Companies Act's code of corporate governance (Table F)¹⁰³ for NEC subsidiaries, including board certifications of AG reports, to harmonise legal frameworks and promote preventive governance. Complementing these, capacity-building initiatives-such as increased Office of the Auditor General (OAG) funding via constitutional provisions and broader public disclosure of audit reports-would strengthen institutional linkages.¹⁰⁴ Rooted in sustained political will, these changes can transform the Auditor General into a proactive guarantor of accountability, reducing corruption risks and enhancing performance in Uganda's military-commercial sector.

3.2.3 Parliamentary Oversight Constraints

The Parliament of Uganda occupies a central position in the governance framework of military enterprises by virtue of its constitutional responsibility for legislation, appropriation of public funds and oversight of their utilisation. Articles 78, 79 and 164 of the 1995 Constitution collectively establish Parliament as the primary civilian institution responsible for ensuring accountability in the management of public resources.¹⁰⁵ Military enterprises such as the National Enterprise Corporation (NEC), having been established by an Act of Parliament and operating with public assets, fall within this oversight remit notwithstanding their defence

affiliation.¹⁰⁶ The statutory character of NEC situates it firmly within the category of state-owned enterprises, which comparative governance practice treats as subject to civilian scrutiny in order to prevent opacity and concentration of power within executive or security institutions.¹⁰⁷ Parliament exercises this responsibility principally through its committee system, particularly the Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) and the Public Accounts Committee (PAC). These committees examine Auditor-General reports, interrogate accounting officers and board representatives, and report their findings to the house for debate and resolution.¹⁰⁸ Such oversight functions correspond to the external monitoring mechanisms emphasised in traditional corporate governance theory, where independent bodies are tasked with scrutinising management conduct and safeguarding stakeholder interests.¹⁰⁹ In the context of public enterprises, parliamentary committees perform a role analogous to that of shareholders and regulators in private corporations, substituting democratic accountability for private ownership while pursuing similar governance objectives of transparency, prudence and responsibility.¹¹⁰

The relevance of parliamentary oversight to corporate governance is further underscored by its contribution to financial discipline and disclosure. Public hearings and committee reports bring enterprise operations into the public domain, reinforcing transparency and enabling informed scrutiny. These practices resonate with international governance standards for state-owned enterprises, which emphasise disclosure, audit independence and accountability to representative institutions as preconditions for effective governance.¹¹¹ In principle, therefore, Uganda's parliamentary oversight framework aligns with widely accepted governance norms applicable to both civilian and military-linked enterprises. Notwithstanding this normative alignment, the effectiveness of Parliament's oversight has been persistently undermined by structural and procedural constraints. Delays in the consideration of Auditor-General reports have weakened the immediacy and corrective impact

¹⁰¹ B. Ackers and A. Adebayo, 'Governance of African State-Owned Enterprises (SOEs) – Towards Agenda 2063' (2022) 4(2) *Accounting Profession Journal (APAJI)* 125.

¹⁰² OECD, *Guidelines on Corporate Governance of State-Owned Enterprises* (OECD 2015) ch V.D; see also N. Turyakira *et al.*, 'Corporate Governance and Performance of State-Owned Enterprises in a Least Developed Economy' (2023) 55 *South African Journal of Business Management* 1.

¹⁰³ Companies Act (n 2).

¹⁰⁴ Uganda Ministry of Finance, Planning and Economic Development, *Public Financial Management Reforms Strategy 2025-2030* (MoFPED 2025) 45-50

¹⁰⁵ Constitution of the Republic of Uganda 1995 (as amended) arts 78, 79, 164; National Enterprise Corporation Act, Cap 312.

¹⁰⁶ *Ibid.*

¹⁰⁷ Alan Bruneau and Florina Matei, 'The Routledge Handbook of Civil-Military Relations' (Routledge 2013).

¹⁰⁸ Rules of Procedure of the Parliament of Uganda, SI 43/2025 (enacted under art 94 of the Constitution of the Republic of Uganda) <<https://www.ulii.org/akn/ug/act/si/2025/43>> accessed 25 February 2026.

¹⁰⁹ Richard Tricker, 'Corporate Governance: Principles, Policies and Practices' (4th edn, OUP 2019).

¹¹⁰ Jill Solomon, 'Corporate Governance and Accountability' (4th edn, Wiley 2020); Ahmed Kagoye, *An Assessment of Accountability Committees of Parliament of Uganda in Conducting Financial Scrutiny* (MBA thesis, Kampala International University 2009).

¹¹¹ OECD, 'G20/OECD Principles of Corporate Governance' (OECD Publishing 2015).

of committee scrutiny, allowing governance deficiencies to persist without timely intervention.¹¹² In the case of military enterprises, such delays are particularly consequential, given the scale of public resources involved and the additional opacity often justified on grounds of national security. Where oversight is deferred, accountability is diluted, and the preventive function of governance mechanisms is correspondingly weakened.¹¹³ Ugandan jurisprudence reinforces the expectation of timely and effective oversight. In *Attorney General v Tinyefuza*, the Supreme Court affirmed that institutions linked to national security remain subject to constitutional accountability principles, rejecting blanket claims of exceptionalism.¹¹⁴ Comparative case law from other jurisdictions illustrates the recurring nature of these challenges. In South Africa, parliamentary oversight of defence and SOEs through the Standing Committee on Public Accounts (SCOPA) and the Portfolio Committee on Public Enterprises has similarly suffered from delays and weak follow-up on audit findings, particularly during periods of state capture at entities like Eskom.¹¹⁵ Indian jurisprudence further underscores the limitations of parliamentary follow-up mechanisms. In *Arun Kumar Agrawal v Union of India*, the Supreme Court of India held that reports of the Comptroller and Auditor General of India (CAG), although constitutionally significant, are subject to parliamentary scrutiny and debate, and that the Public Accounts Committee may consider and act upon the Government's responses to CAG findings.¹¹⁶ The decision therefore demonstrates that audit reports do not, by themselves, guarantee accountability. Where parliamentary follow-up is delayed or ineffective, audit findings may have limited practical impact. This is relevant to Uganda, where recurring audit queries concerning NEC and its subsidiaries suggest weaknesses in the implementation of corrective measures.

It should be noted that, the commercial operations of military enterprises frequently involve sophisticated financial arrangements, procurement structures and subsidiary companies that require advanced expertise to interrogate effectively. Without adequate research support and independent technical advice, parliamentary scrutiny risks being confined to surface-level compliance rather than substantive governance evaluation.¹¹⁷ Scholarship on Uganda's PAC and COSASE notes that intense partisanship and capacity constraints often hinder deeper interrogation of military-linked SOEs.¹¹⁸ Similar capacity deficits have been documented in South African oversight of defence procurement, where technical complexity and political sensitivities have led to a documented decline in effective scrutiny.¹¹⁹ The non-binding nature of parliamentary recommendations also constrains their governance impact. Committee reports, though often detailed and critical, rely on executive action for implementation.¹²⁰ In the absence of legally enforceable follow-up mechanisms, corrective measures may be delayed, selectively implemented or disregarded altogether.¹²¹ From a governance perspective, this weakens the accountability chain by separating oversight findings from consequences, a separation that is widely recognised as inimical to effective control of state-owned enterprises.¹²² Comparative analysis in East and Southern Africa confirms that weak enforcement mechanisms undermine legislative oversight in politically sensitive sectors.¹²³ Despite these challenges, Parliament's role remains indispensable. Comparative experience demonstrates that legislative oversight of state enterprises becomes most effective where it is supported by clear statutory governance standards, mandatory disclosure obligations and enforceable accountability mechanisms.¹²⁴ In the Ugandan context, this points to the need for targeted reform of the National

¹¹² Tom Muzaale, Benon C Basheka and Christelle J Auriacombe, 'Oversight Role of Parliament and the Management of Public Finances in Uganda' (2017) *Journal of Public Administration*.

¹¹³ OECD, 'State-Owned Enterprises and Accountability' (OECD Publishing 2018).

¹¹⁴ *Attorney General v Tinyefuza* Constitutional Appeal No 1 of 1997 (Supreme Court of Uganda).

¹¹⁵ Portfolio Committee on Public Enterprises, 'Final Report on the Inquiry into Eskom' (Parliament of South Africa, November 2018); E Heydenrych, 'Re-evaluating Oversight of South African Defence Procurement' (2024) *Journal of Military and Strategic Studies*; ESKOM is South Africa's main electricity generating entity.

¹¹⁶ *Arun Kumar Agrawal v Union of India*, (2013) 7 SCC 1.

¹¹⁷ C Awor, 'Parliamentary Oversight Committees and Their Effectiveness in Uganda' (MA thesis, Makerere University 2020) 40; Government of Uganda, *Public Financial Management Reforms Strategy July 2025-June 2030* (Ministry of Finance, Planning and Economic Development 2025).

¹¹⁸ GI-ACE, 'Parliamentary Oversight and Corruption in Uganda' (GI-ACE Policy Brief 2025).

¹¹⁹ MP Mokalobe, 'Parliamentary Oversight of the Security Sector: The Case of the South African National Defence Force' (PhD thesis, University of Johannesburg).

¹²⁰ Parliament of Uganda, 'Accounting Officers to be Sanctioned over Audit Reports' (15 January 2025) <https://web.parliament.go.ug/news/3506/accounting-officers-be-sanctioned-over-audit-reports> accessed 19 July 2026.

¹²¹ Rules of Procedure of the Parliament of Uganda, SI 43/2025, r 70.

¹²² World Bank, 'Corporate Governance of State-Owned Enterprises: A Toolkit' (World Bank 2014).

¹²³ *Pastoli v Kabale District Local Government Council* [2008] 2 EA 300 (High Court of Uganda); Vibeke Wang and Lise Rakner, 'The Accountability Function of Supreme Audit Institutions in Malawi, Uganda and Tanzania' (2005) Chr Michelsen Institute Working Paper.

¹²⁴ OECD, 'State-Owned Enterprises and Accountability' (OECD Publishing 2018).

Enterprise Corporation Act to embed explicit corporate governance requirements relating to board independence, conflict-of-interest regulation and external audit transparency. Strengthening institutional coordination between Parliament, the Auditor-General and integrity bodies would further enhance coherence in oversight and reinforce civilian control over military-commercial activity.¹²⁵ Such reforms would not displace Parliament's constitutional role but rather equip it to perform that role in a manner consistent with contemporary corporate governance standards.

3.2.4 Structural Constraints within the Ministry of Defence and Veteran Affairs (MoDVA)

The statutory architecture of the National Enterprise Corporation (NEC) vests the Ministry of Defence and Veteran Affairs (MoDVA) with primary responsibility for the exercise of state ownership oversight. Paradoxically, this centralisation of authority gives rise to structural constraints that inhibit the effective realisation of ordinary corporate governance principles. These constraints do not stem from administrative inefficiency or individual discretion, but from a deeper institutional misalignment between the Ministry's public-law mandate and the governance demands of a commercially oriented enterprise operating within competitive markets.¹²⁶ This misalignment is formalised under section 1(f) of the National Enterprise Corporation Act (NEC Act), which designates the Minister responsible for defence as the principal authority exercising ownership oversight over NEC.¹²⁷ In effect, the statutory arrangement collapses distinct governance functions (policy formulation, ownership oversight, and operational influence) into a single political office, thereby generating tensions that undermine board autonomy, dilute accountability, and weaken the pursuit of commercial discipline within the Corporation.

A primary institutional challenge arises from the Ministry's policy-oriented mandate, which is fundamentally incompatible with the continuous performance monitoring and commercial oversight required in corporate governance. MoDVA is constitutionally and administratively designed to formulate defence policy, manage national security, and oversee military operations. It is not institutionally equipped to function as a professional asset owner or shareholder representative. This limitation affects the Ministry's ability to set clear commercial objectives for NEC, evaluate performance using market-based metrics, and enforce

accountability through incentive and sanction mechanisms. Comparative empirical research on state-owned enterprises demonstrates that line ministries exercising ownership functions tend to prioritise sectoral and political objectives over enterprise efficiency and profitability, thereby weakening governance outcomes.¹²⁸ This mandate misalignment reflects broader governance challenges in Africa. In Kenya, excessive ministerial control has subordinated commercial objectives to political priorities, resulting in inefficiency in state-owned enterprises.¹²⁹ Scholarship reinforces that such mismatches erode performance. The World Bank has highlighted how line ministries often lack the specialised expertise required for effective commercial oversight.¹³⁰ Courts in the region have occasionally scrutinised such overreach. For example, in Kenyan jurisprudence concerning state corporations, undue ministerial influence in operational matters has been challenged as undermining statutory autonomy.¹³¹ Section 6(1) of the NEC Act empowers the Minister to appoint all members of the NEC Board, while section 7(1) authorises the appointment of the chairperson and vice-chairperson. Although these provisions are intended to ensure alignment with defence interests, they impose a further institutional inhibition by placing on the Ministry responsibilities for board nomination and evaluation for which it lacks specialised corporate governance capacity. The absence of formal nomination criteria, independence requirements, or professional qualification thresholds increases the risk of appointments driven by institutional loyalty rather than governance competence. As a result, MoDVA becomes structurally constrained in its ability to build boards capable of exercising independent oversight and strategic leadership, a deficiency widely associated with poor performance in state-owned enterprises.¹³² This arrangement deviates from international benchmarks. The OECD Guidelines on Corporate Governance of State-Owned Enterprises emphasise transparent, merit-based board nominations incorporating a significant proportion of independent directors to ensure objective oversight.¹³³

Empirical studies in sub-Saharan Africa link weak board independence and politicised appointments to financial mismanagement and diminished enterprise value.¹³⁴ In Uganda, opaque appointment processes have similarly been identified as a critical governance weakness in public enterprises.¹³⁵ Comparative case law illustrates the risks of such arrangements. *In Katiba Institute & another v Attorney*

¹²⁵ N Turyakira and others, 'Corporate Governance and Performance of Commercial State-Owned Enterprises in Uganda' (2022) African Development Finance Journal 50.

¹²⁶ National Enterprise Corporation Act, Cap 199.

¹²⁷ *Ibid* s 1(f).

¹²⁸ World Bank, *Corporate Governance of State-Owned Enterprises: A Toolkit* (2014).

¹²⁹ Kiarie Mwaura (2007) 31 *Fordham International Law Journal* 34.

¹³⁰ World Bank, *Rethinking the State's Role in Ownership of SOEs* (2018).

¹³¹ See Kenyan jurisprudence on state corporations and ministerial overreach.

¹³² OECD, *Guidelines on Corporate Governance of State-Owned Enterprises* (2015).

¹³³ *Ibid*.

¹³⁴ Musacchio, Lazzarini and Aguilera (2015).

¹³⁵ Doris Lwanga (2021).

General & others,¹³⁶ the High Court underscored the necessity of transparency and merit in public appointments. In South Africa, jurisprudence and inquiry findings relating to SOEs such as Eskom and the South African Broadcasting Corporation (SABC) demonstrate how politicised appointment processes compromise fiduciary duties and board autonomy.¹³⁷ Another significant inhibition is embedded in section 9 of the Act, which authorises the Minister to issue binding directions to the NEC.¹³⁸ While this power is legally conferred, it creates an institutional dilemma for the Ministry itself. The ability to intervene directly in operational and strategic decisions substitutes ministerial discretion for structured governance processes and weakens the board's authority. This not only undermines board accountability but also exposes the Ministry to governance failures, as responsibility for enterprise outcomes becomes diffused between ministerial directives and board decisions. Empirical governance literature shows that excessive ministerial intervention often results in blurred accountability and reduced managerial discipline, ultimately impairing enterprise performance.¹³⁹ That said, Judicial scrutiny in comparable jurisdictions has at times criticised excessive executive directions that bypass board processes.¹⁴⁰ For instance, analyses of Kenyan parastatals demonstrate that unchecked ministerial directives erode board autonomy and managerial initiative.¹⁴¹ Consistent with the OECD Guidelines' principle, which requires the state to exercise ownership through clear and transparent policy direction rather than day-to-day managerial control, this study recommends that MoDVA's role be confined to providing strategic defence-policy guidance¹⁴² and that the Government's ownership functions in relation to NEC instead be exercised through a professionally constituted and independent central ownership body. This institutional separation would minimise excessive ministerial intervention, strengthen board autonomy and accountability, and allow MoDVA to focus on its core defence mandate while preserving NEC's corporate governance autonomy.

4. Conclusion

This chapter demonstrates that legal and institutional weaknesses, including the concentration of ownership and oversight functions within MoDVA, broad security-based exemptions, fragmented oversight, and capacity limitations within key institutions such as the Auditor General,

Parliament, URSB, and MoDVA constrain corporate governance in Uganda's military enterprises. These challenges undermine board autonomy, transparency, and financial accountability as major principles of corporate governance. The chapter therefore recommends recalibrating the legal framework, strengthening oversight institutions, limiting security-based exemptions, and establishing an independent central ownership body to separate the Government's ownership functions from MoDVA's defence-policy mandate. These reforms would preserve legitimate national security interests while promoting constitutional accountability and effective corporate governance.

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¹³⁶ In *Katiba Institute & another v Attorney General & others* [2021] eKLR

¹³⁷ *Ibid*; South African SOE inquiries.

¹³⁸ NEC Act.

¹³⁹ John Farrar, *Corporate Governance: Theories, Principles and Practice* (4th edn, OUP 2017) 389-392 (on diffusion of accountability where control structures are blurred).

¹⁴⁰ *Katiba Institute & another v Attorney General & others* [2021] eKLR; *Democratic Alliance v President of the Republic of South Africa* [2013] ZACC 24 (on limits to

executive discretion and rationality in public power affecting state entities).

¹⁴¹ Kiarie Mwaura, 'The Failure of Corporate Governance in State Owned Enterprises and the Need for Restructured Governance in Fully and Partially Privatized Enterprises: The Case of Kenya' (2007) 31 *Fordham International Law Journal* 34, 56-60.

¹⁴² OECD, *Guidelines on Corporate Governance of State-Owned Enterprises* (OECD Publishing 2015) 17-18, 55-58.

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