

**UNIVERSITY OF KWAZULU-NATAL**

**Articulating South Africa's port doctrine for a democratic developmental state**

**By**

**Ayanda Meyiwa**

**207500950**

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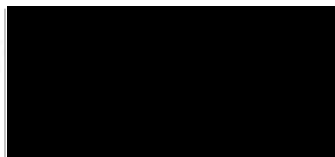


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***ARTICULATING SOUTH AFRICA'S PORT DOCTRINE FOR A DEMOCRATIC  
DEVELOPMENTAL STATE***

**Candidate: Meyiwa A**



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Signed: .....

## **ACKNOWLEDGEMENTS**

I dedicate this thesis to:

The Lord God Almighty and Father of our Lord Jesus Christ Who sustains me and by whose grace I have made progress hitherto. His faithfulness is incomparable.

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Ayanda Meyiwa

## ACRONYMS

B-BBEE	Broad-based Black Economic Empowerment
BOOT	Build, Own, Operate and Transfer
CAPEX	Capital Expenditure
CMTF	Comprehensive Maritime Transport Policy
DBSA	Development Bank of Southern Africa
DDS	Democratic Developmental State
DoT	Department of Transport
DPE	Department of Public Enterprise
DPME	Department of Planning, Monitoring and Evaluation
DS	Developmental State
DTI	Department of Trade and Industry
EBITDA	Earnings Before Interest, Taxation, Depreciation and Amortisation
ETIMC	Excessive Tariff Increase Margin Credit
GDP	Gross Domestic Product
GEAR	Growth, Employment and Redistribution policy
IAME	International Association of Maritime Economists
IPAP	Industrial Policy Action Plan
IDZ	Industrial Development Zone
JEF	Journal of Economics and Financial Sciences Ltd Limited
M-EC	Minerals-Energy Complex
MDS	Market Demand Strategy
MRP	Market Risk Premium

DoT	Department of Transport
NDP	National Development Plan 2030
NERSA	National Energy Regulator of South Africa
NGP	New Growth Path
NPA	National Ports Authority
NPCC	National Port Consultative Committee
OECD	Organisation for Economic Co-operation and Development
OPEX	Operational Expenditure
PCC	Port Consultative Committee
PPP	Public-Private Partnerships
PPPFA	Preferential Procurement Policy Framework Act
PRSA	Ports Regulator of South Africa (Ports Regulator)
RAB	Regulated Asset Base
RDP	Reconstruction and Development Programme
ROC	Return on Capital
ROD	Record of Decision
RoRo	Roll ons – Roll Offs (Cars on Wheels)
RR	Revenue Required
SAAFF	South African Association of Freight Forwarders
SAASOA	South African Association of Ship Operators and Agents
SAMSA	South African Maritime Safety Authority
SAPO	South African Port Operations
SAR	Special Administrative Region

SAR&H	South African Railway and Harbours
SASTLC	Southern Africa Shippers Transport and Logistics Council
SATS	South African Transport Services
SEZ	Special Economic Zone
SOC	State Owned Company
SOE	State-Owned Enterprise
SWH	Ship Working Hour
TEU	Twenty foot Equivalent Units
TFR	Transnet Freight Rail
The Act	The National Ports Act no. 12 of 2005
TIPS	Trade and Industrial Policy Strategies
TNPA	Transnet National Ports Authority
TPT	Transnet Port Terminals
TRE	Transnet Rail Engineering
UKZN	University of KwaZulu-Natal
UNCTAD	United Nations Conference on Trade and Development
WACC	Weighted Average Cost of Capital
ZAR	South African Rand



## ABSTRACT

South Africa lacks a concise paradigm for port governance. This results in a number of challenges including lack of cost-based pricing for port services, retrogressive cross-subsidization, inequitable cost allocation to user groups, siphoning profits from ports to other loss-making divisions of the transport conglomerate; Transnet's anticompetitive practices; the port authority's disregard for the legislative demand to corporatize and poor port performance relative to the premium tariffs charged which compromises South African ports' global competitiveness. These challenges cannot be satisfactorily addressed without interrogating the socio-political context within which pricing decisions, tariff structuring and port investment is done and questioning the philosophy informing these – the port doctrine. With South Africa professing to be a democratic developmental state, there is no divorcing her political dynamics from government's strategic intervention in the ports sector. The socio-political demands and economic and trade objectives framing the entire macroeconomic strategy have, therefore, to filter down into the ports sector. This is a PhD by publication with four objectives, addressed through four papers. The study's overall objective is to ex-ante articulate a South African port doctrine that translates her developmental state policies into a doctrine that addresses pricing methodology, tariff structure and port governance challenges. This study makes prescriptions that account for both historical context from which port governance emerged and the political convictions of the present and economic aspirations of the future, all within the paradigm of a democratic developmental state. Content analysis and document analysis through NVivo 11 Pro® are used to analyze data from secondary sources. It assesses comments from various port stakeholders concerning the Revenue Required tariff methodology, tariff structure and the evolutionary changes made to these through the consultative regulatory process facilitated by the Ports Regulator of South Africa. This study articulates South Africa's own port doctrine. The doctrine aligns macroeconomic strategic intents with port policies and provides a framework for constructing port policy henceforth, gleaning lessons from some East-Asian states. The proposed doctrine presents a different approach to tariff methodology, tariff structure and port investment. Lastly, it proposes a port devolution strategy to achieve increased local private enterprise participation in ports.

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# CHAPTER 1: INTRODUCTION

## 1.1. Introduction and Background

Because of her lack of a well-defined port doctrine, South Africa's ports and port stakeholders have battled a plethora of challenges, most of which relate to conflicting port pricing and port governance objectives. South African ports operate within certain aspects of the Anglo-Saxon doctrine with respect to their pricing and have retained a number of elements of the European (Continental) doctrine as far as the government objectives regarding the ports are concerned (Meyiwa & Chasomeris, 2016). Looking at the legislation and some investment aspects within ports, some traits of the Asian port doctrine can also be found (Meyiwa & Chasomeris, 2016). The challenges resulting from these doctrines include, inter alia, a lack of cost-based pricing for port services, retrogressive cross-subsidization, inequitable cost allocation to various port user groups, and the siphoning of profits from the ports sector to other loss-making divisions of the transport conglomerate, Transnet (Van Niekerk, 2007); Transnet National Port Authority's and Transnet Port Terminals' anticompetitive practices as a result of their management structure (Public Affairs Research Institute, 2018); the port authority's apparent disregard for the legislative demand to corporatize; and the generally poor port performance relative to the premium tariffs charged resulting in compromised competitiveness of the South African ports system compared to the global benchmark sample. The studies done hitherto on South Africa's ports system have mostly concerned themselves with the pricing methodology, tariff structure and productivity of ports given the prevailing governance and *modus operandi* (Havenga et al., 2017; Chasomeris, 2015; Gumede & Chasomeris, 2012). These studies do not address the *status quo*, they only attempt to fix problems in the pricing mechanism without looking at the philosophical/ideological causes thereof. Whilst the TNPA, which is regulated by the Ports Regulator of South Africa (PRSA), has said that it is committed to promoting competition within ports, its unregulated sister company, Transnet Ports Terminals, still has effective monopoly on the two most profitable sectors, namely containerized cargo and automotive cargo (PRSA, 2010). The TNPA, which is a landlord and a price maker in all eight South African commercial ports, says it promotes the User-pays principle but the tariff structure appears to indicate that cargo owners are subsidizing the ship owners while

the automotive and containerized cargo tariffs appear to be subsidizing the dry-bulk cargoes which, by all indication, are underpriced (Port Regulator, 2015). These are but a few contradictions between the landlord's claims and actual practices in South African ports and they are all a function of port doctrines.

The idea of a port doctrine on its own is an elusive concept to attempt to define and its articulation thus far has been a combination of hindsight and a function of a complex set of macroeconomic policy decisions that have ramifications for the entire domestic or regional economy – not just the maritime sector. As a result of observations that South Africa's maritime economy and geopolitical terrain demand an outlook unique to the more established port doctrines, recent studies (Gumede and Chasomeris, 2015; Meyiwa and Chasomeris, 2016) have found that the foundation of a solution to conflicting port objectives, port pricing challenges and port governance issues is the articulation of South Africa's own port doctrine. With port doctrine being dependent on the socio-political and macroeconomic dynamics in the country or region, it is necessary to look into the country's economic developmental objectives within the South African democratic developmental state framework. The Developmental State, though widely researched and studied by development economists and sociologists, is not a static concept and is something different for each state and its fluidity is not without challenges. The idea of a 'Democratic Developmental State' remains a concept of academic debate with no empirical backing from which to draw certain ideals concerning it (Turok, 2008). All this uncertainty, if it remains unresolved, creates a challenging environment within which to establish a more certain port doctrine.

Port pricing models and approaches to port governance are not an exact science (Notteboom, 2009). The pricing methodology and pricing structure of services are often based on political considerations, environmental impact (Swahn, 2002; Abbes, 2007), social equity, and regional and hinterland developments (Kaselimi, 2012) rather than purely on the profitable employment of their facilities. All of these make port pricing a complex exercise dependent mostly on non-quantifiable factors that inform port governance which also form part of what may be called the port doctrine.

Brooks and Cullinane (2006) contend that there are almost as many port devolution models as there are sea ports in the world. This was their response to the study conducted by Song and Lee



(2007) wherein port functions or port governance were classified into four models as shown by Table 1.1 below

**Table 1. 1 Port Governance Models**

Port Models	Port Functions			
	Regulator	Land Owner	Operator	The World's Top 100 Ports
1. Public	Public	Public	Public	7
2. Semi-Public	Public	Public	Private	88
3. Semi-Private	Public	Private	Private	2
4. Private	Private	Private	Private	3
5. South African	Public	Public	Public and Private	-

Source: Adapted from Baird (1995); Song and Lee (2007); Mouknass (2001) and Chasomeris (2011b).

According to Brooks and Cullinane (2006), the sheer variation of some of the port activities make it very difficult to propose a port governance model that is “based on a discrete and absolute apportionment of activities categorized under function headings and with minimal assumptions as to environmental configuration” (Brooks and Cullinane, 2006: 418). One may only assume that the term “environmental” in this case refers to the port-specific management policies and topography.

South Africa does not fit into any of these perfectly as her port system combines some elements of being public and semi-public ports since there is a mixture of public and private sector involvement in port operations. In Table 1.1, Mouknass (2001) had counted the South African ports as those falling within the first model, which is a public port model. Considering the distinctiveness of South African ports, however, Gumede and Chasomeris (2013) found that South Africa also has some private participants in the terminal operating facilities, although TPT has a lion’s share of the market. Therefore, of the top one hundred ports assessed, South Africa is so distinct that it does not fall into any of the four established models.

There have been major changes in SA’s port governance in the period from 1833 to the present, with the most recent changes having occurred in 2007. The summary of the evolutionary process of South Africa’s ports system is shown in Table 1.2 below

**Table 1. 2 History of Port Evolution in South Africa**

	<b>Organization</b>	<b>Governance and Pricing Practices</b>
<b>1833-1908</b>	Autonomous structure. Pre-Union	Financial autonomy of harbours with each port administering its own tariffs. Thus revenue generated accrued to harbour administration and was easily identifiable. Inter-port competition was fierce and promoted competitive tariffs
<b>1909-1981</b>	South African Railway and Harbours (SAR&H)	Harbours and railways were unified. Harbour revenues were also used to subsidize the loss-making railway sector; earlier interport competition was ceased and uniform tariffs were introduced
<b>1982-1989</b>	South African Transport Services (SATS)	The SATS Act of 1981 transformed SATS into a state-owned enterprise that also had to consider the economic interests and transport needs of the entire country. Intra-port and inter-modal cross-subsidization remained
<b>1989-2007</b>	Transnet	Transnet was formed as a public company to commercialize the activities of SATS and it became the country's transport conglomerate as an umbrella company maintaining five divisions: Spoornet, Portnet, Petronet, Autonet and South African Airways. Portnet faced a player-referee dilemma with respect to ports as it had to wear the hats of both regulator and operator of ports and perform a balancing act between the two roles. This being a challenge, and in line with international best practices, in 2002 Portnet was split into a landlord port authority (now called Transnet National Ports Authority or TNPA) and a port operator (now called Transnet Ports Terminals or TPT)
<b>2007-Present</b>	Transnet and Ports Regulator	The Regulator exists mainly for the regulation of pricing and other aspects of economic regulation, promotion of equity of access to ports facilities and services, monitoring the industry's compliance with the regulatory framework and hearing any complaints and appeals lodged with it

**Source:** Adapted from Jones, 1988a; 1988b, Chasomeris 2006, Ports Regulator 2009 in Chasomeris 2011: 6, and Transnet 2011.

Presently, the ports system is governed by a single port authority and a single tariff book that applies uniform port prices for the eight different commercial ports that serve diverse markets and are faced with differing geographic and environmental challenges. The pricing model, known as the Revenue Required (RR) methodology, shows very little (if any) objective relationship between

costs incurred and prices charged. This remains the case even after numerous attempts to improve it over the years. The tariff structure, so called as it points to the way in which the costs are allocated to different port users, i.e. shipping companies, tenants and cargo owners, still remains a point of contention as cargo owners seem to largely bear the brunt of whatever pricing decisions the port authority makes and the ports regulator approves of (Gumede & Chasomeris, 2018). Indeed, for many years cargo owners have been the victims of cost-shifting and, particularly in South Africa, they have been subsidizing shipping companies and bearing the greater cost burden of all port users despite attempts to improve their plight. All these challenges are dealt with in more details in Chapters 3 and 4 of this thesis.

## **1.2. Problem Statement**

Despite these port governance models and the evolution of South Africa's ports hitherto, the best configuration of pricing and governance strategies to address the lingering challenges is still lacking. Also, notwithstanding the fact that there are potentially as many permutations for port governance models as there are ports around the world, political objectives and practices in history have given rise to certain dominant views of ports which economists have come to call port doctrines. There are three distinct port doctrines, namely: the Anglo-Saxon Doctrine, the European (Continental) Doctrine (Bennathan & Walters, 1979), and the Asian Port Doctrine (Lee & Flynn, 2011). South Africa's ports system incorporate elements of each of these doctrines, resulting in problems with its governance.

Bennathan and Walters (1979) were the first researchers to pioneer the phrase 'port doctrine,' by studying various port pricing and governance practices in continental Europe and in the United Kingdom. Judging from the data they collected and their historical observations, the authors were able to establish two modes of port governance and port operation that they believed were the norm for ports in these two regions. They called these beliefs which are dealt with in more detail in the next chapter, the European (Continental) doctrine and the Anglo-Saxon doctrine. Most recently, Lee & Flynn (2011) studied the development of container hub ports in East Asia and they observed port governance and operational models unlike those in the UK or Europe and in their study they

coined a new container port paradigm which became known as the Asian Port Doctrine. Up until now, however, no scholar has attempted to establish a formal definition of the phrase ‘port doctrine.’ It becomes necessary to define it.

This lack of definition has introduced a philosophical dilemma of its own in the study of South African ports. The presence of the phrase ‘doctrine’ brings about an impression that a port doctrine is a set of beliefs that, having been established beforehand, subsumes all operational practices within ports under predetermined principles. This impression lingers in view of discrepancies between how the ports currently operate and how they ought to operate despite the fact that empirical evidence suggests that port doctrines have hitherto been articulated through historical observation. Indeed, the history and politics of South Africa – insofar as it has chosen to be a democratic developmental state – cannot be suspended in the considerations of her port doctrine. It thus becomes necessary to factor these into the articulation of the new port doctrine whether it is viewed from the historical or philosophical perspective.

### **1.3. Research Question and Aim of the Study**

The key question, in view of the democratic developmental state rhetoric, is how a democratic developmental state model can be applied in South African seaports to create South Africa’s very own port doctrine. Therefore, this thesis asks the question:

How can South Africa successfully translate its developmental state policy objectives into a port doctrine that addresses port pricing methodology, tariff structure and port governance challenges?

Because there have been philosophical discrepancies observed, some of which have been mentioned with respect to running ports, this study attempts to examine the implications of a democratic developmental state for port governance. Furthermore it aims to formulate a new port doctrine that will specifically address South Africa’s unique challenges.

## **1.4. Objectives of the Study**

From the aforementioned research question and aim the following five study objectives emerge:

1. To assess the possibility of articulating South Africa's port doctrine in the current dispensation (Chapter 3)
2. To find links between challenges faced by port stakeholders and the current port doctrine (Chapter 4)
3. To assess the degree to which the current port governance environment allows for the flourishing of private port terminals given the current port doctrine (Chapter 5)
4. To *ex ante* articulate South Africa's own port doctrine in view of current policy and legislative documents that facilitate the governance and operation of seaports (Chapter 6)

## **1.5. Research Methodology**

Content Analysis of various ports stakeholder comments regarding TNPA's pricing and governance practices are used to give a critical exposition of South Africa's current port system and it (Content Analysis) is used in varying degrees across all articles within this study focusing on the domestic context. These stakeholder submissions are made to the Ports Regulator of South Africa and are publicly accessible as secondary data through the Ports Regulator's website (PRSA, 2018). Because this thesis is approached and arranged in fulfilment of a PhD by publication, the research approaches may slightly vary from one paper to the next and these are therefore specified in each of the four papers (chapters three to six) that comprise the body of the entire thesis. Moreover, and wherever appropriate, Document Analysis has been used and paired with the content analysis tool to interrogate some publications and information obtainable online from the TNPA, Transnet and Ports Regulator websites.

Chapters three and four mainly concern themselves with the thematic assessment of various stakeholders' contribution to port pricing and governance over a period that spans nine years. The nature of these contributions is mainly textual and qualitative, justifying a qualitative approach to their analysis. For Chapter 3, deductive content analysis was used because the chapter mainly

concerned itself with finding links between challenges faced by stakeholders and whether or not these could be solved through SA adopting a different port doctrine. Document analysis proved necessary for Chapters 5 and 6. Chapter 5 investigates the role and growth of the private sector in South African ports using 21 media releases and roadshow reports while chapter 6 focused on finding the extent of agreement between 10 macroeconomic strategy documents, legislative documents and port governance policies. The themes that naturally flowed from this exercise also necessitated deductive content analysis.

For each of the four papers and the entire thesis the ethical clearance certificates have been obtained from the Human and Social Sciences Research Ethics Committee at the University of KwaZulu-Natal (See Appendix B).

## **1.6. Structure of this Thesis**

This is a PhD by publication that comprises the introduction, a brief literature review on the developmental state, the four papers that form the body of the entire thesis, and the conclusion. The chapter overview below outlines the papers and their objectives

### **Chapter 1: Introduction, Purpose and Methodology of the Study**

This chapter introduces the context and purpose of the study. It communicates the research question, aim and objectives; explains the methodology of the study and outlines the structure of the rest of the chapters that follow.

### **Chapter 2: Literature Review**

This chapter gives an in-depth analysis of the developmental state and its origins, meaning and contexts, but more importantly what the *democratic* developmental state is and what it may involve in the South African economy. It further assesses the question of how the democratic developmental state has or how it may demand articulation in the maritime sector as far as port pricing and governance is concerned.

### **Chapter 3: Restructuring Port Governance in South Africa<sup>1</sup>**

South Africa's (SA) ports do not have a clearly defined port doctrine. They have certain elements resembling the Anglo-Saxon port doctrine, while other elements are based on the Continental doctrine and still others the Asian port doctrine. Thus, SA encounters conflicting port objectives: it runs a complementary ports system where costs are not reflective of prices charged, and the revenues and costs allocated to various commodity types remain unjustified. This is against the backdrop of intra-port, inter-port and multimodal cross-subsidization, which found justification in SA's developmental objectives. However, this practice has been viewed as unjustifiable under current economic conditions, giving rise to dissatisfaction among various port stakeholders regarding Transnet as a state-owned enterprise and Transnet National Ports Authority's (TNPA) governance and pricing practices that have not been adequately addressed.

Using content analysis, 18 stakeholders' submissions on the 2013-2014 TNPA tariff application, 15 stakeholders' submissions regarding the multi-year tariff application, and 16 submissions regarding the 2014-2015 tariff application were assessed. The focus was on finding links between the challenges faced by stakeholders and whether solutions would be found by SA adopting a different port doctrine. The findings show that while the Asian doctrine is more aligned with SA's developmental objectives, the adoption of it may prove premature in view of the current and foreseeable economic conditions. The study shows that the local port system may not find a perfect fit into any of the known port models and established port doctrines, but that SA needs to articulate its own port doctrine.

### **Chapter 4: South Africa's Port Doctrine: Dilemmas and the Way Forward<sup>2</sup>**

South Africa is pursuing the ideal of a democratic developmental state. South Africa's system of eight commercial seaports, however, is unique. The ports are financed and managed using a mix of elements from the European and Asian doctrines, but appear to be attempting to charge port tariffs according to the Anglo-Saxon doctrine. This study examines South Africa's port devolution and the clash in port doctrines that is a source of misunderstanding and contention in the shipping

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<sup>1</sup> This chapter was published as an article in the Journal of Economic and Financial Sciences. See Meyiwa and Chasomeris (2016)

<sup>2</sup> This chapter was accepted and published in the Maritime Studies journal. Citation: Meyiwa, A., Chasomeris, M. 2020. South Africa's port doctrine: dilemmas and the way forward. *Maritime Studies*, 19, pp. 179–191 .

industry. It also shows how the clash of doctrines directly affects the pricing and productivity of the country's ports.

This study uses content analysis to examine 116 industry comments on port tariffing practices over a 7-year period and how stakeholders perceive South Africa's ports system, specifically pricing and governance, and it shows the connection between stakeholders' discontents and the present port doctrine. The study furthermore examines South Africa's port devolution and recommends an appropriate well-fitting port doctrine for a democratic developmental state.

## **Chapter 5: An Analysis of the Policy Environment Surrounding Public-Private Partnerships in South African Ports**

One of the goals of the developmental state is to create an environment which is conducive for the prosperity of the private sector. Working with the private sector and creating a conducive environment for its success implies a transitory phase where the state gradually reduces its involvement in enterprise and devolves many commercial undertakings to the private sector as soon as those state-targeted industries show stability and sustainability. This paper argues that if South Africa were pursuing a developmental state in its economic policies then the operating environment in its seaport terminals and marine services would be conducive for the prosperity of private port terminals. It would also be characterized by a growing private sector market share in its ports as one of the key industries targeted for development. Using document analysis of the port authority's media releases and roadshow reports, the paper investigates the role and growth of the private sector in ports. The study found that while there is consultation with industry stakeholders with respect to pricing of port services and while the tendering process is relatively transparent, when it comes to partnering with the private sector, the regulatory environment in SA ports is not as negotiated as it may be in other ports with best international practices. The Transnet National Ports Authority must actively solicit more input from prospective and current terminal operators to improve the nature of public-private partnership agreements, thus ensuring that port stakeholders are key contributors to the creation of a better operational environment and to the formulation of the port doctrine.



## **Chapter 6: A Review of South Africa's Democratic Developmental Statism: Rhetoric and Practice in the Seaports Sector**

There are multiple challenges to ordering an entire economy on the developmental agenda. The concept of a developmental state on its own is a subject of theoretical conflict. Many neo-statist writers are adamant that such a state is not compatible with a democracy and that the state institution must maintain a great degree of autonomy if the developmental plans are to succeed. Ideally, a developmental state creates an enabling environment for the prosperity of private enterprise while maintaining a coherence between its economic and social policies – hence the need for state autonomy. The state is also the custodian of key resources and sectors, which it uses to determine the development trajectory of the country, mainly through state-owned enterprises. SA is no different in this respect as over decades the state has played an entrepreneurial role and has of late communicated the role of her SOEs as key players in driving development. Transnet National Ports Authority, SA's seaports landlord and SOE, is committed to ensuring the competitiveness of the South African ports systems and supporting economic growth as mandated by its role as a state owned company.

This chapter analyzes themes extracted from nine policy and legislative documents that facilitate the governance and operation of seaports, and tests them for consistency and agreement. The aim of the paper is to assess the likelihood of achieving a harmonious alignment of macroeconomic policy objectives with the maritime policies of South Africa and the extent to which TNPA can achieve its primary developmental objective under a democratic developmental state.

### **1.7. Chapter 7: Conclusion**

This chapter provides a synthesis of the preceding chapters with general discussions and is a substantial chapter that provides an argument for how together they constitute an original contribution to existing knowledge in the field. This chapter also includes a reflection on the research process and its limitations, the implications that flow from the research and recommendations for further research.

## **CHAPTER 2: LITERATURE REVIEW ON THE DEVELOPMENTAL STATE**

### **2.1. Introduction**

The developmental state route that South Africa has taken is both a hopeful and an uncertain path, much of the uncertainty being with the very idea of a developmental state. Therefore, the purpose of Chapter 2 is to explore what a developmental state means, especially in the South African context – especially as South Africa has embraced democracy in its national governance and economic policy-making, an ideology that is still subject to much debate in social and political sciences when it comes to pursuing a developmental state (White, 1988; Heller, 1999; Rodrik, 2004; UNCTAD, 2007). This study will also assess the likelihood of success of a democratic developmental state path that South Africa aims to follow. Further to this, the chapter will attempt to logically draw some lessons on how the democratic developmental state principles may be followed for South Africa's ports.

Pursuant to the defining characteristics of a developmental state, the central government is the champion of economic development and the State-Owned Enterprises (SOEs) are at the forefront as drivers of economic growth (Roberts & Rustomjee, 2010). Most South African SOEs are currently not performing well, to say the least. So, to what extent their profitability and commercial activity is pivotal in ensuring economic development and what policy-making authority they have through the state's agencies which sanction some of their operations, is a critical question.

One of the SOEs that has declared a commitment to helping the state achieve its developmental goals is Transnet, a public company that is the country's transport conglomerate and to which the government is a 100 per cent shareholder through the Department of Public Enterprises. Transnet has five divisions, two of which are Transnet National Ports Authority (TNPA) and Transnet Port Terminals (TPT). TNPA is a regulated company through the Ports Regulator of South Africa (the Regulator) and TPT is not regulated. Over the years, since the TNPA's subjection to the independent Ports Regulator of South Africa (PRSA) in 2009, it has had to apply for approval for its annual tariff increase and has been required to justify the composition and level of its administered prices through open engagement with all port stakeholders prior to their final

approval by the PRSA. The PRSA welcomes the submission of comments and concerns from all port stakeholders annually, and it makes these accessible to the public on its website and then, in consultation with these stakeholders through their submissions, the PRSA makes final recommendations through the Record of Decisions (ROD) and approves a certain level of tariffs for the following financial year.

Because of this open process TNPA's tariffing methodology, tariff structure and commercial practice have been the subject of much contention. Gumede (2012), Gumede & Chasomeris (2012), Meyiwa (2015) and Meyiwa & Chasomeris (2016) have assessed the stakeholder perspectives on South Africa's ports and categorised them into issues regarding port pricing, port performance and port governance, emphasising that South African ports need to be reformed. Gumede & Chasomeris (2015) use descriptive statistics to demonstrate that the South African ports system is financed and managed using a mix of elements from the European and Asian port doctrines, whereas the pricing methodology appears to follow the Anglo-Saxon doctrine. Some of these perspectives involve the legal status of TNPA, its competitiveness, and the fact that it appears to operate above commercial principles. One specific issue that Meyiwa & Chasomeris (2016) address is whether TNPA should be 'incorporated' or not and the implications of its role as an instrument of economic development, vis-à-vis the current reality of poorly performing SOEs. An important question, in view of the developmental state agenda, that arises from the Meyiwa & Chasomeris (2016) study is how feasible it is for the South African government to have a successful developmental state when most of its SOEs are poorly performing. The conclusion arrived at is that South Africa must find a way of articulating her own port doctrine. This is a similar conclusion reached by Gumede & Chasomeris (2015) that a port doctrine should be developed that would be consistent with the country's vision and policies and this is an area that forms the overall objective of this thesis. Therefore, this study is aimed at assisting in the alignment of South Africa's macroeconomic policies with the maritime policy to help ports play an effective role as strategic national assets that further the economic growth of the hinterland as well.

Section 2.2 provides a comprehensive empirical literature review of the nature and types of developmental state that find varying articulation in different regions of the world. Section 2.3 and section 2.4 focus on developmental state highlights of China and South Korea respectively, especially examining the rise and prosperity of the classical developmental state, and in the case

of South Korea, its eventual demise. Section 2.5 discusses the history that informs South Africa's macroeconomic objectives and policy vision, extrapolating it from international conventions to which South Africa is party, dating as far back as the year 2000, and to how it gives shape to SA's present policy formulation. Section 2.5.1 delves extensively into the nature and reasons for the democratic developmental state and Section 2.6 concludes the chapter.

## **2.2. Defining the Developmental State**

From Chalmers Johnson (1982) who is credited for having coined the term after studying the remarkable post-war reindustrialisation of Japan, a Developmental State (DS) is that government and economy wherein the government "influences the direction and pace of economic development by directly intervening in the development process, rather than relying on the uncoordinated influence of market forces to allocate economic resources. The DS took upon itself the task of establishing 'substantive social and economic goals' with which to guide the processes of development and social mobilisation" (Beeson, 2004: 2). Therefore, a developmental state upholds the role of government in economic development through the state's active entrepreneurship, bureaucracy, and autonomy; all of which are state machines to facilitate a social engineering process that will create an environment conducive for long-term industrial development. This remains true of the developmental state while it maintains its distinctiveness from state-socialist planning and free market capitalism. In analysing the developmental state, however, one must tread carefully because it exhibits some of the characteristics of central socialist planning while at the same time making way for private capital to prosper. According to Radice (2008), the developmental state combines elements of market and plan, linking a mixed economy to a political-ideological approach that combines authoritarian technocracy with a relatively egalitarian distribution of income and wealth.

Some of the strengths of the Developmental State in achieving economic growth include: a) The "State's explicit agenda of economic development, marked by clear emphasis on strategic industrialisation, growth and productivity. b) Absence of explicit commitment by the state to general welfare and social conditions; c) An elite bureaucracy, composed of subject experts, having close links with private businesses; and d) A political system where bureaucracy has an adequate degree of power in its operations" (Onis, 1991, pp. 113-115). Wade (1990) argues that market 'guidance' in East Asia happened essentially by (a) redistributing agricultural land in the

early post-war period, (b) controlling the financial system and making private financial capital subordinate to industrial capital, (c) maintaining stability in some of the main economic parameters that affected the viability of long-term investment, especially the exchange rate, the interest rate and general price levels, (d) modulating the impact of foreign competition in the domestic economy and prioritising the use of scarce foreign exchange, (e) promoting exports, (f) promoting technological acquisition from multinational companies and building a national technology system, and (g) assisting particular industries and, in the case of Japan after 1970, introducing industry-specific policies to prevent industrial decline.

In contrast to Johnson's (1982) view of the developmental state, however, Chang (2010) argues that there is more than just one type of developmental state and even within the classical East Asian developmental states there were wide varieties at the individual, regional and national level. He thus adopts a broader definition of the developmental state as a "state that deliberately intervenes to promote development" (Chang, 2010: 94). Adhering to this definition, Chang highlights how France could very well fit into the classical definition of the developmental state because of its use of similar economic development strategies involving planning by the Commissariat General du Plan, sectorial industrial policy led by elite bureaucrats and aggressive use of SOEs. Moreover, by the same definition it can be argued that from the 1950s the Scandinavian countries – except Finland until the 1970s – practiced a variety of 'developmentalism', although not strictly in the classical sense. This is firstly because these countries engaged in selective industrial policies. The Swedish government developed some strategic sectors through PPPs from very early on: iron and steel in the mid-18<sup>th</sup> century, railways in the 1850s, telegraph and telephone in the 1880s and hydroelectric power in 1890s. In the late 19<sup>th</sup> and early 20<sup>th</sup> centuries it also provided targeted protection for emerging heavy industries. Finland and Norway also practiced strong sectoral industrial policies (see Fagerberg et al., 1990 for Norway; and Vartiainen 1995 for Finland). The Scandinavian states, in addition, started specialised institutions of research and development as early as 1820 (Chang, 2010) for, among others, forestry and mining. Their industrial policy was also tied to welfare policy with the objective to promote high productivity and a structural change toward high productivity sectors (Kuhnle & Hort, 2004). This was done through worker insurance to mitigate potential losses to

workers as a result of structural changes, retraining to help the working population to reintegrate into the targeted industries,

The Swedish history of its development makes it seem that the ‘developmentalism’ of East Asia was more of the continuation of practices that were already championed in history and not their own invention. Perhaps the hype their success generated was caused by the fact that such a mode of development was unorthodox and opposed to the neoliberal economic thinking dominant during the post-war period. Perhaps slightly differentiating these practices across time and geography are the context-specific socioeconomic phenomena. The PPPs were possible in Sweden perhaps because of its strong human capital and its capable private sector already in existence while for East Asia the state had to be central and act as a catalyst precisely because such human capabilities were in short supply. This may very well be true because even the East Asian Developmental state bureaucracies, to borrow Chang’s (2010: 102) words, had “a rather poor human capital base at the beginning of the post-WWII period.” Only Japan had ‘the brightest and best’ people with respect to technical skills and managerial competence, contrary to the known myth of general Asian competency and shining moral standards. Chang (2010) further highlights the historical renown of Scandinavian countries for their investment in Research and Development (R&D), arguing that while this may have been argued to be a non-industry selective policy of government, it had its own selectivity in that R&D often favours technology-intensive industries and thus places them as priority for development. One can also add that because of the Swedish state’s promotion of R&D through establishing specialised institutes for research since the 1820s, it was effectively setting a blueprint for what is today called a 21<sup>st</sup> century developmental state (Evans, 2010), which is distinguished from the classical (East Asian) developmental state through its focus on developing human capabilities.

### **2.3. Chinese Developmental State**

China is chosen as a case study for development for the principal reason that of the top five best performing maritime ports globally, three are found in the Chinese seashores while less than four decades ago it would not have been remotely conceived that China was to supersede the Western maritime nations who were dominant as port economies (Yeo, 2010). Naughton (1995) says that

Chinese macroeconomic reforms since 1978 were slow and drawn out not by choice but because there was no blueprint that they followed in instituting them. Consequently, some of the policy measures undertaken were erroneous and had to be revised – a trial-and-error process. There is value to reviewing some of the challenges the Chinese encountered and reforms they undertook so that South Africa may draw some lessons of her own therefrom.

The Chinese reforms started shortly after the Second World War – in 1949 – and the intention was to have these reforms under a strictly socialist paradigm, with national prices being administratively determined rather than left to the market mechanism (Basu, 2007). Chow (2004) says that from 1953-1957 the first Five-Year plan was initiated, following the model of the Soviet Union, but the reforms were interrupted by the 1966-1976 Cultural Revolution which appealed to the masses but was very unpopular among the leaders. In addition to that, Chow (2004) maintains, many economic planners had learned from experience of the inefficiencies of, and the difficulties involved in managing the planned economy. This was also made worse by the comparably faster economic development and growth of China's more market-oriented neighbours. These neighbours included Hong Kong, Taiwan, South Korea and Singapore. Thus the Chinese people desired and would support the transition to a market economy. Moreover, the Chinese people had also suffered from a shortage of consumer goods, lack of improvement in quality, and a limited variety. At the end of the Cultural Revolution, Deng Xiaoping became the leader of China and had to make the move to change. He is said to have purposed to build an economic system with "Chinese characteristics" (Chow, 2004: 140) or to develop socialism with Chinese characteristics (Tisdell, 2009).

That the Chinese Reform was an experimental process is also attested to by Chow (2004), maintaining that the institutional changes involved firstly giving State Owned Enterprises (SOEs) some autonomy over the production, marketing and investment decisions. Beginning in 1979, therefore, the state relaxed its monopoly over industry and allowed for competition in the industries that were exposed to it, encouraging them to grow and even to dominate as non-state enterprises entered industry to take advantage of high fixed state-determined prices over consumer goods (Naughton, 1995). Entry by foreign companies was even encouraged. This later led to a dual-track economy where some state-owned enterprises were allowed to produce output above the government-imposed quota at administered prices and the surplus they were allowed to sell at free-

market prices (Naughton, 1995). Despite the beginning of reforms, however, the SOEs were not organised according to comparative advantage and this would later prove problematic for them. According to Basu (2007), the transformation in industry brought about by the ensuing free-market orientation had 300 000 foreign financed enterprises which employed people in excess of 17 million by 1998 and these companies accounted for 44.1 per cent of China's exports and 54.7 per cent of its imports. This entry by non-state enterprises soon put the SOEs at a disadvantage because, according to Naughton (1995), the SOEs' revenues were reduced as they also had depended on state subsidies to maintain them. To address this problem, monetary measures to improve performance were put in place by the government on the one hand and on the other hand the government granted management of SOEs more individual autonomy to price their own products and services. Profitability was thus quickly regained as SOEs were compelled to adapt to a seemingly inevitable move toward free market enterprise. Naughton (1995: 309) states, "There are certain critical, or core, features of the command economy, and once those are eliminated or weakened, the system has a tendency to devolve into a different type of system." This was seen in the change in ideology from the foundational principles of socialism to the somewhat more liberal convictions such as the principle of "each according to his work" instead of "each according to his need" and also in order to promote production it was necessary to work out payment according to the amount of work done and avoid equalitarianism – a diametrically opposed view to the values of egalitarianism held until that time (Tisdell, 2009: 4). Following this change in values, it was stressed that a rational price system should be established that relies on market conditions to organise economic production – essentially market socialism with Chinese characteristics.

Chow (2004) says reform essentially began with an experiment, piloting six SOEs to operate under market conditions and by the end of June 1980, 6 600 that were granted the same autonomy were producing about 45 per cent of all SOE output. These SOEs were also allowed to retain most of their profits after paying taxes rather than giving them to government. This encouraged productivity, reinvestment and growth.

It was under Zhao Ziyang's 1980-1989 administration that the dual-track approach was formally adopted and restrictions on prices were abolished and SOEs, while still required to fulfil their mandates, were allowed to produce beyond their planned quotas. Thus prices were adjusted successively more in line with the free market system (Naughton, 1995). Significant steps to



enterprise reform were taken during the early 1990s where the government gave up ownership of the small and medium SOEs through issuing shares to management of those SOEs, but it retained ownership of the large ones. This improved capital injection into those SOEs and in many instances the profits provided to the workers were significant (Chow, 2004). Furthermore, the government established economic responsibility systems and thus indicated that it was no longer available to prop up uneconomic state enterprises with bailouts.

The open door policy also encouraged the Chinese economy to open up all the more and increase its composition of trade with the foreign sector. The provinces were given liberty to promote exports. In 1987, for example, the volume of trade increased to 25 per cent of GDP and by 1998 it was 37 per cent of GDP. Access to credit was also granted for local firms who needed working capital in the short-term for export purposes and also for long-term capital expansion to boost their export competitiveness. The more favourable exchange rate was negotiated for Chinese companies. Coastal provinces were allowed to establish export processing zones and foreign investors were encouraged to invest in such zones. These zones were characterised by duty-free imports on materials that were processed for export and joint ventures were established with foreign investors outside of these zones. Another feature of the open door policy was the foreign direct investment through permission for foreign-owned enterprises, joint ventures and cooperatives in special economic zones. Here foreign-owned enterprises were allowed to come and establish and hire domestic labour at market-related wages. In a space of twenty years, 1978 to 1998, FDIs grew from being less than US\$ 1 billion to being in excess of US\$ 30 billion (Chow, 2004).

It must be mentioned with equal emphasis here that not all government officials shared the same view of free trade. Thus it was expected that government should regulate still to some extent the market forces. For example, the pricing system had been administered thitherto. Allowing the prices to be market-determined would compromise the welfare of those who received discounted prices for their subsistence. It would also cause a disruption in the SOEs that were supplied inputs at state-controlled low prices. This is what necessitated the dual-track pricing system so that some resources remain priced the same as before the reforms. The dual-track pricing proved efficient because for SOEs to receive a price that is regulated downward was an equivalent of a government subsidy; and if they wanted to produce above the prescribed quota for sale at a free market they

had to purchase more material at market prices. Thus, having to surrender a given amount of output also amounted to paying a lump-sum tax. Therefore, if they wanted to produce more output they had to economise on their use of under-priced inputs so that they may sell the surplus at market prices (Chow, 2004).

So widespread was the dual-track pricing system that it applied even to the housing market with rental rates being extremely low until the turn of the century where most of the rental apartments were privatised and the rental rates gradually increased with increasing wages (Chow, 2004).

Non-state enterprises were also allowed to grow but ownership of land remained with the government. Some state-owned enterprises were transferred to the private sector through what the government called the commercialisation process. The arrangement was that collectives and individuals would run the retail industry for profit and lease the property in which they operate and this arrangement was widespread in urban, township and rural areas. Despite this setting of business, the collective and individual-owned businesses prospered. For example, in 1978 the individual-owned and other types of enterprises were non-existent but by 1985 they contributed ¥18.0 billion and ¥11.7 billion respectively to total industrial output. By 1996 the other types of businesses had grown more than 10-fold to ¥165.82 using current Yuan. The collective-owned businesses as well showed impressive growth over the same period since 1978 while the state sector kept on dwindling in its contribution to total Chinese industry output, eventually amounting to only 28 per cent in 1996 compared to 39 per cent contributed by collective enterprises (Chow, 2004).

Next to be transformed was the financial and banking sector in much the same way as the SOEs had been transformed. The Chinese government nominally declared the People's Bank a central bank, and progressively passed laws to give credit issuing autonomy to its specialised banks like the Industrial and Commercial Bank of China, the Agricultural Bank of China and the People's Construction Bank of China. This all led to an increase in the supply of money by 50 per cent in 1984 and a moderate inflation of 8.8 per cent by the overall retail price index of 1985. Other financial institutions for investment were also formed and the insurance industry that had been suspended for over twenty years was reintroduced in the early 1990s, along with the formation of stock markets such as the Shanghai and Shenzhen Stock exchanges (Chow, 2004). Other reforms

occurred in education, health and social welfare with gradualism being a consistent paradigm of reforms. These factors are beyond the scope of this study.

Of particular interest is that over the period 1978 to the present, Chinese SOEs declined considerably while private enterprise thrived, despite many scholars (Knight, 2012; Manalo, 2015; Woodall, 2014) being convinced that China is a developmental state and therefore SOEs should play an increasingly more important role in driving economic growth. It is a keenly interesting question how the growth of the private sector (vis-à-vis the decline of SOEs) under the market socialist paradigm is reconciled with the developmental state. Perhaps it is the growth in the policy-making aspect of state agencies, not necessarily the growth in the commercial activities and profitability of SOEs that is a determining factor of the State as champion of development. If this be true then its consequence is that the state can shrink in commercial activities but grow stronger in policing the commercial activities, creating that enabling environment for private business to thrive is evident in China and was articulated in South Africa's National Development Plan in 2012.

#### **2.4. Developmental State of South Korea**

Situated in the Far East and also emerging from a command economic system, South Korea is a country that can be considered to have all that may potentially be attached to a developmental state, having started with what some scholars call a miracle (World Bank, 1993) then a period of slowing but positive economic growth in the period 1973 to 1979 and now a state where export outputs are declining (Amsden, 1989). Among the characteristics of a developmental state are the promotion of export-driven growth and the creation of an environment conducive for private investment and private enterprise to prosper. So in observing South Korea's current state of steadily declining export output, some scholars have adopted a view that the country is in a state of decline as a developmental state (Minns, 2001), making it an interesting case study if we are to glean any lessons for South Africa.

From 1961 to 1979, the year of his assassination, South Korea's ruler Park Chung-hee, led a military coup that led to the Economic Planning Board (EPB) having effective monopoly on the entire country's financial assets at 96.4% total ownership, while maintaining that it was based on market principles. During that time the EPB, having nationalised the banking system, determined

where funds should be allocated and which areas of the economy needed industrialisation. In the early 1970s, due to some extenuating geopolitical factors, the government then moved away from its emphasis on light manufacturing to heavy manufacturing, focusing on defence-oriented production like that of steel, petrochemicals, nonferrous metals, electronics and shipbuilding.

Up until the 1960s, aid from the USA was vital for the Korean economy but it sharply decreased in the 1960s because of Park's objective to facilitate rapid development. So in 1962 a resolution was made that all foreign loans should be repaid - both principal and interest - and their repayments were to be legally guaranteed by the government. It was Park's opinion that aid was a hindrance to economic development and so to enable fundraising for rapid industrialisation, these loans were to be approved by the Minister of Finance as well as the Governors of the Bank of Korea and the Korea Reconstruction Bank. As a result the inflow of foreign loans to the Chaebol<sup>3</sup> accelerated, accounting for up to 36.6 per cent of gross investment by the early 1970s. As long as these arrangements stayed in place, increased capital inflow could only take place via the South Korean state. It had established itself as the conduit between domestic and international capital.

An interesting feature, however, is that FDIs accounted for no more than 10 per cent in 1975 even in Free Export Zones (FEZ) where tax and other government incentives were in place to encourage export activity (Haggard & Moon, 1983). From 1966, most FDI was restricted to export oriented and heavy chemical industry sectors but even then foreign equity holdings were capped at 50 per cent except in FEZs like Masan where foreign ownership would go even up to 100 per cent. Even more fascinating is the fact that between 1964 and 1973 FDI accounted only for 5 per cent of all gross domestic investment and 1 per cent of total gross domestic capital formation (Haggard & Moon, 1983). Private businesses were compelled to make exports and production expansion their targets instead of short-term profit to take advantage of the post-war boom in advanced economies and the Vietnam War. The incentives that were set in place were easy access to subsidised credit and 50 per cent tax cuts during the periods 1965 to 1973 (Chiu, 1992).

Now because economic growth and expansion of exports were based on a high level of international borrowing, during the rest of the 1970 the oil price shocks and the recession caused

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<sup>3</sup> The Chaebol was an administrative elite in South Korea that was mandated with the policy making and strategic directives for targeted and state-led industrial growth

serious problems for the South Korean economy. The response by the government was to increase its borrowing and to continue posting very high growth rates despite the global recession and the government's assistance also took various non-monetary forms.

An important example of government assistance during such troublesome times was the assistance given Hyundai Merchant Marine company. At the outset of the recession the Hyundai shipbuilding company or Hyundai Heavy Industries (HHI) experienced a number of cancellations of orders and immediately ran into difficulties. The government, which owned the only oil refinery in South Korea, responded by demanding that all deliveries of crude be in South Korean owned vessels whose ships were supplied by HHI. Given the start by the state, a decade later HHI was the world's largest ship Builder (Amsden, 1989).

As much as there were handsome incentives to those that abided by the government regulations concerning trade and commerce, there were also some heavy penalties to those that did not. An example of government ruthlessness includes the car maker Shinjin, whose assets the government, as the banker, transferred to Daewoo Motors, and a few other companies that were allowed to go bankrupt while others were taken over by Daewoo.

#### **2.4.1. On State Autonomy**

The South Korean State had undergone a series of major social transformations that, taken together, contributed to a highly unusual situation. The landowning class had lost some of its prestige, then its political power and finally the core of its wealth – the land itself – as a result of colonial occupation by Japan, the taint of collaboration, war and Land Reform. These unfortunate events, whose discourse is not the main focus of the study, entrenched a stronger State domination both politically and economically in South Korea, post 1953. It would be two decades before workers again began to organise independently and make serious demands on capital and the State.

Regarding the development strategy adopted by the state, it is Minn's (2001) view that leaving industry in the private hands was a demonstration of its (the state's) power because it (the state) still had discretion over the use of the private industry through the Chaebol acting as managers of publicly-owned enterprises using state directives.

By 1961, the state had inadvertently made the private sector much richer than it had ever dreamt possible and by the 1980s there was enormous pressure to liberalise markets. In 1987 there was massive labour unrest that broke out and a major democratic movement emerged causing strain on the economy. The economy started slowing down within a year of the 1988 Seoul Olympics. GNP growth was cut in half and conflict between the state and the Chaebol was more common and the state did not always win. Economic and social policy lost its coherence and eventually the state came under pressure to liberalise markets. This was also true for all newly industrialised countries in the 1980s. Sometime during this period, the state became weaker and it faced a stronger private capitalist class and a potent independent labour movement. South Korea has largely depended on the low wages paid for the industrial labour force in developmental strategy. The rapid growth of industry and the levels of dissatisfaction with the lower wages were the main cause of the strike actions that characterised the late 1970s and 1980s (Koo, 1989).

The frequency of such unrest and the violent responses to them by the state attracted huge public sympathy for Independent labour unions and a newly created political opposition, the New Democratic Party, mostly from students and some sections of the Christian churches. Pressure from opposition sources had caused a disunity between key state actors (Kang, 1997). Eventually in 1980 the state made a concession firstly for the state president to be directly elected. After the limited liberalism there was an upsurge in working class unrests and the number of Labour conflicts that took place in 1987 was more than 3700. Between 1987, that year which became known as the hot summer, and 1989 there were more than 7100 disputes and the number of labour unions tripled (Koo, 1989). All these events were marking the beginning of the end of the developmental state. Wages then began to increase sharply especially in heavy industry and South Korea was losing its competitive advantage in a range of products because of higher wages. There was also an upsurge in competition from other economies on key industries like textiles and the production of electronics by China, Hong Kong and Taiwan using cheap labour around the same time that South Korea was experiencing these labour related adversities (Minns, 2001).

Another aspect contributing to the decline in the Korean developmental state, was the reduced ability of the state to control the Chaebol because of the latter's sheer size. The Chaebol had become too big to fail but even then too powerful such that it virtually undermined all state intervention to redirect some of its finances to smaller enterprises. Also because of its diversity

and international investments - more than 2650 projects overseas - and a significant part of its operations being outside of the country, the Chaebol was less prepared to accept state control.

According to Minns (2001) the end of the Korean developmental state was a result of its success in implementing the developmental state policies. Initially, “Park’s interventionist policy involved: (1) private ownership of industry; (2) state control of finance; (3) state planning; and (4) maintenance of a low-wage economy during expansion” and “To maintain this position of dominance over 20 years and through the enormous growth of the Chaebol, the state needed control over the blood supply of South Korean business—finance” (Minns, 2001: 1031). Thus massive denationalisation of the financial institutions including banks and non-banks in the 1980s was part of the major reforms. The Last of the state’s restrictions on the movement of capital was removed in the period 1993 to 1997 through the *Financial Sector Reform Plan*.

Foreign direct investments were no longer capped at 50 per cent and many foreign owned companies were allowed into the South Korean Stock Exchange such that they rose to 11.6 per cent of all listed stocks in 1996. Barriers to imports were lowered through the reduction of average tariffs and the import liberalisation ratio rose from 68.6 per cent in 1982 to 87.7 per cent in 1985.

The Chaebol, while being protagonists of market liberalisation, had been structured under the state institution of easy access to credit and state guarantees. As it overpowered the state and started diversifying its investment portfolio, most of its investments moved away from export-oriented production into the more speculative sectors like real estate and other financial schemes. Because of this practice, the Chaebol started increasing its borrowing such that its debt-equity ratio increased during the 1990s significantly. By 1997 South Korea had the highest proportion of short term loans compared with any other country in Asia and Eastern Europe and the Chaebol debt had begun to affect domestic Banks such that within the first half of 1997 ten commercial banks posted losses and at the end of this year the banks held an estimated 4.2 billion US dollars of bad loans. The change in the export conditions for the South Korean firms and the broader loss of international confidence in the ‘new’ Asian economies were also external catalysts for the 1997 Crisis. But what contributed to a major extent was the borrowing undertaken by the Chaebol.

Some scholars (Kim, 2011; Lee, 2005; Park, 2011; You, 2011) are of the view that the threat to sustainability of the Korean developmental state was the fact that the Chaebol was a dominant

player in commerce and it was over-leveraged. Looking at what appears to be a self-inflicted demise to state autonomy and the end of rapid growth driven by the state, the question worth entertaining is whether the status of a ‘developmental state’ is meant to be permanent or if it is expected to be a transitory period in its development. If the latter is the case, then how sustainable should the economy be beyond the period of being developmental? Krugman (1994) made a prediction that the growth in East-Asian economies would not be sustained. It is interesting to think that the very reason for South Korea’s success in economic growth and development is also the exact same reason that the developmental state was undermined. Considering how the Chinese SOEs diminished in their share of total output over time since the inception of the reforms and how the economy has continued to grow and exhibit more characteristics of being a capitalist economy, the observation is that the government may diminish in its entrepreneurial role and commercial activities but it must retain its authority as policy maker and necessarily grow in such a role. Minns (2001) says that all other Asian economies, as the 1980s wore on, started behaving less like developmental states — becoming less interventionist, selling state assets and loosening trade and investment controls. Within that same discourse the author holds that the South Korean history demonstrates that a developmental state has a use-by date imprinted in its mechanism. This is in sharp opposition to the theoretical standing articulated by Weiss & Hobson (1995) and Amsden (1989) that the developmental state can exist indefinitely throughout the entire industrialisation process (Minns, 2001).

## **2.5. South Africa’s Macroeconomic Objectives and Policy Vision**

South Africa is pursuing a democratic developmental state route in its economic development. As such, the policy frameworks since 2011 have been deliberately put in place to achieve the millennium development goals (MDGs) to which South Africa, along with 190 other developing countries, committed in the year 2000. These Goals are then articulated in various terms but with the same objectives in the policy frameworks that guide the country’s development trajectory – especially the *National Development Plan vision 2030*. State-Owned Enterprises are expected to be at the forefront of South Africa’s economic development (*National Planning Commission, 2012*).

In the year 2000, the United Nations articulated the millennium developmental goals (MDG) with the object to “spare no effort to free our fellow men, women and children from the abject and



dehumanizing conditions of extreme poverty” (*United Nations*, 2015: 3). These MDGs constitute a plan to uplift the world’s poorest. During that year 191 states made a declaration of commitment to the MDGs and they became the widely referenced framework for international development by many agencies (Usher, 2005). The eight goals were to eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality and women empowerment; reduce child mortality; improve maternal health; combat HIV/AIDS, malaria and other diseases; ensure environmental sustainability and global partnership for development (*World Health Organization*, 2018).

The MDGs were reviewed in 2005, five years after world leaders adopted them and ten years before they fell due. As early as the year 2005, trends were showing that much progress still had to be made and if the present rate of progress persisted there was a risk that many of the developing countries would not be able to achieve the MDGs (*United Nations*, 2005). The main reason cited for this was the weak state capacity to deploy the social and economic means at each state’s possession to achieve the goals. In the year 2015, the MDGs were reviewed once more and it was found that, globally the goals have been largely achieved although much work remains to be done (*United Nations*, 2015).

South Africa is among those 191 states that made a commitment to achieve the MDGs. This commitment South Africa, and many other states, made under the regime of a developmental state. The MDGs are not separable from the concept of a developmental state as first defined by Chalmers Johnson (1982). According to Johnson, “the developmental state aims at rational and deliberate development and implements state-driven industrial policies, with co-operation between the government and private enterprises. The developmental state contrasts with the ‘regulatory state’ such as the United States” (Johnson, 1982: 10).

By developing the Medium Term Strategic Framework (MTSF), South Africa aligned her national development planning with the MDGs. In the words of former president Jacob Zuma, “The Plan has been adopted as a National Plan for the whole country. It is our roadmap for the next 20 years. All the work we do in government is now part of the comprehensive National Development Plan, including all operational plans, be they social, economic or political” (Radebe, 2014: 1). Thus, the MTSF for the 2014-2019 electoral term gives structure to the achievement of the National

Development Plan that was formulated in 2011, which is a long-term vision of the country to eventually eliminate poverty and to reduce inequality by the year 2030 (Department of Communications, 2014).

### **2.5.1. The Democratic Developmental State**

In the efforts to achieve the MDGs and understanding that the concept of a developmental state is not a static concept but it may find variation from state to state, the South African state is pursuing a democratic developmental state. This is because, unlike most of the East Asian economies whence the concept found its articulation, the South African government has no direct control over the commercial banks, but has nonetheless built serious financial resources and analytical capacities in the Development Bank of Southern Africa (DBSA) and the Industrial Development Corporation (IDC) over which the state can have a direct influence to drive the developmental agenda (Chang, 2009). It is also because of her apartheid past that South Africa has to play a balancing act of advancing economic development and growth while creating an inclusive, non-sexist and non-racial economy as demanded by the principles of her newfound democracy, hence the pursuit by her government of a democratic developmental state.

Gumede (2009) mentions that despite some differences across various developmental states, there are commonalities among them in that development is always state-led, with the state directly influencing the direction, pace and goals of development rather than leaving the economy's growth and development trajectory to the invisible hand of market forces. Interventions by the state government are often to enable the private sector to thrive and not to constrain or to replace it.

Ideally, the government promotes the state's development and enables the private sector to prosper through ensuring skills development through civic leadership initiatives for government officials and a technically oriented education for the civilians (Marwala, 2006). Investment is another aspect of government intervention through protection of infant industry and an aggressive acquisition of foreign technology; including investment in education through international student exchange programmes and sending local students to study abroad. Partnership with the private sector is a third and quite important aspect as mentioned above (Marwala, 2006). This is done by strengthening the existing manufacturing abilities while building new ones. SA is doing this through the IDC and its focus on giving youth the opportunities to be suppliers and light

manufacturers of some materials vital for industrialisation. Transnet, through TNPA and especially TPT, is on that trajectory as well.

Seeing that there is such an intimate involvement of the state in developmental affairs, South Africa deemed it appropriate that a state-led economic development must have the government's strategic enterprises at the forefront. There are 18 large commercial SOEs inherited by the democratic state post 1994. Although under Apartheid South Africa was capitalist in its economic system, it was not democratic but rather fascist and consequently the Apartheid government did not put too much trust in the private sector to provide the country with key products and services. Moreover, because of the need to industrialise following the discovery of key minerals and the largely underdeveloped human capital of the masses, the state imported a lot of skill to establish key strategic industries and it effectively played the role of entrepreneur.

In writing about Iscor – the public steel producer, and Sasol – an integrated energy and chemical company, Roberts and Rustonjee (2010) say that these SOEs were considered strategic for prolonging the Apartheid state through military and other means, hence their state-ownership. Prior to their privatisation in the late 1980s, these two companies had strong linkages to the Minerals-Energy Complex (M-EC)<sup>4</sup> and were allowed to vertically integrate into the mining of their essential input minerals rather than having to source them from private mining houses. These firms were guided by the state's imperatives and not by the strict profit-seeking orientation of private enterprise – thus they were deeply embedded within the state. The authors observe that the tariff barriers were sharply reduced and in some cases eliminated completely after the 1980s for

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<sup>4</sup> The Minerals-Energy Complex (M-EC) is a system of accumulation through the interdependence of minerals on energy production and vice-versa. Arguably, South Africa's industrial base is not as wide as it ought to be because the political and economic interests between apartheid-era heads of industry and politicians crystallised around minerals and energy production, leading to the formation of a particular system of capital accumulation that inadvertently excluded many who had no political affiliation. According to Ben Fine (2008), the MEC is an integral partnership between state and private capital, and an equally integral connection between a core set of activities around mining and energy, straddling the public/private divide. Indeed, Fine (2008) views the MEC as a system of accumulation, centred on core sectors that have a character and dynamic of its own that evolved and was far from pre-determined. Its history and consequences can be traced back to the emergence of mining in the 1870s through to the present day. In the inter-war and immediate post-war period, core MEC sectors drove the economy, furnishing a surplus for the protection and growth and, ultimately, incorporation of Afrikaner capital. State corporations in electricity, steel, transport and so on, represented an accommodation across the economic power of the mining conglomerates and the political power of the Afrikaners.

these firms and they have become internationally competitive, profitable well-diversified in their product offerings – a true symbol of the Apartheid government’s infant industries now grown up.

According to Woo-Cumings (ed. 1999), some of the driving factors behind the success of Far-East Asian developmental states such as Korea and Japan was the fear of imminent war and so they invested quite heavily in domestic capabilities to manufacture and supply arms. Steel is a key input for many downstream manufacturing products and is at the centre of industrialisation. This saw a uniform trend in the industrial growth of the DS which is heavy manufacturing and petrochemicals being prime targets for rapid development. Roberts & Rustomjee’s (2010) analysis reveals that the Apartheid government invested heavily in domestic steel and petrochemical production through Iscor/Mittal and Sasol precisely because of “the strategic goals to have domestic capabilities in key sectors such as those providing inputs into arms manufacture” (Roberts & Rustomjee, 2010: 56). Little wonder that the firms in the heavy manufacturing and mining and petrochemicals were deeply embedded in the state and almost everywhere the DS was observed they led to a similar phenomenon as the M-EC. Perhaps the very act of targeting and prioritising these industries for growth and development and their subsequent ‘embeddedness’ in the state is the reason for the paradoxical result of their vertical integration and subsequent position of actually limiting or even fighting against downstream beneficiation within the manufacturing sector.

Robert & Rustomjee (2010) then berate the failure of the steel producers to fulfil one of the developmental objectives to improve local employment through downstream beneficiation. They observe that since the acquisition of Mittal Steel by other multinational companies, “users of steel pay prices which bear no relation to the very low costs of steel production such that South Africa remains an exporter of minerals and energy intensive basic products, and has failed to diversify into more labour-absorbing manufacturing activities” (Robert & Rustomjee, 2010: 60). As for the petrochemical company Sasol, the authors list numerous positive spinoffs and downstream beneficiation programmes that were then initiated by government but somehow subverted by what they could only describe as (Sasol’s) private industrial policy. Noteworthy is the fact that since 1994, with the regulatory conditions being relaxed, Sasol has shifted from being a solely state-owned enterprise, to having close to 50 per cent of its shares being privately held by foreign multinationals, of which European and American-based investments are very prominent.

Robert & Rustomjee (2010) finally admit that some progress has been made toward downstream beneficiation and the promotion of competition despite Sasol's successes at lobbying for import parity pricing, but "government has not managed to synchronise beneficiation strategy instruments with the complex regulatory instruments inherited in 1994 to significantly transform, grow and diversify the liquid fuel and petrochemical industry" (Robert & Rustomjee, 2010: 68). This is akin to the conclusion reached by Mohamed & Robert (2008) that South Africa needs a diversified industrial base.

Edigheji (2010) continuously emphasises the importance of institutional investments for a sound developmental state to be achieved. He maintains that public finance should not concern itself with getting a clean audit, which might come at the expense of its ability to provide basic public goods, and services, which is often the case. On the importance of institutions and their role in ensuring a capable state, the author talks about bureaucratic competence – the technical and managerial expertise possessed by the economic planning agents who are selected based on merit to govern economic development, whose careers are made predictable and incentivised by due rewards for good practices. These economic planning agents formed part of different agencies that were (or are) the nerve centre of economic development such as Korea's Economic Planning Board (EPB), Thailand's National Economic and Social Development Board (NESDB), Malaya's Economic Planning Unit (EPU) and the Economic Development Board (EDB) in Singapore. He also highlights that these were insulated – meaning that they kept immediate distance from interest groups – to avoid state capture. One advantage of such arrangements is that it enabled the state to take a long-term view of economic development. The National Planning Commission (NPC), which compiled a diagnostic report for the National Development Plan that now forms SA's long-term vision, is an equivalent of the foregoing Asian economic planning agencies. It remains to be seen whether the NPC is sufficiently detached from interest groups and whether its composition is based on merit or otherwise.

As if to reiterate Mkandawire's (2010) admonition that the lessons learned *ex post* by the forerunners in development appear to late developers as *ex ante* knowledge, Chang (2010) highlights the developmental state approach adopted by the United State in the pre-war period to grow its economy. By this a warning is issued that the USA is not to be mistaken for a country that has always been a 'regulatory' state – notwithstanding its latter policies and its misplaced (perhaps

untimely) enforcement of the Washington Consensus upon the rest of the developing world. The infant industry concept, in fact, was invented by the first American finance minister, Alexander Hamilton in his *1791 Report on the Subject of Manufacturers* by the Treasury Secretary. The consequence of this report was that from 1830 up until the Second World War the US was the most protectionist country in the world. Moreover, since the mid-19<sup>th</sup> to the mid-20<sup>th</sup> century, the US government invested heavily in infrastructure, R&D and higher education (Chang, 2010). It is also argued that even post WWII, the US developmental state survived despite the achievement of industrial supremacy and championing of free trade and the free market. The USA may not have had an elite bureaucracy as in the case of East Asia, but the state achieved ‘embeddedness’ by having a ‘developmental network state’ comprised of people with high technological expertise coming from various state agencies, industries, universities and other research institutes stationed in strategic sectors of government. These were involved in translating cutting-edge technological research into commercial use (Medeiros, 2003). Once again, because of different political environments, the USA’s developmental state had to be different even to that of Scandinavian countries while the proponents of ‘developmentalism’ in USA had to keep a low profile because of the dominance of free market ideology. According to Medeiros (2003), the US developmental state had to have rather clandestine operations with most of its industries funded through the publicly facilitated R&D. All state expenditure that would have been conventionally developmental in its approach had to be in the guise of ‘health’ policy through the National Institute of Health (NIH) and ‘defence’ policy through agencies such as Advanced Research Agency (ARA) of the Pentagon. Nevertheless, Chang (2010) argues, the US developmental state was very successful despite both its relative secrecy and the democratic regime in which it operated.

Chang (2010) goes on to mention that we cannot question the democracy of France and Japan. One would question, however, if the democracy of Japan is at the same level as that of France or even the US. During the post-war development of Japan, its parliament seems to have been rather silent and one questions the extent to which the parliamentary democratic regime was of much effect in the developmental state. South Korea is a democracy as well, but it must be acknowledged that it became such only recently by comparison. One cannot deny the impressive economic development and infrastructural investment that took place under Park’s dictatorial regime, leading

to a period of years wherein double-digit economic growth rates were achieved and have not really been achieved since the advent of South Korean democracy. Looking at such trends, one may be compelled to conclude that high levels of economic growth, historically, seem to be incompatible with democracy even if democracy itself may not actively work against growth and development per se.

Citing various cases like the Danish, Finnish, Swedish and French developmental states; the Taiwanese, Japanese and the South Korean developmental state and the more secretive US developmental state; Chang (2010) shows that there is no formula for ‘doing’ the developmental state as the political, ideological and economic conditions in the US, Scandinavia and East Asia were quite different but they had great success in their developmental attempts. Therefore, a powerful pilot agency like the EPB in South Korea, a line ministry like the MITI in Japan, SOEs (in all countries but the USA) and even sectoral agencies like the ARA and the NIH in the USA can drive a developmental project.

Chang (2010) also alludes to the fact that South Africa already has highly developed agencies and institutions that can be used effectively for a developmental project if there is political will. Among these is the DTI, DBSA, the IDC and a number of strong SOEs. He also points out, however, that the SA developmental state is undermined by the energy-minerals conglomerates with unusually globalised links and capabilities than would be expected from a firm in a developing country. This reduces the range of developmental projects that the state can implement without facing some opposition from the capitalists – the same concerns put forth by Roberts & Rustonjee (2010).

According to Edigheji (2010), both technical competency and political ability to mobilise the entire nation and the resources around the ‘developmentalist’ agenda are of equal importance. That the developmental state was born in the context of authoritarianism does not imply that all developmental states must be autocratic because there is no correlation between authoritarianism and economic development as the evidence is mixed at best. He also adds that since the developmental agenda is multidimensional, then political freedom – more specifically democracy – is necessary to achieve it. Perhaps more importantly, the author notices that although embedded autonomy coupled with a ‘developmentalist’ political elite was successful for only three decades in East Asia, what was necessary to sustain it was the involvement of the citizenry through a

consultative process that would allow them to influence and even determine the developmental agenda. When thinking, therefore, about the developmental state in the South African context of a constitutional democracy, South African policy makers need to be wary of the misconception of the developmental state as mutually exclusive with social policy making. Social policy encourages various types of freedoms, promotes human development and human capital, reduces inequality that might result from guided industrialisation, protects the environment and redistributes income while reducing poverty. He maintains that social policy was an integral part of the developmental state in East Asia regardless of authoritarianism and, in fact, to ignore social policy would be to fall into the same neoclassical fallacy, which gives too little or no regard to equity but views it as a drag on growth, and makes economic policies within developmental states akin to those in regulatory states. Because development is about human well-being, Evans (2010) maintains that development strategies cannot be constructed by technocrats. Instead, they depend on democratically organised public deliberations, making democratic institutions central in the 21<sup>st</sup> century developmental state. Moreover, Edigheji (2007) shows that the Asian developmental states had equity as a central goal and they went on to formulate policies toward achieving that goal. Little wonder then that the Asian developmental state under his analysis showed more egalitarianism. That is, all classes of society were benefiting from the income redistribution stemming from economic development.

According to Edigheji's (2010) treatment of the democratic developmental state, South Africa needs to pursue the development of human capabilities as a means to achieving a Democratic DS and as an end in itself. He argues that the policies that contribute to social transformation should be placed on an equal footing as economic policies rather than the former being subservient or even held hostage to the latter. This view is diametrically opposed to the once-held view that human development and some other social freedoms (even privileges) must take a backseat in order to achieve real industrial development and economic growth. It is, without doubt, a complete turnaround in conventional state-led growth rhetoric of autocratic Asian development states in its elevation of constitutional democracy. In the context of a formerly apartheid state like SA with an industrial base whose growth and potential has been generally undermined by the Minerals-Energy Complex's tendency to subvert most of the state-initiated attempts at diversifying the industrial base and limiting the potential positive spinoffs that would facilitate increased social inclusion and



wealth distribution, it is important to ask if social policy of income redistribution is sustainable, if at all achievable, with an industrial base that is thinner than what it should be. To this the author gives acknowledgment that SA still needs to reverse the deindustrialisation that is taking place because of the dependence on the M-EC. Human capital development through investment in better healthcare, improved education and public infrastructure is one way. It is thus expected that as people are empowered with better education and have improved health and the public infrastructure permits their optimal functionality, they may have better overall capacity to participate more meaningfully and gainfully in the economy. This allows individuals to grow their income and wealth, which is the end of economic development.

In addition to economic rents that could be invested to advance the ‘developmentalist’ project, Edigheji (2010) maintains, that capabilities within existing institutions such as the DTI, DBSA, IDC and SOEs could be enhanced for incubating the developmental state. It is thus possible for SA’s key assets, not only minerals but also long coastlines and ports, to contribute significantly to the developmental agenda. Because of the private and foreign ownership of mines, however, along with the lobbying power of the M-EC, it remains difficult to expect the mining sector to contribute meaningfully toward the developmental state SA seeks to build, despite their impressive rents. The next key asset that may prove to be an accessible and sustainable state apparatus is the ports under TNPA as Transnet remains a State-owned enterprise.

Evans (2010) talks about the types of incentives to building a 21<sup>st</sup> century developmental state. According to him, delivery of capability—expanding services is the cornerstone of the DS and the structures associated with efficient service delivery are a good place to start. The logic of ‘embeddedness’ of the state was straightforward in the 20<sup>th</sup> century developmental state insofar as what was required was the identification of industries to target for industrialisation and the necessary types of incentives to engage relevant firms. The primary cast of the state’s partners in the developmental project was a relatively small set of industrial elites with well-defined interests and building ties based on personal networks was relatively simple. For a capabilities-expansion as a focus of the 21<sup>st</sup> century developmental state, however, the need for information and engagement is a bit more complex in that the interlocutors and the information are relatively more numerous and less organised. The value of a developmental project is no longer based on the technocratic measures such as return on investment or market share. Instead, whether or not a

project is worthwhile now depends on how well the collective community that is served by the project responds to it. This necessitates a consultative process that involves more than just the bureaucracy and the heads of industries but also the consumers and community stakeholders who may be remotely touched by the envisaged developmental project. Therefore, accurate information on collective priorities, says Evans (2010), is a *sine qua non* for the success of the 21<sup>st</sup> century developmental state. The consultative process that marks the regulation of South African port tariff adjustments thus proves a step in the right direction toward the formulation of a 21<sup>st</sup> century developmental state as well. South African ports stakeholders have an input into the price determination process for the services they use.

It appears, then, that in human capability-expansion the efficiency of service delivery is indispensable as capability-expanding services are often co-produced. According to Ostrom (1996), health services are co-produced by patients, their families and the communities that surround them. Education is co-produced by teachers and students in schools. Evans (2010) mentions that shared capability expansion is broad and deep and a huge political challenge to attempt to articulate. In the 21<sup>st</sup> century, the biggest challenge, when it comes to weaving in the ‘embeddedness’, is enabling communities to construct shared coherent goals whose implementation can then be co-produced by public agencies and communities themselves.

Evans’ (2010) discourse seems to suggest that a human capabilities-expansion orientation is central for the success of the 21<sup>st</sup> century developmental state not only because of the need to achieve sustainable development and more encompassing state ‘embeddedness’, but also as a way of dealing with the preponderating challenges of globalisation as well. He also mentions that the central importance of more encompassing ‘embeddedness’ presents a compelling case for a necessarily democratic developmental state.

## **2.6. Conclusion**

This chapter focused on highlighting the contradictions between port governance practices and macroeconomic policy objectives as the grounds for seeking to clarify SA’s port doctrine. In so doing the history and environment of policy formulation and SA’s vision, relative to the country’s position in terms of international conventions to which it is party – and how it gives shape to SA’s present policies – first had to be explored. This exploration revealed that South Africa aspires to

be a democratic developmental state, an ideology well suited to the UN's Millennium Developmental Goals that South Africa adopted along with many countries of the developing world. From thence a comprehensive empirical literature on the nature and types of developmental states was reviewed, while also extensively delving into the nature and reasons for the democratic developmental state. This literature had implications for the South African maritime sector and they are explored below.

A developmental state evolves, it is not a static concept but it goes through stages wherein government starts out by being intimately involved in commercial activities but gradually loosens its resource control without slacking in its regulatory role of commerce. This, history demonstrates consistently in the establishment of SEZs and IDZs where tax incentives and other forms of government assistance are implemented to promote local industrial initiatives, export-oriented beneficiation and export competitiveness in the country. It would appear that with the special treatment given these by the government, their growth eventually necessitates a reduction in state intervention which, if it persists, invariably leads to an increasingly antagonistic relationship. Notwithstanding the challenges that some of the northeast Asian developmental states may be experiencing presently, Beeson (2004) is of the view that the developmental state model may still remain an appropriate and perhaps inescapable element of economic development.

Lee & Flynn (2011) mention the same practice of gradual phasing out of public sector involvement in port operations by the Far Eastern governments, especially the Chinese, in their port reforms. The central government relaxed its role gradually as a dominant terminal operator and started allowing more private terminal operators but restricted their chances at becoming monopolists themselves. The blunder that the South Korean government may have made in its developmental state policy is that it allowed international private investors to have too much lobbying (rent-seeking) activity and thus they undermined state autonomy before the state had fully prepared an environment most conducive for the prosperity and sustainability of local private enterprise initiatives. Moreover, the growth and strengthening of the Chaebol that led to its proclivity to undermine the state's attempts at redirecting some of the Chaebol's finances to smaller enterprises looks eerily similar to the M-EC's proclivity to constrain the diversification of the South African industrial base. SA ports are an interface between the domestic economy and the rest of the world. Consequently, many multinational corporations (MNCs) and foreign-owned entities have their

operations at her shores and they make a greater proportion of all terminal operators and service providers. It would not be unreasonable to expect these to have an influence on the government's attempts at transforming ports. The question may very well be, to what extent the MNCs and incumbent private enterprises influence policy. This is a question of significant relevance in view of how Sasol, when the private sector started claiming a greater stake therein, was seen to have its own private industrial policy. This pertinent question is explored in the paper that constitutes Chapter 5 of this study – a chapter that analyses the policy environment surrounding public-private partnerships in South African ports.

## CHAPTER 3: RESTRUCTURING PORT GOVERNANCE IN SOUTH AFRICA<sup>5</sup>

### Abstract

South Africa's (SA) ports do not have a clearly defined port doctrine but have certain elements resembling the Anglo-Saxon port doctrine, the Continental doctrine and also the Asian port doctrine. Thus, South Africa (SA) battles conflicting port objectives and it runs a complementary ports system where costs are not reflective of prices charged, and the revenues and costs allocated to various commodity types have remained largely unjustified. This is against the backdrop of intra-port, inter-port and multimodal cross-subsidisation, which found justification in SA's developmental objectives but has been viewed as unjustifiable under current economic conditions; giving rise to dissatisfaction amongst various port stakeholders regarding Transnet as a state owned enterprise and Transnet National Ports Authority's (TNPA) governance and pricing practices that have not been addressed adequately.

Using content analysis, 18 stakeholders' submissions on the 2013-2014 TNPA tariff application, 15 stakeholders' submissions regarding the multi-year tariff application, and 16 submissions regarding the 2014-2015 tariff application were assessed. The focus was on finding links between challenges faced by stakeholders and whether or not these could be solved through SA adopting a different port doctrine. The findings show that while the Asian doctrine is more aligned with SA's developmental objectives, adoption of it may prove premature in view of the current and foreseeable economic conditions. The study shows that the local port system may not find a perfect fit into any of the known port models and established port doctrines but instead South Africa needs to articulate her own port doctrine.

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### 3.1. Introduction

It is generally accepted that about 90 per cent of the total global trade is seaborne (IMO, 2012), and of that in seaborne trade South Africa's share is 3.5 per cent. Of South Africa's trade composition, 98 per cent of its goods by volume are moved by sea (SAMSA, 2012). This makes South Africa a major maritime nation with a naturally strategic geographic positioning in the southern hemisphere, as a midpoint between the West and the Far East (Cohen, 1957) it is also seen as a gateway to the rest of the African economy (Scholvin & Draper, 2012). It is relatively sheltered from the fierce ports competition that comes with being in close proximity to other established maritime nations as we see in the Far East and in the West (Yeo, 2010). Furthermore, the country has a potential of benefiting much from transshipment because of its geographic position (DTI, 2012).

South Africa has eight commercial ports managed and run by one port authority called Transnet National Ports Authority which is a division of Transnet. Transnet is a South African transport conglomerate, which is a state-owned enterprise (SOE), with the state having a 100% shareholding in it via the Department of Public Enterprises (DPE) (Klopper, 2010) and its divisions which are Transnet Pipelines, Transnet Freight Rail and Transnet Engineering, which is an operating division of Transnet SOC Ltd which serves as a backbone of the railway industry. Then there is Transnet National Ports Authority (TNPA), which was formerly part of Portnet, which is the ports' landlord and deals with the facilitation of sea trade in SA's ports.

Considering the extensive role played by sea trade in the global economy, seaports are a critical supply chain link between the local economy and the rest of the world. Maero (2014) explains that the proper development and maintenance of seaports helps promote the flow of commerce and contributes to economic development. The administration of the port, its form and structure, are an obvious key to most problems in the ports organisation (Maero, 2014). What informs the administration of the ports, which we call port doctrine, influences the pricing policies and the efficiency of ports.

For example, of the eight commercial ports, the Port of Durban is reputedly the busiest in Africa and the largest container port in the continent according to Transnet (2013). Yet, because of its

key role in the facilitation of hinterland trade and its geographic positioning, the Port of Durban faces a lot of congestion and less than optimal use of existing infrastructure. This phenomenon is not unique to the Port of Durban and all commercial ports on the country's shores have challenges with the current tariff methodology and pricing strategy. The pricing of port services is not a purely accounting concept. The import and export tariffs charged and their justification may not find reasoning purely in economic terms. The competitiveness and protection of local industry in any developing country is influenced by political decisions beyond just macroeconomic policy and nowhere else is this better demonstrated than in the governance and operations of a country's maritime ports (Bennathan & Wishart, 1983). Knowing that the pricing of port services, the policies underpinning governance of ports, and the tariffs charged therein are not an exact science, certain political objectives, modes of operation and economic practices throughout the history of sea trade by dominant maritime nations do, nonetheless, point to several characteristics that are common amongst maritime nations and even regions of the world. These are what Bennathan & Walters (1979) referred to as port doctrines when they were reviewing principles of port development. They established two major port doctrines which they called the Anglo-Saxon doctrine and the European (Continental) doctrine. During the 1970s, the Asian economies started experiencing greater economic growth rates (Stopford, 2009) and developed container hub ports to support their rapid growth. This was under a unique paradigm previously not practiced by the western maritime nations and it was called the Asian Port Doctrine by Lee & Flynn (2011).

Under the Anglo-Saxon doctrine, the main objective of ports is that they make a profit. The tariffs charged are often reflective of the costs incurred and are set such that returns may be made on the private investments that went into their construction and development. Bennathan & Walters (1979) mention that the Anglo-Saxon view is that the ports should earn a reasonable profit or at least not make a loss, that they should be self-sustaining, independent of government intervention, as investment is made and tariffs are charged on the premise that ports make a profit.

Slightly more lenient to government's national economic objectives, and with a wider view of the ports' role in the economy, is the European (Continental) Doctrine. In charting the new paradigm for container hub port development policy, Lee & Flynn (2011) said, "The European doctrine views the port as part of the social infrastructure of a whole region. The value of a port should be assessed not in the accounts of the facilities but in terms of the progress of industry and trade in

the hinterland. Thus, the European doctrine holds that it is necessary that the port breaks even, or perhaps earns a profit, either on existing or proposed investment; justification is pursued and usually found well outside the perimeter of the port.” (Lee & Flynn, 2011:4-5). Under the European doctrine, while not strictly adhering to the user-pays principle, ports themselves are encouraged to set their pricing structure and level of port charges.

South Africa tends to borrow tentatively from each of the aforementioned doctrines and thus gets confronted with conflicting objectives. This chapter attempts briefly to relate South Africa’s history of port governance, to show that South Africa has no clearly defined port doctrine, and to outline the consequences of this; and finally to recommend some reforms of the current port governance model as a means to ameliorate these adverse consequences. It is not the purpose of this chapter to attempt to compare South Africa’s style of port governance to any one of the aforementioned categories of port governance. Rather, the purpose is to express the need for South African ports to have an articulate port doctrine of their own that informs her port policy, port devolution and port pricing.

Section 2 is the Literature Review where the history of South Africa’s ports is summarised and the current situation, as a consequence of past practices, is investigated. The Asian macroeconomic reforms are highlighted and finally the Asian port doctrine is explored, though briefly. Section 3 shows the research methodology used in this study and section 4 discusses the findings and makes a critical comparison between South African ports and Far Eastern ports with a view to improving the South African ports system. Section 5 declares the conclusions and makes recommendations for South Africa’s local ports governance.

### **3.2. Literature Review**

The present imbalances and inefficiencies in South Africa’s port pricing and port operations have their roots in the historical governance of ports. Gumede & Chasomeris (2013) say, from the review of stakeholders’ comments, that South Africa’s ports have had persistent challenges of a lack of cost-based pricing principles; not having a justifiable pricing methodology; congestion,



low productivity and inefficiency; inconsistent and unreasonable pricing of products; and poor service delivery among others.

In the interest of raising port throughput and increasing the benefits of ports to the hinterland, the South African government has, in the past, attempted to regulate the local ports partly through price manipulation (Van Niekerk, 2007), but, of late, through ports restructuring. In as little as one hundred years the South African ports system has been through five models of governance. From 1833 to 1908 ports were financially autonomous harbours administering their own individual tariffs and the situation was characterised by fierce inter-port competition. From 1909 to 1981 the South African Railway and Harbours Administration (SAR&H) took over and unified revenues from ports with those from the railway sector, introducing cross-subsidies in favour of the loss-making railway sector. By 1981, through the *South African Transports Services Act (SATS)*, SAR&H transformed into a state-owned enterprise that also had to consider the economic interests and transport needs of the entire country. Intra-port and inter-modal cross-subsidisation remained. In 1989 Transnet was formed as a public company to commercialise the activities of SATS and it became the country's transport conglomerate as an umbrella company maintaining five divisions: Spoornet, Portnet, Petronet, Autonet and South African Airways. Portnet faced a player-referee dilemma with respect to ports as it had to wear the two hats of regulator and operator of ports and perform a balancing act between the two roles. This being a challenge, and in line with international best practices as recommended by the WorldBank (2007), Portnet was split, in 2002, into a landlord port authority (now called Transnet National Ports Authority or TNPA) and a port operator (now called Transnet Ports Terminals or TPT).

The World Bank, in dealing with the player-referee problem in ports across the world, called for a stand-alone regulator independent of political intervention, hence the birth of the Ports Regulator of South Africa. *Section 30(1a) of the National Ports Act, 2005 (Act No. 12 of 2005)* specifies that one of the main functions of the Ports Regulator is to '(a) exercise economic regulation of the ports system in line with government's strategic objectives.' As declared on its webpage, 'The Regulator's key function is economic regulation of the ports system in South Africa, in line with the strategic development context of the state. In accordance with this mandate, the Regulator performs certain functions and activities in the industry that relate mainly to regulation of pricing and other aspects of economic regulation, promotion of equity of access to ports facilities and

services, monitoring the industry's compliance with the regulatory framework and also hearing any complaints and appeals lodged with it.' (*Ports Regulator of South Africa, 2014*)

TNPA summarises its overall objective as 'ensuring the competitiveness of the South African ports systems and supporting economic growth as mandated by its role as a state owned company.' (TNPA, 2012a:56). With the national ports regulatory framework having been somewhat improved, TNPA is legally required to submit a proposal to the Ports Regulator before making any major adjustments to the port tariff structure and methodology and it applies annually to the same body when an increase in port tariffs is requested. The Ports Regulator then invites various stakeholders to comment on the tariff increase applied for or the tariff adjustment and a period of review is given so that an informed decision may be made in accordance to the *National Commercial Ports Policy*, the *National Ports Act (Act 12 of 2005)* and the regulatory directives.

In view of the TNPA tariff application over the years, and analysing the port directives which were approved and gazetted in 2009, and amended in 2010, when the Authority proposes tariffs, the Regulator should ensure that such tariffs allow the Authority to:

- *Recover its investment in owning, managing, controlling and administering ports and its investment in port services and port facilities;*
- *Recover its costs in maintaining, operating, managing, controlling and administering ports and its costs in providing port services and port facilities; and*
- *Make a profit commensurate with the risk of owning, managing, controlling and administering ports and of providing port services and port facilities* (TNPA, 2012:8-9)

There has been some agreement with the first two points above in providing rationale for their tariff increase applications annually, but not necessarily with the third point. The reasons cited are that the ports are a strategic national asset used to facilitate South African trade and improve its competitiveness, therefore the prices charged for providing the services by TNPA should enable the economy to achieve these; and the financial structure of ports as national strategic assets should be structured to enhance competitiveness; and not against recovery of opportunity costs of capital employed. Therefore the third directive should be reviewed (*Fruit\_SA, 2013*).

The above complaint by Fruit SA is not purely a question of port pricing. It is rather a strategic issue of port governance that then determines the pricing methodology used for ports. For TNPA this is the Required Revenue (RR) methodology which, while not being the best methodology, seems to be approved by the Ports Regulator in the absence of a superior alternative (*Ports Regulator*, 2011). Chasomeris (2015) makes a detailed constructive critique of the RR methodology which, however, is not a focus of this chapter. The complaints arising from stakeholders about its consequent port charges for various commodities and the pricing strategy are echoed in the themes of port governance discussed in section 4 of this chapter.

### 3.2.1. Port Devolution in South Africa

Among some of TNPA's objectives, are ambitions to be a perfect landlord port like Le Havre in France (TNPA, 2012: 26 and 48) instead of the predominantly public ports model as is the current situation under Transnet with TNPA being the landlord and also having a sizeable stake in terminal operations through TPT. Terminal operations are best handled by private terminal operators in landlord ports but we presently find Transnet, a public utility, having a significant share as shown by Table 3.1.

**Table 3. 1 Public-Private Interface in Terminal Operations**

Service	TNPA	Port Operations	
		SOE-TPT	Private Sector
Marine Services	100%		
Bulk Cargo Handling		37%	63%
Break-bulk Cargo Handling		78%	22%
Container Handling		97%	3%
Car (on wheels) handling – RoRo		100%	

Source: *Ports Regulator* 2010:31

It must be noted that the most profitable sectors, when it comes to ports, are the containerised cargo and the automotive (RoRo) cargoes. These two sectors are charged premium prices while the dry bulk sector faces discounted port authority charges and, incidentally, TPT handles the most

profitable cargo types almost exclusively – that is, handling of containers 97 per cent and RoRo cargo 100 per cent. This is seldom the case for ports that aspire to conform to the landlord model.

Among landlord ports, there still are differences in the functions and interaction set of responsibilities across different ports. Brooks & Cullinane (2007) argued that there are almost as many port devolution models as there are maritime ports in the world. This they said in response to the study conducted by Baird (1995, 1997) cited in Song & Lee (2007) wherein the port functions or port governance can be classified into four models as shown by Table 3.2 below:

**Table 3. 2 Port Governance Model**

Port Models	Port Functions		
	Regulator	Land Owner	Operator
1. Public	Public	Public	Public
2. Semi-Public	Public	Public	Private
3. Semi-Private	Public	Private	Private
3. Private	Private	Private	Private

Source: Baird (1995, 1997) in: Song & Lee (2007)

South African ports have largely the Public Port characteristics yet they are not purely a public port system. For her ports, the regulator is a public body, the land owner is TNPA, a public company, and the operator is TPT, a dominant terminal operator and a sister company to TNPA. Despite this position, it is difficult to classify it as a purely public port because, while TPT as an SOE is a major goods handler, there are smaller private players largely handling the bulk and break-bulk commodities as well. Neither can one classify the ports system as a Semi-Public port model because both public and private sectors have a role to play. Therefore the SA ports system does not conform entirely to any of the four classifications and it finds itself as an odd fit between a public and semi-public port model. It is for this reason that Brooks & Cullinane (2007) found in a study of 42 ports at least 34 different combinations of port governance.

Beyond the abovementioned port governance matrix are port devolution options which may include privatisation, incorporation or public-private partnerships which all have their advantages and shortfalls. These devolution measures are beyond the scope of this chapter to discuss but,

suffice to say that in South African legislation there is an option to incorporate her ports. The reasons for this is so that TNPA can be able to conduct business as a corporate entity (*National Ports Act 2005. s.3(3)(b)*). Such a provision is made in fulfilling the objects of the act which all point to the workings of a private company as articulated in *Section 2(a) to 2(f)*. It must be pointed out, that the incorporation process, according to *Section 27(1) of the Act*, was supposed to commence immediately after the Act came into effect.

In 2012, after considering some of its pricing shortfalls and the complaints lodged against it, TNPA established four core design principles which are: cost based, user pays, required revenue and competitiveness. These principles, TNPA (2012) says, inform its cost structure. Yet, despite these claims, there remains conflicting objectives within the same ports authority. For example, though the ports differ in structure, commodities handled and markets served, they are charged uniform tariffs. This is in conflict with the cost-based and user-pays principles. These principles do not allow for competitiveness based on TNPA prices. Another issue is the fact that running the complementary ports system clashes directly with cost-reflective pricing and inter-port competition – so also is the practice of intermodal, intra-port and inter-port cross-subsidisation.

Remarkably, the government's goal is to align TNPA as a parastatal with its national macroeconomic objectives for ports. This decision anticipates an increase in the facilitation of administered port pricing, but TNPA wants to implement the user-pays principle along with cost-reflective pricing. The RR methodology currently being used is, by definition, in conflict with competitiveness as a core design principle because it does not incentivise productivity or cost-reduction. On the contrary, the RR methodology may actually incentivise bloated capital costs and operating costs (Chasomeris, 2015). In addition to these contradictions, TNPA wants to be a perfect landlord model but currently TPT, its sister company under the same conglomerate, holds a lion's share of terminal operations.

### **3.2.2. Theoretical Review of Port Pricing**

With respect to port pricing, it is a common conviction among many port economists, that the pricing for port services should be based on a marginal cost approach or its varieties such as marginal social costs, short run marginal cost or the long run marginal costs depending on policy

and each port's cost structure. Haralambides et al., (2001), Bennathan & Walters (1979), Meersman et al., (2003), Swahn (2002), hold that when determining administered port prices, marginal cost pricing is the principle worth considering. It is noted that among the most successful ports of the world the landlord model is followed where the port authority is the owner of the infrastructure, and the superstructure is predominantly owned and maintained by the private sector (Suykens & Van De Voorde, 1998). However, for the Asian ports and for South Africa, this practice is not employed in the determination of port prices, and in many Far Eastern ports the government is a player of multiple roles, readily redefining, what many port economists may call, the conventional. Notwithstanding the unconventional approach to port management, structure and pricing, the Chinese and other Asian ports, through their treatment of a container port as fundamental development infrastructure, have successfully developed top ranking container ports in Asia during the past four decades (Lee & Flynn, 2011) which prior to that were unheard of in much of Asia, while South Africa has had persistent challenges of stifling intra- and inter-port competition and poorly executed cross-subsidisation.

### **3.2.3. Reviewing Port Doctrines and their Consequences**

It is worth asking where South Africa falls short compared to the Far East and other maritime nations. For this reason, a review of two port doctrines, whose characteristics seem incumbent to South African ports, follows.

#### **3.2.3.1. The Anglo-Saxon Doctrine**

Under the Anglo-Saxon Doctrine of ports the underlying principle is that they should be profitable, Zinan Liu (1995) said, regarding UK ports, that the liberal nature of the British Government towards ports does not give ports in the UK any obligation to consider ports as part of the social infrastructure. As such, the underlying Anglo-Saxon doctrine entirely rejects macroeconomic objectives, such as those pursued by the ports sector in many other continental European countries, like employment creation, improvement in the tax base and general economic development of the hinterland (Liu, 1995).

Under the Anglo-Saxon doctrine, ports are certainly expected to charge reasonably for their services to all users, however, public ports are not expected to be profit-seeking (De Langen & HEij, 2013). That is, they are non-profit organisations - yet they receive no subsidies from the government and are still required to generate adequate revenues to cover operating costs and to finance investment expenditure (Liu, 1995). Another tenet of public ports under the Anglo-Saxon doctrine is that they are free from government interference and they enjoy much the same managerial freedom as their private counterparts in all aspects, except having limited access to sources of capital (Liu, 1995).

Insofar as most ports in the UK are privately owned and tariffs are charged on a commercial cost basis, they lean more towards the five pricing guidelines suggested by Meyric (1989) when he said the following:

- ‘The full cost of providing port services should be recovered from users;
- Port costs arising from services provided for an identifiable user or group of users should be recovered from that user or group of users;
- Costs which cannot be attributable to any specific users should be allocated according to the following principles: (a) all port users should make some contribution to common costs and (b) the contribution that any group of users makes should not exceed the cost that they would incur if they were the sole users of the port and (c) within these limits cost allocation should reflect the benefit that a user derives from the service provision;
- The structure of port charges should, as far as possible, reflect the structure of costs; and
- The cost of capital should reflect the opportunity cost of the original investment in the case of assets for which there is no ready market. For other assets, it should reflect the opportunity costs of holding the asset in its current use.’ (Meyric, 1989)

These five points are more in line with what Meersman et al. (2003) said when they stated the purpose of port pricing, is to confront the user with the additional cost that he causes. Interestingly, however, this argument was in favour of short-run marginal cost pricing while Meyric (1989) is advancing much the same reasoning but for average cost pricing.

### 3.2.3.2. The Asian Port Doctrine

Lee & Flynn (2011), in their discussion of the Asian (Port) Doctrine, mention the direct involvement of central government in the Far Eastern ports as port designer, developer, operator, port pricing maker, mediator and investor; showing the intricate system of central coordination which is prevalent in some Far Eastern economic systems as evidenced by the Chinese style of governance. The Asian doctrine highlights the importance of ports as part of the entire hinterland economic reform which would not flourish without being knitted into the overall government developmental strategies. Indeed, this kind of developmental planning is not a strange phenomenon to economies such as Korea, Singapore and Taiwan which are seen as adherents to the Asian doctrine where central government plays the role of infrastructure construction, terminal pricing maker and facilitator.

Table 3 shows the Asian doctrine following Far Eastern ports compared with current practice in South Africa. The general observation is that with respect to marine access infrastructure, most of the services that are performed by the central government in the Far East are performed by the Ports Authority in South Africa. Again with respect to port infrastructure provision, the Far Eastern ports have a mix of terminal operators, port authorities and central government being responsible. This is also true for the Port of Antwerp, even though the responsibility leans more heavily on the port authority. The port superstructure is provided by terminal operators in all ports save Busan, Gwangyang but in South Africa it is the government-owned TPT which, as already established, is the most dominant terminal operator.

It cannot be ruled out that the central government, and other arms of government, have a strategic role to play in national ports. Yet despite that, the principal feature of landlord ports is conspicuous. That is, the port terminal operators provide almost all port superstructure (cargo handling utilities) in ports despite the multifarious role of government.

With respect to investment in ports, maritime access infrastructure is handled by central government in ports such as Korea's Busan & Gwangyang; Singapore; Malaysia's Tanjung Pelepas; China's Shanghai, Waigaoqiao & Yangshan. In Hong Kong's port, however, which is now part of mainland China, maritime access infrastructure is handled by local government (Lee



& Flynn, 2011). The reason for this is that Hong Kong is seen as a special administrative region (SAR), which means that it is treated as a separate country from an immigration standpoint and continues to circulate its own currency, the Hong Kong Dollar. Hong Kong also retains an independent legal and judicial system inherited from the previous British rulers. Therefore what would have been the central government is now seen as local government (Mayer, 2012). Hong Kong, therefore, remains a free market economy with container terminals owned and operated by private enterprises. Cargo handling and terminal charges are set by operators and shipping lines themselves and, according to the port benchmarking study conducted by the Marine Department's Planning, Development and Port Security Branch (*Planning*, 2006), empirical evidence shows that these charges have been declining over the years. Furthermore, Hong Kong remains one of the lowest cost ports in the world, and it is very efficient in its goods handling capacity – achieving 36 moves per hour (MPH) with a peak rate of 40 MPH, while most globally competitive ports are only able to achieve 30 MPH at best (*Planning*, 2006)

**Table 3. 3 Institutional Responsibility for Port Investment Items and Government's Role**

Institutional Responsibility for Port Investment Items and Government's Role											
Investment Category	Sub-items	South Korea Busan, Gwangyang	Songapore Singapore Port	Taiwan Kaohsiung	Taipei	Malaysia Tanjung Pelepas	China Shanghai, Waigaoqiao	Yangshan	Hong-Kong Hong-Kong Port	Antwerp Antwerp Port	South Africa SA Ports System
Marine Access	Channel	CG	CG	CG	PA	CG	CG	CG	LG	CG	PA
	Breakwaters, etc	CG	CG	CG	PA	CG	CG	CG	LG	CG	PA
	Navigation Aids	CG	CG	CG	CG	CG	CG	CG	LG	CG	PA
Port Infrastructure	Land	PA	PA	PA	TO	TO	TO	LG	TO	PA	PA
	Berths Dredging	PA	PA	PA	TO	TO	TO	LG	TO	PA	PA
	Berthside	TO	TO	TO	TO	TO	TO	TO	LG	PA	PA
	Turning Basin	CG	CG	PA	PA	CG	PA	PA	LG	CG	PA
Port Superstructure	Channel	CG	CG	PA	PA	CG	PA	PA	LG	CG	PA
	Paving	PA	TO	TO	TO	TO	TO	TO	TO	TO	TPT / Private TO
	Cranes	PA	TO	TO	TO	TO	TO	TO	TO	TO	TPT / Private TO
	Terminals	PA	TO	TO	TO	TO	TO	TO	TO	TO	TPT / Private TO
	Sheds (CFS)	TO	TO	TO	TO	TO	TO	TO	LG	TO	TPT / Private TO
Land Access Infrastructure	Road Links	CG	CG	CG	CG	CG	LG	LG	LG	CG	LG/DOT
	Railway links	CG	CG	CG	CG	LG/CG	LG/CG	LG/CG	Others	CG	TFR
	Inland Waterways (if any)	CG	N/A	CG	CG	LG/CG	LG/CG	LG/CG	N/A	CG	N/A
SEZs or logistics region adjacent to container port		Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Cross-subsidization in port construction/ development		Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes
Government intervention in terminal operations		M	Yes	M	M	M	Yes	Yes	No	M	Yes

Notes: CG (central government); LG (local government); PA (port authority); TO (terminal operator); M (partly middle position); TFR (Transnet Freight Rail); DOT (Department of Transport - a central government arm); TPT (Transnet Port Terminal - a public TO)

**Source:** Adapted from Lee & Flynn (2011:[PAGE REFERENCE MISSING]) and authors have adapted, compiled and added the case of South Africa

It is noteworthy that Hong Kong, while being part of mainland China and being in the Far East, part of its port infrastructure is invested in by terminal operators – as is all of its port superstructure – with land access infrastructure being provided by local governments and others (Lee & Flynn, 2011). Hong Kong port also has no central government intervention to cross-subsidise port development and construction, it has no special economic zones (SEZs) close by and government has no intervention in terminal operations (Lee & Flynn, 2011).

In the arrangement we see above, notwithstanding the multidimensional role of government in most ports, the landlord model, as highly recommended by the *World Bank's toolkit* (2001), is still primarily implemented with the government and the port authority investing mostly in port infrastructure and maritime access infrastructure, while terminal operators are private companies which mostly invest in port superstructure.

Lee & Flynn (2011) argue that they are not prescribing a government-founded and government-owned approach to port policy making as a pillar, but that it should be used until the port is strong enough to stand on its own as a global competitor – the classical infant industry argument. This shows that heavy government involvement is mainly a strategic tool to create hub ports and give them a strong foundation upon which they can become self-sustaining in a globally competitive environment. One of the ways to encourage an environment conducive to creation of hub ports is through strategic port pricing which includes administered pricing. Administered prices are not a phenomenon unique to ports but they are also prevalent in the entire Chinese economy.

Of all the tenets of the Asian doctrine, there are some similarities with South Africa's port policies, in that SEZs are increasing, tariff determination is heavily controlled albeit by TNPA and the Ports Regulator, and no private terminal operators have monopoly power in the markets they may serve in South Africa, although TPT has a significant market share and is the most dominant terminal operator, being under Transnet.

Central government is heavily involved in ports under the Asian doctrine with the objective of aiding them to become hub ports and to eventually compete in the global environment. In South Africa, however, TPT as a SOE appears to compete against the private sector. The main difference, and by far the biggest cited by TNPA, is that in other ports central government is responsible for investing in marine infrastructure. According to TNPA, if government were to fund port infrastructure, 67 per cent of all total assets would be covered (TNPA, 2012). Another

difference is that ports under the Asian doctrine are competitive, management thereof is coordinated with hinterland economic policies, and the user-pays principle is relaxed on account of welfare benefits of the port.

In exploring the merits of the Asian doctrine, Hee-jung Yeo (2010) shows that competition among Asian ports is increasingly fierce, with seven of the 10 largest container terminals in the world being in Asia. Previously, ports have been viewed as monopolies because of their immovable nature and the concentration of cargoes in their locations. However, rapid development and adoption of container and other intermodal technology has altered this structure of markets to that in which fierce competition prevails across the world (Yeo, 2010). In his paper on *Competition and Collaboration among Container Ports*, Hoshino (2010) says, “Outside Asia, only Dubai and Rotterdam are ranked among the top 10 container ports in terms of container throughput. As well, six out of the 10 ports are in China, while Singapore, Hong Kong and Busan are ranked in the top 5” (Hoshino, 2010, p. 2). This confirms the well-known principle in economics that competition brings about efficiency and effectiveness. As a result of this it is known that the cheapest, yet most productive, ports are found in the Far East (*Planning*, 2006). Although this is generally believed in the case of private enterprise, what is seen in Far Eastern ports is that central government is heavily involved in multiple roles without running the ports as one body or system, thus still leaving much room for competition across ports (Lee & Flynn, 2011).

Bandara, Nguyen & Chen (2013) acknowledge that for most ports (landlord ports) infrastructure is handled by the state sector and it is often regarded as public goods and therefore their charges necessarily take into account the social welfare effect (Bandara, et al., 2013). If TNPA is aspiring to be a landlord port then government must be willing, as part of its state budget and the belief that ports are a strategic national asset, to finance some of its infrastructure – even as a way of ensuring increased competitiveness by way of decreased costs. This is in line with the ‘best or common’ practices around the world. As pointed out above, if government were to fund port infrastructure, 67 per cent of total assets would be covered according to TNPA (2012) – such a fact is so remarkable that it warrants a detailed study on port governance even beyond this chapter.

### **3.3. Research Methodology**

Due to the exploratory nature of this study, the authors have leaned more towards the qualitative method of researching. The objectives of the study are to determine the reforms necessary to improve South Africa's port governance and port pricing. The variables involved in assessing current governance include the philosophy that underpins the prevailing port doctrine, government objectives and economic policies; none of which can be quantified with any objective measures. Pricing in ports around the world is not a pure science as it is often unique and bending to the will of the port authorities and the arms of government involved in its determination. Thus there seems to be a limited scope for quantitative enquiry. Therefore a qualitative technique called Content Analysis has been used. Content analysis is a qualitative data analysis tool that involves dissecting the content of an interview, magazine, book or a document with the aim of identifying themes that emerge from responses given by respondents. "Content analysis is qualitative analysis concerned mostly with the general import or message of the existing documentary materials which are either verbal or written" (Kothari, 2004:110). Clarke (2005) refers to content analysis as a positivistic attempt to identify subjective meaning in the cultural domain. The steps involved in this process are identifying the main themes, assigning codes to the main themes, classifying those responses under the main themes and finally integrating those themes into the text of one's report or study. As a qualitative tool used to determine the general import or message of existing documents, the difference is somehow like that between a casual and an in-depth interview (Good & Douglas, 1954) as the most dominant themes are likely to come into sharper focus as this tool is being applied.

For the updated stakeholders' perspectives the data was received from the public domain, mainly from the Ports Regulator of South Africa and TNPA. Content analysis was used to assess 18 various stakeholders' submissions regarding the 2013-2014 TNPA tariff application, 15 stakeholders' submissions regarding the multi-year tariff application for the tariff years 2013/14-2014/15, and 16 further submissions regarding the 2014-2015 tariff application were analysed. Submissions varied in length, with some being as short as one page and others up to 121 pages in length. The validity of the data collected in this study is incumbent upon the perspectives of all the members involved in the stakeholders' submissions, which have been published at least since 2009 by the Ports Regulator and prove to represent very well the population of relevant participants in South Africa's ports system. It is therefore expected,

based on the consistency of their professional comments on the issues of pricing and governance in South African ports, that the data collected through their submissions corroborates what they have published on the Ports Regulator's website in the past years. The submissions capture well the types of stakeholders represented in the ports as these fall into three major categories, namely: the cargo owners, shipping agents and shipping lines, and tenants.

In conducting content analysis on the various submissions by stakeholders, themes were extracted and classified in a tabular format and the various stakeholders who raised such themes were tabulated according to the various tariff years in which they raised those themes. A salient observation is that while from year to year there would be variations in submissions that were made by the same stakeholders, that theme which appeared inadequately addressed in the previous tariff year would be reiterated the following year with various magnitudes of vehemence.

### **3.4. Findings on Stakeholders' Comments on Port Governance and TNPA**

The stakeholders' concerns, views and recommendations are presented within this section with respect to port governance. Themes are extracted from annual submissions by various stakeholders to the Ports Regulator of South Africa in line with the South African port policies, legislation and regulatory requirements. TNPA submits a proposal on an annual basis to adjust the tariffs. The Ports Regulator then invites various stakeholders to comment. From those comments it makes an informed decision partly guided by the *Records of Decision* and the *National Ports Act*.

Table 3.4 shows the findings from the data gathered, summarising the themes on port governance and pricing.

**Table 3. 4 Themes on Port Governance and TNPA Pricing**

	Themes on Port Governance				
	Submissions on the following Review Periods				
Requested Tariff Increase	Frequencies	18.06%	13.2%	14.39%	Σ
Allowed Tariff Increase		2.76%	0%	8.15% <sup>1</sup>	
				5.9% <sup>2</sup>	
Theme	2009/10-2011/12	2012/13	2013/14	2014/15	
Current structure inhibits global competitiveness of ports, and high port tariffs hinder stakeholders' profitability	38	7	31	10	58
Revenue Requirement Model is unjustifiable and arbitrary	36	4	5	8	53
Misalignments with international tariff standards and inconsistent pricing of some port commodities – User-pays principle is preached but not practiced	13	8	6	8	35
Inefficiency and low productivity of ports	13	13	4	1	31
No accounting for prevailing economic conditions	24	3	2	1	30
Above-inflation increases requested annually	15	7	1	3	26
WACC, MRP and betas used to assess risk are all inaccurate		4	10	11	24
Non-compliance with national policies and inconsistency	13	3	1	3	20
Lack of transparency in reporting or justifying tariffs	10	1	2	5	18
TNPA practices do not support job creation	9	5	1	2	17
Regulatory Asset Base is not cleaned up and it is overvalued	-		3	6	9
Abuse of monopoly power	8	-	-	1	9
Poor service delivery	4	-	-	1	5
Ports as national asset are used for profiting, not national economic objectives	-	-	2	2	4
Projects from previous financial year are seldom complete	-	3	1	-	4
Lack of consultation with industry prior to altering tariffs	-	2	1	-	3
Transition from TNPA to NPA (Pty) Ltd is still pending	-	-	2	1	3

Note 1: The 8.15% allowed tariff increase was for bulk and break-bulk commodities.

Note 2: The 5.9% allowed increase was for every other commodity.

**Source:** Author compiled and analysed using data from Gumede (2013) and Stakeholders' Submissions from the Ports Regulator (2014).

Many of the foregoing issues, complaints and concerns are rooted in the manner in which the ports are governed. For example, port stakeholders express dissatisfaction with the pricing methodology. Stakeholders have complaints about the tariff structure and the manner in which port costs are recovered from them.

South Africa's practice of running a complementary ports system and system-wide pricing has led to a "one size fits all" type of pricing that has made port tariffs rather arbitrary and conducive to inter-port and intermodal cross subsidisation. Competition has been stifled and stakeholders' competitiveness in the export markets has been undermined and their profitability threatened while there have been reports of lost traffic, diverted from South African ports to others in the Sub-Saharan African region (City\_of\_Cape\_Town, 2013).

### **3.4.1. On RR Methodology and Tariff Structure and their effect on Port Governance**

Of the much dissatisfaction concerning the tariff structure by TNPA, the most disconcerting, at 58 complaints since 2009, is that South Africa's export competitiveness is getting undermined in international markets. The current tariff structure inhibits competitiveness of ports as it thwarts SA companies' profitability, in addition to hampering global competitiveness. Anglo American (2012) warns that South Africa is at risk of becoming an uncompetitive alternative for many countries due to unsubstantiated commodity tariff increases.

Since 2009, there has been 53 complaints that the Required Revenue model appears not to incentivise the organisation to look critically at how it could improve its operational performance and thus reduce the need to apply for such large tariff adjustments annually. If South Africa was in a more competitive geographic region, it is suspected that the ports would make significant expenditure losses as the pricing methodology would result in their failure to attract additional traffic.

The next most frequently cited concern is the misalignment of South African tariffs with international standards. Thirty-five times it is argued that the user-pays principle is claimed to be implemented but seldom do port users actually see its implementation. On this critical issue, it is the authors' view that the user-pays principle is least compatible with the country's policy objectives, despite it being one of TNPA's tariff structure design principles, for two principal reasons. Firstly, the user-pays principle is more compatible with competitive regimes where



costs are not arbitrarily determined and in perfect landlord models where more clear lines of responsibility exist. South Africa is not compatible in this regard and shall never be as long as the Required Revenue strategy remains because it thwarts competition.

Secondly the South African port system is complementary rather than competitive and therefore it is, by definition, characterised by central coordination which inadvertently may include price manipulation with the aim of achieving national policy objectives. This is more so because ports are seen as a growth engine in the country rather than independent profit-making enterprises that must “stand on their own” (Bennathan & Walters, 1979). In this dilemma what can be seen is some incongruity between the political objectives for ports and the ideals TNPA aspires to. This is a core issue of port governance.

It is not likely that South Africa can achieve her potential to develop hub ports despite the popularity of Durban as Africa’s biggest container port (*Transnet*, 2013) especially because of the user-pays principle that TNPA wants to enforce. The view of this study is that not even the European doctrine is adequate for a developmental state to achieve its objectives. This is seen by the ports under this type of governance not doing as well or better than the Far Eastern ports which are governed and operated differently. Lee & Lee (2010) argue that the uncompromising adherence to the user-pays principle by the UK ports is a contributing factor to their inability to create more hub ports in the recent decades and thus be superseded by the Far East.

### **3.4.2. On Ports Performance**

At thirty one complaints, it is frequently pointed out that South African ports are among the most inefficient and least productive in the world. They are among the most expensive ports in the world yet they are often on par with the third world in terms of performance and, at that, the worst performing. In a port benchmarking study conducted by Maersk Lines and Safmarine, it was shown that the three South African ports (Durban, Cape Town and Port Elizabeth) while being among the least productive, were the top three most expensive ports in the study (*Ports Regulator*, 2012).

The study done by the Organization for Economic Cooperation and Development (OECD, 2014) on the competitiveness of ports in emerging markets shows that from 2001-2007, average ship waiting hours in Durban, now Africa’s leading container port, increased from 26.14 to 55.14. This, one might add, is due to the increases in demand for its services without

commensurate investments in its capacity, which contributed to congestion – a problem that persists even today. As of 2012-13 the average turnaround time was 60.4 hours, with a median value around 56 hours (standard deviation of 30 hours) with many ships having a turnaround time above 70 hours. The average dwell time for all container flows is currently about 3.9 days and this is considered the most efficient in Sub-Saharan African ports where the average dwell time may easily be twice this figure (OECD, 2014).

The terminal operations' performance has shown Durban to be relatively constant at 20 moves per hour per crane in 2013. This is certainly an improvement for a container port that has remained constant at 15 moves per crane hour in 2008. Nevertheless, the target for 2014/2015 is 28 moves for DCT1 and 30 moves for DCT2 (OECD, 2014).

Another complaint is that TNPA takes no cognisance of the prevailing local and global economic conditions in applying for tariff increases. This complaint can be paired with another similar in nature, in which stakeholders bemoan the above-inflation tariff increases that are requested annually. The proposed increases are said to hamper economic growth and development and Business Unity South Africa (BUSA, 2012) therefore opposes them. The South African Shippers Council (SASC, 2012) states that TNPA is being short-sighted by not taking into consideration supply chain partners when contemplating rate increases. The National Association for Automobile Manufacturers in South Africa (NAAMSA, 2012) and Richards' Bay Coal Terminal (RBCT, 2013) are of the same voice when they say the *National Ports Act* recognises a tariff system that is affordable and efficient, that stimulates competition, equitable access and international trade with the fundamental goal of striving towards economic growth and development of South Africa. The prevailing port governance leads to some form of cross-subsidisation that may result in the collapse of certain sectors and the development of some at the expense of others. TNPA does not consider the port-specific phenomena that demands each port to be priced differently from other ports.

### **3.4.3. On Port Governance in South Africa**

South Africa's port governance has a direct bearing on the type and amount of tariffs charged per port service, and it is not without its flaws. Although with the establishment of the independent Ports Regulator of South Africa in 2005 there has been regulation of tariff increases granted to TNPA annually, there has been no alternative pricing methodology and

the Regulator has provisionally allowed the application of the RR method. Further to this, while the demand for incorporation of TNPA is gaining more attention the closest we have seen of this is only the documented – but never the acted on – plan for concession of some port terminals which has only been demonstrated by no overtly articulated objection to this type of arrangement; another matter on which Transnet has been silent. Indeed, the slow progress of port reform may very well be a tacit repudiation of the idea of concession agreements in local ports. This is because, with concession, what must naturally follow is the permission for concessionaires to determine their own terminal operating prices according to the unique cost structures they face because of the markets they serve. This effectively means there is virtually no room for uniform tariffs and there are lower chances of cross subsidisation. With the incorporation of TNPA, and its subjection to normal private company environments, when it comes to costs and price determination there would certainly be an end to the RR methodology, and therefore less room for TNPA to make supernormal profits for Transnet. TNPA as an enterprise should facilitate the development of trade and commerce for the national economy's benefit. It is, furthermore, an entity that did not acquire its current infrastructure via a commercial sale that justifies such a profit-oriented revenue approach and cross subsidisation.

Of the many themes that came out of the data gathered and analysed for this chapter, SASC (2012) states that most complaints revolve around TNPA still operating above commercial laws and accountability - this is where almost all the problems and complaints by various stakeholders emanate. It is no surprise that the least visited fact regarding the regulation of Transnet and, indeed, TNPA, is that the *National Ports Act* makes a provision that TNPA should be incorporated. Transnet has not, to date, started transitioning the TNPA to the National Ports Authority (Pty) Ltd as stated in *Section 27 of the National Ports Act 12 of 2005 (National Ports Act 2005. s.27(1)(a))*. It is recommended by SASC (2012) that this provision by the Act be quickly enforced, so as to make TNPA more accountable in the future, and also that TNPA be put on a level playing field with other players, such as cargo owners and service providers.

On the one hand, one may be of the view that, preceded by adherence to the Asian doctrine, it would be easier to run South African ports according to sound business principles because then they would be in a better position to compete internationally. This is to say, prior to the incorporation of South African ports, there may be merit in first adapting and implementing the principles demonstrated in the Asian doctrine. This stance is evidenced by the consequences of the Asian doctrine on the Far East Asian economies.

On the other hand, however, while those with some affection for the Asian port paradigm may advocate for a centrally coordinated system of ports that involves a multifarious role of central government in South Africa as an alternative – especially in view of her macroeconomic objectives for state owned enterprises – until her ports can ‘stand on their own bottom’ under any fierce competition globally; it is also worth considering her recently slower economic growth and relatively bleak economic outlook for the foreseeable future (*The Presidency*, 2016). With non-performing SOEs needing a rescue package extended to them totalling R460 billion (Donnelly, 2015) – contributing to the state debt levels rising from 47 per cent of GDP by a further R600 billion (Nene, 2015) - one may question the notion of increased central government involvement in the national ports system.

It must be recalled that SOEs have historically been significant contributors to the country’s economic growth and determinants of its development trajectory as early as the 1700s (Fourie, 2014). This phenomenon was more pronounced from the 1920s as the government increasingly played the role of entrepreneur by establishing, among several others, Eskom, Iscor, South African National Roads Services, South African Airways, and the South African Post Office – all of which are struggling today (Fourie, 2014). In the modern context, SOEs “are now viewed explicitly as vehicles for socio-economic development... and ‘we have to ensure that there is alignment between their national interest and commercial interest mandates.’” (Malusi Gigaba cited in *SabinetLaw* 2010).

### **3.5. Conclusion and Recommendations**

It is understood that, according to the country’s developmental goals, SOEs are supposed to be instrumental in the development and growth of South Africa’s economy. The currently floundering SOEs, however, do cast a shadow of doubt upon the idea of the South African central government’s capability to run its enterprises and also upon the economy’s financial muscle for two reasons. Firstly, to involve the state any deeper into the affairs of TNPA to, for example, finance its entire seaside operations (the 67% of TNPA’s costs) is to entrust, into an already struggling institution, more responsibility. Secondly, with some R460 billion that’s earmarked to rescue the loss-making SOEs causing a further increase in the public debt, it can be argued that a move to increase the state’s role in TNPA would result in the polar opposite of what the government is planning to achieve with SOEs – which is to have them as key role players for South Africa’s economic growth and development.

With all the managerial and fiscal constraints considered, the adaptation and adoption of the principles of the Asian doctrine for SA's ports may prove premature. At the same time, however, the incorporation of her ports presently appears to be against the government's developmental objectives and macroeconomic strategy. Nevertheless, the demand for reform in SA's ports is still as potent as ever, because TNPA's ideal principles of user-pays and of competitiveness are still not being realised despite the articulation of its strategic objective to ensure competitiveness of ports. What this is communicating is that SA's ports simply cannot find a perfect fit into the already established port paradigms such as the Anglo-Saxon, Continental or Asian doctrine. Therefore, South Africa must find a way of articulating her own port doctrine and this is an area for further research.

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## **CHAPTER 4: SOUTH AFRICA'S PORT DOCTRINE: DILEMMAS AND THE WAY FORWARD<sup>6</sup>**

### **Abstract**

This study uses content analyses to examine 137 stakeholders' submissions to the Ports Regulator of South Africa from 2009/10 to 2018/19, classifying themes into two broad categories, namely port authority pricing and port governance, which together define South Africa's port doctrine. Results show that South Africa's system of eight commercial seaports is unique and is financed and managed using a mix of elements from the Anglo-Saxon and Asian doctrines, and attempts to charge port tariffs according to the Anglo-Saxon doctrine. The paper critiques the port authority pricing methodology employed in South Africa and shows its inconsistency with sound pricing principles and global best practices. The governance structure and how it has persistently defied legislation, served to promote anticompetitive behaviour and at worst accommodated years of corrupt activities that have recently surfaced is also discussed. The recommendation is a swift incorporation of Transnet National Port Authority (TNPA) as a stand-alone entity outside of Transnet. Incorporation of TNPA would help to remove the present conflicts of interests, improve transparency, accountability and regulation as well as incentivise improved productivity and infrastructure spending and attract private investments into the ports system.

### **1. Introduction and Background**

The African National Congress (ANC), the South African ruling political party, follows a developmental state orientation for its political-economic policies. In this paradigm of economic growth and development, the state governs the markets and facilitates both the allocation of the country's key strategic resources and finances to purposefully selected industries and the distribution of incomes in the economy to correct market failures in this respect (Low, 2004). This is what Levi-Faur (1998) referred to as governed development as opposed to that facilitated by market forces alone. In a developmental state, the state uses its commercial enterprises as key players in industrial development (Chow, 2004; Edigheji, 2010;

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<sup>6</sup> This chapter is a peer-reviewed paper by Meyiwa and Chasomeris (2020) that was accepted for publication in the Maritime Studies journal. DOI: 10.1007/s40152-020-00166-2

Chang, 2010) and this is no different in South Africa (Roberts & Rustonjee, 2010). As such, Transnet and its maritime divisions, Transnet National Ports Authority (TNPA) and Transnet Ports Terminals (TPT) are committed to driving economic growth and development in South Africa. According to TNPA (2019) its mandate is to help reduce the cost of doing business in South Africa by reducing logistic costs, and to contribute to economic development. However, such a commitment is contradicted by TNPA's historical reinvestment practices. Since the fiscal years 2012/13, TNPA has been asking for annual revenues that are well above their budgeted and actual capital expenditure. Indeed, the requested annual tariff increases have been made with the aim to achieve progressively greater revenue while budgeted and actual CAPEX have been progressively decreasing (TNPA, 2019). It is worth mentioning that such a downward trend in reinvestments into ports has coincided with the Market Demand Strategy (now known as Transnet 4.0) that proposed a total planned capital expenditure of R300 billion over 10 years from the year 2012. Of this planned expenditure, R87 billion was earmarked for ports, a capex that proved to be above TNPA's Regulatory Asset Base at that time and was going to be funded through an amalgamated loan from various international financial institutions (Aderibigbe, 2015). These two observations, along with a questionable cost recovery method TNPA has continued to use in order to collect revenue from port stakeholders (Meyiwa & Chasomeris, 2016; Gumede & Chasomeris, 2017) which neither conforms to international best practice (World Bank, 2007) nor reflects the pricing principles TNPA claims to uphold (TNPA, 2012), lead the authors to believe that TNPA's commitment to economic growth is only nominal and not practical.

South Africa has eight commercial ports that are run by a single national ports authority, TNPA, using a single tariff book and thus applying uniform tariffs to ports that differ in infrastructure and the markets they serve. TNPA is a subdivision of Transnet State Owned Corporation (SOC) that is wholly owned by the government through the Department of Public Enterprises (DPE). TNPA was established "to be a landlord of ports responsible for the safe, efficient effective and economic functioning of the national ports system which it manages, controls and administers on behalf of the State" (Transnet, 2019:1). Under a landlord model, "the port authority acts as a regulator and as a landlord, while port operations (especially cargo handling) are handled by private operators" (World Bank, 2007: 21). Port operations in South Africa, however, are handled both by private operators and a public operator called Transnet Port Terminals (TPT), a division of the Transnet Group.

On an annual basis, TNPA issues a revised tariff book with proposed tariff adjustments in view of the required revenue projections for that fiscal year. These adjustments are based on a mathematical formula to determine the needed revenues to finance its annual operations. The formula is called the Revenue Required (RR) methodology. The RR methodology heavily depends on the landlord's Regulatory Asset Base (RAB) and the weighted average cost of capital (WACC). The correct valuation of the RAB and the correct determination of the WACC are therefore very important in determining the annual tariff adjustments.

The annual tariff adjustments proposed by TNPA are then submitted to the Ports Regulator of South Africa (Ports Regulator), a body that was established to monitor and regulate the operations of TNPA so that it does not abuse its monopoly power as the sole landlord of ports in the entire country. Once submitted, the Ports Regulator takes the proposed tariff adjustments and makes them available to all port stakeholders – cargo owners, shipping lines, terminal operators and any other party that may be impacted by port operations – who are then given a period of time to make comments on TNPA's proposed tariff adjustments for the next fiscal year. The Ports Regulator also recalculates the tariff adjustment applied for using the same principles (RR methodology) that TNPA used. After taking into consideration its own recalculations and stakeholders' comments, the Ports Regulator then communicates the approved tariff adjustments to TNPA and to the public using the annual Record of Decision (RoD). Throughout its history, the Ports Regulator has consistently revised the tariffs applied for by TNPA, almost always approving tariff increases that are significantly lower than those proposed. In some years the Ports Regulator has made a ruling that there be no increases in tariffs and in other years it has ruled in favour of tariff decreases based on its recalculations and what it believes the actual RAB and WACC to be (TIPS, 2014). This discrepancy between proposed and approved tariffs has raised concerns regarding TNPA's valuation of the RAB and caused the Ports Regulator to request further information from TNPA on the valuation method, but up until the year 2017 TNPA has either failed to provide such information or ignored these requests. Moreover, the fact that tariffs are set on a system-wide basis – uniform tariffs for different ports in different environments – means that tariff charges do not relate directly to specific infrastructure assets, making the determination of the cash flow suffer from a revenue attribution problem (PRSA, 2018).

The many challenges that remain with respect to port authority pricing, which involve the RR methodology used to determine annual tariff adjustments, and the tariff structure used to

attribute costs to various port users; and the governance and regulatory practices of TNPA are a subject of ongoing research and may collectively be referred to as challenges of a port doctrine. Without giving a definition, Bennathan and Walters (1979) were the first to coin the term “port doctrine” in reference to various pricing practices and structures of governance within and across maritime ports in continental Europe and the United Kingdom. The Oxford Dictionary defines doctrine as a belief or set of beliefs held and taught by a Church, political party or other group. From this definition, one may consider a port doctrine as a certain paradigm, a set of principles regarding port pricing and port governance that a particular port or port system adheres to, actively through conforming to best practice in the industry, or passively through reacting to historical events. South Africa’s port doctrine is inconsistent and unarticulable, but the root of the problem is the fact that whatever may be pieced together as South Africa’s port doctrine appears to be inconsistently or incoherently applied in its ports. The authors believe this undermines TNPA’s commitment to economic development and it contributes to making the whole of Transnet fall short of the South African developmental state’s goals.

The objective of this study, therefore, is an articulation of a more coherent port doctrine to examine current dilemmas and recommend a way forward. Thus, using content analysis to examine 137 stakeholders’ submissions over a 9-year period, this paper will attempt to logically outline South Africa’s challenges with respect to port doctrine and make recommendations for improvement.

## **2. Literature Review**

### **2.1. A Developmental State**

A developmental state is a concept coined by Chalmers Johnson (Johnson, 1982) in his diagnostic study of the post war Japanese economy. In a series of studies that would result in what developmental economists would call the ‘Japanese Miracle’, Johnson extrapolated a number of elements that constituted the Japanese developmental state and then these elements would be used to assess its ‘replicability’ and its transferability. The first element is the existence of a small, inexpensive, but elite state bureaucracy staffed by the brightest and best managerial talent in the system. The bureaucracy’s duties would firstly be to identify those industries to be developed (industrial structure policy); secondly, to identify and choose the best means of rapidly developing the chosen industries (industrial rationalisation policy); and

thirdly, to supervise competition in the designated strategic sectors in order to guarantee their economic health and effectiveness.

The second element is a political system in which the bureaucracy is given sufficient scope to take initiative and operate effectively. The third element is the perfection of market-conforming methods of state intervention in the economy. This involves establishing legal clarity and simple, straightforward legislative guidelines on development. The fourth and final element is a pilot organisation. In Japan's case, it was the Ministry of International Trade and Industry (MITI). The key characteristics of the MITI are its small size, its indirect control of government funds, its "think tank" functions, its vertical bureaus for the implementation of industrial policy at the micro level, and its internal democracy (Woo-Cumings, 1999).

A developmental state upholds the role of government in economic development through the state's active entrepreneurship, bureaucracy, and autonomy, all of which are aimed to facilitate a social engineering process that will create an environment conducive for long-term industrial development. This remains true of the developmental state while it maintains its distinctiveness from state-socialist planning and free market capitalism (Radice, 2008). In analysing the developmental state, however, one must tread carefully because it exhibits some of the characteristics of central socialist planning while at the same time making way for private capital to prosper. According to Radice (2008), the developmental state combines elements of market and plan, linking a mixed economy to a political-ideological approach that combines authoritarian technocracy with a relatively egalitarian distribution of income and wealth.

Some of the strengths of the developmental state in achieving economic growth include: a) The "State's explicit agenda is economic development, marked by clear emphasis on strategic industrialisation, growth and productivity; b) Absence of explicit commitment by the state to general welfare and social conditions; c) An elite bureaucracy, composed of subject experts, having close links with private businesses. The latter is what Evans (1989) referred to as embedded autonomy; and d) A political system where bureaucracy has adequate degree of power in its operations" (Onis, 1991, pp. 113-115).

Woo-Cumings (1999) further explains the mutuality between private enterprise and the state sector, saying that the concept "developmental state" means that each side uses the other in a mutually beneficial relationship to achieve developmental goals and enterprise viability. When the developmental state is working well, neither the state officials nor the civilian enterprise

managers prevail over the other. The state is a catalytic agency and the managers are responding to incentives and disincentives that the state establishes.

In the efforts to achieve its Millennium Developmental Goals (MDGs), and understanding that the concept of a developmental state is not a static concept but it may find variation from state to state, the South African government is pursuing a democratic developmental state. This is because, unlike most of East Asian economies, whence the concept found its articulation, the South African government has no direct control over the commercial banks, but has nonetheless built financial resources and analytical capacities in state owned companies like Transnet as well as the Development Bank of Southern Africa (DBSA) and the Industrial Development Corporation (IDC) for which the state can have a direct influence to drive the developmental agenda (Edhigeji, 2010).

## **2.2. The Asian Port Doctrine**

From history, we can separate two categories that contribute toward a port doctrine of sorts. These are port authority pricing and port governance. Port authority pricing is concerned with the tariff methodology, tariff structure and the resulting prices. Governance is concerned with the legal status of the ports company (the landlord and port terminal operator) and the managerial structure and policies that result therefrom. Governance is also concerned with ports regulation, which addresses the role central government plays as policy maker and shareholder in the port industry, which invariably affects pricing practices and regulatory manoeuvres.

Pursuant to the Developmental State model, the Chinese and other Far-East Asian states have had their port development and port investment activities championed by the state and centrally coordinated with the rest of the hinterland economy. Lee & Flynn (2011) present a uniquely Asian detailed exposition of a new paradigm in container port development, which they call the Asian Port Doctrine.

Under the Asian Port Doctrine, central government is involved as port designer, developer, operator, port pricing maker, mediator and investor (Lee & Flynn, 2011). This highlights the importance of ports as part of the entire hinterland economic reform, which would not flourish without being knitted into the overall government developmental strategies. Indeed, this kind

of developmental planning is no strange phenomenon to economies such as Korea, Singapore and Taiwan, which are seen as adherents to the Asian (Port) Doctrine where central government plays a role in infrastructure construction, terminal pricing and facilitation. Lee & Flynn (2011) further mention that one of the core elements of the Asian Port Pricing Framework is administered pricing.

Administered prices were prevalent in the Chinese economy. One of the ways to stabilise and control the national price levels was through China's central bank anchoring its currency and keeping it at a fixed 8.28 Yuan to the US Dollar from 1994 to 2005 and it was a remarkable success. Port planners at central government level control the national price index and determine the port sector's trade competitiveness through pricing used at the port authority level (McKinnon, 2006). The Asian Port Doctrine, with administered prices and central planning, is a classical illustration of developmental 'statism' as expressed by Wade (1990) as the government intentionally gets the prices wrong in order to address market failure that characterises much of East Asia (Low, 2004). This is evident in administered port prices.

Pricing tools are also employed in the expansion and/or development of new ports, which would otherwise have to charge high tariffs reflective of their high costs of construction. These ports are given an opportunity to price their services and products at competitive levels and avoid full transfer of standard construction costs to the users. The cross-subsidy mechanism in Asian ports creates opportunities for the expansion of capacity that would otherwise not be possible, giving rise to construction of more container hub ports (Lee & Flynn, 2011). This is more so a possibility for Far Eastern ports than it is for ports outside the framework of the Asian Doctrine. Moreover, Asian port pricing does not solely depend on full cost recovery as is the case in the Anglo-Saxon Doctrine. For the Asian doctrine, in considering the socioeconomic impacts of the ports, the total construction costs are partly discounted and allocated to social overhead capital (Lee & Flynn, 2011). An alternative to the Asian port doctrine is the Anglo-Saxon doctrine which is discussed in section 2.3.

### **2.3 The Anglo-Saxon Doctrine**

Governance informs port authority pricing and the principles within which a port authority should price its services. Among the roles of the port authority, as stipulated by the World Bank, are the "full recovery of all port-related costs, including capital costs, plus an adequate



return on capital as a principal objective... Full cost recovery should be viewed as a minimum port authority objective; once this objective has been achieved, however, the port authority can pursue other-than-financial objectives considered desirable by the government or by itself” (World Bank, 2007a: 78). This implies that the key consideration in port authority pricing is for the financial sustainability of the port authority and anything else is secondary. This resonates with a certain port paradigm that Bennathan and Walters (1979) referred to as the Anglo-Saxon doctrine, in which all European port authorities are seen to support full cost recovery from port users (Haralambides 2002; Santos, Mendes, & Guedes Soares 2016).

Under the Anglo-Saxon doctrine, ports are certainly expected to charge reasonably for their services to all users, however, public ports are not expected to be profit-seeking (De Langen & Heij, 2013). That is, they are non-profit organisations - yet they receive no subsidies from the government and are still required to generate revenues adequate to cover operating costs and to finance investment expenditure. Most ports in the UK are privately owned and tariffs are charged on a commercial cost basis. Accordingly, Strandenæs & Marlow (2000) propose the following five pricing guidelines:

- “The full cost of providing port services should be recovered from users;
- Costs arising from services provided for an identifiable user or group of users should be recovered from that user or group of users;
- Costs which cannot be attributable to any specific users should be allocated according to the following principles: (a) all port users should make some contribution to common costs and (b) the contribution that any group of users makes should not exceed the cost that they would incur if they were the sole users of the port and (c) within these limits cost allocation should reflect the benefit that a user derives from the service provision;
- The structure of port charges should, as far as possible, reflect the structure of costs;
- The cost of capital should reflect the opportunity cost of the original investment in the case of assets for which there is no ready market. For other assets, it should reflect the opportunity costs of holding the asset in its current use.” (Strandenæs & Marlow, 2000: 320-321)

These five points are more in line with what Meersman et al. (2003) mentioned. That is, the aim of port pricing is to confront the user with the additional cost that he causes. Interestingly, however, this argument was in favour of short-run marginal cost pricing while Meyric (1989) advances much the same reasoning albeit for average cost pricing. Marginal cost pricing is challenging to implement because of the difficulty associated with quantifying marginal costs (Haralambides, 2002).

## **2.4 Port Authority Governance and Pricing in South Africa**

With respect to governance as an aspect of port doctrines, TNPA is one of five operating divisions of Transnet SOC Ltd and it manages all eight South African commercial ports in a landlord capacity, providing infrastructure and marine services. TNPA operates within a legislative and regulatory environment created by the National Ports Act 2005 (Act No. 12 of 2005). The National Ports Act creates a role for the National Ports Authority whereby it is responsible for the port regulatory function at the ports - i.e. controlling the provision of port services through licensing or entering into agreements with port operators to ensure that efficient port services are provided. The Act also establishes that the main functions of the Ports Regulator are to (National Ports Act, 2005: 32):

“(a) exercise economic regulation of the ports system in line with government’s strategic objectives; (b) promote equity of access to ports and to facilities and services provided in ports; (c) monitor the activities of the Authority to ensure that it performs its functions in accordance with this Act.”

(2) The Regulator must-

(a) hear appeals and complaints contemplated in sections 46 and 47, respectively, and investigate complaints contemplated in section 48; (b) negotiate and conclude an agreement with the Competition Commission established by section 19 of the Competition Act, 1998 (Act No. 89 of 1998), to co-ordinate and harmonise the exercise of jurisdiction over competition matters, and to ensure consistent application of the principles of this Act; (c) advise and receive advice from any other regulatory authority; (d) consider proposed tariffs of the Authority, contemplated in section 72, in the prescribed manner; (e) promote regulated competition;”

(f) regulate the provision of adequate, affordable and efficient port services and facilities.”

Transnet Port Terminals (TPT) is a division of Transnet SOC Limited; South Africa’s state-owned freight transport company which owns and operates 16 terminals situated across seven of South Africa’s ports. Operations are divided into major market sectors, namely containers, bulk, break bulk and automotive, and are organised into three geographical regions – Eastern Cape, Western Cape and KwaZulu-Natal. The Ports Regulator is responsible for regulating port authority pricing and operations, as listed in its responsibilities above, but its regulatory duties do not extend to TPT as a port terminal operator.

TNPA has a dual mandate of lowering the logistics costs of doing business in South Africa and contributing toward economic development. Its landlord role shares some similarities with best practice in port governance as stipulated by the World Bank in its Port Reform Toolkit. One of those similarities is the establishment of an independent regulatory body whose objectives are to “ensure fair competition among competing operators in the port; to control monopolies (including public ones) and mergers; and to prevent anticompetitive practices” (World Bank, 2007a: 89). The World Bank further stipulates that the regulator should only be effected in the event of serious threats to free competition within the port. It should preferably have the character of an arbitrator instead of a court of law, and be accepted by the port community as being independent. The anticompetitive behaviour of the landlord, according to the World Bank, involves

- “Use of a dominant position to prevent or lessen competition.
- Cross-subsidization by the provider of monopoly services of contestable services, thereby threatening fair competition.
- Price fixing among competitors.
- Use of other practices that are intended to restrict, distort, or prevent competition” (World Bank, 2007a: 89).

TNPA has been accused, and is accordingly being investigated by the South African Competition Commission, of the use of a dominant position to prevent or lessen competition. Furthermore TPT, which is TNPA’s unregulated sister company, and the most dominant terminal operator in South African ports, was suspected to be benefiting from preferential pricing arrangements with TNPA (Competition Commission, 2016). Cross-subsidization of

loss-making divisions of Transnet by the ports sector and cross-subsidization of some services by others, that is, the container trade and the automotive cargo trade in South African ports being charged premium tariffs, thus appearing to be subsidizing dry bulk trade to keep the latter's tariffs discounted below the global average tariffs. Such a practice, according to Gumede and Chasomeris (2015), is reminiscent of ad-valorem wharfage that was discontinued during the 2002 port reforms in South Africa and which is against international best practice.

In South Africa, the Ports Regulator is empowered by the National Ports Act (Act no. 12 of 2005) to, inter alia, monitor the activities of TNPA to ensure that it performs its functions in accordance with this Act; and to hear complaints and appeals. The act makes provisions for the incorporation of TNPA (National Ports Act, 2005), yet such a provision has been ignored since the promulgation of the act and even beyond the establishment of the Ports Regulator, which ought to enforce adherence to the provisions of the act.

In South Africa, when the Authority proposes tariffs, the "Regulator should ensure that such tariffs allow the Authority to:

- Recover its investment in owning, managing, controlling and administering ports and its investment in port services and port facilities;
- Recover its costs in maintaining, operating, managing, controlling and administering ports and its costs in providing port services and port facilities; and
- Make a profit commensurate with the risk of owning, managing, controlling and administering ports and of providing port services and port facilities." (TNPA, 2012:8-9)

The preceding bullet points are akin to the fourth point from the World Bank Port Reform Toolkit, i.e. "Generate internal cash flows needed to replace and expand port infrastructure and superstructure." In this respect, TNPA's revenue requirement methodology has the financial sustainability criteria in common with the global best practice for a port authority. Nevertheless, South Africa's port authority pricing also factors in the risk element that is associated with owning, managing, controlling and administering ports. This element is a puzzle because TNPA is a monopoly and faces no competition from any rival landlords (Bhuckhory, 2013; Fruit SA, 2013). Further to this, TNPA decides the amount of total revenue that should come from ship owners, cargo owners, and tenants, using the tariff structure, which

is the allotment of costs to these port stakeholders. This tariff structure is governed by four core design principles summarised below:

- “Cost Based – each tariff should cover the costs of providing the related infrastructure and services;
- User Pays – every port user should contribute for the right and access to port facilities that they use;
- Required Revenue – the tariff methodology, as a mathematical function, can be disaggregated and applied to each individual tariff to cover operating costs, depreciation, taxation and a fair return on TNPA’s assets; and
- Competitiveness – TNPA says that market expectation and common or best practices have been considered” (TNPA, 2012: 8)

These core design principles are said to help support the tariff structure with “sound design principles, a more balanced and equitable distribution of charges to various port user groups, the need to support government policies through the tariff structure, as well as being strongly aligned with international norms and standards” (TNPA, 2012:8). Notwithstanding what TNPA says concerning its port pricing structure, Meyiwa and Chasomeris (2016) demonstrate that the port authority falls short of its own aforementioned principles. For example, charging uniform tariffs for ports that differ in structure, commodities handled and markets served is in conflict with the cost-based and user-pays principles. These principles do not allow for competitiveness based on TNPA prices. Another issue is the fact that running the complementary ports system clashes directly with cost-reflective pricing and inter-port competition – so also is the practice of intermodal, intra-port and inter-port cross-subsidisation.

With respect to governance, SA’s ports share some characteristics with ports that subscribe to the Asian Port Doctrine in that SA’s ports are publically owned and predominantly publically run (Chasomeris, 2011). They also were, for the most part, constructed through government auspices and in the older dispensation they were seen to favour some sectors which the government had targeted for development over others (TIPS, 2014). These are also classical characteristics of the developmental state mandate where government invests heavily in key sectors that can have positive industrial spin-offs (Woo-Cumings ed. 1999) and was also evident under SA’s Apartheid government with its heavy investment in domestic steel and petrochemical production through Iscor/Mittal and Sasol, precisely because of “the strategic goals to have domestic capabilities in key sectors such as those providing inputs into arms

manufacture” (Roberts & Rustomjee, 2010: 56). Thus, SA’s ports have historically shared common traits with those run and constructed under the Asian developmental state model. The significant difference is with respect to pricing in South Africa’s ports which seems to be misallocating its cross-subsidies. From this, and other misallocations, stem a host of stakeholder complaints regarding South Africa’s ports authority pricing and port governance which will be explored in this paper.

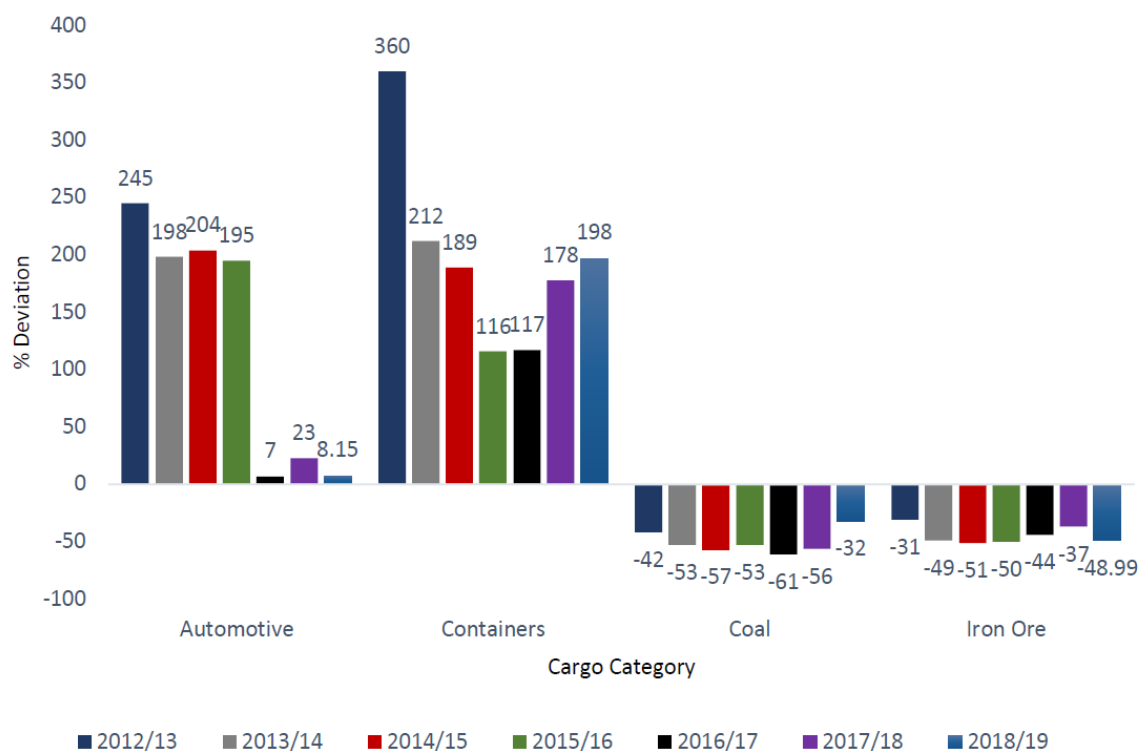
Moreover, it is international best practice for landlord ports to recover a bulk of their revenues from terminal operators (tenants) through rental incomes and for the marine infrastructure costs to be largely allotted to shipping lines (TNPA, 2012). Table 2 shows, however, that the port costs in the history of TNPA have largely been repatriated from cargo owners, with shipping lines facing lower tariffs than the global benchmarked average whenever they call in South African ports. Table 2 shows that since 2012 there has been a noticeable, though slow, progression towards the proposed long term end state in port costs distribution. Specifically, cargo owners have being allotted reduced cost burdens, but overall still contribute the greatest revenues to TNPA. TNPA argues that allocating a greater share of port costs to shipping lines will make South Africa’s ports less appealing and will inevitably cause them to shift the cost burden to cargo owners through higher prices. Nevertheless, the Ports Regulator (2015) rejected the TNPA proposed end state distribution of port costs amongst port users and proposed their alternative long-term end state that sees a greater proportion of costs allocated to shipping lines (36%) and tenants (29%), with a significant reduction in costs allocated to cargo owners, from the present 60% to the proposed 35% (Gumede & Chasomeris, 2018).

**Table 1. Distribution of Port Costs among Port User Groups**

Port user groups	Current realised (2012)		FY 2018/19	Proposed long term end state	
	TNPA	Ports Regulator		TNPA	Ports Regulator
Cargo owners	61%	60%	55%	46%	35%
Tenants	19%	22%	23%	33%	29%
Shipping lines	20%	18%	22%	21%	36%

Source: Author created using information from the TNPA, 2012; Gumede and Chasomeris, 2018; and Ports Regulator, 2015.

The legacy of ad-valorem tariffs was still evident as recently as 2019. Figure 1 shows that the bulk commodities are charged much lower rates than the Ports Regulator benchmarked mean and containers and automotives are charged much higher than the benchmark mean. Benchmarked mean of port costs refers to the average port costs of each cargo category observed from the ports in the sample that has been benchmarked. The Ports Regulator calculates it from its annual Global Port Pricing Comparator Study. Containers (export and import) and automotives are still potentially cross-subsidising bulk exports tariffs, even more so if only cargo dues are taken into account with container and automotive cargo owners facing costs at premiums of between 271% and 146% of the benchmarked mean respectively and the bulk cargo types below the benchmarked mean.



**Figure 1.** South African Port Costs (as deviation from the sample global average)

**Source:** Ports Regulator of South Africa, 2018b

Thus, TNPA ostensibly prices according to best international practices and even its core design principles that are said to uphold its structure appear sound, but the practice hitherto has not necessarily aligned. Indeed, the Anglo-Saxon doctrine in pricing appears to be followed in South Africa, but because of the ports system, competition is absent and is particularly discouraged by the use of a uniform tariff book.

### **3. Research Methodology**

Previous studies by Gumede & Chasomeris (2015) and Meyiwa & Chasomeris (2016) have used content analysis to analyse port stakeholders' comments regarding South Africa's port doctrine up to the 2014/2015 review period. Likewise, this study uses content analysis of 137 stakeholder submissions to the Ports Regulator over 9 years, from fiscal years 2009/10 to 2018/19. The study examines themes that emerge from stakeholders' comments regarding port authority pricing, pricing structure and the governance of South Africa's ports. Content analysis describes a family of analytic approaches ranging from impressionistic, intuitive, interpretive analyses to systematic, strict textual analyses (Rosengren, 1981). According to Cavanagh (1997), content analysis is a flexible qualitative data analysis tool. This tool of data collection consists of analysing the contents of documentary materials such as books, magazines, newspapers and the contents of all other verbal materials, which can be either spoken or printed. In this case the material assessed is available from the Ports Regulator's website. According to Good & Scates (1954: 670), "Content-analysis is measurement through proportion. Content analysis measures pervasiveness and that is sometimes an index of the intensity of the force" (Good & Scates, 1954: 670). For this study the themes and their 'index of the intensity' is with respect to the pricing and governance practices of TNPA as landlord of South Africa's ports as commented on by various port stakeholders including cargo owners, freight forwarders, terminal operators, ship operators and ship agents. These annual submissions, collected from the website of the Ports Regulator of South Africa, range in length from one page to 163 pages for the longest submission. The study extracts the stakeholders' main concerns, codes them into different themes and analyses their frequency distribution.

The two broad themes within which the various port stakeholders have expressed their concerns in the past are those of port authority pricing, and port governance. These will be discussed in view of the evidence from historical practices of TNPA and compared to the national government's objectives with respect to the ports and TNPA's objectives. TNPA's port



governance model and its governance objectives have been referred to as the doctrine, specifically Port Doctrine.

#### **4. Results and Discussion**

Over the 2009/10 to 2018/19 tariff review period, analyses of the 137 ports stakeholders' submissions to the Ports Regulator, resulted in the identification of 77 relevant themes. These themes are broadly categorised and discussed under port authority pricing (section 4.1) and port governance (section 4.2).

##### **4.1. Port Authority Pricing Methodology and Tariff Structure**

Over the 2009/10 to 2018/19 tariff review period, it has been stated repeatedly that the Revenue Requirement (RR) tariff methodology employed is not satisfactory, is arbitrary, unjustifiable and incentivises overstating the required revenue by inflating the weighted average cost of capital, the regulatory asset base and the market risk premium among other variables. Other themes, with relatively low frequency, were that there is inappropriate use of income from berth dues and cargo dues; that the TNPA FY 2018/19 tariff allocation will almost wholly prejudice the cargo owners (see table 1). In addition, TNPA revenues and profits are being used to subsidise other Transnet divisions rather than being re-invested into the ports system.

The most prominent themes over the period 2009/10 to 2014/15 are those relating to the arbitrary and unjustifiable nature of the RR methodology (53 submissions) and its annual above-inflation tariff increase requests (26 submissions). Market risk determinants along with the valuation of the regulatory asset base and returns to capital were arguably inaccurate (25 submissions). From 2015/16 to 2018/19, a further 15 submissions agree that the RR methodology remains arbitrary and unjustifiable. In addition, volume forecasts cause anomalies in tariff determination trends (10 submissions) and the methodology itself provides undesired incentives, thus the methodology still needs revision (10 submissions). Incentives to overstate the required revenue with a potential to undermine various port users' profitability remains one of the weaknesses of the methodology. Indeed, such critiques of the RR methodology are validated by Chasomeris (2015) and Gumede and Chasomeris (2017) that show that the RR model may incentivise unnecessary port capital expenditure (investments),

bloat operating expenditure and port prices at levels that are not in the best interests of the country's trade competitiveness and economic development objectives.

One of the three objectives to be achieved through the methodology is to “make a profit commensurate with the risk of owning, managing, controlling and administering ports and of providing port services and port facilities” (TNPA, 2012: 8-9). The stakeholders are of the view that the ports are a strategic national asset used to facilitate South African trade and improve its competitiveness, therefore the prices charged for providing the services by TNPA should enable the economy to achieve these; and the financial structure of ports as national strategic assets should be structured to enhance competitiveness; not be against recovery of opportunity costs of capital employed. In addition, the South African Shippers' Council (SASC, 2013) mentions that TNPA did not initially pay for the infrastructure and they were only given the mandate to own, manage and administer the assets so as to ensure their efficiency and effectiveness. The same sentiment is repeated by National Ports Consultative Committee (2017, 2018) for the most recent tariff years leading to 2019/20. Therefore, the ports are regarded as national assets to serve the welfare of the economy that should not be used to generate huge profits out of port operations.

The RR methodology is heavily dependent upon the valuation of the Regulatory Asset Base. Lotter and Chasomeris (2018) explain that there are essentially two viable valuation methods for the RAB. These are the Financial Capital Maintenance (FCM), based on historic cost and Trended Original Cost (TOC); and Physical Capital Maintenance (PCM), based on the Depreciated Optimised Replacement Cost (DORC) model. TNPA argues in favour of the PCM method, then treated on a TOC going forward. The Ports Regulator stipulated that the FCM method, should be applied in the valuation of the TNPA valuation of port assets. Indeed, South African Association of Ship owners and Agents (AASOA, 2018) highlights that the TNPA used an inappropriate RAB valuation methodology that overinflates port assets. Likewise, Sasol (2018) stated that the use of the historic approach to the RAB valuation has allowed TNPA to get away with excessive profits for years. The historical cost approach has assets prior and up to the year 1990 included in the valuation so the Ports Regulator does well to use the TOC which excludes the fully depreciated pre-1990 assets, bringing them to a zero valuation according to the South African Association of Freight Forwarders (SAASOA, 2018). In the end, the Ports Regulator's (PRSA, 2018) Record of Decision, having taken stakeholders' submissions into consideration, applied a version of the FCM method to the RAB valuation.

This resulted in a ZAR16,5 billion reduction in the value of the RAB and that contributed to a ZAR1 billion reduction in the required revenue for TNPA and a 6.27 percent weighted average decrease in tariffs for the review period 2019/20 (PRSA, 2018).

With reference to the tariff structure, for the tariff review periods 2009/10 to 2019/20, 52 submissions cited that the current tariff structure inhibits ports' global competitiveness, with five of these recommending that TNPA ought to do a thorough costing for each port service offering and practice cost-based pricing. Fifteen submissions said that the tariff structure is misaligned with international tariff standards, and 15 submissions also highlighted that the pricing is inconsistent and unreasonable. Five stakeholders' submissions still maintained that the majority of the TNPA proceeds are used to subsidise other divisions of Transnet instead of reinvesting in the ports sector. It is clear that there is confusion about the purpose of cross-subsidies in the South African ports system or that TNPA does not do a good job of justifying these. The possibility of differential pricing has been suggested, for example, on regional differences such that the transshipment hubs may be priced differently (SAAFF, 2017). This would be a challenge because the income and expenditure statements for each of the eight commercial ports are not made public and with the prevailing blanket tariff approach the potential for differential pricing is inhibited by a lack of information.

Table 1 shows that slow progress has been made toward the adjustment of the tariff structure into a fairer distribution of port costs among port user groups. However, TNPA's tariff structure still falls short of satisfying sound pricing principles outlined by Strandenness and Marlow (2000) as well as their own core design principles.

The Asian port pricing, governance and investment practices resonate with the ideology of a developmental state as far as cross subsidies for capacity expansion and administered prices to control for market failure are concerned. South Africa, on the other hand, professes to be a developmental state yet in TNPA, one of the most profitable divisions of Transnet, the pricing is said to be cost-based and the tariff structure founded on user-pays principle, competitiveness, best practices and revenue requirement. These basis, except for revenue requirement, are tenets of the Anglo-Saxon port doctrine and the best practices supposedly adhered to are those endorsed by the World Bank in its Port Reform Toolkit (2007). The revenue requirement principle, however, is manifestly opposed to the first three principles. It provides disincentives to efficiency in TNPA because revenues are predetermined and the prices adjusted to those targets with no incentive to reduce costs and little incentive to improve productivity. With

respect to the tariff structure, the cross subsidisation practiced in Asian ports is for the expansion of ports, not the funding of loss-making divisions, and alternative modes of transportation, as is the case with Transnet in South Africa.

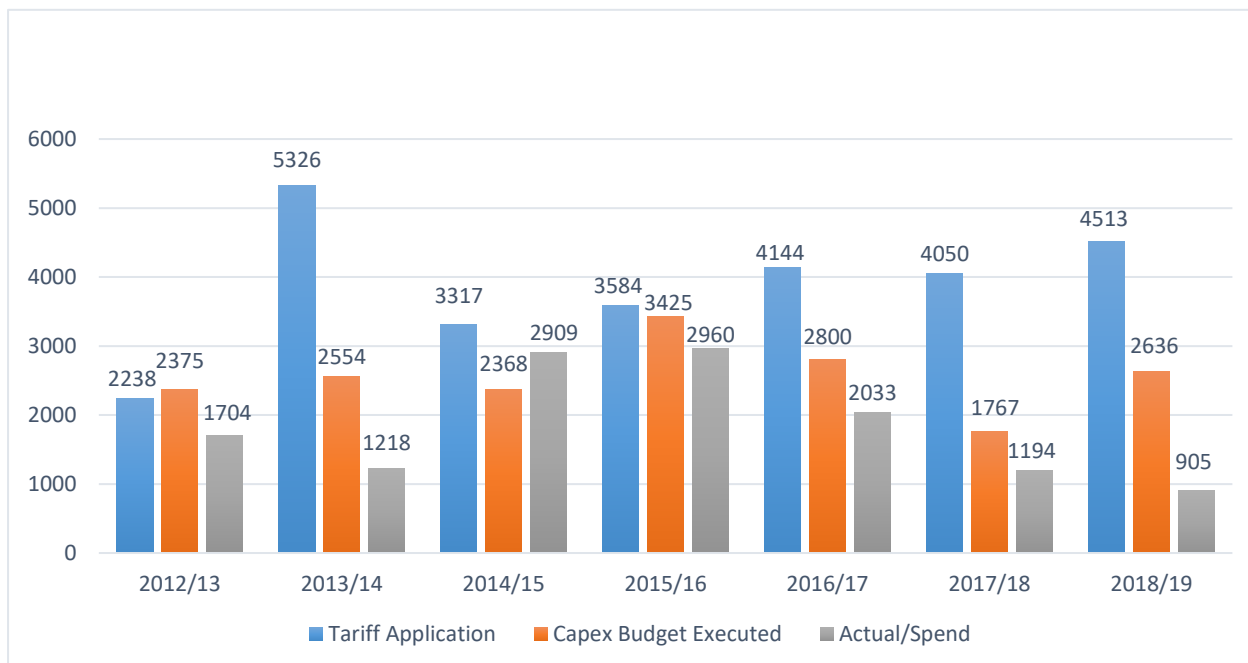
## **4.2 Port Governance**

From 2009/10 until 2017/18, 43 stakeholders criticized TNPA for inefficiency and low productivity of ports, for having no regard for the prevailing economic conditions in its operations and pricing (30 submissions), for lack of transparency in reporting or justification of prices (18 submissions), for non-compliance with national policies and for favouring TPT over private terminal operators by allowing TPT to charge monopoly prices even though it is not the only terminal operator. Four submissions stated that TPT is generally given preferential treatment that gives it an unfair advantage; and abuse of monopoly power. Furthermore, the complaint that TNPA is simply non-compliant has persisted even for the tariff years 2018/19 and 2019/20, with the proportion of stakeholders submissions advancing that complaint growing from 13 in 2018/19 to 20 in 2019/20. This complaint on non-compliance is in addition to the fact that TNPA is required, according to the National Ports Act, to submit its request for tariff increases to the National Ports Consultative Committee (NPCC) as well as the Ports Regulator. To the best of the NPCC's knowledge, TNPA has never complied in that respect (NPCC, 2018).

Five stakeholders' submissions stated that much of the TNPA proceeds are used to subsidise other divisions of Transnet instead of being reinvesting into the ports sector. SAASOA (2018) and Sasol (2018) berate TNPA for cross subsidisation and transferring profits to the Transnet Group while maintaining only minimal investment in the ports. The NPCC supports cross subsidisation within the port system. However, it is difficult to monitor the degree to which the Authority may or may not be subsidising other Transnet divisions. A further conflict of interest is that the members of the TNPA Deemed Board are the same as the members of the Transnet Board (Transnet, 2019). Therefore, in some instances board decisions of the Transnet group may supersede the best interests of the TNPA division and port stakeholders. Indeed, from 2010 to 2014, about R16.7 billion was transferred from the TNPA division to the Transnet group. Hence, port users argue that they are cross-subsidising less profitable divisions of Transnet. The Cape Chamber of Commerce (2017) recalls that cross-subsidisation was referred

to as the Transnet Group milking the ports authority of its profits and that no other port in the world has a tariff structure like South Africa's.

TNPA has the right to issue licences and it is expected to monitor terminal operators' productivity. TPT, however, is a public terminal operator division within the same Transnet Group, which presents a conflict of interest. Furthermore, TPT is not subject to Ports Regulator's regulatory oversight. This is all the more reason why the TNPA needs to be incorporated according to SAAFF (2017). That is, TNPA needs to be a stand-alone SOC. In addition to cross-subsidisation there is a lack of transparent risk delineation between TNPA and the Transnet Group. TNPA's delegation of authority framework is linked to that of Transnet, the latter's framework not being consistent with that of the National Ports Act. This, according to the NPCC (2018), has an impact on decision-making, CAPEX spend and inefficiencies within the ports system. Figure 2 shows the comparison between the revenue required, applied for by TNPA in the annual tariff application, budgeted CAPEX and the actual CAPEX. Since 2012/13 fiscal year the revenue requirement has been consistently higher than the budgeted and actual CAPEX, which prompts question: Are such wide discrepancies between revenue applied for and the actual capital expenditure a sign of misallocated funds or a lack of capacity and competency to spend? The actual CAPEX declined by more than 69% from ZAR2.9 billion in 2015/16 to less than ZAR905 million in the 2018/19 fiscal year. However, annual profit before tax increased 155% from just over R2.9 billion in 2016/17 to more than R7.4 billion in 2018/19. (Transnet, 2019). This has all been against the backdrop of increasing CAPEX revenue requirement applications since 2012/13 from ZAR2.238 billion to ZAR4.513 billion in the 2018/19 fiscal year with the biggest discrepancy being in 2013/14 where revenue requirement was at its highest at ZAR5.3 billion, dwarfing the actual capital expenditure which stood at ZAR 1.2 billion for the same year. The decline in actual investment into the ports system is not consistent with TNPA's planned increases and is a major concern to port users and the Ports Regulator.



**Figure 2.** Capital Expenditure Tariff Application vs. Budget vs. Actual, FY 2012/13 to FY 2018/19

**Source:** Authors adapted and compiled from TNPA (2019).

The historical underinvestment in South African ports as well as the continued reduction in actual CAPEX may compromise the trade competitiveness of South Africa. TNPA governance, pricing and investment generally counters the ideal role of State-Owned Enterprises in a developmental state contributing to South Africa's economic development and specifically contradicts TNPA's goal to contribute to economic development through a reduction in logistics costs.

The treatment of tax in the RR formula is controversial. The NPCC (2017) requires assurance from the Ports Regulator that the Authority is taxed on its stand-alone profit and not on its watered-down profit due to the Transnet Group or divisional influences. This is deemed important due to the Authority not being incorporated or appropriately ring-fenced in compliance with the National Ports Act of 2005. Indeed, the Ports Regulator observed that the 28 percent tax allowance on TNPA as part of the RR methodology has been excessive, resulting in high prices for port users and exorbitant profits for the Transnet group. Moreover, the 28 percent tax rate would have been justified for a stand-alone entity, but TNPA is a division within Transnet and should not be carrying an unjustifiably greater burden of tax on behalf of

the whole group. Since 2018/19, Ports Regulator instructed TNPA to use an equitable tax rate approach. This approach gives due consideration to the profits and losses of other divisions in the Transnet Group. Fakir and Chasomeris (2019) calculate an equitable tax rate for TNPA for the years 2011 to 2017. Their results show that port users could have saved an estimated ZAR2.6 billion had the equitable tax rate been applied from the start of regulation. Going forward, the application of an equitable tax rate should result in an estimated annual savings of about ZAR500 million for port users. Alas, the inappropriate tax calculations throughout the regulatory period along with lack of transparency and non-compliance, through inadequate information supplied to the Ports Regulator by Transnet and TNPA, are only a few of the many things that may be associated with the misappropriation of profits and funds within Transnet.

The Public Affairs Research Institute (PARI) has uncovered widespread corruption in the governance of Transnet, as the former CEO of the group is suspected to have caused a loss of approximately ZAR35 billion in what appears as suspicious transactions over 8 years (Public Affairs Research Institute, 2018). These activities resulted in the formation of a powerful structure called the Board Acquisitions and Disposals Committee (BADC), which was mainly responsible for facilitating a small network of companies among whom most information on lucrative tenders would be communicated and to whom the biggest tenders were leaked before the public call for bidding. What then followed was exotic holiday gifts given by those ‘elect’ bidding companies to Transnet’s permanent CFO (who was also chairman of the BADC), followed by that same gift-giver company winning the bid. Such corruption bearing striking resemblance to a flock of vultures encircling a carcass is very reminiscent of the Minerals-Energy Complex insofar as it was a crystallisation of business and political interests around the minerals and energy-producing sector that halted the diversification of the South African industrial base (Fine, 2008). To this the PARI (2018: 32) attests: “governance of Transnet has been undermined and repurposed to materially benefit a politically connected elite, while compromising national economic and social development.” Other corrupt activities included service providers and consulting firms in some transactions being encouraged to charge premium service fees and prices and to launder the money through paying kickbacks to other companies in which the BADC members had interests. The report compiled after the audits states that “at Transnet, governance structures have been repurposed to enable corruption and rent seeking on a massive scale” (Public Affairs Research Institute, 2018: 7).

The democratic component of South Africa's developmental state also comes under question when, 14 years after the act prescribed the corporatisation of TNPA, Transnet has made very little progress in that direction despite the legislation to incorporate being in agreement with most private port users. The NPCC supports the recommendation that the Ports Regulator finds a middle ground that will involve commencing the corporatisation of the Ports Authority from 1 April 2019. Along with this recommendation, the NPCC (2018) recommends a CAPEX expenditure to be set aside to facilitate a smooth transition.

Upon reflecting on South Africa's port governance and the preceding evidence of corruption, the disregard for legislation, incongruity between principles and actual practice, non-compliance with regulation, misappropriation of investment budget, discouragement of competition and the persisting player-referee dilemma between TNPA and TPT only serve to reinforce suboptimal port performance and unjustifiable pricing. All of these are characteristic of the present South African port doctrine, which is an inconsistent amalgam of Asian and Anglo-Saxon port doctrines with sub-optimal results.

## **5. Conclusion and the Way Forward**

South Africa is pursuing an ideal of a democratic developmental state. South Africa's system of eight commercial seaports, however, is unique and is financed and managed using a mix of elements from the Anglo-Saxon and Asian doctrines, and appears to be attempting to charge port tariffs according to the Anglo-Saxon doctrine. The study used content analyses to examine 137 stakeholders' submissions to Ports Regulator from 2009/10 to 2018/19, classifying themes into two broad categories, namely port authority pricing and port governance, which together define the port doctrine. The major themes identified on port authority pricing, were that after a number of attempted improvements on the RR methodology and tariff structure, challenges still persist, not the least of which are the disincentives to improving productivity and reinvestment into ports. Regarding the RR methodology, there remains unresolved issues on the correct valuation of the regulatory asset base. As it stands, the RR methodology does not provide the right incentives and may shield inefficiencies at ports even against annual planned budgets for CAPEX that are progressively higher, while actual port investment is declining. TNPA also seems to be contradicting principles governing its own tariff structure while the slow progress toward a fairer cost allocation to different user groups remains a continuing disregard of international best practices, which TNPA claims to be aligned with. Moreover, the



complex governance structure of Transnet and the history of intermodal cross-subsidization has, of late, proved to be conducive for corruption at the Group level. If the *status quo* remains, there is little assurance that TNPA, the most profitable division, is insulated from the corruption in which the Group has been implicated. The recommendation is a swift incorporation of TNPA as a stand-alone entity outside of Transnet. Incorporation of TNPA as a stand-alone entity in line with the Act and best international practices for a landlord port as recommended by the World Bank (2007) and also in accordance with TNPA's (2012) aspiration. It would further help to remove the present conflicts of interests, improve transparency, accountability and regulation as well as incentivise improved productivity and infrastructure spending and attract private investments into the ports system.

This study's first contribution is the comparison and contrast between claims at democratic developmental statism by SA's government and practice by TNPA as a State-Owned Enterprise in its contribution toward the fulfilment of developmental state goals. TNPA's practices, here referred to as a port doctrine and assessed against the reviewed literature, speak neither into SA's democratic developmental state goals nor into international best practices of port authority pricing and governance. The second contribution this study makes is to link the theoretical concept of a port doctrine to the empirically verified concept of a developmental state. By briefly reviewing the Asian port doctrine in the literature and contrasting the Asian developmental state with SA's democratic developmental state, this study's further contribution is a demonstration that a port doctrine and a political ideology can and should be compatible. TNPA should adopt a port doctrine that embodies the objectives of a democratic developmental state and truly contributes to economic development.

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## **CHAPTER 5: AN ANALYSIS OF THE POLICY ENVIRONMENT SURROUNDING PUBLIC-PRIVATE PARTNERSHIPS IN SOUTH AFRICAN PORTS**

### **Abstract**

One of the goals of the developmental state is to create an environment conducive for the prosperity of the private sector. The state works hand in glove with the private sector, while using its State-Owned Entities to drive development through targeting key industries for rapid growth, but with the intention of fostering private enterprise and increasing private investment in rapidly growing the economy. Working with the private sector and creating a conducive environment for its success implies a transitory phase where the state gradually reduces its involvement in enterprises and devolves many commercial undertakings to the private sector as soon as those state-targeted industries show stability and promise sustainability. This chapter argues that if South Africa were pursuing a developmental state in its economic policies then the operating environment in its seaport terminals and marine services would be conducive for the prosperity of private port terminals. Moreover, it would also be characterised by a growing private sector market share in its ports as one of the key industries targeted for development. Using document analysis of the port authority's 21 media releases and roadshow reports, the chapter investigates the role and growth of the private sector in South African ports. The study found that while there is consultation with industry stakeholders with respect to pricing of port services and the tendering process is relatively transparent, when it comes to partnering with the private sector the regulatory environment in South African ports is not as negotiated as it may be in other ports in line with best international practices. The National Ports Authority must actively solicit more input from prospective and current terminal operators to improve the nature of public-private partnership agreements, thus making private port stake-holders key contributors to the creation of a better operational environment and formulation of the port doctrine.

### **5.1. Introduction**

The International Monetary Fund (2018) is of the belief that infrastructure investment by the public sector, such as paved roads and wider electricity rollout, positively contributes to the support of increased private investment in the long run as infrastructure better facilitates the

operation of private business. This idea is not at all removed from one of the pillars of constructing a developmental state, that is, government needs to create an enabling environment for the prosperity of private enterprise. One must understand, however, that for the developmental state an enabling environment not only goes beyond infrastructure investment but also includes institutional capital and the regulatory framework that places slightly more demands upon private business than would be expected for a regulatory state.

The discussions on the developmental state started in the late 2000s and the first volume of papers on the possibility of the South African developmental state, compiled by Ben Turok (2008), on the threshold of Zuma's presidency, with the next volume by Edigheji (2010). In 2011, the government set up a planning commission comprising various stakeholders from the public sector, business and academia, all under temporary contract, with one permanently employed cabinet minister (Trevor Manuel) as the chair. The purpose of the commission was to conduct a diagnostic report in which they identified eleven socioeconomic challenges that befall the economy and start planning a way forward concerning them. From this diagnostic report, the country's prevailing overarching macroeconomic strategy – the National Development Plan (NDP) – was constructed. Launched in 2012, the NDP serves as a vision for the country and a blueprint to reduce poverty and inequality by the year 2030 (National Planning Commission, 2018).

As late as 2012 it was revealed that there is a 30-year reinvestment gap in South Africa's ports finances. This gap, among other factors, is believed to have been a contributor to the generally poorly performing ports sector (TIPS, 2014). In that same year, Transnet launched the *Market Demand Strategy* (Transnet, 2012), a 7-year long R300 billion capital investment strategy geared toward expanding rail, port and pipeline infrastructure to meet and to keep up with market demand. Evidence suggests, however, that of the R300 billion earmarked for investment, a substantially lower amount of actual investment has taken place hitherto. For example, with respect to port-related investment there is a noted decline of actual CAPEX from R2,96 billion to R960 million over the past four years (Meyiwa & Chasomeris, 2020).<sup>7</sup> Notwithstanding this, the Market Demand Strategy was introduced as a response to the need

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<sup>7</sup> This paper has been published in the 2020 issue of Maritime Studies journal. Citation: Meyiwa, A., Chasomeris, M. 2020. South Africa's port doctrine: dilemmas and the way forward. *Maritime Studies*, 19, 179–191



for the development of SOE infrastructure to promote economic growth, reduce the cost of doing business and, among other things, enhance the country's competitiveness.

Here one sees the corresponding response from the SOEs to the need for the development of not only the country but the SOE's capacity to keep on contributing to that overarching goal. In 2014, government launched *Operation Phakisa*<sup>8</sup>, which is one of government's ongoing projects to make the *National Development Plan* come alive. *Operation Phakisa* is a cross-sector programme where various stakeholders engage to implement initiatives and concrete actions to address constraints to delivery in a prioritised focused area for public accountability and transparency (DPME, 2014). It was born as a result of the president's 2013 visit to Malaysia in which he encountered the *Big Fast Results Methodology* through which the Malaysian government achieved significant government and economic transformation within a very short time. With the support of the Malaysian government, the *Big Fast Results* approach was adapted to the South African context. *Operation Phakisa* is a results-driven approach, involving setting clear plans and targets, on-going monitoring of progress and making these results public. One of its focus areas is the oceans economy in which the focus is to fast-track the development through concerted investment efforts from the public and the private sector into South Africa's maritime sector (Operation Phakisa, 2014).

A detailed discussion of how the policies and strategies cited above speak to the country's developmental state objectives with respect to the ports sector is undertaken in chapter 6 that forms part of the overall study.<sup>9</sup> The purpose of this chapter is the assessment of only one among the marks of a developmental state and that is the collaborative efforts toward the development of the ports sector through public-private partnerships (PPPs) hitherto and the environment within which this has had to take place. This will be done through document analysis of the port authority's 21 media releases and roadshow reports by assessing the degree to which regulation, transaction type, lease durations, licenses issued and permits granted all allow for the flourishing of private terminal operators.

In this chapter, section 5.2 starts by very briefly reviewing different examples of PPPs in South Africa and the nature of the contracts underpinning them. Section 5.3 looks at the research methodology employed to generate the results which Section 5.4 then discusses by taking the literature on PPPs and empirical evidence thereof in ports under study, making observations

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<sup>8</sup> Phakisa is a Sotho word that translates as "Make haste"

<sup>9</sup> *South Africa's Democratic Developmental State Agenda: Rhetoric and Practice in the Ports Sector*

about South African ports environment wherein the PPPs have had to take place. Section 5.5 offers recommendations and conclusions.

## **5.2. Literature Review**

The South African government plans to take infrastructure investment as a percentage of GDP up to 30 percent by 2030 (NDP, 2012). While government has made progress towards this target, with infrastructure investment at 19.5 percent of GDP in 2016, the public sector cannot fund infrastructure alone (Treasury, 2018). The National Treasury believes that crowding in private sector investments can bring in the financing needed to meet the *National Development Plan's* target, while contributing to improved decision making and more rigorous assessment and accountability in infrastructure projects (Treasury, 2018).

First introduced in 1998, PPPs, according to the Treasury (2018: 153), are defined as “a contract between a public-sector institution and a private party, where the private party performs a function that is usually provided by the public-sector and/or uses state property in terms of the PPP agreement. Most of the project risk (technical, financial and operational) is transferred to the private party. The public sector pays for a full set of services, including new infrastructure, maintenance and facilities management, through monthly or annual payments. In a traditional government project, the public sector pays for the capital and operating costs, and carries the risks of cost overruns and late delivery”. Galvao, Wang and Mileski (2016) subscribe to the use of the term PPPs as a valid term for describing public-private interactions and Meunier & Quinet (2010: 134) note the importance of PPP saying “[...] very rare have been the ports that did cover all functions by public entities: ports are by nature a place of interface between public and private interests, the question here is rather to analyse the degree of implication of the public authorities in this complex interface.”

The National Treasury further lists 33 completed PPP projects up until the year 2018, which amount to ZAR18.2 billion, which is 2.2 per cent of the total budgeted public expenditure over the next 3 years Treasury (2018). All these projects are in a range of industries including Tourism, Accommodation, Health, Correctional Services, Water & Sanitation; and Transport. None of these, except for one purchase of two emergency towing ocean vessels, is in the maritime field. The kind of investments that are currently taking place in the maritime field are those endorsed by Operation Phakisa (2014) and the Transnet's Market Demand Strategy (Transnet, 2012). They are publicised through the website of TNPA (2018). If the opinion of

Meunier and Quinet (2010) be taken into consideration that ports are by very nature a PPP undertaking, it is the nature of SA port's PPP that remains to be assessed and this is the objective of the chapter.

Notwithstanding the Treasury's lack of accounting for the PPP arrangements in South African ports, Operation Phakisa's (2016) progress report on maritime transportation and manufacturing mentions that as the first move of the first phase of implementation the plan is to create a supporting funding model based on PPP. The investment in infrastructure in three of South Africa's ports has ZAR5 billion earmarked by government and a further ZAR7 billion PPP investment opportunity (Treasury, 2018: 9). Seeing as the Operation Phakisa is a PPP arrangement, what needs to be established is the nature of the PPP contracts and its impact on their success and the success of the private sector in ports.

A number of factors have an impact on the success of concession agreements as a form of PPP arrangement and even more factors have a determining impact on other PPPs at ports. Looking at the East Asian ports, since the time of the reforms in China there has been some form of partnership between the government and private local and international investors (Adams et al., 2006). The ascension of Asian ports from relative obscurity in the past five decades to dominating the top 50 global ports in terms of performance (efficiency and throughput) and price competition, while championed by government's investment, has had a great deal to do with the evolution of central government's relationship with local and foreign investors (Lee & Flynn, 2011).

The first modern PPP contracts were implemented in Southeast Asia in the mid-1980s and their usage then spread to the rest of the world, including low- and middle-income countries like South Africa (Perrier, Toro, & Pellerin, 2014). China and India are known to be in the middle-income trap and they see PPPs as a way to develop growth centres and help them break from it (Farrell & Vandeslander, 2015). Other reasons for PPP projects are to increase cash flows to government – through rental incomes under lease arrangements for example, raising capital for more investment, capacity constraints on government, risk sharing, innovation, efficiency improvements, increased consumer choice, the various benefits of increased competition, and the broadening of asset ownership (Osborne, 2010). Farrell and Vandeslander (2015), however, suggest that returns to government are by far the greatest reasons. In the case of South Africa's government-initiated infrastructural investment into the oceans economy, Operation Phakisa has unlocked investments totalling ZAR24 billion with the government's contribution of

ZAR15 billion (Zuma, 2017). In agreement with the findings of Farrell and Vandeslander (2015), Operation Phakisa mentions that these aggressive investments cannot be undertaken by government alone because of inadequate funds, hence the need for PPPs.

The World Bank (2019) uses four categories to classify types of PPP contracts, firstly, Management Contract and Leases – where the ownership and investment decisions remain in the public sector and there is very little private investment required, if any. Secondly, Concessions, which are still the most common types of PPP arrangements – accounting for almost half of all contracts – where the private sector is responsible for financing new investment as well as operating and maintaining public-sector assets. Thirdly, a Greenfield project where the private sector invests in new assets which are to be operated on behalf of the public sector as a common user facility, then transferred back to it at the end of the concession period. Finally, there are Divestitures, where the private sector buys up equity in a state-owned entity (Farrell & Vandeslander, 2015). Panayides, et al., (2015) also point out that although PPPs provide mechanisms that can exploit the advantages of the public and private sectors, other factors may influence the success of PPPs. Institutional theory has recognised such factors, which are focused in particular on the involvement of the public sector and its ability to institute an environment where the partnership can flourish. According to Spackman (2002) this is especially true where accountability is critical, cost shifting presents problems, the time frame is long and societal normative choices are more important than costs.

One key distinction between South Africa's developmental state and the classical East-Asian developmental state is the emphasis on democracy. South Africa seeks to be sensitive to her history and legacy through redress and inclusivity and this makes a democratic approach to the implementation of policy an indispensable *modus operandi*. In their comparison of public-private partnerships in airports and seaports in low- and middle-income countries, Farrell and Vandeslander (2015) use eight 'granules' — the eight 'Ws' — as the basis for the analysis, comparing PPPs in terms of 'What' 'When', 'Where', 'Why', 'Whole', 'Who', 'Whom' and 'Which way'. Their conclusion is that the main differences between seaport and airport PPPs emerge in respect of 'Whom' (choice of private-sector partner), 'Which Way' (PPP models, contract duration, and contract award procedures), and 'Whole' (bundling of facilities). In South Africa, in view of inclusivity and redress, democratic convictions prompt us to answer to the 'Whom' with more caution and discretion. Caution because in South Africa's highly politicised business environment, any bidding and tendering process that may remotely be seen

as unjust or inequitable may incite civil action or unrest; and discretion in that while trying to achieve equity and redress, the state must not compromise on quality and delivery – especially not with private investors contribution to the developmental project. For the reasons above, the nuances between PPP contracts in Asia's classical developmental state and South Africa's developmental state are more pronounced by democratic considerations. So while it is fitting to ask about how tenders and concessions were awarded in countries like China, Hong Kong, Taiwan, South Korea, Malaysia, Thailand, Singapore and Japan for example, it is an expectation that the answer to the question may not constitute an exact fit into South Africa's paradigm.

Using data collected from the *World Bank's PPI Database* dated 1995 to 2011, Panayides et al. (2015) use seven institutional factors to determine the success of PPPs in the ports sector and these are: voice and accountability, government effectiveness, regulatory quality, market openness, ease to start a business, enforcing contracts, and protecting investors. These are the ease of doing business indicators from the World Bank. From their analysis they conclude that port PPP initiative success is influenced positively by the institutional variables: regulatory quality, market openness, ease to start a business and enforcing contracts. They also find that the quality of regulatory practices has a significant and positive impact on PPP initiatives and successes in ports and, remarkably, government effectiveness which reflects the quality of public services, policy formulation and implementation and government credibility as to the implementation of such policies is found to be negatively related to PPP initiative success in ports. This, according to Panayides et al. (2015), may be attributed to the fact that government is so effective in developing and implementing policies with respect to port investment and management that there is no need for private sector involvement. The Port of Singapore provides a good example. According to Cullinane et al. (2007) there is limited involvement of the private sector in the Port of Singapore and that is restricted to joint ventures with a few shipping lines. Another example is the case of Hong Kong-based Hutchison Port Holdings which has been successful in capturing Mainland China's container port market share through a network of joint ventures. The firm's regionalisation drive, in addition to traditional economic factors, is explained by socio-cultural and political factors within the context of Mainland China's economic articulation with the global economy (Airriess, 2001).

Doing an international comparison for public-private partnership projects between China, Taiwan, Singapore, Indonesia and the UK, Chou and Pramudawardhani (2015) use 35 potential

important factors (15 key drivers and 20 Critical Success Factors) and 69 risk allocation preferences which they identified from literature. Collecting data from structured questionnaires informed by the literature reviewed, the questionnaires were sent to PPP practitioners and academics to generate the results. From their analysis, Taiwanese PPPs had, as their key driver, the need to improve maintainability as the most important factor along with the macroeconomic stability and an organized and committed public agency as critical success factors for PPPs initiated (Chou et al., 2012). In Singapore, organized and committed public agency, appropriate risk allocation and risk sharing, and a strong private consortium were considered the three most important indicators. In China, the three most important CSFs were favourable legal framework, appropriate risk allocation and sharing, and commitment and responsibility of the public and private sector. From the study by Chou and Pramudawardhani (2015), it can be gathered that although these East Asian countries can be collectively considered successful developmental states, various PPP practitioners consider key drivers, success factors and risk-sharing criteria in diverse ways and based on their experiences with PPP projects. This gives legitimacy to South Africa's approach to running a developmental state under democratic principles. What is left is the evidence of such democratic practices and the degree to which it is thus far succeeding. The exploration of such evidence, however, is the subject of a different chapter.

There are many studies assessing the success of PPPs using international comparisons, but those looking more in-depth into the evolution of PPPs in each country in the Asia Pacific are scarce to non-existent. For example, Aerts et al., (2014) use a multi-actor analysis, in order to explore the critical success factors (CSFs) for sound implementation of public-private partnerships (PPPs) in the port context, and to determine the diverging opinions of stakeholders with regard to the importance of these CSFs. The results indicate that eight CSFs, out of more than 70 that were identified for their research, are of superior importance in port PPPs. These were: the concreteness and preciseness of the concession agreement, the ability to allocate appropriately and to share risk, the technical feasibility of the project, the commitment made by partners, the attractiveness of the financial package, a clear definition of responsibilities, the presence of a strong private consortium and a realistic cost/benefit assessment (Aerts et al., 2014). Yet even their study does not go in-depth into assessing the legal and political climate surrounding the PPPs under examination.

The legal specifics, the anticipated returns on investment for the private firm in the transaction and other agreements for each concession contract or any other PPP arrangement often prove to be of a sensitive nature and not easily made available to researchers. Moreover, the Competition Commission has hitherto been engaged in an investigation into Transnet regarding allegations of anticompetitive behaviour, which hindered the use of primary data (Competition Commission, 2016). For this reason, this chapter will employ an empirical tool called *Document Analysis* to interrogate publicly available data on the environment surrounding the involvement of the private sector in SA port investments under the current democratic developmental state dispensation. The hypothesis is that if South Africa truly is a developmental state, as it started making such declarations in the mid-2000s, the behaviour of the state toward the private sector should be that of championing infrastructural investment and policy formulation to make the environment more conducive for the prosperity of the private sector.

### **5.3. Research Methodology**

What can be considered as a ‘document’ covers a potentially broad spectrum of material, both textual and otherwise (Flick, 2014). Flick (2014: 413) defines documents as “literary, textual or visual devices that enable information to be shared and ‘stories’ to be presented”. These can include large data sets and public records; notes, memoranda, case records, email threads and so forth; semi-public or routine documents that are at the heart of everyday social practice. There are also private papers of various kinds that we can also treat as documentary data or evidence – for example, diaries, testimony, letters and cards. Document analysis can be used as a qualitative research tool in its own right. Important here is to understand the overlap between *Document Analysis* and other tools used within the discipline of qualitative research in general. Flick (2014: 414) says that it is “entirely possible and appropriate to undertake a thematic analysis of documentary data,” thus inviting both qualitative and quantitative content analysis within the paradigm of document analysis.

Cardno (2018: 623) considers document analysis as an important practical tool for people at the forefront of policy analysis insofar as they need to be able to look behind the policy to determine the forces that brought it into being, “to tap into policy history to know how it was constructed; and most importantly, evaluate the way it is working to achieve its stated purposes.” Ritchie & Lewis (2003: 35) see documentary analysis as more appropriately fitting

where “the history of events or experiences has relevance, in studies where written communications may be central to the enquiry (for example organisational research, studies of public awareness or information) and where 'private' as well as 'public' accounts are needed.”

There are diverse ways to analyse documents and because of the broad spectrum of what can be called a document, there is no one prescribed approach that can uniquely be called document analysis. Notwithstanding that, and especially in view of textual documents, Flick (2014) believes that a generally agreeable approach is to distinguish between what documents ‘look like’ (i.e. language and form), what they ‘do’ (i.e. purpose or function) and how they are related (i.e. intertextuality between documents). Language and form refers to the question of how documents are structured, the messages produced and articulated by an author or authors to an audience. How the document looks and its style of authorship can tell much about the social setting or practice under consideration. Purpose of the document refers to the kind of reality it presents and seeks to convey vis-à-vis the reality it creates in the minds of the readers. That is, ‘what is the document doing?’ because documents do not merely describe an event but they also serve the purpose of persuasion. Finally, intertextuality highlights the importance of looking at documents not in isolation but in relation to other documents. Intertextuality purposes to assess agreements, correlations, similarities, consistency facts and presentation between documents that address the same phenomena, much like an auditor would for a firm or an organization. Intertextuality is perhaps the most important aspect of document analysis (Flick, 2014).

In this study, document analysis was chosen as the best approach to assessing secondary data publically available since TNPA could not supply primary data because of an ongoing investigation by the Competition Commission which started in July 2016. The investigation was launched regarding suspicions about potentially anticompetitive practices in TNPA and her sister company, TPT (Competition Commission, 2016). Thus, Document Analysis is used to assess 21 press releases and roadshow presentations by the TNPA that pertain to the PPP projects and other investment initiatives toward infrastructure and any auxiliary port business. These projects often fall within the Transnet MDS programme as defined above, or within the Operation Phakisa strategy. These projects are called Initiatives 2, 5, 7 and 8 by TNPA and their implementation falls within a guiding framework that is TNPAs response to the National Ports Act (2005). The framework is specified along with the Act to which it conforms in a detailed document called the *Guidelines for Agreements Licences and Permits in terms of the*



*National Ports Act No 12 of 2005*, hereafter referred to as the *2008 Guidelines* which, along with press releases and roadshow presentations pertaining to TNPA investments and PPP projects undertaken at ports, are subjected to the document analysis process. From this process, data is presented in figures and tables that paint a clear picture of the role and growth (potential) of private port terminal operators in South Africa.

For document analysis, table 5.1 lists the documents under analysis against the questions categorised above, and the summary of answers thereto. Beyond this, the 21 press releases, picked according to the relevance of their content to the MDS and *Operation Phakisa* strategy, are used to start answering questions on the nature of the PPP contracts, their duration, and the environment within which they are contrived. Results are also presented and their interpretation is in the next section of the paper. For the purpose of this study, it is important to understand the nature of the documents under analysis. That is, the roadshow presentations are public declarations of TNPA's intentions or objectives and stakeholder empowerment sessions, while the press releases are statements of what TNPA (in partnership with the private sector) has accomplished or at least the presentation of the outcomes from TNPA's activities undertaken to fulfil those intentions. This understanding is key when considering the intertextuality between documents.

## 5.4. Results and Discussion

Table 5.1 presents the answers to the first two questions of a document analysis process which is the language and form and the purpose/function of these documents. All documents' language register is consultative/professional, with the exception of the TNPA Guidelines for Licences and Agreements, which has a rather frozen/static language register and style but leaning more toward the Formal/Regulated nature. Again all documents analysed are publically available and are in powerpoint presentation format except the *Guidelines*, whose format is that of an organisational record although made publically available. Table 5.2 demonstrates, when each of the seven documents are compared to each other, that common content can be seen and in the case of blank cells in the table, the implication is that there is no common content between a document and others. Concerning these roadshow presentations it must be recalled that the overall objective for each was to engage external stakeholders and to empower them through information and invitation to participate in the business of ports, hence the commonality of

some of the content across documents under analysis. What is important to observe regarding intertextuality between the documents tabulated above is that there are no disagreements between them but not all of them speak to exactly the same thing. The only commonality among them is the consultative-informative nature of their purpose. Integrating the content of the TNPA press releases which, as mentioned previously, are statements of what TNPA has accomplished in response to its stated intentions in the Roadshow presentations.

**Table 5. 1 Results from the Document Analysis of TNPA Presentations**

	<b>TNPA Guidelines for licences and agreements</b>	<b>Presentation B2B: Port of Saldanha</b>	<b>Operation Phakisa Presentation TNPA Customer Conference</b>	<b>B2B Networking Forum</b>	<b>Supplier Development Initiatives Port of RB</b>	<b>Richards Bay B2B MDS, Ports Act Implementation &amp; Phakisa</b>	<b>ISV Precinct Strategy</b>
<b>Purpose</b>	<p>The document is written in response to the <i>National Ports Act No 12 of 2005 (the Act)</i>, with the objective of helping TNPA stakeholders better comply with the Act and fulfil its purpose</p> <p>Highlight provisions of the <i>Act</i> pertaining to the formulation of agreements, issuing of licences and permits for various port stakeholders whose operations have their residence within the port limits</p>	<p>To exchange information with TNPA's stakeholders both internal and external, giving an update on infrastructural developments, progress on completed and on ongoing investment projects and anticipated benefits</p> <p>To communicate the intent, marketing strategy and value proposition of the Port of Saldanha.</p>	<p>To communicate with external stakeholders about the potential of the ocean economy through Marine Transport and Manufacturing (MTM)</p> <p>To communicate initiatives for MTM with respect to three categories namely infrastructure and operations; skills and capacity building; and market growth;</p>	<p>To reveal how the Market Demand Strategy (MDS) is being/to be implemented in Durban in collaboration with various private and public stakeholders</p> <p>To reveal the five strategic focus areas through which the Port of Durban will contribute to the MDS; To communicate the principles underpinning the implementation of Island View Strategy</p>	<p>To communicate with the public about the various partnership Transnet SOC has formed with other stakeholders in order to implement its Supplier Development and Enterprise Development initiatives across the country</p> <p>Promote Small, Micro and Medium Enterprise (SMME) participation in the business of Transnet including ports; To show that Transnet has surpassed its supplier development and localisation targets to the year 2015</p>	<p>To communicate with the public about the totality of all projects currently taking place under the MDS, Operational <i>Phakisa</i> and the Provisions of the <i>National Ports Act</i></p> <p>To communicate achievements to date, including: approval of the (2008) <i>Guidelines for Agreements, Licences and Permits</i>; Alignment of TNPA strategy with the <i>Act</i>; Agreed RR tariff methodology</p>	<p>To inform the public of the upcoming initiative to transform the Island View Shipping Precinct - a liquid bulk hub in the Port of Durban</p> <p>To give motivation for why the IVS Precinct needs transformation and to give effect to <i>Sections 11 and 56 of the National Ports Act</i></p>

**Source:** Authors compiled from TNPA Presentations (TNPA, 2018a)

**Table 5. 2 Intertextuality**

2008 Guidelines		PRESENTATION B2B: PORT OF SALDANHA	Operation Phakisa Presentation TNPA Customer Conference	B2B Networking Forum	Supplier Development Initiatives Port of RB	Richards Bay B2B MDS, Ports Act Implementation & <i>Phakisa</i>	IV Precinct Strategy
2008 Guidelines	1		Core functions of the TNPA as provided for in <i>ss 11 of the Act</i>	Principles underpinning implementation of Island View (IV) Strategy		Core functions of the TNPA as provided for in ss 11 of the Act	Principles underpinning implementation of IV Strategy
PRESENTATION B2B: PORT OF SALDANHA		1	MTM projects at Port of Saldanha, update on ongoing and completed projects			MTM projects at, update on those ongoing and completed projects	
Operation Phakisa Presentation TNPA Customer Conference			1			GDP contribution and job creation in Marine Transport and Manufacturing (MTM) Sector; Emphasis on Initiatives 2, 5, 7 & 8	
B2B Networking Forum				1			Principles underpinning implementation of IV Strategy
Supplier Development Initiatives Port of RB					1		
Richards Bay B2B MDS, <i>Ports Act</i> Implementation & <i>Phakisa</i>						1	
IV Precinct Strategy							1

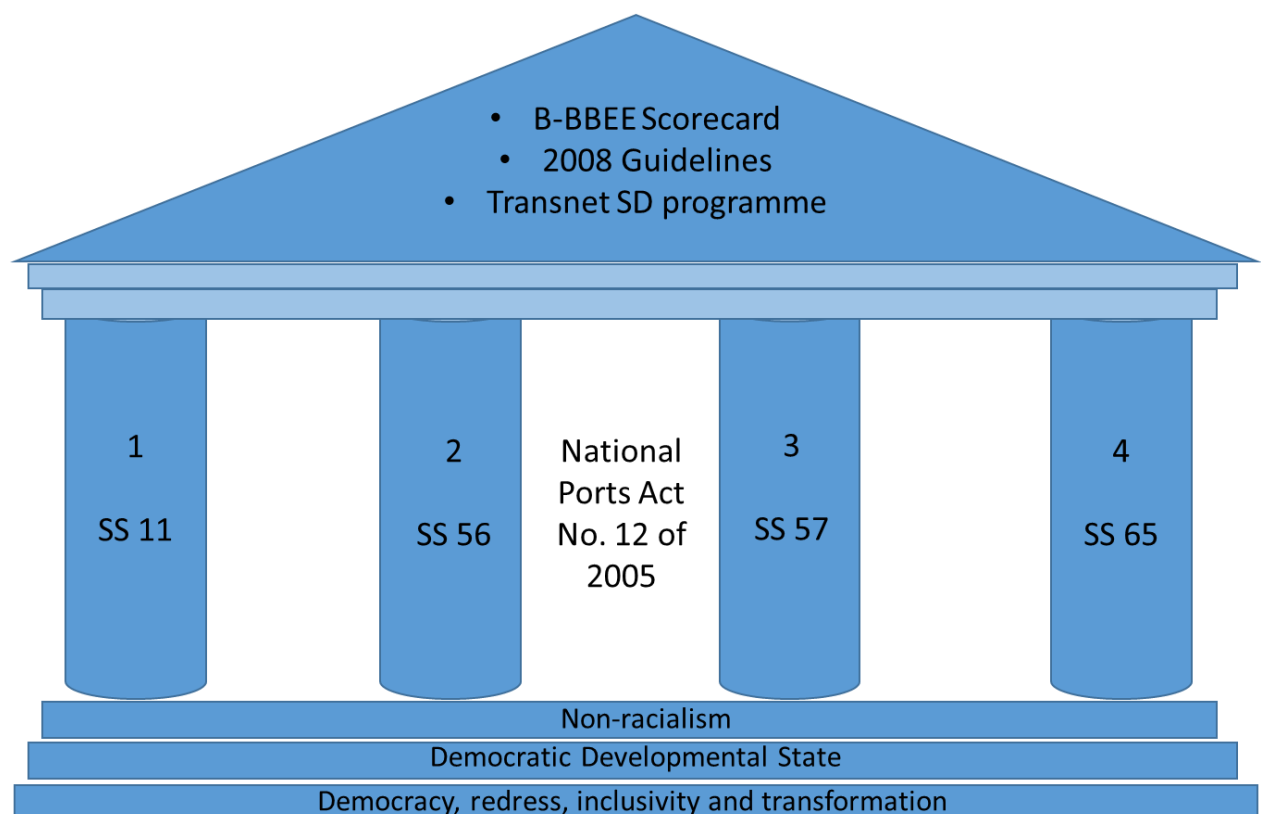
**Source:** Author compiled from TNPA Presentations (TNPA, 2018a)

The presentation of results from the preceding document analysis reveals the context within which the PPP projects have had to unfold. Reference is consistently made to the regulation with which the TNPA has had to comply. To ensure compliance to its best ability, the TNPA has developed processes and firm level apparatuses to best respond to the National Ports Act no 12 of 2005.

The context, as briefly shown by the literature, is that of a dynamic political environment where for more than a decade the state had proffered a democratic developmental state which has largely informed macroeconomic policy and strategy. That developmental state has as its pillars redress, inclusivity and non-racialism. To enforce those democratic convictions within the maritime sector, regulatory measures, principally the National Ports Act, provides, among others, the inclusion of historically disadvantaged persons in Section 11. Included in the historically disadvantaged groups are Black-woman owned businesses, youth-owned businesses and the disabled, whose economic inclusion is further provided for through the Broad-Based Black Economic Empowerment (B-BBEE) scorecard and Transnet Supplier Development (SD) programme, which is among firm-level apparatuses that are used as a response by TNPA to the regulatory demands, national political demands and the convictions of the democratic developmental state. This study adopts the same definitions of “black people” and “broad-based black economic empowerment” as those articulated in the B-BBEE Act 53 of 2003 as amended by Act 46 of 2013, where “black people” is a generic term which means Africans, Coloureds and Indians who are citizens of the Republic of South Africa by birth or descent; or who became citizens of the Republic of South Africa by naturalization before 27 April 1994; or (ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.

Chief among these apparatuses is the 2008 Guidelines. The guidelines serve to interpret the National Ports Act of 2005 and to highlight key sections that speak directly to the port authority’s operations as far as issuing licenses, permits and formulating agreements with the private sector is concerned. The guidelines further clarify the process to be undertaken to ensure a “fair, equitable, transparent, competitive and cost-effective” tendering process (TNPA, 2008: 13). The tendering process is also clarified in some roadshow reports and points to PPP projects as being Build, Own, Operate and Transfer (or BOOT) concession agreements as a standard transaction type in South African ports. There is, therefore, a foundation of Democratic Development State (DDS) convictions informing the strategic political demands on TNPA, and

a set of firm-level apparatuses to respond to this foundation, with the National Ports Act of 2005 as a regulatory framework to uphold the firm-level apparatuses upon the foundation. Figure 5.1 thus presents the document analysis results in view of this environment, which informs also the normative framework guiding the governance and devolution of South African ports or part of the port doctrine.



**Figure 5. 1 The environment of PPPs in SA Ports**

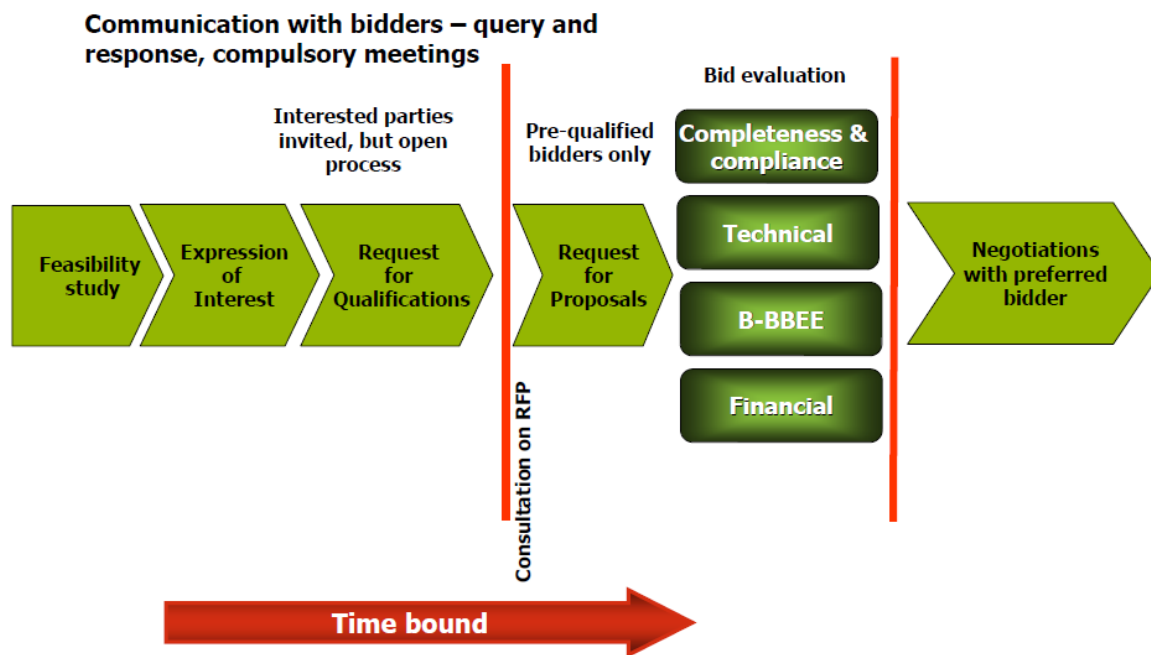
**Source:** Authors compiled and constructed from National Ports Act (2005) and Transnet (2012)

Figure 5.1 summarises the environment surrounding PPPs in South Africa’s ports. Section 11 of the National Ports Act (2005) presents the functions of the ports authority and the subsections considered in this chapter are the functions of the ports authority with specific conduct concerning the historically disadvantaged. Section 56 is about how the ports authority is to conduct itself in approaching the public to form PPP arrangements in a manner that is fair and equitable. It is from this section that TNPA stresses subsection 5 that the agreements contemplated within section 56(1)-(4) should only be entered into by the Authority in

accordance with a procedure that is fair, equitable, transparent, competitive and cost-effective. Section 57 regulates the conduct by those prospective port service providers who may approach the Authority seeking for licenses and permits to do so. Finally section 65 regulates the behaviour of those incumbent port service providers when the said chapter comes into effect.

The top part of Figure 5.1 – that collection of apparatuses – informs the formulation of PPP contracts, the execution of tender processes and the commissioning of projects at ports. Considering the nature of projects, both those that form part of the MDS and those endorsed by Operation Phakisa, it is clear that the port operations are indeed PPP undertakings in their nature even as suggested by Meunier and Quinet (2010). The investment is split between TNPA's projects under the MDS, funded through a loan taken against Transnet's balance sheet and PPP projects under Operation Phakisa. The projects discussed in this chapter are in Category A of current port investment activities and, within that category, four initiatives (namely initiatives 2, 5, 7 & 8) out of eight are relevant for this study. In brevity, Initiative 2 is the purpose-built oil and gas port infrastructure in Saldanha Bay. Initiative 5 is the development of general maintenance quay to an offshore supply base from the Port of Saldanha. Initiative 7 is the Floating dock in Richards Bay and Initiative 8 is a Boat-building cluster in the East London port. The PPP arrangement is also undertaken under the MDS, mainly focusing on initiative 5, which is about refurbishing and expanding current facilities.

From the provisions of the National Ports Act of 2005 as explained and interpreted within the 2008 Guidelines came the Statutory Procedural Requirements for licences and agreements which is best illustrated by figure 5.2.



**Figure 5. 2 Statutory Procedural requirements for licences and agreements**

Source: *TNPA* (2008: 31)

The procedure illustrated above shows the tendering process that precedes the formulation of all PPP contracts in South African ports. It is in place to ensure that the whole tendering process is “fair, equitable, transparent, competitive and cost-effective” (TNPA, 2008: 13). However, the South African Aerospace, Maritime & Defence Industries Association (AMD) believe that the shipbuilding and repair industry, which is an essential element of Operation Phakisa, has a stunted growth potential in the economy because of TNPA’s lease terms and conditions. According to AMD (2019), TNPA tender processes are unclear, non-transparent and inefficient, resulting in ad-hoc extensions (which are illegal), short lease periods, and lost investment opportunities. The price determinant is not stipulated in the lease or in any other guideline or document. Much confusion and disagreement about TNPA’s valuation remains as no methodology published. Legally, the ‘market rent’ should be determined via competitive open tender process and not stipulated by TNPA, as is currently occurring. Therefore, TNPA is required by legislation to include rentals for approval by the Ports Regulator of South Africa as rentals are treated no differently to cargo dues, port dues and berth dues in Sections 72 and 73 of the National Ports Act (AMD, 2020).



Next in the tools used is the BEE scorecard. The Broad-Based Black Economic Empowerment Act, No. 53 of 2003, was passed into law in the year 2004 and the final B-BBEE Codes of Good Practice are now operational as of the date of publication in the Government Gazette, No. 29617, on 9 February 2007. Along with the preferential procurement elements in the Preferential Procurement Policy Framework Act, No. 5 of 2000 (PPPFA), procurement managers and buyers are encouraged to comply with the B-BBEE codes because doing so enhances their B-BBEE scorecard. It must be made clear, however, that there are no legal penalties for non-compliance with the National Ports Act beyond incentives bestowed upon bidders for having an impressive B-BBEE score during the tender processes. The Generic Scorecard consists of seven points, each of which are weighted differently, starting with Ownership as Table 5.3 illustrates.

**Table 5. 3 Black Economic Empowerment Elements and Weights**

<b>B-BBEE Element</b>	<b>Ownership</b>	<b>Management</b>	<b>Employment Equity</b>	<b>Skills Development</b>	<b>Preferential Procurement</b>	<b>Enterprise Development</b>	<b>Socioeconomic Development</b>
<b>Weight (%)</b>	20	10	15	15	20	15	5

**Source:** the *DTI* (2012)

Of all the elements, few deserve explanation such as Ownership, Employment Equity and Preferential Procurement. A company scores a full weighting on ownership if the owners are all black or at least a significant portion of the weighting if the majority shareholding is black people. Of course, there is no legal obligation to be enforced with respect to this element but black recognition contributes to bonus points and even promotions under certain circumstances, hence the Section 56 process of the National Ports Act. A full score on Employment Equity can also be obtained if the labour practices and the staff component has a fair representation of demographics that are likely to be disadvantaged when it comes to obtaining gainful employment like women and the disabled, in line with the provisions of the Employment Equity Act of 2003. Preferential Procurement pertains to the PPPFA, an Act whose purpose is to enhance the participation of historically disadvantaged individuals and the small, medium and micro enterprises in the public sector procurement system.

The tool used mostly by Transnet as a conglomerate is the Supplier Development (SD) Programme in order, directly, to bring about inclusivity and redress. Of the total expenditure

planned by Transnet, a portion is reserved for expenditure in Black Women-owned businesses, youth-owned businesses and businesses run by people with disabilities. This is also in direct fulfillment of the B-BBEE Act of 2003. The mechanics of the SD Programme are worthy of a separate study on their own. What is sufficient for this chapter is the fact that this programme has been implemented with success in some projects in the Port of Richards Bay and the targets have been exceeded, at least according to what Transnet reports (Transnet, 2012).

The totality of all these procurement procedural practices inspired mainly by the National Ports Act and supported by the B-BBEE Act and the PPPFA as founded upon the democratic developmental state convictions, culminates in a number of port investment projects endorsed under the MDS and Operation Phakisa programmes. The sample of projects whose information was collected and collated from TNPA's press releases is shown in Table 5.4.

**Table 5. 4 PPP Projects underway and completed in SA Ports**

Project Name	Endorsement	Initiative (2, 5, 7, or 8)	Total Estimated Required Investment	Transaction Type	Tender Awardee	Nationality	B-BBEE Status (Level 1-4)	Terminal Operator (Y/N)
DCT Berth Deepening	MDS	5	ZAR7 billion	N/A	CMI Emtateni Joint Venture	Italian & S African	2	N
Maydon Wharf Berth reconstruction	OP	5	ZAR1.5 billion		Stefanutti Stocks AXSYS Joint Venture	South African	4	N
9 New Tugs	MDS	4	ZAR1.4 billion	N/A	Southern African Shipyards & TNPA	South African	4	N
Durban Cruise Terminal	OP	5	ZAR215 million	BOOT	KwaZulu Cruise Terminal Pty Ltd (KCT) - joint venture between MSC Cruises SA (70%) and Africa Armada Consortium (30%).	South African	4	Y
Cape Town Fuel Storage Facility	OP	5		BOOT	Burgan Cape Terminal (Owned by VTTI, Thebe Investment Corp and Jicaro)	Dutch & S African	4	Y
Port Nolloth Rehabilitation project	OP	2	ZAR39 million		Steffanuti Stocks Marine Pty Ltd	South African	4	N
Bed Leveller (Plough tug) Construction	OP	5	ZAR2 billion		FTC Engineering (Pty) Ltd, trading as Tide Marine Shipyard	South African	1	N/A
Augusta Westland (AW 109) Helicopters	MDS	4	ZAR250 million	N/A	Leonardo S.p.A.	Italian	N/A	N/A
Offshore Supply Base (OSSB)	OP	2	ZAR303 million	BOOT	Saldehco Pty Ltd	South African	4	Y
HFO Tank, East London	OP	8		BOOT				
Liquid Bulk Terminal	OP	7	ZAR1.2 billion	BOOT	Oiltanking Grindrod Calulo	South African	1	Y
Liquefied Petroleum Gas plant	OP	7		BOOT	Sunrise Energy			Y
Cape Town ship repair and modernisation programme	MDS	7	ZAR950 million		N/A	N/A	N/A	N/A
Richards Bay Floating Dock Facility	OP	7	ZAR1.4 billion	BOOT	N/A	N/A	N/A	N/A

**Source:** Authors collected and compiled using data from the 21 press releases from TNPA (2018b)

Table 5.4 shows that the 14 projects, whose total value is estimated at ZAR16.45 billion, have TNPA awarding tenders to multinational corporations who partner with South African companies, with the exception of the helicopter acquisition where the expertise are found only in Italy. Only three of the 14 projects do not yet have tender awardees and their completion status is not yet known and three whose estimated required investment is not yet disclosed. The total estimated required investment for each project ranges from ZAR39 million for the Port Nolloth Rehabilitation project to over ZAR7 billion for the Durban Container Terminal berth deepening project. The transaction type for all projects wherein a PPP agreement is entered into with a terminal operator is a Build, Own, Operate and Transfer (BOOT) arrangement.

Recalling Farrell and Vandeslander's (2015) eight 'granules' — the eight 'Ws' — as the basis for the analysis, we see that the 'Whom' component – choice of private sector partner – is answered principally according to competence and ability to meet demand. This is embedded in the whole of Section 56 procurement process as demonstrated in figure 5.2. It is, furthermore, a statutory requirement from Section 61 of the National Ports Act that the Authority is expected to establish performance standards to be observed by all licenced terminal operators to “ensure the reliability of the supply of port services and facilities” (TNPA, 2008: 116). The section is consistent with one of the transformation principles TNPA is planning to keep with respect to the Island View Precinct which is “Security of supply of strategic liquid bulk commodities” (TNPA, 2018: 1). With this principle communicated along with the democratic and developmental necessity to encourage greater participation for historically disadvantaged individuals, the joint ventures between powerful multinational corporations and local, comparably smaller entities with impressive B-BBEE scorecards seem an excellent way to simultaneously meet these seemingly divergent principles. For example, the joint venture called KwaZulu Cruise Terminals (KCT). The tender is for a cruise terminal and the much smaller company, Africa Armada Consortium is an investment company that empowers its black financiers through participation in economic activities. MSC Cruises is the world's largest privately held cruise company. KCT's equity is currently divided into 70 per cent ownership by MSC Cruises SA and 30 per cent ownership by Africa Armada Consortium (TNPA, 2018b). The same is true with the multibillion-rand DCT Berth Deepening project. The CMI Emtateni Joint Venture is a venture between Italian construction company CMC Di Ravenna and its 51 per cent black-owned South African company CMI Infrastructure, which is a 10-year old, unincorporated Joint Venture with PG Mavundla Engineering (PTY) Ltd (TNPA, 2018b). What is commendable is the fact that included in the partnership are Oname

Emtateni Empowerment Group Consortium, which is a combination of five local, independently owned, black- woman-owned companies that have been working as a collective for the last fifteen years, and Masinya Emtateni Empowerment Group Consortium which was also formed through a combination of five local black companies. According to B-BBEE ratings, ranging from Level 1 (Exceeding compliance expectations) to 8 (least compliant), the companies or joint ventures are ranging from level 1 as being 100% black-owned and black-operated South African companies to level 4, which is just fully compliant.

Again, despite the tendering provisions in the National Ports Act and the 2008 Guidelines, the DCT Berth Deepening project has lately been a subject of much contention, with an anonymous unsuccessful bidder lodging a court application challenging Transnet's decision to award the tender to CMI Emtateni joint venture. This resulted in the stoppage of all works related to the project and Transnet's investigation is still ongoing (Transnet, 2019). Coupled with the findings by AMD (2019) and the ongoing investigation by the Competition Commission, the contestations concerning the DCT berth deepening project directly challenge the idea that the TNPA tender process are as fair, equitable and as transparent as it appears in the 2008 Guidelines.

The 'Which way' component (PPP models, contract duration, and contract award procedures) seems rather uniformly provided for in legislation through Section 56 and culminates in the BOOT transaction type with any contract not exceeding a 25-year long lease period. Previously the Island View Shipping precinct, a liquid bulk terminal in the Port of Durban, has been occupied by terminal operators who are also cargo owners, most of whom have had leases in excess of 50 years. This, however, is beginning to change as Requests for Proposals from compliant bidders were being made until February 2019 (Transnet, 2018).

## **5.5. Conclusion**

The purpose of this chapter was to assess the degree to which the current port governance environment allows for the flourishing of private terminal operators. The obstacle to making extensive findings was the lack of access to TNPA personnel and terminal operators licensed under TNPA for interviews due to the ongoing investigations by the Competition Commission. However, based on what was made available via TNPA's website, ongoing and completed projects, their transaction types, lease durations, private sector stakeholders involved and (in

some instances) the estimated required investment for each project could be ascertained. The literature covered in this chapter mostly revealed what terminal operators themselves along with other stakeholders and academics considered important for the success of PPP arrangements at ports. What is clear is that it is important for the functioning of PPP arrangements in SA ports that the landlord and the prospective tender awardee adhere to the *National Port Acts* and the other supporting regulation such as the *B-BBEE Act*, *PPPF Act* and the tender processes derived from *TNPA's 2008 Guidelines* in its attempts to make the National Ports Act effective. These are part of the legislative framework to fulfil the requirements of a democratic developmental state. The most telling response by TNPA as far as transformation of ownership structures within port operations is concerned, was the scrapping of evergreen contractual arrangements and the reduction in lease durations to no more than 25 years for any terminal operator. This is a step in the right direction along with the enforcement of majority black ownership if an existing terminal operator seeks a renewal or extension of their lease. Whether this transformation currently underway is sustainable, however, remains to be seen as these reforms are still relatively too new to make definitive conclusions on their power to create an environment conducive enough for the growth of private enterprise.

This study's contribution to the literature is the articulation of how the environment for PPP projects at ports is informed by the country's socioeconomic and political history, a developmental state paradigm in policy making and a regulatory framework that brings the need for redress and democratic considerations together and imposes it on business practices in South African ports. What determines the success for each bidder is their ability to adhere to such a remedial regulatory framework and simultaneously demonstrate the necessary competencies to efficiently and cost-effectively run the port facility without compromising the quality of the supply chain or port services. The entire PPP environment, although communicated to stakeholders in a consultative process – which is commendable, eventually appears to be imposed on participants by the social heritage of the entire country rather than the strict science of doing business at ports. This is not necessarily a bad thing because it reveals a critical facet of governance when it comes to South Africa's port doctrine. Areas for further research in refining port governance may be found in gathering, from the sample of all terminal operators and other port service providers who were awarded the tenders, just what it is they consider are the critical success factors for PPP arrangements and, thus, how we may further improve the environment and subsequently the port doctrine.

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## **CHAPTER 6: SOUTH AFRICA'S DEMOCRATIC DEVELOPMENTAL STATE AGENDA: RHETORIC AND PRACTICE IN THE PORTS SECTOR**

### **Abstract**

The concept of a developmental state is a subject of theoretical conflict with some neo-statist writers adamant that such a state is not compatible with a democracy and that the state institution must maintain a great degree of autonomy if the developmental plans are to succeed. Ideally, a developmental state creates an enabling environment for the prosperity of private enterprise while maintaining a coherence between its economic and social policies – hence the need for state autonomy. The state is also the custodian of key resources and sectors, which it uses to determine the development trajectory of the country, mainly through state-owned enterprises (SOEs). South Africa is no different in this respect as over decades the state has played an entrepreneurial role and has communicated the role of her SOEs as key players in driving development. Transnet National Ports Authority (TNPA), South Africa's seaports landlord and SOE, is committed to ensuring the competitiveness of the South African ports system and support economic growth as mandated by its role as a state owned company. This chapter uses Document Analysis to analyze themes extracted from ten policy and legislative documents that facilitate the governance of seaports, and tests them for consistency and agreement. It seeks to find out the extent to which the current maritime policy trajectory points toward a democratic developmental state at ports. The chapter assesses the possibility of achieving a harmonious alignment of macroeconomic policy objectives with the maritime policies of South Africa; the extent to which TNPA can achieve its primary developmental objective under a democratic developmental state. Lastly, it articulates a doctrine that should inform the formulation of port policy henceforth.

## 6.1. Introduction

A developmental state concept is an attempt to bridge the gap between a centrally planned economy and a free market system, without emphasising the ideological position (Turok, 2008). This points to a pragmatic approach that cuts across a free market system and a centrally planned economic system in trying to bring about economic growth and development in a developing country. Turok's (2008) general conclusion was that without a comprehensive development strategy, South Africa could not be characterised as a developmental state but it has taken several significant steps in this direction, while Gumede (2013) concluded that South Africa was a developmental state, albeit a weak one. Subsequent to this, in 2012 South Africa published the National Development Plan 2030, which covers broadly the country's growth objectives and targets for all industries with a mention on how the state may achieve that plan.

One of the surest characteristics of a developmental state is the tendency to target specific industries that have potential for high growth and positive spinoffs to facilitate industrialisation through diversifying the manufacturing base. This the state does by identifying its key assets or industries dominated by its own enterprises, which will then be the drivers of economic development. South African ports are considered to be among key national assets (South African Shippers Council, 2013) and they therefore need to be targeted accordingly and governed with sound developmental policies to achieve the desired economic development.

One of the ways that the government is executing a developmental state approach to port governance and development is through the *Operation Phakisa* strategy. This details ongoing investment plans for South Africa's blue (or Oceans or Maritime) economy. The investments made in port lands under this strategy are partly funded by the government and in part by the private sector through concessions and agreements based on a Build, Own, Operate and Transfer (BOOT) arrangement. True to the principles of developmental statism, that is, to fast-track state-led development in the key strategic sectors of the government that have great potential to unlock growth and the establishment of other industries with the aim of achieving rapid economic growth in a relatively short period, *Operation Phakisa* borrows much from the planning and implementation strategies executed in the Malaysian developmental state (DTI, 2015a).

There seem to be some theoretical and empirical arguments in favour of the democratic developmental state in South Africa, albeit the literature presents conflicting results (Edigheji,

2010; Ansari, 2017). It is thus worth exploring whether or not the ports sector is presently structured or governed appropriately to contribute to the development of the entire economy of South Africa. The principal question this chapter aims to answer becomes: is South Africa's current port doctrine agreeable with the democratic developmental state and, in the event that it is not, what port doctrine can be articulated for the success of the democratic developmental state? The articulation of port doctrine is important as it has a determining effect on the international competitiveness of a country's ports, their profitability and long-term sustainability. This chapter attempts to single out a few pillars or elemental features that must speak to a port doctrine. Therefore, section 6.2 is the literature review on the developmental state and port devolution in South Africa. Section 6.3 is the methodology employed in this chapter. Sections 6.4 to section 6.6 discuss the data and interpret the results. Finally, section 6.7 concludes and presents recommendations.

## **6.2. Literature Review**

Sangweni & Mxakatho (2007) are of the view that the developmental state must be a strong state but it must be able to intervene effectively. When it comes to South Africa's case, it must also be democratic and, in this respect, differ from the authoritarian East-Asian tigers. SA's external environment is also different to that which enabled the East-Asian states to advance successfully – it is more fluid and contested. Also, theirs was marked by a strict control of labour, which is not the case in South Africa.

In a developmental state, SOEs have an important role to play. Turok (2008) says that the SOEs should not be seen as merely stand-alone providers of public goods and should be integrated with other departments and agencies. Sangweni and Mxakatho (2007) point out that there are disconnections between SOEs and agencies and their relevant department – for example, Transnet, Department of Public Enterprises and Department of Transport. There needs to be a formal requirement to compel integrated planning between these entities and their departments. Thus, developmental planning is needed. There is, currently, no comprehensive document providing the portrait of SOE sector and their assets and their overall role in the economy, including downstream and upstream value addition. The SOEs, moreover, have legitimate grounds to use protectionist measures as an economic tool. For example, the low electricity prices are important in order to stimulate economic growth. Since Eskom controls electricity prices, the supply could be used to pressure Mittal Steel to keep prices at appropriate levels for local industries.

Jahed and Kimathi (2008) discuss and synthesise the literature on developmental states with three interpretations thereto, namely neoclassical, neoliberal and neo-Kynesian interpretations. In defining the developmental state, the authors demonstrate that a developmental state is characterised by its reason for intervention, which is to spur development and not just to regulate economic actors. In addition, they put forth six differences between a developmental state and a regulatory state as proffered by Johnson (1982). Firstly, a developmental state determines national incomes and means to achieve it. A regulatory state lets market forces determine economic outcomes, seeking only to regulate the market rather than to direct it. Secondly, while a developmental state concerns itself with setting substantive and social goals, the regulatory state only concerns itself with the rules of competition, such as pricing mechanisms. Thirdly, a developmental state begins by establishing what industries ought to exist in an economy, which existing industries are relevant (or not) for economic prosperity and how the desired industries can be fostered. A regulatory or market-oriented state leaves these matters to market competition. Fourthly, economic policy-making in developmental states gives precedence to national industrial policies, with an emphasis on making domestic industries internationally competitive. A regulatory state gives precedence to policies that emphasise rules and reciprocal concessions. Trade policies, for instance, may focus on strengthening political relationships rather than economic competitiveness. Fifthly, in a developmental state, bureaucrats are not concerned with externalities (i.e. noneconomic consequences of economic activities, such as pollution), if the externalities are not part of the national goals. Bureaucrats in a developmental state are satisfied when their national goals are met, irrespective of secondary effects. A regulatory state is concerned with the effects of externalities and may attempt to regulate economic agents whose operations may result in negative externalities. Finally, a developmental state uses effectiveness as its evaluative criterion while regulatory states look for efficiency.

In view of the differences above, South Africa seems to be leaning more toward a regulatory state rather than a developmental one. The authors put forward that the neoliberal view of the economy led to the misdiagnosis of African economies' woes and led to the institution of *Structural Adjustment Programs (SAPs)* under the misconception that the success of East Asian developmental states was based on the minimalist approach of their governments. They sum up the neoliberal delineation of state versus private sector role to economic participation with respect to African states in three words: "It didn't work" (Jahed & Kimathi, 2008: 101) as does Kieh (2015) conclude that "the neoliberal development strategy in its various incantations has

failed to promote the material well-being of the peoples of Africa, especially the non-owning classes” (Kieh, 2015: 13).

Following the failure of SAPs in Africa, the World Bank admittedly learned that the problem of development in Africa was that of poor governance more than anything else and they advocated that states should play a central role in the development of a country (Kanyenze, 2017). They also learned that East Asian development led to the prosperity of the market precisely because development does not occur in a vacuum. The East Asian states buttressed their prosperity by ensuring favourable international circumstances for development and economic growth.

Turok (2008), moreover, is of the view that SA is not developmentally oriented because our basic industries essential for industrialisation and development have collapsed, such as the foundry and tool-making industries. SA has even sold major commodities such as iron ore, indicating a lack of long-term industrial vision. The general conclusion reached is that there is still too little evidence of a comprehensive developmental strategy directed by the state and all its institutions towards one development agenda.

Ansari (2017), in his investigative discourse on why the developmental state still has not materialised, purports that there was market orthodoxy practised by the National Party under Apartheid but it only increased and international capitalist interests tightened their grip on South Africa’s economy in the post-Apartheid era. Added to that, a convergence of interests between political elites, global portfolio capital, and what some authors have labelled the Minerals-Energy Complex (M-EC), has therefore crystallised around financial liberalisation – which other authors have called Crony Capitalism (Levi-Faur, 2017)

It is interesting how crony capitalism, although the phrase gained popularity with the study of the developmental state courting more attention, manifests itself more often in the neoliberal markets and regulated states with orthodox market practice than in governed markets. It is therefore an error to discount the merits of developmentalism solely on the possibility of the convergence of capitalistic interests between the international investor class and the bureaucracy.

Jahed and Kimathi (2008) further argue that the Neo-Keynesian (or revisionist) view is perfectly aligned with the developmental state paradigm. They then make their discourse from various authors in favour of this view of the economy, starting from Johnson (1982) who is the



pioneer of the developmental state in literature. Johnson (1982) highlights that the state in a developmental state agenda prioritises policies that are concerned with creating wealth rather than those about social distribution. If it is to be developmental, the state must first ensure growth before it is concerned with less important things such as equality and welfare.

Burger (2014) says that SA cannot fit the East-Asian developmental state mould because of a number of fundamental dissimilarities between SA and the East-Asian states. Among these are the lack of focus on economic growth but rather on reducing unemployment, poverty and inequality. The IPAP expenditure for the years 2015/16 was actually 0.27% of GDP, which is not reflective of a strong state-led industrial policy in support of selected industries. The South African constitution grants many rights to the domestic labour force with high unionization as to discourage keeping low wages to in support of higher exports and growth. Further dissimilarities are South Africa's emphasis on democracy, her low saving rate, incongruously high labour costs relative to lower productivity than that of Asian labour and finally lack of capacity in education, health and service delivery pointing to the glaring absence of a capable, professional bureaucracy. Notwithstanding this, Burger (2014) agrees with Evans (2005), that a 21st Century developmental state would likely serve South Africa better if the needed efficiency in the public sector and reforms of social policy are forthcoming; and with Kieh (2015) that the social democratic developmental state is the best trajectory for promoting human-centred democracy and development in Africa.

Nagar's (2015) comparative study of South Africa and Botswana's supposed democratic developmental state uses five benchmarks, namely: Development-Oriented Political Leadership; Effective and Well-Insulated Economic Bureaucracy; Developmental Success; Consolidated Electoral Democracy; and Popular Participation in the Development and Governance Process. The conclusion is that given these benchmarks, South Africa still has a long way to go before it can truly become a democratic developmental state. This is the same conclusion reached by Gumede (2014) and Mothabi (2017), saying that South Africa appears to be actually drifting away from being a democratic developmental state, even citing reasons similar to what Ansari (2017) would cite such as the hegemonic control of the global capitalist system over South Africa despite the staggering failure of neoliberal policies. Fine (2010) had also indicated that if South Africa has ever been a developmental state, it might be considered to have been more so in the past than in the present or the immediate future. Therefore more work needs to be done if the dream of a developmental state is to be achieved (Ayee, 2013). It

thus appears that recent developments in developmental state literature present mixed, but mostly negative, views on whether South Africa remains a developmental state.

### **6.2.1. Traces of the 21<sup>st</sup> Century Developmental State in SA's Ports System**

The White Paper on South Africa's Transport Policy (DoT, 2017a) states that port development cannot be considered in isolation, but should be integrated into any national, provincial and local economic and spatial development initiatives, and also support the overall macroeconomic strategies such as the Reconstruction and Development Programme (RDP). It further stresses the need for synergy between port development plans and national and provincial economic and development strategies, saying that the long-term location planning for ports should run parallel with provincial and regional economic development plans.

Seeing that the needed diversification of the industrial base and the downstream beneficiation process stemming from SA's heavy industries has been met with some resistance and complex industrial-political relations – through the M-EC – legislative reform and industrial policy reformulation is still necessary before the mining sector can be expected to meaningfully contribute toward the developmental state (Jourdan, 2014). This process may take a long time. Notwithstanding these challenges, the question remains how the government may still use the SOEs and other key assets that are not apparently captured by private interests to fulfil the developmental agenda. More specifically, what should be ascertained is how Transnet and the ports system can presently align with a 21<sup>st</sup> century developmental state as much as possible.

Given the inclusive nature of a 21<sup>st</sup> century developmental state and its focus on expanding human capabilities, ports, as key assets to the state, must necessarily speak to the development of local human capital and the inclusion of young black businesses in the ports sector. Policies on South African ports must also point to the same in more than one respect of just creating a conducive environment for the prosperity of private enterprise. One of the ways in which the public interest is accommodated in the operation of SA ports, is through the *Port Tariff Incentive Programme (PTIP)*.

While previously TNPA has been berated for the vestige of often poorly justified cross-subsidies in the pricing of various port activities (SASC, 2012), the *Ports Regulator of South Africa (PRSA)*, in consultation with TNPA, the DTI, and the DoT among other government departments, has formulated the PTIP which is aimed at supporting beneficiation, industrialisation and localisation (PRSA, 2017). The PRSA (2017) says that the tariff strategy,

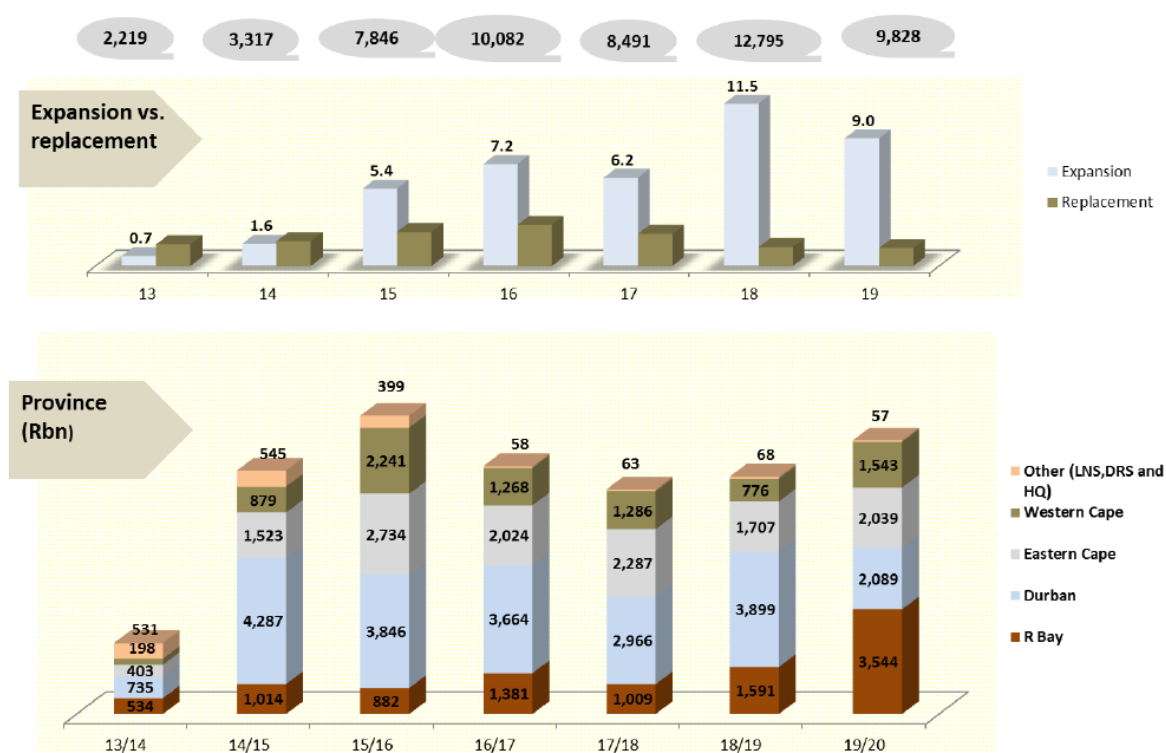
in its latest formulation of a triennial tariff review, does not fully address the use of port tariffs as an incentivisation tool for industrial development objectives. The PRSA (2017) highlights strategic goals of the *National Development Plan*, cites relevant objectives from the *Industrial Policy Action Plan* documents and draws important principles from the *National Commercial Ports Policy*, to show some alignments of the current *Tariff Strategy* with the overall national government objectives. The agreements between the tariff strategy and the envisaged PTIP are well defined. There being some alignment of objectives, the ports regulator proposes to use these tariffs for strategic pricing because port charges are linked to the port strategic objectives and goes on further to state that pricing can be a very useful tool in achieving the objectives and targets of a strategic plan of a port.

The PRSA is aware that the industrial policy is more fluid and can accommodate more adjustments than the consistency striven for in the port or infrastructure tariffs. Therefore, in instituting cross-subsidies in favour of a specific industry/service/tariff – which is the first step – the Regulator will attempt to balance it with its directives from the Record of Decisions. Some of these directives are that the proposed tariffs must avoid discrimination “save where discrimination is in the public interest; and the avoidance of cross-subsidisation save where cross subsidisation is in the public interest” (PRSA, 2017: 15). This limited kind of cross-subsidies is aimed at assisting small to medium-sized enterprises to enter the market as well as to aid economic growth, beneficiation, localisation, and industrialisation.

According to the PRSA (2017), “Cross subsidies will be shared on a system-wide basis as in-category cross subsidisation would significantly reduce the flexibility and quantum of the mechanism as well as long-term carrying capacity or sustainability. A system wide approach will still retain the ability to focus the effects of a subsidy on certain industries / cargo types, or commodities. In order to ensure the element of control exists, the NPA will, for a three-year basis, implement a cross-subsidy threshold, e.g. 1 per cent of revenue. All cross-subsidizes provided within the port system should then be shared within this amount. The intention behind the threshold is to avoid a system so fraught with cross-subsidies that it goes directly against the principles of the Tariff Strategy” (PRSA, 2017: 10). When detailing the rollout of the PTIP, PRSA highlights the consultation between the DTI, DoT, NPA and the Regulator based on the government’s economic objectives as the hallmark of the whole processes.

A necessary part of developing South Africa’s ports and ensuring positive industrial spin-offs and the much-needed downstream beneficiation is the investment activities undertaken by the

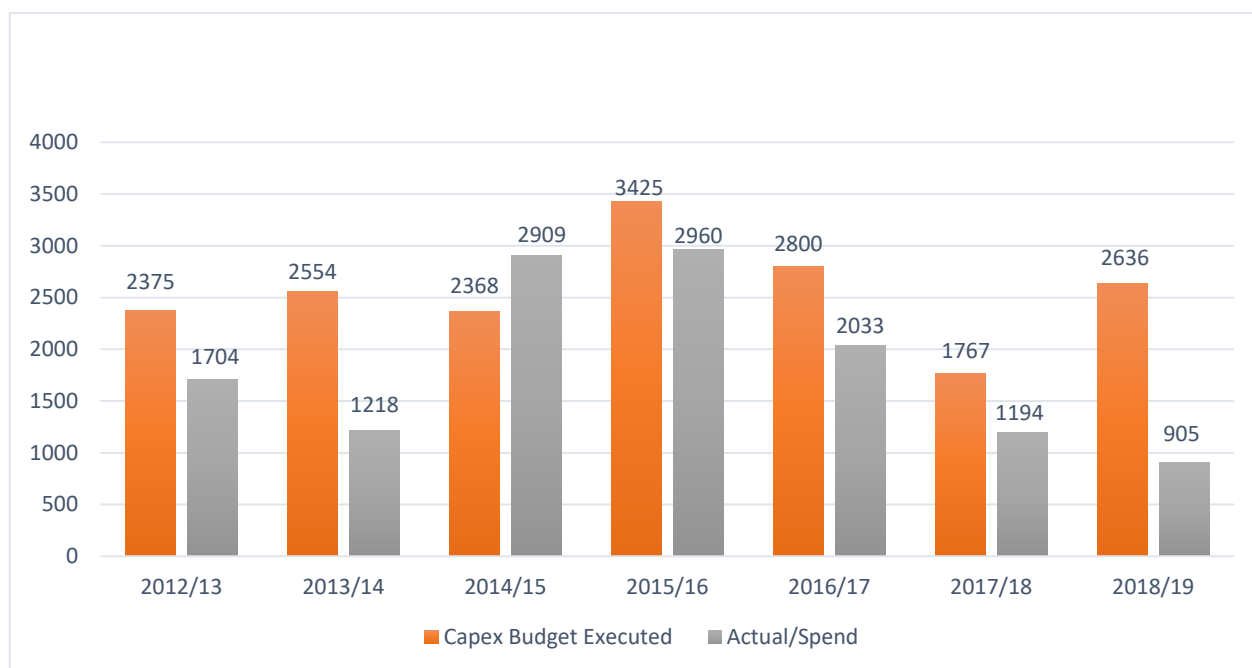
landlord port Authority, TNPA. Transnet's (2012) Market Demand Strategy (MDS) is a document that speaks of ongoing investment in the ports sector. This is a capital expenditure programme undertaken by Transnet to finance infrastructure and expand capacity ahead of anticipated demand – hence the name. Capital is raised through a syndicated loan involving multiple financiers internationally. The planned CAPEX is R307 billion over seven years since 2012 and of this amount, R87 billion is earmarked for the ports system with zero contribution from the government. Figure 6.1 illustrates the planned expenditure



**Figure 6. 1 TNPA's Planned Capital Expenditure over 7 Years**

**Source:** *Transnet* (2012).

R87 billion had been planned for capital expenditure for the ports sector since 2012, but with hindsight, actual expenditure proved to be less than budgeted with both budgeted expenditure and actual expenditure actually declining for the past four of the seven years. Figure 6.2 illustrates this more clearly with the startling difference between the 2019/20 fiscal year's budget and actual expenditure of R2.636 billion and R905 million. Such discrepancies in investment plans and their execution makes the upkeep of South Africa's ports infrastructure questionable and contributes to persisting performance challenges.



**Figure 6.2.** Capital Expenditure: Budget vs. Actual, FY 2012/13 to FY 2018/19

**Source:** Authors adapted and compiled from TNPA (2019).

With the TNPA’s beneficiation promotion programme and the PRSA’s PTIP, we begin to see what position maritime stakeholders may be assuming with respect to port pricing and structuring of tariffs both presently and for the near future. Moreover, concerning TNPA’s MDS and the central government’s *Operation Phakisa* – the position on port investment and the interface between public and private investment becomes more clearly defined, at least in an ideal world where investment plans are followed through. Pricing and investment are two of the most important aspects of the port doctrine. What remains unclear, however, is the stance on port management and devolution. The clarification of these will help cement and articulate South Africa’s port doctrine for a democratic developmental state. This is the final exercise beyond the methodology section of this study.

### 6.3. Methodology

This study uses Document Analysis that is a systematic procedure for reviewing or evaluating documents—both printed and electronic (computer-based and Internet-transmitted) material (Bowen, 2009) and it is best used for qualitative studies with the objective to elicit meaning, gain understanding, and develop empirical knowledge (Corbin & Strauss, 2008; Rapley, 2007). Documents may refer to any medium that contains information regarding the phenomena being

researched such as advertisements; agendas, attendance registers, and minutes of meetings; manuals; background papers; books and brochures; diaries and journals; event programme letters and memoranda; maps and charts; newspapers, press releases; programme proposals, application forms, and summaries; radio and television programme scripts; organisational or institutional reports; survey data; and various public records (Bowen, 2009). Looking at the wide scope of records that may be considered documents, the employment of Document Analysis in the publications interrogated in this study is thus justified. “The analytic procedure entails finding, selecting, appraising (making sense of), and synthesising data contained in documents. Document analysis yields data—excerpts, quotations, or entire passages—that are then organised into major themes, categories, and case examples specifically through content analysis” (Labuschagne, 2003: 101). All qualitative content analysis, whether it be inductive or deductive, involves three phases: preparation, organisation and reporting of the results. During the organising phase for deductive content analysis, a categorization matrix is developed and the documents reviewed are placed in categories (Polit & Beck, 2012) – as in Table 6.1 below. In the reporting phase, results are described by the content of the categories describing the phenomenon using a deductive approach.

Using NVivo11 Pro® ten publications that may inform policy formulation were analysed for various themes and from this exercise all related themes were placed into categories. The documents selection is based on their relevance and relation to policy formulation that has taken place with respect to South African ports since the 2001 reforms. These documents are further selected based on the fact that their authors often cross-reference them as foundations that inform the articulation of each successive white paper, policy or Act of Parliament. Thus, the authors expect to find some agreements within and across all these documents. To arrive at the themes within this study, publications had to be grouped into macroeconomic strategy documents, roadshow reports, conference proceedings and, finally, legislative documents. Then, using the Word Frequency function and the Text search function in Nvivo11 Pro®, the authors were able to establish the most common themes emerging from them using the deductive content analysis approach.

**Table 6. 1 Documents analysed in this study**

<b>Macroeconomic Strategy</b>	<b>Legislative Documents</b>	<b>Roadshow Reports</b>	<b>Conference Proceedings</b>
<i>National Development Plan 2030</i> (National Planning Commission, 2012)	<i>White Paper on National Commercial Ports 2002</i> (Department of Transport, 2002)	<i>Operation Phakisa: Marine Protection Services and Governance Executive Summary</i> (Operation Phakisa, 2014)	<i>Inaugural South African Maritime Industry Conference 2012</i> (SAMSA: 2012)
<i>New Growth Path</i> (Department of Economic Development, 2011)	<i>National Ports Act, 2005</i> (Department of Transport, 2005)		
<i>Industrial Policy Action Plan to 2016</i> (Department of Trade and Industry, 2013)	<i>Comprehensive Maritime Transport Policy 2017</i> (Department of Transport, 2017b)		
<i>DoT Strategic Plan 2015-2020</i> (Department of Transport, 2015)			
<i>National Industrial Policy Framework</i> (Department of Trade and Industry, 2015b)			

The publications, ranging in length from 15 pages of the *National Commercial Ports Policy* to 489 pages of the *National Development Plan*, are accessible online and they range from *macroeconomic strategy documents* such as the *National Development Plan 2030*, the *New Growth Path*, the *Industrial Policy Action Plan to 2016*, *DTIs' Strategic Plan 2015-2020*, and the *National Industrial Policy Framework*. Other documents were roadshow reports such as the *Operation Phakisa: Marine Protection Services and Governance Executive Summary*. Others are Conference Proceedings such as the *Inaugural South African Maritime Industry Conference (or SAMIC Report)*. Others are legislative documents like the *White Paper on*

*National Commercial Ports* – which was gazetted in 2002, *The Comprehensive Maritime Transport Policy 2017*; and *the National Ports Act, 2005*.

Using NVivo 11 Pro®, themes were extracted from the preceding literature on the developmental state and the South African government's publications and policy pronouncement that inform the implementation of the developmental state agenda. These themes were then ordered according to four broad categories that are bound to inform port doctrine and vice versa. The categories are:

- *Category 1: Common Maritime Terms* – which are phrases and words that permeate the political and layman rhetoric such as “Blue economy, Oceans economy, maritime economy, marine economy, ports, harbours, tariffs and pricing”;
- *Category 2: Government Rhetoric*– which are phrases and terms that permeate much of the developmental discourse with respect to the oceans economy or port governance such as: “Public-private partnership (PPP), Small Medium and Micro Enterprises (SMMEs), subsidies, cross-subsidies, Special Economic Zones (SEZs), Export, Beneficiation Promotion Programme, Export-oriented, Human capabilities development, Port Tariff Incentive Programme (PTIP), Research and Development (R&D), Developmental State, Democratic, Democracy, Inclusive, Inclusivity, Project, Paradigm.”;
- *Category 3: Port-related Jargon* – these are specialist phrases and terms that people outside of the port industry are less likely to know, such as: “ad-valorem wharfage, cargo dues, cargo-handling capacity, cargo-handling infrastructure, shipping costs, port infrastructure, Required Revenue or Revenue Requirement (RR) methodology, tariff Structure, port doctrine.” These phrases and words are used as a criteria to query the extent to which the publications under analysis concern themselves with the matters of port governance and devolution, which inform the port doctrine.
- *Category 4: Port Performance* – these are phrases and terms mainly applied to address the port performance, i.e., efficiency of port operations and the productivity of marine and cargo-handling infrastructure, such as: “container terminal capacity and volumes, container terminal utilisation, container moves per ship working hour, gross crane moves per hour, time spent at anchorage, ship turnaround times, and dwell times.” These phrases and words are used as criteria to query the extent to which the publications under analysis concern themselves with the matters of port productivity and efficiency.



## 6.4. Results and Discussion

Certain words were intentionally excluded as they proved to be very frequent in the publications but they had no relevance for the study and would only serve to obfuscate the results of the analysis. These words are: South, Africa, RSA, SA, national, TNPA, Transnet, democracy, democratic, democratically and African.

Running a Text Search query for all four categories, with the exclusion of the said words, the *National Development Plan* seems to have the highest number of references, followed by the *Comprehensive Maritime Transport Policy* and the *Industrial Policy Action Plan*. The coverage, however, which pits the number of words within the document that match the query criteria against the total number of words in the entire document, shows the *National Development Plan* and the *IPAP* to have low coverage compared to other documents.

**Table 6. 2 Overview of thematic coverage**

Document Name	References	Coverage
<i>SAMIC Report</i>	1033	3.16%
<i>National Commercial Ports Policy</i>	724	3.13%
<i>2017 Comprehensive Maritime Transport Policy</i>	1602	2.68%
<i>Operation Phakisa Oceans MPSG Executive Summary</i>	301	2.31%
<i>DoT Strategic Plan 2015-2020</i>	750	2.14%
<i>National Industrial Policy Framework</i>	642	2.06%
<i>Industrial Policy Action Plan (IPAP) to 2016</i>	1598	1.80%
<i>New Growth Path</i>	472	1.76%
<i>National Ports Act, 2005</i>	583	1.54%
<i>National Development Plan</i>	4531	1.39%

**Source:** Author generated and compiled using NVivo11 Pro®

It appears that the voluminous nature of these documents has provided them with many references but the coverage of the queried content seems weak, with the notable exception of the *Comprehensive Maritime Transport Policy* ranking third in terms of coverage. In the face of it, it appears as if the first three documents can tell us much about the South African port doctrine, but a deeper analysis will reveal more accurate results. What follows are the pictures of the word frequencies from the different types of documents analysed in this study.

Of the ten publications assessed within this study, the words ‘port’ and ‘ports’ are ranked 33<sup>rd</sup> and 35<sup>th</sup> respectively out of the top one hundred most commonly used words, with the frequency of 566 and 560 respectively and each of them with a weighting of 0.21 per cent while





**Figure 6. 3 Word Frequency cloud (Common themes on Macroeconomic Strategy Documents)**

**Source:** Author generated and compiled using NVivo11 Pro®

From the preceding word cloud, it is clear that the documents are largely concerned with economic development, which comes as no surprise because they are, after all, macroeconomic strategy documents.

Looking at the *Roadshow Report*, which is *Operation Phakisa*, Ocean is at the top of 100 most frequent citations, followed by ‘government’ and ‘programme’. Incidentally, the *Phakisa* ‘document’ is preoccupied with finding the most effective way of investing to rapidly grow the oceans economy and it is wholly funded by government. Looking at the Conference proceedings from the *South African Inaugural Maritime Conference 2012*, it is clear once more that the most frequently cited word of the top 100 is ‘Maritime’, with ‘ports’ also being very weakly mentioned, which is quite disappointing for a maritime-related document as well.

Lastly in this process of extracting the most common themes we turn to the legislative documents. Looking at the most frequently cited words we find ‘Maritime’, ‘Port’, ‘Ports’ and ‘Authority’ being most frequently cited at 581, 489, 470 and 425, creating an impression that much of the legislative writing has been with specific reference to ports and not just the maritime industry in general as tends to be the preoccupation of macroeconomic policy.

It will shortly become clear in this study as to what extent each of the foregoing document takes consideration of port governance, port pricing, and devolution – which all inform the port doctrine, when these documents are analysed with regard to port-related jargon and port performance language. That is, when these documents are interrogated with specific reference to thematic categories 3 and 4 respectively.

#### **6.4.1. *National Development Plan 2030***

Words such as Marine, maritime, ports, port, harbour, harbours, ocean, oceans and blue, entrepreneur, entrepreneurship, private, enterprise’ were used as a word search criteria and only 67 matches were found in the *NDP 2030* – a document made up of 489 pages. The *National Development Plan* is a detailed blueprint for how the country can significantly promote economic growth, reduce poverty and inequality by the year 2030.

The words ‘entrepreneur, entrepreneurship, private, enterprise’ are cited 338 times in the NDP, but when the word ‘private’ is removed, only 25 references could be found. Marine entrepreneurship is not once mentioned in the NDP. This may be understandable because the NDP is not primarily concerned with the blue economy. Nevertheless, the entrepreneurial climate in South Africa is adequately addressed and the racial dynamics surrounding it are properly acknowledged. For example, the NDP (2012) on entrepreneurship mentions that the policy formulation should create fertile conditions for entrepreneurship, that government should provide better support for entrepreneurial environment and business development. It is also mentioned that the long-term solution to skewed ownership and control is to grow the economy rapidly but that also involves spreading more opportunities for black people as the economy grows.

The issue of entrepreneurship needs to be more deeply addressed in policy because of the political conviction that the envisaged development of SA is that based on inclusivity and development. For example, the NDP (2012) aims to promote labour-absorbing industries with small- and medium-sized firms being considered the main employment creators. The ports industry is heavily capital intensive and technologically-driven, with the current port investments under the MDS being largely the purchase of machinery for increased automation. This readily points toward labour-saving modes of operation, which contradicts employment creation and disregards South Africa’s relatively high unskilled labour endowment in the face

of massive unemployment. The NDP, moreover, makes it clear that through the BEE policy it aims to transform the ownership of the economy, “de-racialise the ownership structures as well as the top echelons of the business community” (*National Planning Commission*, 2012: 139). It mentions two potential avenues for this to be achieved, including ensuring that “new growth is skewed toward black entrepreneurs” (*National Planning Commission*, 2012: 139). As regards marine entrepreneurship, Transnet’s policy is to spend at least 30 per cent of their total procurement budget on local small component manufactures, with a keen preference for black businesses. However, looking at the investment interface between government and Transnet, the policy seems indeed to be the creation of a conducive environment for the prosperity of private enterprise but that environment seems to favour already existing large multinational corporations. There appears to be nothing more than silence on the question of how emerging, black businesses are being accommodated at South Africa’s ports. The NDP mentions no detailed plans concerning this.

Under the category of Common Maritime Terms, ports, their tariffs, the port pricing methodology and structure (all of which inform the port doctrine) are hardly mentioned in the NDP, giving an impression that the diagnosis and the developmental recommendations concerning the ocean economy are at best general and not concerned with the economic viability of SA’s ports system.

#### **6.4.2. National Industrial Policy Framework**

*The National Industrial Policy Framework (NIPF)* is also known as the *Industrial Policy Action Plan (or IPAP)* and its primary objective is to set out government’s approach to the industrial development of the South African economy. Consequently, the NIPF sets out a vision for the industrial economy for both the short-medium and medium-long term (DTI, 2007).

The words ‘Marine, maritime, ports, port, harbour, harbours, ocean, oceans and blue’ were used as a query to gauge the prominence of the maritime (or blue) economy in the NIPF (DTI, 2007) and only four results concerning ports were found. Interestingly, the ports were mentioned only in passing in the entire document, indicating yet again that perhaps the development of the South African maritime economy, especially the ports sector, was not highly ranking in the priorities of the central government as recently as ten years ago. The only real acknowledgment to ports is that given in view of South Africa’s weak investment in maintaining infrastructure and in creating a new one. As a result, the plan was to invest about

R150 billion in upgrading ports, railway and electrical infrastructure. In the common maritime vocabulary, no mention of the phrases Blue Economy or Marine anything were made.

Next, the words ‘entrepreneur, entrepreneurship, private, enterprise’ were used as a query and 32 references were made with the most frequent among these being ‘private’ and ‘enterprise’ at 18 and 14 references respectively. The most common phrases are ‘The private sector’ and ‘Small enterprise development.’ It also appeared that none of these words were used in the maritime or port context. Furthermore, there was absolutely no mention of maritime entrepreneurship. Nevertheless, the Blue/ocean economy, including vessel building and repair is the first of the fourteen Key Strategic Programmes identified in the *Industrial Policy Action Plan* iterative publications – which is keenly related to the NIPF – and in the *Black Industrialist Policy*.

#### **6.4.3. Industrial Policy Action Plan (IPAP) to 2013/14-2015/16**

The IPAP “articulates South Africa’s overarching approach to industrial development. The re-industrialisation trajectory is implemented through successive IPAP iterations that respond to change in global and domestic economic opportunities and dynamics. The IPAP guides South Africa’s industrial development path towards sectors and capabilities, which will provide sustained inclusive growth and increase participation of marginalised citizens and regions” (DTI, 2015b: 8).

It is in the IPAP 2013/14-2015/16 document that the language akin to maritime specialisation is mentioned when identifying constraints to its implementation. Some of these constraints are “High port charges for the export of value-added goods, compounded by serious inefficiencies in rail and port freight logistics” (DTI, 2013: 19). Other constraints are with regard to the success of Special Economic Zones (SEZs) as a contribution to economic development. One of those constraints is inefficiencies at SA ports network, especially the container terminal capacity constraints. Within the same document, however, the strategic location of SA’s ports and the available facilities such as world class ports and back-of-ports industrial capabilities and specialised logistics services puts SA in a favourable position to take advantage of global investment opportunities, including in the upstream oil and gas industry. It is thus important that SA makes certain to optimise its product offering at the ports and elsewhere (DTI, 2013). The *IPAP*, mentions that through developing SEZs as hubs of economic activity at, or closest to, ports is one way to do this.

With regard to the IPAP's *Maritime Industrial Capacity and Ports Offerings Programme*, the plan is to create more complementarity within and across the many functions of the ports which are sometimes competing. The government is planning to upgrade port and back-of-ports infrastructure and to upscale investment therein under the guidance of the *Presidential Infrastructure Coordinating Committee (PICC)*. The envisaged outcome is to create specialisation in each port and to make each port a hub port aligned with a special type of economic activity. On the social side, it is also to "facilitate industrial development, sustainable employment and social upliftment" (DTI, 2013: 130).

Upon querying 'entrepreneur, entrepreneurship, private, enterprise,' 42 references could be found with the most frequently used word being 'private' and the most frequently cited phrases being 'the private sector' and 'private partnership.' Public and private partnership was cited on more than a few occasions, for almost all key policy action programmes except for the maritime industrial capacity and ports offerings. This gives an impression that the government is, indeed, keeping up with the 21<sup>st</sup> century developmental state requirement of creating a conducive environment for the prosperity of private enterprise. This, however, appears to be of less concern with regard to the maritime port industry. The next most frequently cited words were 'enterprises' and 'enterprise' with 26 and 11 references respectively; the most common phrases concerning these being 'the department of public enterprises' and 'enterprise development.' None of these words or phrases were used in the context of marine or maritime entrepreneurship.

#### **6.4.4. The New Growth Path: Framework**

In the year 2011, the Department of Economic Development (DED) published the *New Growth Path: Framework*, a series of publications whose purpose was to "to stimulate a constructive discussion about the country's economic priorities in order to identify actions that the private sector, organised labour and government can undertake jointly and in their respective areas and to build support for strong partnerships in the society to address the jobs and economic challenges" (Department of Economic Development, 2011: 1).

Of the top 40 words used, the most frequently occurring words, in order of occurrence, were 'employment', 'development', 'support' and 'jobs'. Using the common maritime terms criteria again the words 'Marine, maritime, ports, port, harbour, harbours, ocean, oceans and blue' were used and a total of 6 references were made. Of these, the word 'ports' was cited four times

while ‘port’ was cited only once and the other ‘port’ was for Port Elizabeth – a coastal city with a namesake harbour.

The *New Growth Path (NGP)* document acknowledges the importance of port efficiencies for the greater regional economic development as this (port efficiency) can facilitate strong partnerships with other countries on the continent to achieve SA’s development goals. Competitive pricing of ports is considered in this macroeconomic strategy as an important determinant in the long-term competitiveness of SA’s economy. Competitive port pricing is bundled with the ten programmes to control inflationary pressures and inefficiencies combined with more proactive strategies to support an inclusive economy, social equity and regional development. Microeconomic measures to control inflationary pressures include: (a) competition policy as discussed below, targeting monopoly pricing on wage goods and basic industrial inputs; (b) a review of administered prices to ensure that they do not increase above inflation without compelling reasons; and (c) targeted, efficient and sustainable interventions to contain other volatile and/or rapidly rising costs” (Department of Economic Development, 2011: 41).

When the query ‘entrepreneur, entrepreneurship, private, enterprise’ was executed in NVivo®11, a total of 32 references could be found, with none of them having anything specific to comment on with regard to maritime entrepreneurship or SMME developments within that industry. The next and last macroeconomic policy document to interrogate using common maritime terms is the *Department of Transport’s Strategic Plan to 2015/16-2019/20*.

#### **6.4.5. DoT Strategic Plan 2015/16-2019/20**

The DoT is on a mission to “lead the development of efficient integrated transport systems by creating a framework of sustainable policies and regulations; and implementable models to support Government strategies for socio-economic development” (DoT, 2015: 12).

Using the common maritime terms query, a total of 107 references could be made and the most frequent of these was the term ‘Maritime’ at 65 references; followed by ‘Ports’, ‘Port’ and ‘Oceans’ at 21, 12 and 1 respectively. This is the most times, in all the preceding macroeconomic strategies, that the maritime sector has been so frequently cited. This being a national strategy on transport, it became necessary to add a new criterion relating to transport in order to compare the extent to which the maritime industry, and more specifically the ports sector, is given attention compared to other modes of transport. As a consequence, additional



maritime-related terms were used such as ‘Vessel, vessels, seagoing, ship, ships, shippers, shipping, companies, shipbuilding, quay, quayside, cargo, cargo-handling, terminal, terminals, seaside, landside, and marine-side.’; A total of only 27 references was found with most of the words in the new criteria yielding no result but the words ‘Shipping, Ships, Ship, Terminal, Cargo Companies and Shippers’ yielding 13, 4, 3, 2, 2, 2, and 1 outcome respectively.

A further exercise proved necessary for the purposes of comparison. Therefore, the words deemed common in land transport such as ‘freight, rail, cars, car, trains, courier, couriers, carrier, carriers, trucks, trucking, fuel, oil, pipeline, pipelines, routes, roads, road, national, corridors, corridor, node, and nodes; were accordingly queried and this yielded a total of 310 results. Of these, ‘Road, Rail and Roads’ were the three most frequently cited at 152, 69 and 45 references respectively, while ‘Freight, Corridor, Trains, and Oil’ were referred to 20, 14 and 2 times respectively. ‘Routes, Fuel, Fuels, coaches, node, nodes and pipelines’ were all cited only once.

The picture this gives is that the Department of Transport in South Africa is mainly looking at improving rail and road infrastructure and its mission to integrate the transport system efficiently is mainly with respect to road and rail transport and only secondarily with respect to maritime transport and the ports. The document, however, points to the creation of the Draft maritime transport policy and the completion of the comprehensive maritime transport policy by no later than 2016/17, which one should expect to address maritime and port-specific challenges more comprehensively. It will be discussed later on in this study within this section.

Of port governance, devolution and pricing, however, the Deputy Minister of Transport seems to speak directly to that in the *DoT Strategic Plan 2015/16-2019/20*, with reference to the *Operation Phakisa* strategy, citing the *National Ports Act of 2005* on the matter of TNPA’s incorporation, the pricing methodology, and the siphoning off of the port authority profits – the latter being one of the major themes discussed in most studies and complained about by some port stakeholders (Meyiwa & Chasomeris, 2016). In the words of the deputy minister,

*“Implementation of the National Ports Act (2005), as amended, whose key objective is to promote the development of an effective and productive South African Ports Sector, will be fast-tracked and closely monitored to enhance performance of sea ports and harbours. Successful implementation of this Act will improve the efficiency and performance in the management and operations of ports as well as a reduction in the cost of doing business and trading. Chapter 2 of the Act refers to the incorporation of the*

*Transnet National Ports Authority (TNPA). Through incorporation, the TNPA would be able to retain its profits resulting in a reduction in revenue requirement for every tariff year, further resulting in tariff decreases of between 10% and 45% per annum. The retained earnings could be used to fund capital expenditure, thus lowering debt costs while simultaneously making it cheaper to expand the port infrastructure and superstructure so as to provide an affordable world-class service to shippers and traders. Since 90% of South Africa's exports and imports are conducted using sea transportation, the implementation of the Ports Act would undoubtedly unlock the maritime economy, and create thousands of jobs and enterprises for the South African economy.” (DoT, 2015: 6).*

In the next section of the study, the conference proceedings of the *SAMIC 2012* and the four legislative documents undergo careful scrutiny with regard to Category 3 and Category 4, which most closely concern themselves with port economics specialisation and port performance. The macroeconomic strategic documents and *Operation Phakisa* have been intentionally omitted from the following analysis as preceding analyses made it clear that they do not primarily concern themselves with port-specific matters. It is also an expectation that beyond the following analysis the results will enable the authors to better articulate South Africa's port doctrine and recommend necessary reforms, which is the primary objective of the study.

## **6.5. Category 2: Assessing Convictions concerning Developmental Statism in South African Port Policy-making**

### **6.5.1. Inaugural South African Maritime Industry Conference (SAMIC) Report**

Recognising that South Africa's maritime sector had existed in a vacuum since 1994, was fragmented and under-resourced, thus restricting its potential to play its part as the primary component of South Africa's international trade competitiveness, the key objective of the *SAMIC Conference* was to provide a platform for dialogue with public and private sector role players to share information on how to advance the maritime development agenda as an economic sector of note.

Running the government rhetoric and political ideology themes in this document of 52 pages, 268 results were generated with 'Private and Public partnership' being ten times referred to. On exports and export-orientation the conference papers produced platitudes and no strategic

or specific action plans. Further, the document said nothing on SEZs, Export beneficiation, the developmental state – especially the democratic developmental state – and human capabilities development. Concerning human capabilities development, however, the document did promote the education of communities on seafaring, especially communities in areas identified as residing in maritime areas such as the coast and within a 60km radius from the shore and inland waterways.

The *SAMIC report* acknowledged that since 1994 the South African maritime sector has largely been neglected and that this contributed to compromised international competitiveness. It is only 18 years later, it seems, that South Africa started addressing this issue aggressively and it was in this conference that the long-term maritime investment and development strategies found a better platform for articulation. In this conference, public and private partnership was considered the way to do things.

#### **6.5.2. *White Paper on National Commercial Ports 2002***

*The White Paper on National Commercial Ports* was written after two significant reforms in the South African port governance system with the establishment of the *National Ports Authority (NPA)* and *South African Ports Operator (SAPO)* from a subdivision of Transnet called Portnet. The aim was to have the NPA (now known as TNPA) playing the landlord role and SAPO (now TPT) being a terminal operator so that operations would “see greater participation by the private sector to enable our ports to cope with the needs of the economy and the increasing business in our ports” (DoT, 2002: 1). “The White Paper on National Transport policy mainly deals with commercial ports from a transport perspective... The purpose of this policy is to ensure affordable, internationally competitive, efficient and safe port services based on the application of commercial rules in a transparent and competitive environment applied consistently across the transport system” (DoT, 2002: 1).

Export-competitiveness seems central in the wording and construction of the *White Paper on Commercial Ports*. Of the other themes in this category, the document appears to be silent. The document also says nothing on public-private partnerships and mentions the SMEs or SMMEs in passing as one of the necessary vehicles for sustainability and viability of the policy; and it is placed as the last of the sixteen objectives. Among its objectives, however, the *White Paper on National Commercial Ports Policy* aims to “Encourage fair competition based on transparent rules applied consistently across the transport and port system and Establish appropriate institutional arrangements and legislation to support the governance of ports”

(DoT, 2002: 9). The idea of competition according to TNPA is that which does not conflict with the complementarity of the SA ports system and all the governance tools such as cross-subsidies within and across ports used by the ports authority to run the ports thus – including the tariff methodology and structure. Institutional arrangements speak to the interface between public and private investment, port operation, devolution and port regulation.

One puzzle, however, is that the *White Paper* does not mention the intra-, inter-port and intermodal cross-subsidies as part of a challenge resulting from having the national ports authority as part of a transport company, that is NPA being a division of Transnet SOC. This gives the impression that cross-subsidies, however decried by the stakeholders as revealed in previous studies, form a backbone of the complementary nature of SA ports but not necessarily for port profitability reasons – in fact, necessarily not for the profitability of ports. Cross-subsidies, hitherto, serve primarily to legitimise the entire conglomerate of Transnet. Gumede and Chasomeris (2017) assess the profitability of all Transnet’s divisions and conclude that there is evidence of unwarranted cross-subsidisation by channelling some of the ports profits to the Transnet Group which, in some years, has loss-making division. Some types of cross-subsidies, nonetheless, have lately found a more justifiable place when applied in the public interest through the *Port Tariff Incentive Programme (PTIP)*. These and other port doctrine-related issues will be dealt with more extensively when articulating SA’s port doctrine later on in this study. Since its drafting in the year 2002, the *White Paper* then became the *National Ports Act (Act 12 of 2005)* and it is interrogated as the logical step from the preceding analysis.

### **6.5.3. National Ports Act of 2005**

The *National Ports Act* places much power in the hands of the ministers with regard to port governance and port devolution, speaking volumes about SA government’s view on port doctrine. For example, the shareholding minister must ensure that the necessary steps toward the incorporation of NPA are taken. The shareholding minister may, in accordance with the *Companies Act*, take the necessary steps toward converting the port authority into a public company styled the *National Ports Authority Limited*. The shareholding minister may exercise the State’s rights as a shareholder of the incorporated NPA. It must appoint the Board of the newly incorporated NPA. The minister of Transport may, on the other hand, “by notice in the Gazette determine ports in addition to the ports contemplated in subsection (1) which fall under the jurisdiction of the Authority. The minister may review, vary or extend the boundaries of

ports and must consult with the municipality concerned if such review, variation or extension affects the municipal boundaries” (National Ports Act, 2005: 9).

The *National Ports Act*, furthermore, is mostly about the incorporation of the NPA and what ought to be the processes preceding, during and beyond its incorporation. It hardly speaks to tariffs, tariff structure or even port performance and investment therein except to lay out the consultative process regarding tariff determination and to mention, as one of the functions of the Port Authority, the encouragement of public and private sector investment and participation in the provision of port services and facilities. In all of this, save to govern its affairs as the ports authority of the land, the *National Ports Act* seems to imply that the NPA has no input or veto power with respect to its incorporation or the extent of its geographic jurisdiction. These seem to be determined by the shareholding minister (which is the minister of Public Enterprise) alone or the minister of Transport in consultation with the shareholding minister and the minister of Trade and Industry.

In running the second category thematic criteria, and because this document is about ports, the National Ports Authority and the regulation thereof, ports were excluded along with the phrases ‘National Port Authority’ in order to ascertain to what extent the *National Ports Act* is drafted with the view to integrating ports into the macroeconomic policy strategies of South Africa. The following search criteria was implemented: ‘Public-private partnership (PPP), Small Medium and Micro Enterprises (SMMEs), subsidies, cross-subsidies, Special Economic Zones, (SEZs) Export, Beneficiation Promotion Programme, Export-oriented, Human capabilities development, Port Tariff Incentive Programme (PTIP), Research and Development (R&D), Developmental State, Democratic, Democracy, Inclusive, Inclusivity, Project, Paradigm.’ In a 38-page document, only 85 results were generated. Of these results, the most frequently cited words are ‘Development’, ‘Economic’ and ‘Tariffs’ at 26, 15 and 7 times respectively. Even then, these words are mentioned in passing and their use seems to be at the level of platitudes. The rest of the words and phrases are either not mentioned or only appear in the definition of terms. Finally, the *National Ports Act* seems mostly about reform of the ports authority and the establishment of an independent regulatory body, the *Ports Regulator of South Africa*, which would later be established in 2007 in line with the *Act*. The NPA (or lately, TNPA), however, has to date not been incorporated.

#### **6.5.4. Operation Phakisa**

The next document discoursing extensively about government's investment plans in the maritime (blue) economy is the *Operation Phakisa*, the aim of which is to fast-track integrated programmes designed to unlock growth and delivery in the oceans (or blue) economy. Through focusing on four key areas, namely: Oil and Gas Exploration (OG), Marine Transport and Manufacturing (MTM), Aquaculture and Marine Protection and Governance, *Operation Phakisa* finds much agreement with the NDP and the IPAP in these strategies' objectives concerning the blue economy.

Research and observation is key in the *Operation Phakisa* strategy and perhaps this is to be expected since the approach to the development and investment in SA's blue economy employs a paradigm that succeeded in Malaysia. It needs not be said that Malaysia is a significantly smaller-sized country with different cultural, historical and socio-economic dynamics to South Africa and therefore a lot of other unaccounted variables that may have led to the prosperity of this approach may be unavailing for South Africa. This necessitates closely monitoring whatever developmental strategies are being implemented. Hence the marine protected areas and marine spatial planning, discovery, research and monitoring form top priority. With the entire *Operation Phakisa* being funded wholly by government, including research, the SA central government is making an indelible mark as a marine researcher, investor and developer in SA. This speaks volumes for the current port doctrine to be discussed later on in this study.

Remarkably, the *Operation Phakisa* document speaks nothing of the developmental state paradigm within which it is being implemented, and it says nothing on the promotion of entrepreneurship and the success of private enterprise – especially micro, small and medium businesses – as a way of tackling the triple challenge of poverty, inequality and unemployment. It is furthermore silent on the public-private partnerships, beneficiation promotion or value-adding activities at ports, exports and tariffs. It is even silent on the matter of ports, pricing practices and their governance – indeed all possible pronouncements on the port doctrine. This was perhaps to be expected. *Operation Phakisa* is primarily concerned with investment into the entire maritime industry with four specific areas targeted. The decision to invest therein could scarcely be concerned with port devolution as this comes at a critical historical epoch where there is a widespread realisation that the multi-billion Rand maritime industry has largely been ignored since 1994 and has been at the periphery of policymaking hitherto. Next, we look at the last policy document primarily concerned with the maritime industry and that is the *Comprehensive Maritime Transport Policy*.

#### **6.5.5. Comprehensive Maritime Transport Policy for South Africa 2017 (CMTP)**

The CMTP aims to facilitate growth and development of South Africa's maritime transport system in support of socio-economic development of the country whilst contributing to international trade (CMTP, 2017). The policy is constructed in view of how the absence of an overarching transport policy has contributed to the slowed growth of SA's economy – especially the sharply declined ability to carry her own import and export trade since the 1980s. Lastly, the policy is a build-up from the *1996 White Paper on Transport*, which was later updated in 2010, and it also acknowledges the contributions made by various macroeconomic strategies, which are the *Reconstruction and Development Programme (RDP)*, the *Growth, Employment and Redistribution (GEAR)*, the *IPAP*, the *NDP* and the *NGP* toward the articulation of the more comprehensive maritime transport policy.

Perhaps unsurprisingly, the four most frequently used words or phrases in the 122-page document are 'Maritime', 'Transport, Department' and 'Development' at the frequencies of 504, 267, 193 and 155 respectively. This is excluding phrases such as South Africa and Policy. Upon querying the document for the Category 2 themes, a staggering 516 results were obtained. This is the largest output so far of all the documents analysed in this study in which Category 2 themes were used. Of these results, the leading citation is on development and research.

The CMTP mentions PPPs with respect to the Department of Higher Education and Training's partnership with the Department of Transport on the development of maritime education. For this, private institutions are also invited to partner and improve education and training systems in shipping. This is just as well because, in keeping with one of the 21<sup>st</sup> Century developmental state principles, human capabilities development must be an integral part of economic development. The policy adequately addresses the need for maritime education and training and actively encourages more private sector involvement in this regard.

Because of the importance of maritime training and education, research, innovation and development of technology becomes indispensable and the policy aims to advance industry research on international trends, technology development, marine engineering, naval architecture, nautical navigation and other maritime-related areas. Special Economic Zones (SEZs) are also considered important for research and innovation by the CMTP, but not much

is said on beneficiation or even the promotion of value-adding activities within those SEZs to create jobs and to boost export trade competitiveness of South Africa.

It is fair to say that the CMTP addresses a wide number of Transport and safety-related issues as well, with a keen attitude to learning and staying abreast of current maritime affairs, hence the centrality of education, training, research and development.

## 6.6. Category 3 and 4: Assessing South Africa’s Articulation of a Port Doctrine in Maritime Policy-Making.

Looking at all of the legislative documents and querying the Category 3 themes on all of these, a total of 969 results were generated with the most frequently cited word being ‘Port’. Of these results, the *Comprehensive Maritime Transport Policy* had the most results at 321 references, followed by the *White Paper on National Commercial Ports* and the *National Ports Act* at 312 and 281 references respectively. The most important measure of prominence for any theme in this output, however, is the coverage of each document. Coverage refers to how much of the text within the document matches the input one has queried.

**Table 6. 3 Thematic coverage from legislative documents**

Document Name	References	Coverage
Comprehensive Maritime Transport Policy	321	0.56%
White Paper on National Commercial Ports	312	1.24%
National Ports Act	281	0.71%

**Source:** Author generated and compiled using NVivo11 Pro®

As can be seen in the above table, while the CMTP shows the highest frequency of the text query, the themes cover only 0.56 per cent of the entire document, which is the least coverage, indicating that it may be the least likely to address those themes and the relatively higher frequency is due to the volume of the document being 122 pages long. *The White Paper on National Commercial ports* has the highest coverage of the themes, followed by the *National Ports Act* which is a build up from the *White Paper*. Indeed, previous analyses show that the White Paper is most concerned with port governance – an important aspect of the port doctrine – and it seems to suggest that there are genuine flaws with the port governance that lead to a number of problems emanating from governance of ports.

In order to ascertain to what extent the legislative documents may speak to port performance and efficiency, Category 4 themes were queried with an exclusion of the word ‘Port’ because of its prevalence so as not to confuse the results. The results are shown in Table 6.4.



**Table 6. 4 Thematic coverage of Category 4 themes from legislative documents**

Document Name	References	Coverage
<i>Comprehensive Maritime Transport Policy</i>	177	0.20%
<i>White Paper on National Commercial Ports</i>	53	0.27%
<i>National Ports Act</i>	36	0.09%

**Source:** Author generated and compiled using NVivo11 Pro®

Once again, it appears that the CMTP has the most citations of these themes but once more it is proven by relative coverage that this high frequency is due to the number of pages in the document. It is actually the *White paper on Commercial Ports* that shows the highest coverage of port-performance related themes – even at three times the coverage by the *National Ports Act*. Nevertheless, the most accurate form of analysis is an individual interrogation of each of these documents with respect to the two categories.

According to the *White Paper*, the ports are well placed under a complementary system and this system is designed to facilitate competition and instil a certain level of discipline across all commercial ports. The incorporation of the ports authority is still called for as one of the reforms that may curb issues pertaining to regulation and the *White Paper* finally advises that regulatory responsibility is to be assigned to an entity outside the *National Ports Authority*. The *White Paper* does not speak to port performance issues plaguing South Africa’s port systems and it therefore makes no recommendations on improvements. Finally, the *White Paper* mentions pricing with respect to prevention of monopoly pricing and the necessity of the Ports Regulator to regulate the ports authority in this regard.

The *National Ports Act of 2005* speaks more specifically to the pricing practices of South Africa’s ports. According to the *Act*, the *National Ports Authority* must determine tariffs which may be approved by the Ports Regulator and those tariffs must be published. Any substantial changes to tariffs are effected only in consultation with the *National Port Consultative Committee* and, “Subject to *Section 9 of the Competition Act, 1998 (Act No. 89 of 1998)*, the tariffs contemplated in subsection (1) may vary between ports” (*DoT, 2005: 30*). Moreover, the ports authority may enter into an agreement with a licensed operator or a party to an agreement or a port user for the variation of any tariff. Perhaps this is where the PTIP’s provision for private port users to apply and its hallmark consultative process come in with regard to tariff

negotiation and the limited nature of cross-subsidies in the public's best interest. The PTIP may prove to be quite a relevant and useful improvement in SA's current port doctrine by far.

## **6.7. Conclusion: Current Port Doctrine and Recommended Improvements**

From the preceding document analysis it is clear that South Africa subscribes to a complementary system of ports, encouraging competition not necessarily within and across the ports system but within the region and internationally. Each port within the South African ports system has a certain comparative advantage compared to others and each port, because of system-wide pricing, has to mitigate its own expenses in order to maintain itself and stay operational. There are, therefore, many possibilities for cross-subsidization within the subsectors, say in the container sector in the Port of Durban or in the Port of Cape Town, which is reasonable in a complementary ports system paradigm. It becomes undesirable, however, when one subsector cross-subsidises another because profitability is compromised along with technical efficiency. This is, essentially, what South African port stakeholders have complained about in the past. Port prices in SA ports are administered because of the Ports Regulator and Revenue Requirement Methodology, and their administered nature thus allows for port system-wide cross-subsidies if they are in the public interest. Notwithstanding this, public consultation and tariff regulation concerning tariff adjustment are still central in the SA Ports doctrine. In addition, investment in ports is subject to the *Ports Consultative Committee (PCC)* approval. This is commendable.

Investment, as it stands, is mainly by the port authority and any port expansion plans – that is, the MDS – are financed through proceeds from port operations and loans for such investments are made against Transnet's balance sheet. The National Ports Authority and the Transnet Ports Terminals receive no funding from the government to aid ongoing investment in ports. Through the *Operation Phakisa* strategy, however, the government is facilitating nationwide investment in the blue economy, some of which borders port and back-of-port infrastructural investment, like upgrading rail networks from the ports to the hinterland. Other *Operation Phakisa* undertakings involve extending and expanding local port's ship repairing capabilities to service current and future vessels in East and West Africa; and building patrol vessels as part of the *Marine Protection Services and Governance (MPSG)* programme among other things. The National Ports Authority and Transnet have adopted a Public-Private Partnership model to

finance new *Operation Phakisa* infrastructure investment with the objective of supporting industrial opportunities in ports. Thus what is observed is the commonality of objectives concerning ports and their expansion between the presidency and Transnet and, by extension, TNPA and TPT. This gives an impression that there is alignment between port operations and national developmental state objectives.

On the management style and governance currently, TNPA and TPT are a maritime division of Transnet SOC Limited – the transport conglomerate. Decisions taken by Transnet top management are binding on TNPA and TPT since they have the same board of directors. Thus TNPA's decisions can be overruled by the Transnet directorate, rendering the ports landlord and terminal operators without autonomy concerning the use of the ports profits. Legislation prescribes the incorporation of TNPA (*National Ports Act, 2005; National Commercial Ports Policy, 2002*) so that it may have a separate board of directors, no longer being answerable to Transnet, and have full control over what profits are used for and what proportion of port profits are reinvested, instead of being siphoned off into Transnet Group's other loss-making divisions. This restructuring, however, still has not taken place and it appears to be meeting some resistance from Transnet, so the *status quo* essentially remains.

The question that this paper sought to answer is to what extent South Africa's current port doctrine is agreeable with the democratic developmental state and, in the event that it is not, what port doctrine can be articulated for the success of the democratic developmental state. There appears to be some alignment between the ten documents analysed in this study, especially among macroeconomic policy documents. A number of aspects in which there is a consistent shortfall, however, is with respect to how exactly the government actively encourages a conducive environment for private enterprise and if this private enterprise is not only just private but it also specifically addresses local businesses, not multinational corporations that are clambering at SA's shores. If South Africa is to be truly a democratic developmental state, be inclusive (insofar as it seeks to redress the injustices of Apartheid), and implement this paradigm in the ports sector as well, we do not expect it to be so silent on the issue of young, black local entrepreneurs at SA ports. Lastly, the delayed or perhaps disregarded incorporation of TNPA fifteen years after it was provided for in the *National Ports Act of 2005* is tantamount to felony. It inhibits transparency, effective regulation and the ability of policy formulators, academics and other industry stakeholders to articulate a better port doctrine for South Africa's ports system. What is recommended is a deeper look into the

composition of private sector participants, their socio-political status at SA ports, and the environment and conditions within which they have their operations. What needs to be further ascertained is the opportunities availed to them both for empowerment and for doing business. With all this considered, TNPA should be incorporated in line with legislation (National Ports Act No. 12 of 2005) and international best practice (World Bank Port Reform Toolkit, 2007) and this is central to the port doctrine this PhD thesis seeks to articulate.

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## CHAPTER 7: CONCLUSION AND RECOMMENDATIONS

### 7.1. Introduction

South African ports have come a long way since the days of independent port authorities where each port had price-determining autonomy. The environment has since changed into a ports system where there is one landlord, one tariff book, uniform tariffs and one ports regulator for all ports. In all the eras of their evolution the different ports faced unique challenges and were under varying political influences which would often necessitate their evolution. Such evolution came in the form of pricing methodology, tariff structure and regulation. As revealed in Chapter three of this study, from a historical view, it appears quite natural that ports evolve and adapt to the changes in their respective socio-economic and geopolitical terrains. Such diverse environments presented the ports with their own challenges and resulting ideologies and it is not erroneous to expect ports and their devolution strategies to evolve overtime. What we observe, however, is that port governance regimes may grow resistant to change over time and become obstinate in their methods and devices even when this resistance almost always result in port performance challenges. It can be seen, moreover, that principles used to determine port pricing and governance (port doctrines) have been a product of gradual historical events and have been ex-post articulated. While this is not an error on its own, this behaviour paints a misleading picture that a port doctrine may only be declared after-the-fact of historical events. This effectively eliminates the notion that nations and governments can determine their own port doctrines in advance in much the same way as the classical and 21<sup>st</sup> century developmental states, which charter their own vision for economic development and then execute it. Because of this, the study's primary objective has been to *ex-ante* articulate South Africa's port doctrine for a democratic developmental state and this has been done primarily through four papers (chapters) that are published separately and collectively contribute to this thesis.

Recalling that the multiple challenges that South African ports face are with respect to pricing methodology, tariff structure and port devolution, the solution largely proposed throughout this study has been to articulate a new port doctrine aligned with the democratic developmental state principles. To recount the principles of a democratic developmental state, what needs to be remembered is that social and economic policies are not regarded as mutually exclusive (Evans, 2010; Edigheji, 2010) and there may be overlaps in some instances. The

recommendations made in this chapter follow this as a fundamental principle of ordering a developmental state. These principles are:

- State-led industrialisation policy (Gumede, 2009);
- Prioritisation of key industries from which other industries may sprawl (Roberts & Rustomjee, 2010);
- Establishment of a planning body comprising an elite bureaucracy to formulate economic and social policy (Minns, 2001; Chang, 2010);
- State-controlled financial system and/or state institutions for industrial capital finance, e.g. China Development Bank, Land Bank, Industrial Development Corporation; and the subservience of private finance to public finance (Wade, 1990)
- State-Owned Enterprises at the forefront of industrialization and economic development (Chang, 2010; Roberts & Rustomjee, 2010)
- Infant industry protection without tolerance for inefficiencies in SOEs (Chang, 2010; Lee & Flynn, 2011)
- Promotion of export-driven growth and the creation of an environment conducive for private investment and private enterprise to prosper (Chow, 2004)
- Promotion of technological acquisition from multinational corporations (Marwala, 2006).
- Human capital development through investment in better healthcare, improved education and public infrastructure (Ostrom, 1996; Chow, 2004; Edigheji, 2010)
- Wealth redistribution and land reform (Edigheji, 2007; Radice, 2008)

The developmental state and the possibilities of creating a 21<sup>st</sup> century democratic developmental state in South Africa are discussed in Chapter Three where this study presented a history of South Africa's ports and how they currently compare to the East-Asian ports in terms of their investment mix and government's role. Using Lee & Flynn's (2011) investment split criteria, it was found that there are a number of similarities between South African and Asian ports. What appears different is that marine infrastructure investments take the form of a blend of various arms of government (local and central) along with terminal operators for East-Asian ports, while South Africa's most dominant player is the port authority (TNPA). For port superstructure TNPA's sister company (TPT) is in control in South Africa – especially for the most profitable trades – while in East-Asian ports private terminal operators are largely in

control (Lee & Flynn, 2011). Land access infrastructure investment also appeared to be largely the responsibility of central and, to a lesser extent, local government in East-Asian ports while in South Africa this is the function of Transnet through its Freight Rail division. Considering that Transnet, and by extension TNPA, is wholly owned by the South African government through the DPE, the truth of the situation is that these investment categories are the responsibility of central government. However, this scenario must be approached cautiously because unlike in the case of East Asian government, investment into South African ports is achieved through a State-Owned corporate entity, and not necessarily through tax revenues as is the case when central government uses funds from its fiscus. This fine line separates the government expenditure that is profit-oriented from government investment that is development-oriented. By establishing SOEs, the government is effectively playing the role of an entrepreneur. It is therefore a reasonable expectation that state-owned entities should make a profit in order to sustain themselves and not rely on government bailouts, which equates to unprofitable use of tax revenues. Notwithstanding this, TNPA was still found to be operating above commercial principles and it needs to be further restructured to make sure that this situation does not continue. Incorporation is expected to also contribute toward the elimination of inefficiencies and the need for government bailouts while simultaneously keeping the entity in government hands in view of its developmental mandate.

Chapter 4 more deeply scrutinised the current port doctrine, highlighting the major contradictions in philosophy and practice; contradictions that were also extracted from an extensive review of port stakeholders' comments stretching over nine years. Having carefully juxtaposed these contradictions, a more challenging undertaking was finding a way to articulate South Africa's port doctrine and thereafter assess that same doctrine under the lens of a developmental state. What was found was that there were clashes because of a conflicting combination of three doctrines (detailed in Chapter 4) that could not adequately speak to SA's economic objectives and none of them constituted an exact fit into South Africa's port doctrine. This highlighted the need to articulate a uniquely South African port doctrine. A further challenge was the very act of articulating a doctrine. In other words, presenting a positive statement (of what is) based on a historical view of port devolution within a country, region or territory; or a normative statement (of what ought to be) based on the country's macroeconomic vision and goals concerning the ports sector. In all of this, it was concluded that as it stands, the port doctrine is a *status quo* and thus a statement of what is. However, whole study sought to present a port doctrine that presents what ought to be. That is, to *ex-ante* articulate a more

sound port doctrine that will help the South African government and port stakeholders to be more proactive in matters of port pricing, investment and devolution, thus being more proactive and less reactive. This could have been achieved by inviting all port stakeholders to participate in a separate study, but this enterprise was thwarted by the Competition Commission's ongoing investigation into Transnet's potentially anticompetitive practices (*Competition Commission*, 2016).

With this limitation in place, but still with the goal of finding ways to articulate South Africa's port doctrine, Chapter 6 focused on an analysis of the environment surrounding public-private partnerships in South African ports. The overall aim in this chapter was to assess the extent to which the government and the ports sector under the current dispensation is at least keeping to its aim of being a democratic developmental state. For this, one guiding criteria was adopted: the extent to which the ports business environment is conducive for the prosperity of the private sector. Because the study was strictly limited to the ports it was conducted in an environment whose foundation is non-racialism, redress, inclusivity and transformation. Legislation compelled the Transnet Group, TNPA and TPT to implement procurement processes and supplier development programmes mostly fulfil those very foundations. *The National Ports Act* serves to further buttress those processes and programmes. The public-private partnership contracts that were formed in this environment also reflected the foundations, with a salient feature that they were mostly partnerships between powerful multinational corporations and comparably weaker – and often newer – South African counterparts. The conclusions, nonetheless, still had an aura of uncertainty about them. What emerged very clearly was that the qualification criteria for PPP contracts in SA ports was often non-negotiated – and perhaps even non-negotiable – and remedial in outlook, contrary to what is observed for PPP contracts in other regions of the world. Indeed, the entire PPP environment in SA ports seems to be imposed on participants by the social heritage of the entire country rather than the strict science of doing business at ports. There may be value to seeking, from the sample of all terminal operators and other port service providers who were awarded the tenders, just what it is they consider critical success factors for PPP arrangements and, thus, how we may further improve the environment and subsequently the port doctrine.

Having professed democratic developmental statism for more than a decade, it was necessary to do a historical documentary review of South Africa's public policy statements and macroeconomic strategies to assess exactly how, if at all, the country has been practicing the same rhetoric – especially in the case of the ports. Chapter 5 concerned itself with cross-

referencing key themes using deductive content analysis and NVivo 11 Pro® qualitative analytic software to reveal the relationship between government's developmental rhetoric and actual business practices in ports. It was found that there were some agreements between macroeconomic strategies and policies while there was an uncomfortable silence on the plans regarding redress, non-racialism and inclusion of young, black entrepreneurs who stand to benefit from the reformatory actions of the state.

## **7.2. Objectives of the study and the extent to which this study fulfilled them**

### **7.2.1. Objective 1: To assess the possibility of articulating South Africa's port doctrine in the current dispensation**

When looking at the possibility of articulating SA's port doctrine in the current political climate, drawing lessons from the Asian Port Doctrine where the central government is mainly involved and, through its municipal arms, recurrently determining the extent and trajectory of investment, pricing and governance, dictates that South Africa should do likewise especially in view of the developmental state rhetoric and the gross unwillingness of TNPA to incorporate in line with the provisions of the *National Ports Act*. At the time of the study, however, South Africa was facing a crisis of poorly performing major SOEs that needed hundreds of billions of Rands from the government in the form of rescue packages (Donnelly, 2015), rising debt-to-GDP ratios (Nene, 2015) and a downgrade in the country's sovereign credit rating. All of these communicated that the state was in no way capable of assuming additional fiscal undertakings to such strategic assets as ports without faltering. Implicitly, it also communicated that the state would do well to continue in its neoliberal economic practices despite whatever developmental stance it professes to take.

Indeed, it was discovered that the state may not, without incurring significant fiscal burdens equivalent to 67 per cent of TNPA's seaside operational costs, involve itself more deeply into port affairs (TNPA, 2012). Increased government intervention would further harm the very objective of government which is to see SOEs (such as TNPA) being self-sustaining key role players in South Africa's economic growth and development. Within the current context of South Africa's political economy the conclusion thus reached concerning the possibility of articulating South Africa's port doctrine was that the adaptation of the principles of the Asian doctrine into SA would prove premature. This, however, in no way precludes SA from articulating it. What was discovered is that fitting into the Asian – or any of the other port

doctrines – was not possible for South Africa and the ground-breaking quest for the articulation of SA's unique port doctrine had only began. Chapter 3 addressed this objective adequately.

### **7.2.2. Objective 2: To find links between challenges faced by port stakeholders and the current port doctrine**

Moving on from Objective one, the next logical step was to assess what port doctrine(s) may be followed in South Africa currently and the finding was that SA is using a mixture of the three port doctrines which are Asian, European and Anglo-Saxon port doctrines. Upon assessing the reasons for this, it appeared that arrival at such port governance practices that are now preponderant was, at best, through trial-and-error methods and was by no means done in alignment with the country's macroeconomic objectives. It should be stated that the consideration of developmental state objectives was an afterthought. This, among other things, resulted in confusion and discontent which has since been expressed through many stakeholders' submissions to the PRSA. Among some of those dissatisfactions were longstanding complaints that TNPA seemed to have either been ignoring or consistently failing to address because of the incoherent current port doctrine. These included the lack of incorporation, cross-subsidisation, rising port costs and the pricing methodology that lacks sufficient justification. Apart from the fact that TNPA remained mute concerning incorporation at the time of the study, the challenge that still remained was finding an objective dichotomy between the normative declarations of a port doctrine (that is, what ought to be) and the positive statements concerning it (what actually is). To overcome this, a recommendation was made to work in consultation with TNPA, TPT and terminal operators as they form part of the core business of ports, for them to be part of the solution in ameliorating some dilemmas presented by doctrinal ambiguity and to help articulate a well-fitting doctrine for a democratic developmental state. Because other state departments such as the DoT and the DPE along with the Ports Regulator and their efficacy in policy formulation may be affected by the port doctrine, these must also be consulted and their contribution to a new port doctrine solicited.

Objective 2 was well achieved in Chapter 4 with a collection of stakeholders submissions stretching over 9 years and the various themes extracted from these remaining relatively uniform concerning the RR Methodology, tariff structure, port performance and governance. The clashing port doctrines were also detailed and clearly identified in this chapter as the source of conflict and dilemmas. The challenge this chapter faced was to present a clear picture of the

SA port paradigm and differentiate it from what it is and what it ought to be. It appears that port users and TNPA differ on how ports ought to be governed and the pricing principles that should be followed. TNPA is not presenting a convincing argument in favour of the RR methodology and current governance practices. The conclusion reached in this study regarding this is that a port doctrine may be a statement of what is, but nowhere in literature or in the data collected and analysed is there a preclusion from stating a port doctrine as what ought to be.

### **7.2.3. Objective 3: To assess the degree to which the current port governance environment allows for the flourishing of private port terminals under the current port doctrine**

Chapter 5 preoccupied itself with achieving this objective. It is a reasonable assumption that a state which for nearly two decades has professed to be a developmental state ought to have some traces of that rhetoric in its public-private business environment in which ports naturally are role players. What was found is that South African ports perceive a lot of value in pursuing PPP arrangements in ports in order to improve their performance and to raise capital without turning to the state. As this is one of the sound reasons for seeking PPPs, it is also expected that there is a great deal of negotiations between the landlord of ports (TNPA) which is representative of the public in this case, and potential partners in these arrangements until a mutually beneficial agreement is reached. Upon assessment, however, it appears that although the procurement processes and the TNPA guidelines for successful tendering processes promote transparency and a fair chance to all, the whole process is one-directional and leaves very little room to entertain private stakeholders on what they consider critical success factors for PPPs. It was also found that for heavy infrastructural investment projects, no single South African corporate had the capacity to run them entirely. Neither was there a consortium (for example) comprising only local companies which had the capacity and any partnerships with multinational corporations would have resulted in local companies being dwarfed in such a collaboration. This is the *status quo* and all these partnerships are formed, it must be recalled, to ensure better port performance and to guarantee favourable returns on investment for the duration of the contracts.

#### **7.2.4. Objective 4: To *ex ante* articulate South Africa's own port doctrine in view of relevant policy and legislative documents that facilitate the governance and operation of seaports**

Port doctrine in Asia stemmed from the predominant political ideology, which was economic development guided strictly along socialist/communist principles often under autocratic rule. The same ideology found expression in the way policy was formulated and the organisation of government into planning commissions, elite bureaucrats and technocrats responsible for policy implementation. Due to these factors, it became apparent that for port doctrine to be successful, it had to be articulated beforehand. That is, a port doctrine is a normative framework within which pricing, investment and port governance takes place. Port doctrine is not divorced from all other macroeconomic strategic documents and objectives. This unified approach to the port sector fostered growth and competitiveness, leading to the prosperity of East Asian ports as seen today.

Chapter 6's preoccupation was with the assessment of South Africa's Democratic Developmental State: Rhetoric and Practice in the Ports Sector. After examining all available documents that contribute toward the formulation of South Africa's maritime policies and strategies, including therein the *National Development Plan* as an overarching macroeconomic strategy until 2030, it was concluded that there is a fair degree of agreement between all documents analysed in this study, especially among macroeconomic policy documents. The shortfall lay in the felonious delay or even disregard for the *National Ports Act's* provision to incorporate TNPA, and the general silence of macroeconomic strategies and consultative documents on the nature of – and plans to develop – South Africa's port industries. Certainly, the potential contribution of SA's ports was duly acknowledged in some of these documents but nothing was presented in the macroeconomic strategies on how to achieve that contribution or sustain it beyond. Another noticeable omission was with regard to institutional reform to allow for the inclusion of young, black local entrepreneurs at ports. If South Africa is to be truly a democratic developmental state that seeks to expand human capabilities, be inclusive (insofar as it seeks to redress the injustices of Apartheid), and implement this paradigm in the ports sector as well, it is not acceptable to be so silent on the issue of young, black local entrepreneurs at its ports.



### **7.3. Answering the Overall Research Question**

The overall research question is as follows: How can South Africa successfully translate its developmental state policy objectives into a port doctrine that addresses port pricing methodology, tariff structure and port governance challenges?

Based on the data collected within this study, the macroeconomic strategies and national developmental objectives, various recommendations have been made in each chapter either by the author or by port stakeholders. The following section, therefore, will corroborate these recommendations and present them in more detail, breaking them into three broad sections pertaining to port pricing, tariff structure and port governance. From this the answer to the overarching research question will be presented as a policy recommendation – even prescription – that, when wholly considered, presents a complete normative framework that needs to be adopted regarding the ownership, management, operation and devolution of South Africa's ports. This is the *ex-ante* articulation of South Africa's port doctrine for a democratic developmental state.

### **7.4. Recommendations and Contribution to Knowledge: A New Port Doctrine**

#### **7.4.1. On Governance**

The ports authority currently remains under the Transnet Group and is bound by the decisions made by the group's board of directors. This board of directors has the interests of the whole conglomerate at heart and has no qualms about using the profits from the TNPA to subsidise non-performing divisions of Transnet. This would not be problematic if such a practice had not resulted in a 30-year long investment gap into TNPA's ports infrastructure that contributed to poor port performance (TIPS, 2014). Transnet is already a corporate entity insofar as it is not expected to depend on tax revenues for survival, but its corporate governance has been rather questionable despite its corporate nature. By extension, and because of its dominance in the cargo-handling side of port operations through TPT, TNPA has acted in some capacity as a monopoly and has been suspected of anticompetitive behaviour (*Competition Commission*, 2016). For all these reasons, stakeholders have been demanding consistently that TNPA be incorporated in line with the provisions of the *National Ports Act of 2005*.

What incorporation implies is that TNPA must have a separate board of directors and be counted as another SOC independent of the Transnet group so that it may prioritise its own corporate interests ahead of those of Transnet. That is, TNPA must become National Ports Authority SOC, meaning it should remain 100 per cent in the hands of government in order to fulfil its developmental mandate but its financial performance should not be diluted with the interests of the whole Transnet conglomerate. The obligation to incorporate TNPA must be fulfilled urgently. Moreover, since the time of the study, new information has surfaced on the unethical behaviour of some Transnet executives – with their plain and more covert corrupt practices – making a more compelling case for the incorporation of TNPA (Haffajee, 2018; *Public Affairs Research Institute*, 2018).

#### **7.4.1.1. On Regulation**

Because National Ports Authority SOC would still be owned by the government as a 100 per cent shareholder through the Department of Public Enterprises, it must remain regulated by the Ports Regulator of South Africa as currently the case. Considering the ease with which TNPA has been able to brush off legislation to incorporate since 2005 and even under the current PRSA's regime, the PRSA must be endowed with more authority than its current constabulary role. That is, the Ports Regulator must be given the powers to institute punitive measures against the National Ports Authority's blatant disregard for its recommendations in the annual *Record of Decisions*. At the very least, the PRSA should have the powers to sue. The ROD must therefore not be looked at as a record of suggestions but rather as a litigious document whose disregard invites criminal or civil action against the authority.

Transnet Port Terminals and its tariffs are not regulated by the PRSA. TPT may remain under Transnet but because it is a division of a SOC, it must not be exempt from the regulation of its corporate governance. TPT, for example, remains an effective monopoly over the two most profitable subsectors in SA shores, that is, the Ro-Ro and the containerised cargo. These cargo types are historically known for their premium tariffs and in view of the stakeholders' complaints that have prompted an ongoing investigation by the Competition Commission, TPT's hegemony must not continue unabated. It must be recalled that TNPA aspires to be a perfect landlord port and in the best performing landlord ports around the world, it is often the private sector that dominates the cargo-handling side of port operations. Therefore, TPT must make way for more private participation in the Ro-Ro and container trades and the landlord

(TNPA) must exact rent from these private terminal operators, which is international best practice that also fosters healthy competition and efficiency.

#### **7.4.2. On Pricing Methodology and Tariff Structure**

As a stand-alone SOC, the National Ports Authority would be expected to follow its developmental mandate and the PRSA should ensure that the authority's tariffs allow it to:

- “Recover its investment in owning, managing, controlling and administering ports and its investment in port services and port facilities;
- Recover its costs in maintaining, operating, managing, controlling and administering ports and its costs in providing port services and port facilities; and
- Make a profit commensurate with the risk of owning, managing, controlling and administering ports and of providing port services and port facilities.” (TNPA, 2012:8-9)

This is in line with the existing *status quo* and it may not be changed if the ports authority is expected to self-sustain. What must be changed, however, is the RR Methodology. A clear cost basis for all its components must be sufficiently presented or the whole methodology overhauled to make way for a new one that reflects the authority's new legal status as an independent SOC. If the RR methodology remains, a correct asset valuation method must be adhered to for the estimation of the regulatory asset base and the PRSA must be given complete authority to appoint an independent asset valuator. This valuator's findings must be considered preeminent to the port authority's asset valuation. This is appropriate regulation.

Currently the ports system is complementary and uses one tariff book to charge uniform tariffs across eight different commercial ports that serve different markets, all of this in a country whose maritime activities enable it to interact with the rest of the world along a 2850 kilometre coastline straddling two oceans. The complementary system and uniform tariffs help to run and regulate ports with relative ease. It also has a potential to help the government use each port's comparative advantage to fulfil its developmental objectives. Each port, however, must be allowed to make slight adjustments to its tariffs in response to its unique geographical challenges and operational environments. These price adjustments may be subject to certain ceilings and floors.

There is currently a triennial tariff application process which can be reviewed and adjusted annually. This is a tariff adjustment practice that was recommended and approved with the intention of smoothing annual tariff adjustments as the ports are undergoing a pricing reform. The annual review and adjustment of a triennial tariff application, however, makes the tariff application rather an annual undertaking and the triennial nature thereof illusory. It has not worked hitherto. There is also a Port Tariff Incentive Program (PTIP) which was introduced and approved as a way of dealing with the dilemma of cross-subsidies and allowing subsidies to approved cargoes to be applied only when they are in the public interests. The mechanics of the PTIP were discussed in this study. The 3-year tariff was for tariff smoothing and the PTIP was to encourage local beneficiation and encourage port stakeholders to align themselves with the ports' developmental mandate and contribute toward job creation through ports.

Combining the merits of current tariff regulation and the intentions behind the PTIP, the subsidies under the proposed National Ports Authority SOC's would be used to subsidize similar trades between two or more ports and these subsidies would be earmarked for reinvestment into infrastructure. For example, some of the proceeds from the Durban container terminal may be redirected to the container terminal in the Port of Cape Town to build, upgrade facilities or purchase equipment there and boost productivity of the whole port. Each port within the system, moreover, must be allowed sufficient individual autonomy in making decisions that each port committee and management considers best for it as long as it does not detract from the overall developmental objectives as upheld by the National Ports Authority SOC. This may include whatever subsidies extracted from its individual operations for the benefit of another port being made an inter-port loan within the necessary provisions deemed appropriate by the port authority and the shareholding minister. The loan, as one of possible arrangements superior to a subsidy, may be considered an internal investment that encourages one port to wisely allocate the subsidies granted to it so that no one port may grow dependent on subsidies from others.

#### **7.4.3. On Port Devolution**

From the research done in view of South Africa's current port doctrine and her democratic developmental state rhetoric, it appears that in order to move toward achieving the state's objectives of a commercially viable, self-sustaining landlord port model, job-creating maritime sector, and a transformed port economy; investment into relevant institutions is the first and most important move. Longer-term oriented solutions must precede and outlast the likes of

Operation Phakisa strategy. Thus, considering the country's ambitions as expressed in the National Development Plan (NDP), institutional reform is at the heart of a port doctrine and a new port doctrine has, as a *sine qua non*, investment into viable institutions in order to be effective.

South Africa, through Affirmative Action and B-BBEE policies, seeks to transform the ownership of the economy and achieve equality. This is no different in the ports sector where Transnet as an SOE is expected to achieve a 70% local content in its procurement practices and 51% black ownership of some port terminals like the IVS Precinct in Durban. The challenge is that there are neither nearly enough local content suppliers for Transnet's (TPT's) high-tech component parts nor a sufficient amount of black businesses with expertise and competences in the sectors where the government demands transformation. This points to a structural challenge away from port devolution that first needs long-term solutions implemented in it before maritime-related issues of economic transformation can be successfully addressed. Maritime entrepreneurship must first be an accessible, viable and well-understood option for the black majority who, for many decades and diverse historical reasons, have never considered it a career option. Maritime education must be an increasing part of vocational training in Technical and Vocational Education and Training (T-VET) institutions, a growing academic discipline in traditional universities, and a significant part of logistics and transportation-related subjects in high schools. This involves a concerted effort from various governmental departments such as Department of Education, various grassroots initiatives in townships and rural areas – especially for coastal provinces – and even Transnet itself as an SOE.

In achieving a more equitable distribution of incomes and targeting key industries as catalysts for economic growth, it is not erroneous to assume that the Asian developmental states had not only created awareness to the general public about the potential of their economies but through their social transformation policies they had also groomed a class of businesspeople who would be industry captains to sustain that development and economic growth. This is no less an expectation for South Africa, especially in view of being a democratic developmental state. The level of inclusivity that South Africa wants to achieve must necessarily be preceded by the efforts to make certain that the masses are capacitated for inclusion. That is even more necessary if Transnet is to adhere to its principles of maintaining the quality logistics supply chain.

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## APPENDIX A

**Table A. 1 Themes on Tariff methodology**

	Themes on Tariff Methodology				
	Submissions on the following Review Periods				
Requested Tariff Increase		18.06%	13.2%	14.39%	Σ
Theme	2009/10-2011/12	2012/13	13/14	14/15	
<b>Revenue Requirement Model is unjustifiable</b>	36	4	5	8	53
<b>Above-inflation increases requested</b>	15	7	1	3	26
<b>Regulatory Asset Base is not cleaned up and it is</b>	-	-	3	6	9
<b>Depreciation methods used remain questionable</b>	-	-	1	1	2
<b>Some products are still tried on a value basis</b>	1	-	-	-	1
<b>WACC, MRP and betas used to assess risk are all inaccurate</b>	-	4	10	11	25
<b>Cargo dues are a uniquely South African Practice</b>	1	5	1	1	8
<b>TNPA's Return on Capital is not justified</b>	-	1	-	-	1
<b>Estimated volume</b>	2	1	1	3	7
<b>Multi-year tariff approach is above inflation and questionable</b>	-	-	4	-	4
<b>The inclusion of taxation in the RR method is not lawful</b>	-	-	2	-	2
<b>The inclusion of CAPEX into the RR method inflates port costs</b>	-	-	1	3	4
<b>TNPA has increased its OPEX costs to its customers unjustifiably</b>	-	-	-	1	1

Source: Author compiled and analysed using data from Gumede (2013) and Stakeholders' Submissions from the Ports Regulator (2014)

**Table A. 2 Themes on Tariff Structure**

	Themes on Tariff Structure				
	Submissions on the following Review Periods				
Requested Tariff Increase		<b>18.06%</b>	<b>13.2%</b>	<b>14.39%</b>	<b>Σ</b>
Theme	<b>09/10-11/12</b>	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	
<b>Current structure inhibits global competitiveness of ports</b>	30	7	3	7	47
<b>High port tariffs hinder the profitability of stakeholders</b>	8	-	-	3	11
<b>There are misalignments with international tariff standards</b>	3	7	2	3	15
<b>Unreasonable and inconsistent pricing of some port commodities</b>	8	1	3	3	15
<b>Cross subsidization of some port costs across all ports</b>	-	1	-	-	1
<b>Cross subsidization of port profits to other Transnet divisions</b>	-	1	-	-	1
<b>Port dues as a tax system are inefficient and blunt instrument for profiteering</b>	-	-	1	-	1
<b>Inappropriate use of income from berth dues and cargo dues</b>	-	-	-	1	1
<b>Incongruity between CAPEX spend on some products and tariff increases</b>	-	-	2	2	4
<b>The Beneficiation Promotion Programme is difficult to understand or execute</b>	-	-	2	2	4
<b>Increases in tariffs resulting from Market Demand Strategy will be inevitable</b>	-	-	1	2	3
<b>New tariff allocation will almost wholly prejudice the cargo owners</b>	-	-	4	1	5
<b>Bunker Levy is prohibitively high</b>	-	-	4		4
<b>User-pays principle is preached but not practiced</b>	-	-	1	2	3

Source: Author compiled and analysed using data from Gumede (2013) and Stakeholders' Submissions from the Ports Regulator (2014)

**Table A. 3 Themes on Port Governance**

	Themes on Port Governance				
	Submissions on the following Review Periods				
Requested Tariff Increase	Frequency	18.06	13.2	14.3	Σ
Theme	09/10-11/12	12/13	13/14	14/1	
Unresolved matters	5	-	-	-	5
Abuse of monopoly power	8	-	-	1	9
Lack of transparency in reporting or justifying tariffs	10	1	2	5	18
No accounting for prevailing economic conditions	24	3	2	1	30
TNPA practices do not support job creation	9	5	1	2	17
Non-compliance with national policies and inconsistency	13	3	1	3	20
Inefficiency and low productivity of ports	13	13	4	1	31
Poor service delivery	4	-	-	1	5
Weak Security	1	-	-	-	1
Lack of consultation with industry prior to altering tariffs	-	2	1	-	3
Projects from previous financial year are seldom complete	-	3	1	-	4
Lack of locally owned vessels is costly to local cargo owners	-	2	1	-	3
Wasteful expenditure and corruption within Transnet	-	-	1	-	1
Transition from TNPA to NPA (Pty) Ltd is still pending	-	-	2	1	3
Ports as national asset are used for profiting, not national economic objectives	-	-	2	2	4
Poor port infrastructure still not addressed for some stakeholders	-	-	-	1	1

Source: Author compiled and analysed using data from Gumede (2013) and Stakeholders' Submissions from the Ports Regulator (2014)

**Table A. 4 New Themes on Tariff Methodology**

Stakeholders' Comments	Number of Submissions
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		2015/16	2016/17	2017/18	2018/19	2019/20	Total
		10	8	6	7	14	45
The National Port Authority asset base need an accurate and correct valuation.	4	3	1	3	4	15	
	40.00%	37.50%	16.67%	43%	28.57%	33.33%	
National Ports Authority’s volume forecasts present anomalies in trends.	4	3		1	2	10	
	40.00%	37.50%		14.29%	14.29%	22.22%	
The current Required Revenue method provide undesired incentives, and thus need to be revised.	4	1	2	1	2	10	
	40.00%	12.50%	33.33%		14.29%	22.22%	
The National Ports Authority appear to be a cash cow, making excessive profits that harm port users.	2	1	1	3		7	
	20.00%	12.50%	16.67%	43%		15.56%	
Risk free rate, market risk premium and betas that National Ports Authority use to determine required revenue must be reviewed to be more accurate for South African ports.	1	1	1	2	2	7	
	10.00%	12.50%	16.67%	28.57%	14.29%	15.56%	
The National Ports Authority used an incorrect weighted average cost of capital.	2	1		1	2	6	
	20.00%	12.50%		14.29%	14.29%	13.33%	
The National Ports Authority is using Hamada model incorrectly to re-lever equity beta from asset beta.	2					2	
	20.00%					4.44%	
Tariff increase while South Africa’s currency depreciate significantly against other currencies make it more expensive for importers.	1	1				2	
	10.00%	12.50%				4.44%	
			1	2	2	5	

Fully paid investments should not be paid for again. Most of the National Ports Authority assets had already been paid for by taxes, and the Authority did not have to bear any costs in acquiring them; port users should not be asked to pay for them again.			16.67%	28.57%	14.29%	11.11%
The PRSA introduced a revised methodology for valuing the RAB. The TNPA has refused to use this method and instead has presented its application using the defunct methodology					3	3
					21.43%	6.67%

Source: Author created using content analysis of stakeholders' comments to National Ports Authority tariff applications for 2015/16 to 2017/18 waves of tariff periods.

**Table A. 5 New Themes on Tariff Structure**

Stakeholders' Comments	Number of Submissions					
	2015/16	2016/17	2017/18	2018/19	2019/20	Total
	10	8	6	7	14	24
The National Ports Authority need to do a costing study for each service they offer in order for them to properly determine a cost-based price that should be paid.	2	1	2			5
	20.00%	12.50%	33.33%			20.83%
The majority of the National Ports Authority	3	1	1			5

proceeds are being used to subsidize other Transnet division rather than being re-invested in port land.	30.00%	12.50%	16.67%			20.83%
Port costs to cargo owners are still 276% above the global average and users in the container ports face a premium of 178%				2	2	4
				28.57%	14.28%	16.67%
The PRSA presents a misleading report on port costs by aggregating the discounted dry-bulk port costs with the much higher container and RoRo sectors, reducing the total port premium to inaccurately reflect 23% above the global average					1	1
					7.14%	4.17%
There is a possibility for differential pricing on, say, regional differences such that (for example) the transshipment hubs be priced differently				1		1
				14.28%		4.17%

Source: Author created using content analysis of stakeholders' comments to National Ports Authority tariff applications for 2015/16 to 2017/18 waves of tariff periods.

**Table A. 6 New Themes on Port Governance**

Stakeholders' Comments	Number of Submissions					
	2015/16	2016/17	2017/18	2018/19	2019/20	Total
	10	8	6	7	14	45
TNPA is not complying fully with the national port policies and legislation.	2	4	2	2	2	12
	20.00%	50.00%	33.33%	28.57%	14.29%	26.67%
TPT inherits its market power from the National Ports Authority as the Authority licenses TPT to operate major terminals and thus able to charge monopoly prices.	4	1	1	1		7
	40.00%	12.50%	16.67%	14.29%		15.56%
National Ports Authority's inconsistencies with legislations and its lacks of transparency hinders efficient regulations and valuations.	3	1	1	2	2	9
	30.00%	12.50%	16.67%	28.57%	14.29%	20%
In order to improve South Africa's ports governance and pricing, the National Ports Authority need to be incorporated as the National Ports Act 12 of 2005 prescribed.	1	1	2	4	2	10
	10.00%	12.50%	33.33%	57.15%	14.29%	22.22%
The current Ports Regulator is facing many challenges to regulate ports as it's under-resourced. An establishment of a Single Transport Economic Regulator would be able to regulate the whole transport chain in South Africa.	2	1				3
	20.00%	12.50%				6.67%



The National Ports Authority is abusing its market power.	2	1				3
	20.00%	12.50%				6.67%
Preferential treatment of TPT give an unfair advantage of TPT to other port operators.	1	1	1	1		4
	10.00%	12.50%	16.67%	14.28%		8.89%
Restructured port asset usage to user group is illogical.	1	1				2
	10.00%	12.50%				4.45%
The current port pricing allows for container and automotive sector to subsidize other sectors.	2					2
	20.00%					4.45%
The National Ports Authority must reduce congestions in ports, especially in the Port of Durban.	1	1	1			3
	10.00%	12.50%	16.67%			6.67%
The National Ports Authority must improve its productivity and efficiencies.	6	4	2			12
	60.00%	50.00%	33.33%			26.67%

Source: Author created using content analysis of stakeholders' comments to National Ports Authority tariff applications for 2015/16 to 2017/18 waves of tariff periods.

**Table A. 7 Themes on Port Prices and Competition**

Stakeholders' Comments	Number of Submissions					
	2015/16	2016/17	2017/18	2018/19	2019/20	Total
	10	8	6	7	14	45
Higher port tariffs hinder local companies' international competitiveness, as trading	6	3	4	3	4	20
	60.00%	37.50%	66.67%	42.85%	28.57%	44.44%

partners switch to other countries.						
The National Ports Authority should reduce their operating costs.	7	5	1	1	2	16
	70.00%	62.50%	16.67%	14.28%	14.28%	35.56%
High port tariffs are not affordable at a current slow/no growing economy. The National Port Authority should be cognisance of the economic growth status.	4	3	2	1		10
	40.00%	37.50%	33.33%	14.28%		22.22%
Port users cannot afford port price increases which are higher than the country's general price increase (Consumer Price Index).	4	2	2	2	2	12
	40.00%	25.00%	33.33%	28.57%	14.28%	26.67%
Higher port tariffs lead to higher costs of doing business in the country.	3	1		1		5
	30.00%	12.50%		14.28%		11.11%
Risk free rate, market risk premium and betas that National Ports Authority use to determine required revenue must be reviewed to be more accurate for South African ports.	1	1	1			3
	10.00%	12.50%	16.67%			6.67%
	1		1		1	3

The National Ports Authority should apply for tariff decrease rather than increase.	10.00%		16.67%		7.16%	6.67%
Excessive Tariff Margin	1		1	1	3	6
Credits that have been saved through prior over-recoveries should be used in the event that more than general country's inflation tariff increase is required.	10.00%		16.67%	14.28%	21.42%	8.88%

**Source:** Author created using content analysis of stakeholders' comments to National Ports Authority tariff applications for 2015/16 to 2017/18 waves of tariff periods.

### Recalculation of the RAB

In line with the Tariff Methodology of March 2017, the TNPA applied for an indicative tariff increase of 18.57% and 6.34% for the years 2020/21 and 2021/22 respectively. This was after a 2018/19 tariff increase request of 8.45% and a subsequent decision by the PRSA to only approve a 2.5% average tariff increase, after considering updated information. These adjustments follow a recalculation of the regulatory asset base by the PRSA after considering TNPA's calculation of the regulatory asset base. Moreover, in the years 2018/19 and 2019/20, in line with the multi-year tariff application regime and post the new addition to the RR methodology of weighted efficiency gains from operations (WEGO), the TNPA applied for an average tariff increase of 4.21% for the period 01 April 2019 to 31 March 2020 together with the indicative tariff beyond that period to 31 March 2020. After assessing the comments submitted by a total of 14 stakeholders, the Ports Regulator of South Africa (PRSA) concluded that the overall tariff adjustment for the year must be a decrease of 6.27%.

What led to the difference in the RAB as calculated by the PRSA was a number of adjustments in the components that go into determining the RAB. Firstly, the RAB is calculated as follows:

$$RAB_y = \frac{1}{2} [RAB_{c,y} + RAB_{o,y}] + w_y$$

$$RAB_{c,y} = RAB_{o,y} (1 + CPI_y) + CWIP_y - D_y$$

Where:

$RAB_y$  = Value of the RAB used to determine the returns for the period y

$RAB_{o,y}$  = opening value of the RAB for the period y

$RAB_{c,y}$  = closing value of the RAB for the period y

$w_y$  = forecast average net working capital over the review period

$CWIP_y$  = value of expected capital investment for the review period

$D_y$  = depreciation allowance for assets over the review period

$CPI_y$  = annual rate of general inflation expected over the review period

When PRSA calculated depreciation for the tariff period 2019/20, it amounted to ZAR 2 074 million as opposed to the ZAR 2 279 million determined by TNPA. Moreover, the PRSA used the Trended Original Cost Approach to the valuation of the RAB and consequently arrived at a RAB of ZAR 69 732 as opposed to the TNPA calculated ZAR 85 597.

Recalling the RR formula, i.e.

$$\text{Allowed Revenues}_y = RAB_y * WACC_y + E_y + D_y + T_y - (+) C_y + (-) ETIMC - F_{y-1} * (WACC_{y-1}) + F_y + (-) WEGO_{y-1}$$

It becomes apparent that the RAB, along with the vanilla weighted average cost of capital (WACC), has a deterministic impact on the calculation of allowed revenues and therefore accurate calculation thereof is paramount.

### **Recalculating WACC<sub>vanilla</sub>**

Other factors that the PRSA had to recalculate in order to reach its final decision was the components that go into the determination of the WACC. The WACC is calculated as follows:

$$WACC_{vanilla} = k_d \cdot g + k_e(1 - g)$$

Where:

$WACC_{vanilla}$  = weighted average cost of capital

$k_d$  = pre-tax cost of debt

$k_e$  = post-tax cost of equity

$g$  = gearing, which is debt over total capital

The ports authority had requested that WACC be assessed as being 6.80% for the review period 2019/20, but the PRSA determined the real vanilla WACC to be 6.55%. The ports authority had also requested that  $k_e$  be assessed to be 8.20% but the  $k_e$  determined by the PRSA was 8.00% along with a  $k_d$  of 5.10%. and a gearing ( $g$ ) of 50%. The ports authority uses a Capital Asset Pricing Model (CAPM) cost of equity methodology, which is calculated as follows:

$$k_e = R_f + \beta(MR - R_f)$$

Where:

$R_f$  = risk-free rate

$MR$  = Market return

$\beta$  = beta coefficient

$(MR - R_f)$  = market risk premium calculated over the long term

The risk-free rate ( $R_f$ ) appears as a nominal number, 8.58%, in the TNPA 2019/20 tariff increase application but the PRSA recalculated it at 8.63% using data available from September 2018 and a 5-year average period commencing in May 2013. It further used an asset beta of 0.5, which equates to an equity beta of 0.93 and the Market Risk Premium ( $MR - R_f$ ) is 5.35% using the Dimson, Marsh and Staunton (DMS) model. The final component of the RR methodology to look at, which the PRSA deemed necessary to revisit, was taxation, and it determined that the 5-year average equitable tax rate of 15.8% was appropriate for the year 2019/20.

### **Calculating the Equitable Tax Rate**

The ports authority has, for four out of the seven years of regulation by the PRSA, been bearing a disproportionately larger tax burden for the entire Transnet group than it would have borne if it were a corporatized entity. Chasomeris and Fakir (2019) demonstrate that the NPA tax allowance was over half (50%) of the actual tax liability of the Transnet Group, and much more than the group tax in FY2016, at 216.30%.

**Table A. 8 Disproportionality of Tax allowed to the NPA vs Group Tax liability.**  
(R'million)

Financial Year:	Total Transnet Group Profit	28% Corporate Tax on Transnet Group Profit	Tax allowed in NPA revenue as per Regulator ROD	NPA tax allowed as % Group tax liability
2017	4265	1194	1050	87,94%
2016	1468	411	889	216,30%
2015	7590	2125	768	36,14%
2014	7135	1998	1005	50,30%
2013	6041	1691	959	56,71%
2012	6241	1747	342	19,58%
2011	5692	1594	816	51,19%

**Source:** Authors compiled and calculated from Transnet Annual Financial Statements: segmental reports (Transnet 2012; 2013; 2014; 2015; 2016; 2017; 2018); Ports Regulator Records of Decision (Ports Regulator of South Africa, 2011; 2012; 2013b; 2014b; 2015; 2016a; 2016b).

The calculation of the equitable tax rate applicable to any profitable division is  $28\% \times (\text{Transnet net profit} / \text{sum of profits of profitable divisions})$  and it is as follows

$$t_e = t \left( \frac{P_g}{\sum P_i} \right)$$

Where:

$t_e$  = equitable tax rate

$t$  = 28% or the corporate tax rate

$P_g$  = Transnet group net profits for the year

$\sum P_i$  = sum of profits of profitable divisions

From the equitable tax rate formula, in which the Transnet profits are disaggregated from group level to divisional level, Chasomeris and Fakir (2019) then present losses and profits from each division and the appropriate tax burden attachable to each division per year for the past 7 years.

**Table A. 9 Profits and Losses from each Transnet Division**

Fin. Year :	NPA	TPT	TFR	TPL	TRE	All other segments	Inter-segment Elimination	Total Group Profit	Σ Profit units	Σ Loss units	Equitable tax rate: $t_e$
2017	2934	1233	1525	2804	-1607	-2866	242	4265	8738	-4473	13.67%
2016	4089	996	-337	1233	-423	-4320	230	1468	6548	-5080	6.28%
2015	3270	736	5943	1704	101	-3897	-267	7590	11754	-4164	18.08%
2014	4251	234	5169	1649	250	-3814	-604	7135	11553	-4418	17.29%
2013	2705	218	5070	1273	1022	-3304	-943	6041	10288	-4247	16.44%
2012	3333	765	3553	1282	688	-2560	-820	6241	9621	-3380	18.16%
2011	3990	728	1925	475	784	-1576	-634	5692	7902	-2210	20.17%
Ave. $t_e$ :											15.73%

As can be observed above, at an average of 25.73% for the past 7 years, the equitable tax rate is significantly lower than the corporate tax rate of 28%. Chasomeris and Fakir (2019) further compare the tax allowed by the Ports Regulator versus tax allowance calculated using the Equitable Tax Rate formula for each financial year from 2011 to 2017. With the equitable tax rate being significantly lower than the regulated tax allowance, the use of this method could result in a saving of between a low of 27.97% in 2011 to a high of 77.58% in 2016 for port users. If the method had been used from the outset, then the average per centage reduction in tax revenues for the seven year period would have been 43.83%. In quantitative terms this amounts to an aggregate saving of just over R2.6 billion over the seven year period.

The conclusion drawn from the analysis of the PRSA is that a revenue surplus of ZAR 621 million is obtainable and it thus translate to a decrease of 6.27% for the 2019/20 tariffs.

## APPENDIX B: ETHICAL CLEARANCES



19 November 2018

Mr Ayanda Meyiwa (207500950)  
Graduate School of Business & Leadership  
Westville Campus

Dear Mr Meyiwa,

Protocol reference number: HSS/2079/018D (Linked to HSS/2078/018D)  
Project title: Restructuring Port Governance in South Africa

### Full Approval – No Risk / Exempt Application

In response to your application received on 14 November 2018, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number. **PLEASE NOTE:** Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

  
.....  
Dr Shamila Naidoo (Deputy Chair)

/ms

Cc Supervisor: Dr Mihalīs Chasomeris  
Cc Academic Leader Research: Professor Muhammad Hoque  
cc School Administrator: Ms Zarina Bullyraj

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### Humanities & Social Sciences Research Ethics Committee

Professor Shenuka Singh (Chair)

Westville Campus, Govan Mbeki Building

Postal Address: Private Bag X54001, Durban 4000

Telephone: +27 (0) 31 260 3587/8350/4557 Facsimile: +27 (0) 31 260 4809 Email: [ximbap@ukzn.ac.za](mailto:ximbap@ukzn.ac.za) / [snymanm@ukzn.ac.za](mailto:snymanm@ukzn.ac.za) / [mohungu@ukzn.ac.za](mailto:mohungu@ukzn.ac.za)

Website: [www.ukzn.ac.za](http://www.ukzn.ac.za)



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19 November 2018

Mr Ayanda Meyiwa (207500950)  
Graduate School of Business & Leadership  
Westville Campus

Dear Mr Meyiwa,

Protocol reference number: HSS/2080/018D (Linked to HSS/2078/018D)  
Project title: South Africa's Port Doctrine: Dilemmas and the way forward

**Full Approval – No Risk / Exempt Application**

In response to your application received on 14 November 2018, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted **FULL APPROVAL**.

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Dr Shamila Naidoo (Deputy Chair)

/ms

Cc Supervisor: Dr Mihalis Chasomeris  
Cc Academic Leader Research: Professor Muhammad Hoque  
cc School Administrator: Ms Zarina Bullyraj

---

**Humanities & Social Sciences Research Ethics Committee**

Professor Shenuka Singh (Chair)

Westville Campus, Govan Mbeki Building

Postal Address: Private Bag X54001, Durban 4000

Telephone: +27 (0) 31 260 3567/8350/4557 Facsimile: +27 (0) 31 260 4609 Email: [ximbap@ukzn.ac.za](mailto:ximbap@ukzn.ac.za) / [snymam@ukzn.ac.za](mailto:snymam@ukzn.ac.za) / [mohunp@ukzn.ac.za](mailto:mohunp@ukzn.ac.za)

Website: [www.ukzn.ac.za](http://www.ukzn.ac.za)



Founding Campuses: Edgewood Howard College Medical School Pietermaritzburg Westville





19 November 2018

Mr Ayanda Meyiwa (207500950)  
Graduate School of Business & Leadership  
Westville Campus

Dear Mr Meyiwa,

Protocol reference number: HSS/2082/018D (Linked to HSS/2078/018D)

Project title: South Africa's Democratic Developmental State: Rhetoric and evidence in the Ports Sector

**Full Approval – No Risk / Exempt Application**

In response to your application received on 14 November 2018, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number. **PLEASE NOTE:** Research data should be securely stored in the discipline/department for a period of 5 years.

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I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

  
.....  
Dr Anamisa Naidoo (Deputy Chair)

/ms

Cc Supervisor: Dr Mihalios Chasomeris  
Cc Academic Leader Research: Professor Muhammad Hoque  
cc School Administrator: Ms Zarina Bullyraj

---

**Humanities & Social Sciences Research Ethics Committee**

Professor Shenuka Singh (Chair)

Westville Campus, Govan Mbeki Building






Postal Address: Private Bag X64001, Durban 4000

Telephone: +27 (0) 31 260 3587/8350/4557 Facsimile: +27 (0) 31 260 4609 Email: [simbiso@ukzn.ac.za](mailto:simbiso@ukzn.ac.za) / [gnymann@ukzn.ac.za](mailto:gnymann@ukzn.ac.za) / [mohunp@ukzn.ac.za](mailto:mohunp@ukzn.ac.za)

Website: [www.ukzn.ac.za](http://www.ukzn.ac.za)



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19 November 2018

Mr Ayanda Meyiwa (207500950)  
Graduate School of Business & Leadership  
Westville Campus

Dear Mr Meyiwa,

Protocol reference number: HSS/2078/018D

Project title: Articulating South Africa's Port Doctrine for a Democratic Developmental State

**Full Approval – No Risk / Exempt Application**

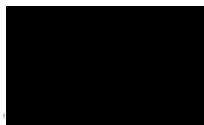
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---

**Humanities & Social Sciences Research Ethics Committee**

Professor Shenuka Singh (Chair)

Westville Campus, Govan Mbeki Building

Postal Address: Private Bag X54001, Durban 4000

Telephone: +27 (0) 31 260 3587/8350/4557 Facsimile: +27 (0) 31 260 4609 Email: [simbiso@ukzn.ac.za](mailto:simbiso@ukzn.ac.za) / [snymanm@ukzn.ac.za](mailto:snymanm@ukzn.ac.za) / [mohungu@ukzn.ac.za](mailto:mohungu@ukzn.ac.za)

Website: [www.ukzn.ac.za](http://www.ukzn.ac.za)



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## APPENDIX C: TURNITIN REPORT

### Articulating South Africa's Port Doctrine for a Democratic Developmental State

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#### ORIGINALITY REPORT

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