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The political economy of corporate governance reform in South Africa

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This study describes the political-economic dimension of corporate governance reform in South Africa. It then investigates the relationship between corporate governance institutions and systems on the one hand and the political, economic and historical context of South African society on the other. The study establishes the political, economic and historical determinants of corporate governance reform as they evolved in the course of South African corporate history. The study concludes that South African corporate governance reform and such reform in the Commonwealth economic systems have a lot in common in terms of their historical evolution. This is despite the reasons for such reform being vastly different. The outcome of the political process in South Africa, for very specific reasons, is that a specific shareholder model of corporate governance became the corporate governance system in South Africa.

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Introduction

The study of corporate governance within the context of political and economic factors is a recent phenomenon, and because the political and economic landscape of South Africa has changed dramatically since 1994, the political and economic determinants of corporate governance reform in South Africa are both currently still poorly described and consequently poorly understood.

This study provides a deeper understanding of the drivers behind the corporate governance reform process in South Africa by identifying the various economic actors involved and exploring their corporate governance preferences.

Webster and Adler (1999) describe South Africa's transition as a class compromise reached between collective actors. They argue that a political compromise was reached between these political actors in 1994, adding that a second economic compromise would have to be reached. They claim that the alternatives to such a compromise are a continued economic stalemate between the current social, political and economic forces in South Africa, increased disorder and even a descent into decentralised collective violence in South African society. This study thus attempts to provide a deeper understanding of the reasons why such a "political compromise" occurred and its resultant impact on corporate governance reform.

Malherbe and Segal (2001) drew the conclusions that the context of South African corporate business, until 1994, had a decisive impact on economic developments in South Africa; the issue of access to capital markets, as well as the

efficient use of capital by firms in the economy was central; the structure of the corporate firm has an impact on corporate governance; and that the reform of legislation and regulations, listing rules and accounting standards play an important role in corporate governance reform. This study aims to explore these drivers that affect the political economy with a view to describing the impact of such drivers on corporate governance in South Africa.

Literature review

Political economy

The term "political economy" may be described as how politics and economics combine to influence the economy. Arndt (1984) identified three legitimate uses for the term, one of which is 'the discussion of principles of public policy in the economic field.' The term "political economy" is used extensively in corporate governance and related economic literature, for example, in the work of Goldstein (2000), Malherbe and Segal (2001), Pieterse (1997), Reed (2002) and Soederberg (2003). However, since no attempts are made to define the term "political economy" in this literature, this paper shall use the term in the context provided by Arndt (1984).

Corporate governance

Pound (1995) suggests that the essence of corporate governance is the ability of a corporation to employ a proper corporate decision-making process rather than focusing on monitoring managers. Markus (2003:1) states that corporate governance is "defined as a set of institutions, i.e. formal

and informal constraints on behaviour, determining the capacities of firm stakeholders to control the decisions and that cash flows in a given corporation". Gilson (2001) observes, however, that due to the decompression of trade barriers, more emphasis should now be placed on the various functions of corporate governance, rather than on the institutions. Lorsch and Clark (2008) remark that the emphasis of the debate has shifted to compliance with the ever-evolving set of regulations, as a result of legislation in general, and the Sarbanes-Oxley Act in the United States of America in particular.

Corporate governance reform took place *inter alia* as a result of the transformations in eastern and central Europe, the demise of the Soviet Union, the economic crisis of 1997 and 1998 in South East Asia and the fact that the battle between capitalism and communism has largely been resolved in favour of capitalism (Bradley, Schipani, Sundaram & Walsh, 1999). The authors argue that reform questions are now increasingly centred around the transition from one form of capitalism to another. The form of capitalism that will eventually rise to dominance is predicated by the institutions that will arise from the social changes and organisational structures that will evolve for the provision of goods and services. Bradley *et al.* (1999) claim that, traditionally, the phrase "corporate governance" evokes a narrow interpretation of the relationship between the firm's capital providers and top managers, as mediated by its board of directors, e.g. in the work of Shleifer and Vishny (1997).

Gillan (2006) suggests that, initially, the sample balance-sheet model of the firm (i.e. the internal and external role players in the firm), was used as a basis to study corporate governance. This viewpoint defines corporate governance as the procedures put in place to ensure that suppliers of finance will get a return on their investment. He argues that this is too narrow a perspective and expands this viewpoint further into a broader stakeholder model of the firm. According to Gillan (2006: 383), the basic feature is that of a nexus of contracts which is impacted by environmental factors. This view coincides with the stakeholder view of the firm and includes all aspects of the environment that affect corporate governance. An increasingly relevant aspect in research on the corporate governance debate is the question of the political determinants of the corporate governance structure of a country. Roe (2006) states that politics can affect a firm in many ways, for example, it determines who owns the firm, how big a firm can grow, what it can produce profitably and how it raises its capital, amongst other things. One key variable which politics has influenced in the past and continues to influence is the degree to which ownership of the firm is separated from control in the firm. While Roe (2006) maintains that in the United States of America, large, publicly held and diffusely owned firms dominate business, he claims that this is not the case in other economically advanced nations in which ownership of a firm is concentrated in the hands of a very small number of equity holders. In such nations, the political context exerts pressure on managers to stabilise employment and, in the process of doing so, to forego some profit-maximising yet risky opportunities for the firm. Managers are also encouraged to

keep capital in place rather than to downsize when markets are no longer aligned with the firm's production capabilities.

Andreasson (2008a) articulates that the kind of capitalism that Roe (2006) calls the "diffusely held firm" is also "stockmarket capitalism" or "Anglo-Saxon" capitalism and is found in the United States of America, the United Kingdom and, broadly speaking, in the Commonwealth countries. The concentrated ownership model of capitalism is also called "welfare capitalism", "stakeholder capitalism" or "Rhineland capitalism". Corporate governance literature therefore distinguishes between an Anglo-American "outsider" model of corporate governance (shareholder capitalism) and a Continental "insider" model of corporate governance (stakeholder capitalism).

Since the inception of the Sarbanes-Oxley Act, corporate governance practice has evolved into a legalistic, compliance-based approach. The approach in the United Kingdom has been more strategic and voluntary in nature, though, and has been referred to as the so-called "light touch" approach (Andreasson, 2008a:8). This divergence in approach has developed increasingly different trajectories in this aspect (Toms, 2005).

Once politics entered the arena of corporate governance analysis, other contextual determinants of corporate governance also began to feature in the literature, namely culture and law. These societal institutions have an impact on corporate governance regimes according to La Porta, Lopez-de-Silanes, Schleifer and Vishny (1998) and Licht, Goldschmidt and Schwartz (2005). Licht *et al.* (2005) argue that corporate governance is the framework that defines the division of wealth and power in the corporation. This framework is comprised of laws and the legal rules that shape this division are found scattered in various parts of the laws of countries, including specific corporate laws, bankruptcy codes and financial institution regulations.

Actors and their preferences in the global corporate governance reform debate

Various interest groups could have different agendas with regard to corporate governance reform.

Through the work of Cioffi and Höpner (2006) and Jackson (2005) a number of role players (actors) can be identified, namely political parties; financial institutions; transnational institutions such as the European Union; the vested interests of the existing economic elite; national governments and trade unions.

According to the actors' preferences, political coalitions set the rules of corporate governance (Gourevitch & Shinn, 2007). According to the work of Cioffi and Höpner (2006) and as described by Roe (2006), centre left political parties and trade unions often opted for political alliances with other economic role players to change the vested interests of the existing political elite.

Forces that affect corporate governance reform

Access to, and the movement of capital is an important force affecting corporate governance reform (Jackson, 2005; Roe, 2006; Soederberg, 2003). All three authors state that the free movement of capital and liberalised capital markets tend to push corporate governance reform in the direction of corporate governance systems based on the United States model.

The “Anglo-American” system (Soederberg, 2003:7), is often imposed on the developing countries of the southern hemisphere in order to ensure that the emerging markets adhere to the principles of the neo-liberal open market economy. However, great emphasis is placed on shareholder value in the United States of America as opposed to other types of corporate governance which protects the interests of institutional investors based in market-centric systems.

When South Africa was accepted back into the international business environment, South African enterprises were compelled to embrace improved standards of corporate governance to compete (Vaughn & Ryan, 2006). When foreign financial institutions returned to South Africa in 1994, their infusion of capital was conditional upon assurances that corporations practiced accountability, transparency and fairness to all stakeholders (Kakabadse & Korac-Kakabadse, 2002; Vaughn & Ryan, 2006).

Allen (2005) suggests that there are a narrow and broad view of corporate governance. The narrow view is concerned with ensuring that firms are run in the interests of shareholders while the broad view is concerned with ensuring that firms are run in such a way that society's resources are used efficiently. Allen (2005) criticises this narrow view, as this model is based on assumptions such as perfect and complete markets. Despite this criticism, much of the existing analysis of corporate governance in emerging economies takes it as a given that this narrow view is the appropriate one.

In a wide-ranging analysis of various corporate governance structures, Bebchuk and Roe (1999) deduce that the corporate structures in an economy at any point in time depend in part on those that the economy had in earlier times.

Research questions

In the broader global corporate governance context, and on the basis of an exploration of corporate governance and corporate governance reform literature, two research questions were formulated:

What is the historical perspective of corporate governance developments in South Africa thus far?

Who are the actors, and what are their preferences and characteristics in the corporate governance reform debate in South Africa?

Methodology

A qualitative methodology was adopted to develop a deeper understanding of the drivers of corporate governance reform in South Africa. Content analysis was used to analyse the data that was collected. It is suggested that the approach of Gourevitch and Shinn (2007) provides a sensible point of departure for this exploratory study: they conclude that, as far as corporate governance is concerned, interest groups within the corporate governance debate have preferences. These preferences are then aggregated by political institutions into corporate governance systems and structures.

This exploratory study consequently attempted to:

discover the various interest groups currently participating in the corporate governance reform debate in South Africa, and describe their basic political economic characteristics;

identify and categorise the preferences of these groups described above in terms of the groups' political-economic orientations; and

describe how these preferences are aggregated by institutions into corporate governance structures and systems in South Africa.

The study isolated the so-called “unit of analysis” (Zikmund, 2003: 96) as the corporate governance reform process in South Africa. This process can be described as a behavioural pattern of people, more particularly South African society, attempting to design and implement corporate governance systems and structures. In the process of designing and implementing corporate governance systems and structures, public debate takes place and various organs of society aggregate the various preferences of the different interest groups into corporate governance structures and systems. This public debate and aggregation process is documented in the public domain, making it very suitable for content analysis.

The following data sources were used in the content analysis:

- motivational memoranda and position papers submitted by role players to the South African Parliament in the course of all relevant corporate governance law making and law amendment procedures;
- newspaper and magazine reports on corporate governance reform activities;
- public speeches made by Ministers and other public officials of the Republic of South Africa, as reported in both the printed and electronic media;
- policy documents by political parties and other institutions of civil society which relate to corporate governance and corporate governance reform; and
- secondary sources such as reports written in the course of political, legal and social research.

The data was analysed by tracing the history of corporate governance structures and systems in South Africa, and extracting a list of issues which South African business regards as corporate governance issues. A list of participants in the current corporate governance debate was then compiled and their background information was analysed in order to categorise the various role players into political-economic categories, given their social, economic and political origin and functioning. Their preferences were analysed, particularly the specific aspect/s that each listed participant chose to address in this public debate and aggregation process. Lastly, the structures and systems that can currently be described as South Africa's corporate governance structures and systems were identified.

RESULTS

History of corporate governance as a phenomenon in South African corporate society

International dimension

The concept of corporate governance gained an increasingly high profile in corporate life during the last decade of the previous century (Mallin, 2006). In May 1991, the Committee on the Financial Aspects of Corporate Governance was established in the United Kingdom with Sir Adrian Cadbury as their Chairperson. This Committee's report laid the foundations for the best practice system of corporate governance, both in the United Kingdom and elsewhere. Corporate governance in the United Kingdom developed rapidly; and a number of reports were drafted and implemented.

The second significant corporate governance development on the international scene was the promulgation of the Public Company Accounting Reform and Investor Protection Act 2002 in the United States of America (known as the Sarbanes-Oxley Act.) Through this Act, public confidence in the integrity of corporate governance could only be restored through greater government involvement in its structures and systems (Andreasson, 2008b).

The South African historical dimension

A wide variety of sources indicate that corporate governance has developed into a coherent phenomenon in South Africa since the establishment of the King Committee on Corporate Governance in 1992 (Andreasson, 2008b; Malherbe & Segal, 2001; Van der Merwe *et al.*, 2004). Mallin (2006) states clearly that the starting point for corporate governance as a separate identifiable phenomenon of corporate life can be traced back to 1992 and the impetus for the King Committee given by the Institute of Directors of Southern Africa. She adds that the establishment of the King Committee was not stimulated by any significant crisis in the corporate sector at the time (as was the case in many other countries, including the United Kingdom). Instead, it was in response to the desire for

South African private business sector to become more competitive in the international business arena following the re-admission of South Africa to the global economy (Vaughn & Ryan, 2006; Mallin, 2006). It should be noted, however, that South Africa also had its own share of financial scandals during this time, such as Macmed, Regal Treasury Bank and Leisurenet and, according to Andreasson (2007), are part of the the context in which South African structures of corporate governance were reshaped.

Van der Merwe *et al.* (2004) claim that the concept of "corporate governance" was first introduced into South Africa in 1994 with the publication of the first King Report on corporate governance. They explain that this report recommended standards of conduct for directors of companies and emphasised the need for responsible corporate activities, with due regard for the society in which the company operates.

The timeline of South Africa's political economy

The King Committee on Corporate Governance was established in 1992 in the midst of the negotiation phase that took place contemporaneously with the international reforms in corporate governance. It is important to see this year in its proper context and to plot the date accurately on a timeline of South Africa's political transformation from apartheid to democracy. The following timeline can be extracted from the literature (Murray & Luiz, 2007; Terreblanche, 2002):

- Between 1652 and 1994, South Africa went through various power shifts where the interdependence of political and economic power ran as a common thread. Initially, the Dutch East India Company brought a mercantilist mentality to South Africa. This evolved, eventually, into an alliance between British and local corporations, and government enforced an ideology of segregation between the races in South Africa.
- In 1976, the Soweto youth uprising ushered in a period of political instability, with a profound influence on business. Various actors in South African society realised that the then current social, economic and political dispensation was not sustainable.
- From early in the 20th century, the African National Congress (ANC) developed as a political movement representing the interests of the South African black majority. Hostility between the ANC and the complex social and political structures within South Africa intensified to the point at which the ANC formally began to pursue a policy of armed struggle for the liberation of the black majority.
- From 1985 to 1990, however, there were a number of attempts by role players in South Africa to bridge the gap between the South African government and the ANC.

- Throughout this period, the ANC embraced an economic policy of socialism, and had a specific policy that stated that there was no need for negotiation between the various role players in South Africa. Political power should simply be transferred to the ANC because it was representative of the majority of the people in South Africa.
- In July 1989, the first formal contact between the South African government and the ANC took place when the then State President, P.W. Botha, met with Nelson Mandela, then leader of the ANC, who was still in prison.
- In August of the same year, the ANC indicated, by way of the Organisation of African Unity's Harare Declaration, that it was willing to change its policy of a simple transfer of power and to start to negotiate.
- In February 1990, the ANC and the South African Communist Party were unbanned and Mr Nelson Mandela was released from prison.
- Protracted negotiations started in 1990, eventually leading to the high profile Congress for a Democratic South Africa (CODESA) negotiations in Kempton Park. This phase in the political history of South Africa was concluded on 10 May 1994, when Mr Nelson Mandela was inaugurated as South Africa's first popularly elected president. This period (1990 to 1994) is referred to in this paper as the "negotiation phase".
- During this negotiation phase the ANC, as a political party, was forced by international realities to make ambiguous policy statements that the private sector had a central and pivotal role to play within the context of the mixed economy in South Africa. This statement sparked a fierce ideological debate between the ANC and the Congress of South African Trade Unions (COSATU). There was intense uncertainty as to the future of the political and economic order in South Africa.

Viewed against the above backdrop, the following aspects are significant regarding the King Committee:

- The King Committee was established, in the midst of the negotiation phase described above. All of this took place contemporaneously with the formation of the Cadbury Committee on Corporate Governance in the United Kingdom.
- The King Committee was not a formal commission established by a public authority, but an initiative by a very specific role player in the private sector. The first King Report, adopted by the Institute of Directors in 1994, advanced many of the standards and principles advocated in a number of national codes that had been adopted, especially in the Commonwealth countries (Mallin, 2006). It distinguished itself with its integrated

approach to good governance with regard to financial, social, ethical and environmental practices to serve the interests of a wide range of stakeholders. Mallin (2006) makes the important observation that the approach of the first King Report probably reflected the considerable role that business played in South Africa in both social and economic issues, especially during the political transition of the government.

Mallin (2006) remarks that these reform measures placed South Africa in the top rank of emerging market economies, and even on a par with more developed markets.

In August 2000, the Institute of Directors decided to review the first King Report and they established guiding principles for the committees and assessment process. They included evaluating the first King Report's currency in terms of local and international developments while embracing the interests of a wider range of stakeholders (Mallin, 2006: 215).

The second King Report was formally released in March 2002 (Institute of Directors, 2002). It focused on qualitative aspects of good governance and was not designed as a regulatory instrument (Mallin, 2006; Van der Merwe *et al.*, 2004). This second report was noteworthy for bringing societal obligations of companies within the ambit of corporate governance; and in this way lived up to the expectations of government and the wider community that the corporate sector would contribute to the country's transition and development (Mallin, 2006).

The key components of the second King Report can be summarised as follows:

- **Board structure:**
A unitary board structure was called for with a balance between executive and non-executive directors, the latter independent of management and more aware of the implications and abilities needed as board members. The chairperson and the CEO of the company should have separate roles.
- **Risk management and internal control assurances:**
The importance of organisational integrity was emphasised and companies are expected to demonstrate commitment by drawing up an ethical code with implementation monitored by the board and management.
- **Accounting and reporting:**
The role of the audit committee was emphasised and a number of accounting and auditing issues introduced. Accounting regulators in South Africa have since taken steps to bring about a formal alignment between the International Accounting Standards (IFRS standards) and South African Generally Accepted Accounting Practice (GAAP) (Vorster *et al.*, 2006).

- **Integrated sustainability reports:**
Regarding affirmative action in addressing historical racial imbalances in the workplace, employee skills development, labour and employee rights. The code also required a company to report once annually on the nature and extent of its policy and practices and treat these aspects of their activities as strategic issues.
- **Relations with shareholders:**
This was not extensively dealt with this because the South African Companies Act confers extensive rights on shareholders.

In a communication with Stefan Andreasson on 21 August 2006, Mr King strongly related South African corporate governance developments to British corporate history, starting with Gladstone and the Limited Liability Act of 1855 to, more recently, Adrian Cadbury's Committee on Corporate Governance and the Cadbury Report that followed from that. King has emphasised on several occasions that South African corporate governance was firmly rooted in the British tradition (Andreasson, 2008b).

West (2006: 445) observes that the approach of the second King Report represents a more "inclusive" approach to corporate governance in South Africa, but that the position of shareholders, capital, return on capital have remained paramount.

General political developments and the corporate governance reform debate in South Africa

When the above events occurred, the ANC and its partners made several attempts to position themselves with regard to economic policy. During the 1980s, a shared social and economic vision originally bound a tripartite alliance between the ANC, the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU). Over time, however, differences arose between the partners; and eroded the bond between the parties (Majova & Mgibisa, 2007). These differences had a profound impact on policy positions made and held several implications for the corporate governance reform debate.

The following synopsis of the development of the economic policies of the alliance should be noted for the purposes of this study:

Early in 1991, the tripartite alliance and other mass democratic movement formations inside South Africa initiated the Macro Economic Research Group (MERG) to put forward an economic policy and released its report in December 1993. Details leaked to the press resulted in the ANC issuing a statement on 8 November 1993 indicating that MERG was a policy proposal of some parties only, and that the ANC itself would not favour a dispensation that would curtail the independence of the Reserve Bank (ANC. Department of Economic Planning, 1993).

Cognisance was taken of the formal legal framework All the initiatives resulted in the Reconstruction and Development Programme (RDP)-based document, published early in 1994 as the election manifesto of the tripartite alliance (Murray & Luiz, 2007).

This policy document's formation coincided with the height of the Washington consensus (which prescribed the opening of currency exchanges, the freeing-up of trade etc.) It was very different from the principles of the ANC's economic policy and how it had evolved, and was formulated in the RDP (Murray & Luiz, 2007).

During this time Minister Trevor Manuel became the Minister of Finance which led to the adoption of the Growth, Employment and Redistribution (GEAR) programme which was the result of a think-tank of a group of academics and officials consisting of senior officials from the South African Reserve Bank, the Development Bank of South Africa, the World Bank and the Departments of Finance and Trade and Industry and Labour. When GEAR was announced in June 1996, Manuel indicated unequivocally that the parameters of GEAR were not open to negotiation, and that government had taken control of macroeconomic policy (Murray & Luiz, 2007).

In terms of GEAR, business signalled its approval of the programme. GEAR was a stabilisation initiative and while the government remained committed to the values and objectives of the liberation struggle and the RDP, it had to adopt core policies to avoid economic stagnation and dependence on institutions. The intention of GEAR was poverty alleviation and economic transformation through programmes such as Black Economic Empowerment in a neo-liberal economy (Murray & Luiz, 2007).

Since the inception of GEAR and the date of this project, the government has stuck to the GEAR programme and announced a further programme called the Accelerated and Shared Growth Initiative for South Africa (ASGISA), aimed at investing in the long-term growth potential of the economy as a whole. This has led to intense friction within the tripartite alliance.

Against the above background, the Minister of Trade and Industry (DTI), Mandisi Mpahlwa, published a discussion paper called "Company Law for the 21st century" (DTI, 2004). This paper could potentially have far-reaching consequences for company law and company law reform. Remarks made in this paper, for the purposes of this study, included that while current South African company law was based on mid 19th century Victorian English law, a new constitutional framework and environment had been established in 1994, and reform was needed (DTI, 2004).

Simultaneously, the South African government initiated a fundamental rethink of the South African economy. It challenged Labour to accept the centrality of a market economy and, at the same time, challenged Business to buy into the idea of "stakeholder capitalism". On 15 July 2005,

the *Business Day* published the results of an interview which it had with Deputy Finance Minister, Jabu Moleketi more confident in its ability to be an economic player while its industrial strategy would not be determined by the markets. Sacrifices were expected in exchange for long term economic stability.

Neither the National General Council of the ANC in July 2005, nor the ANC branches adopted the approach of the government and this initiative never surfaced in the public domain again. From 1995, the tripartite agreement members' relationship has deteriorated and the economic thinking of the government at the time of this report appeared to be vague and unclear. Brief reference to this will be made later on in this section.

The drive to write a new company law in 2004, and the drive by the government in 2005 that business should embrace its new idea of "stakeholder capitalism" occurred almost simultaneously. It is against this background that the release of the Companies Bill on 19 March 2007, which was drafted following the consultation process after the release of "Company Law for the 21st Century" was eagerly awaited. In the explanatory memorandum, attention was drawn to the fact that "Company Law for the 21st Century" promised to retain the basic principles of the previous Company Law regime but also to incorporate best practice internationally and the possibilities for its adaptation to the South African context.

Van Wyk, (2007) commented on the bill:

- The DTI primarily used foreign (especially American) advisers to draft the new Bill, who introduced new concepts and ideas foreign to the South African Company Law tradition. They appeared unaware of the differences between the system proposed by them and the traditional approach, which would prove to be disruptive and counterproductive.

On 29 August 2008, the DTI published the Companies Bill 2008 (DTI, 2008). The explanatory memorandum indicated that the Department had received wide support for its diagnosis of many problem areas in the South African Company and Corporate Law system and regime, but widespread opposition against the new Bill. The opposition was mainly based on the objections as articulated by Van Wyk (2007). It indicated that the criticisms were taken into account in the drafting of the 2008 Companies Act.

The DTI called for public comment on the Bill and 30 organisations responded to the Bill. The most wide-ranging comment was received from the Institute of Directors of South Africa. The vast majority of contributions came from the business community, members of the academic fraternity and a number of auditors' and attorneys' firms. No participants representative of the leftist social and political forces in South Africa, contributed.

The South African Human Rights Commission (SAHRC) submission stated that Section 8 of the Constitution of the

(Brown, Dlamini & Radebe, 2005, n.p.). Important points that emerged were that the State was Republic Act, 1996 (Act 108 of 1996) conferred rights and obligations on juristic persons, and that these obligations should be included in any new Companies Act. The SAHRC submission took into account the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC) submission and supported the submission in the SAIFAC document without reservation (SAHRC, 2008).

The importance of the submission is that this international debate is carried into the public debate on company law reform and will have to be dealt with.

Between the 2007 and 2008 Bills, a meaningful political event took place namely the 52nd National Conference of the ANC, held in Polokwane at the University of the North, from 16 to 21 December 2007 (ANC, 2007). Here, President Mbeki and a number of members of his government were voted out of the leadership structures of the ANC. The *Financial Mail* reported the outcome of the proceedings at Polokwane and interpreted it as a power shift to the left with a leftist economic orientation with a SACP and COSATU alliance revival (Paton, 2007).

Simultaneously with the broad political developments and the attempts to reform South African Company Law, the Institute of Directors revisited the second King Report to amend the report and add a chapter on the concept of "sustainability" (Brand, 2008c). Worldwide and locally, public and municipal finances have been brought under the ambit of good corporate governance. Locally, Amendment Acts of Company Laws have changed and in January 2010, the new Companies Act will be promulgated.

During July 2008, the International Society of Business Economics and Ethics held its first congress in Africa (Brand, 2008a) and it was reported that:

- Mervyn King had confirmed that a hybrid system of corporate governance was awaiting South Africa: hybrid on the basis that some of the guidelines would be enacted in legislation (the new Companies Act), and some contained in voluntary codes (the third King Report) (Brand, 2008a).
- He described the United States' Sarbanes-Oxley Act as extraordinary in that it represented direct government interference in the private sector.
- He had been involved in discussions with Sir David Tweedy, the Chairman of the International Standards Accountancy Board and Chairman of the Global Reporting Initiative, with the aim of aligning international company reporting systems to achieve one standard of holistic reporting, embracing triple bottom line reporting on accounting measures and other aspects. Consensus had been reached amongst the big four accounting firms in the world (PriceWaterhouseCoopers,

Deloitte Touche Tohmatsu, Ernest and Young and KPMG), the technical committee had already formed and guidelines would be available and broadly implemented within the next ten years (Van Gass, 2008).

Role players in the South African corporate governance fraternity have increased their international profiles. Philip Armstrong was the principal convenor of the second King Report, and now heads the Global Corporate Governance Forum, based in Washington, DC, in the United States and Mervyn King was appointed Chairman of a United Nations steering committee on corporate governance at the United Nations in 2006 (Katzenellenbogen, 2006).

In the meantime, following the developments at the National Convention of the ANC in Polokwane, other events related to the prominent political role players in South Africa transpired. The rift between the three alliance partners deepened and the former Minister of Defence, Mr Musiwa Lekota, and others within the ANC in government positions, contemplated establishing a new party on 16 December 2008 as the SACP and COSATU were taking charge of the ANC (De Lange, 2008). At the conclusion of the ANC economic summit from 17 to 19 October 2008, two SACP members announced a number of policy changes prompting the commentator to remark that the ascendant trajectory in the ANC was leftist, while the traditional ANC has become silent (Malala, 2008).

Since the events at Polokwane in 2007, there have been no meaningful and detailed policy developments that could impact on corporate governance.

Summary and interpretation of observations regarding South African corporate governance reform

Historical perspective

An inescapable conclusion from the literature discussed and reviewed is that, whereas some aspects or dimensions of corporate governance can be traced back to the early 20th century, for instance, the classical work by Berle and Means, *The Modern Corporation and Private Property*, published in 1932 (La Porta *et al.*, 1999), the concept of "corporate governance" as a separate field of study and as a separate phenomenon in its own right in corporate life only emerged late in the last century. The Cadbury Committee on Corporate Governance appointed in 1991 in the United Kingdom is regarded as the historical point at which the concept of "corporate governance" began to get a life of its own. In South Africa, corporate governance developments and the King Report's codes of corporate governance are synonymous. The King Committee was established by the Institute of Directors in 1992. It is submitted throughout this study that there is a very close relationship between corporate governance in the United Kingdom and in South Africa in terms of content and trajectories having been developed in 1991 and 1992 respectively.

The system in the United Kingdom was motivated by high-level corporate failures (Sanford, 2005), while in South Africa it was motivated by the desire of the business community to be competitive in an international business arena after the democratisation of South Africa (Mallin, 2006). This is important, since the United Kingdom is an economy of the developed world, while South Africa an emerging market economy. It can be argued that the adherence to the unitary board typified by the Anglo-American model, yet requiring the board to meet demanding stakeholder requirements is not suitable for the South African context. Kakabadse & Korac-Kakabadse (2002) argue that the continental European stakeholder model of corporate governance, whereby business issues are the remit of the executive board and broader economic and stakeholder concerns are the responsibility of the supervisory board.

- As the political representatives of the black majority had no coherent economic approach, the preferences of the business community became corporate governance policy and regulation in South Africa.
- The second King Report placed more emphasis on social responsibility and labour issues without forgetting about the role of the shareholder in the corporate governance framework.
- In 2008, corporate governance was reviewed worldwide and in South Africa, an economic compromise between the underdeveloped society and economic elite was reviewed. The third King Report and the 2008 Companies Bill may again become the corporate governance constitutive instruments.

During the first 14 years of the South African economy after 1994, the traditional anti-apartheid liberation movements as such, contributed very little to the development of the corporate governance debate in South Africa.

Actors and their characteristics and preferences.

An analysis of the observations of the South African corporate governance process revealed the following role players and their respective characteristics and preferences:

The existing economic elite and their institutions:

As is clear from Giliomee (2004) and Terreblanche (2002), over more than a century, an economic elite developed in South Africa. Certain companies played a central role in this process, and a unique and sometimes uneasy coalition developed between British capital in South Africa and the political system, dominated mainly by Afrikaner-dominated political parties (Terreblanche, 2002). These two forces collapsed into a single force, perhaps dominated by the business community, in 1990, when the negotiation phase in South Africa started.

The single most important organisation that took control of the corporate governance debate in South Africa was the

Institute of Directors of Southern Africa, by way of the King Committee. The preferences of the South African business community and the existing economic elite from South Africa's pre-1994 history was to take a very strong conscious decision to align itself, not only with the mainstream of economic developments in the post-1990 international arena (characterised by a sentiment that the ideological economic debate in the world was conclusively settled in favour of capitalism), but also with the Commonwealth corporate governance preference for a diffuse ownership system (Roe, 2006).

- **International role players:**
Corporate governance reform actors in the United Kingdom had a profound impact on the creation of the context in South Africa within which corporate governance reform took place and continues to take place. The preferences of international role players should be read against the revision of the second King Report. The compilation of the third King Report took place not only against the backdrop of the disintegration of the liberation movement in South Africa, but also against the backdrop of the dramatic global credit meltdown. The international community engaged in a fundamental re-evaluation of the concept of "sustainability" and the exact role of the "law" in corporate governance
- **The tripartite alliance of the ANC, COSATU and SACP:**
The significance of this alliance is twofold as they have been unable to put forward a coherent economic policy hence the South African government stabilising the economy with the GEAR policy. The South African government has also been identified as a separate role player (Brown *et al.*, 2005) in corporate governance reform. It has gained confidence in the economic management of the country and has a preference for "stakeholder capitalism".

The two alliance partners of the tripartite alliance, the SACP and COSATU, can generally be described as representing the left of the political spectrum (De Lange, 2008; Malala, 2008) and have a preference to the left of the South African government.

The business community in South Africa preferred a so-called 'light touch' approach to corporate governance, as opposed to the hard approach adopted especially by the Sarbanes-Oxley Act in the United States of America.

This approach could result in fundamental changes in South Africa's corporate governance system. The South African government initially proposed a radical new Company Law regime, but eventually reverted to a new Companies Act based squarely on the traditions and history of the existing South African Company Law, due to the preferences of internal role players such as the South African business community.

The position paper of SAIFAC to the South African Parliament with regard to the 2008 Company Bill added a further dimension to the preferences. This document argued very strongly that the human rights obligations of companies

should be incorporated explicitly in any future Company Law, and the constituting documents of a company.

Conclusion

Over the last 14 years, South African corporate governance reform has displayed a fascinating relationship between international factors and domestic political realities. The catalyst for this reform has been the recognition that South Africa is a developing economy, and as such, there is a particular need for South African companies to be more competitive in the international arena. This catalyst for reform is quite distinct from the reform in corporate governance that occurred in developed countries, namely, for the most part, as a reaction to corporate scandal and greed. Yet, despite the variance in the reasons for reform, there are great similarities in the historical evolution of corporate governance reform in both South Africa and Commonwealth economic systems. Although there was a significant shift in the emphasis in corporate governance from the first King Report to the second King Report, the basic tenets of shareholder-centred corporate governance remained intact, contrary to what could be expected after a country has undergone such fundamental transformation as South Africa has. The reasons that such a fundamental normative instrument of society remained firmly anchored in mainstream capitalist thinking are to be found in the complex relationships between various actors within the corporate governance debate, their relative strengths at the negotiating table and the political realities affecting the conduct of such actors.

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