AFRICAN DEVELOPMENT BANK

ECONOMIC RESEARCH PAPERS

N^{O} 66

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Abstract

This study first delineates the conceptual and practical issues in corporate governance, without assuming any prior understanding of corporate governance. It then surveys, using some of the more objective international criteria, the institutional record for quality corporate governance in Africa.

In our conclusion, we suggest that corporate governance in Africa is enriched by expanding the framework of analysis beyond the conventional criteria developed from the limited assumption of homo economicus. Incorporating the influence of norms and values or moral sentiments can improve our understanding of board room dynamics and the characteristics of the decision management and decision control they engender in "Business Africa."

Résumé

La présente étude s’attache dans un premier temps à délinéer les questions conceptuelles et pratiques touchant la gouvernance d’entreprise, sans supposer aucune connaissance préalable en la matière. Ensuite, à l’aune de critères internationaux plus objectifs, elle passe en revue les exemples institutionnels d’une gouvernance d’entreprise de qualité en Afrique.

Notre conclusion laisse entendre qu’en Afrique, la gouvernance d’entreprise s’enrichit en étendant le cadre d’analyse au delà des critères conventionnels élaborés à partir de l’hypothèse limitée de l’homo economicus. En intégrant l’influence des normes et valeurs ou sentiments moraux, nous pouvons améliorer notre compréhension de la dynamique des réunions et des caractéristiques de la gestion et du contrôle des décisions qu’ils engendrent dans l’environnement d’affaires en Afrique.

Corporate Governance in Africa: The Record and Policies for Good Governance

by

Melvin D. Ayogu*

1. Introduction

This study reviews the institutional record of "corporate governance" in Africa and offers some policy directions for improving performance. The underlying thesis is that a crisis of governance is basically a crisis of board of directors. Our approach is to first delineate the conceptual and practical issues in corporate governance, without assuming any prior understanding of corporate governance. Proceeding under this constraint forces us to be more mindful of jargons, a strategy that we hope should open the ideas to more constructive debates that are obviously required in such a timely topic. We have always believed that research in corporate governance is an agenda that can benefit from insights from other disciplines that study organizations, such as organizational psychology and sociology. For instance, the concept of "bounded rationality" taken from psychology has been used by economists to shed light on why contracts are necessarily incomplete, and, by linking that to transaction costs, to make sense of the many observed agency relationships that leave agents with a great deal of discretion (even when the power corrupts). We end by surveying, using international criteria, the institutional record for quality corporate governance in Africa. In our conclusion, we argue that corporate governance in Africa is enriched by expanding the framework of analysis beyond the conventional criteria developed from the study of business cultures that do not incorporate the African perspective.

From a practical point of view, the problem of "corporate governance" is concerned with the design of institutions that induce management in their actions, to take into account the welfare of stakeholders–investors, employees, communities, suppliers, and customers. On the other hand, management runs the firm through managing its day to day operations and setting its business strategy. At least, in the "structure-conduct-performance" paradigm, management's perceptions of the market structure and the firm's strengths and weaknesses jointly determine their choice of corporate strategy (long-run plan for profit maximization), and organizational structure (the internal allocation of tasks, decision rules, and procedures for appraisal and reward, selected for the best pursuit of that strategy). Both corporate strategy and organizational structure influence the economic performance of the firm and the market in which it sells. Market structure refers to certain attributes of the market that influence the firm's conduct. Attributes such as the number and size distribution of sellers and buyers, extent of barriers to entry and exit, extent and character of product differentiation, extent and character of international competition, and certain parameters (elasticity and growth rate) of demand.

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On the other hand, boards of directors are supposed to govern the corporations: They have the power to set dividends, to hire, fire, and set the compensation of the senior executives; to decide to enter new lines of business; and to reject merger offers or to approve and submit them to stockholders.

Nominally, and by law, the stockholders own a corporation. However, their rights are in fact, quite limited. Generally, stockholders can vote to change the corporate charter. They can elect the directors and remove them by a majority vote. They usually have the right to vote on substantial structural changes, such as mergers, or the sale of most of the corporation's assets. But that is about all there is to the much talked about "residual rights." The stockholders cannot set the dividends that are paid to them. They have no role in investment or acquisition decisions. They do not hire the managers or set their pay, and they have no say in setting prices. By electing directors who are empowered to hire and fire management and to make or ratify all major management decisions, the stockholders can, it is true, indirectly affect the decisions that are made. And if the directors do not follow their wishes, the stockholders can replace them, at least in principle. But how well has this worked in practice and has it worked to make the directors diligent? If not, what should be done to remedy the situation in Africa? That is the thrust of our analysis.

2. Conceptual issues in corporate governance

It will be fruitful to frame the discussion around aspects of management that the board is supposed to monitor and control, and around factors that can impair the board's ability to discharge these responsibilities. Additionally, we consider factors that may hamper the ability of stakeholders to "incentivize" (i.e., constructively control) the board.

We begin by observing that the hallmark of the modern corporation is the separation of ownership rights and control rights.1 The problem inherent in such separation of rights have been extensively studied and are generally well appreciated even though satisfactory solutions are yet to be devised. In many economies of the industrialized world, notable strides have been made in aligning the interests of managers and owners. But by and large, problems persist. In fact, the renewed interest in corporate governance (concomitant with the current interest in civil governance) is indicative of the growing realization that while many academic papers preach socially efficient outcomes based on invisible hands, experiences–many of which are reported in the media–warn us otherwise. The so called invisble hands of the market are in fact visible. They are the humans who run the corporations and sundry enterprises that populate the domain of "free" markets. And "like the rest of us, corporate managers have many personal goals and ambitions, only one of which is to get rich" (Shleifer and Vishny, 1998).

3. Managerialism, abuse of discretion, and self-succession problems

Early research in this area is due to Jensen and Meckling (1976) who identify two types of conflicts: One from managerial moral hazard since, in not having full ownership, managers are unable to capture the full benefits of their efforts. As well, they do not bear the full costs of their actions. This conflict has been described as "managerialism" or "managerial agency."

Furthermore, the complexity of the coordination task in the modern firm (corporation), imperfect information (uncertainty), and bounded rationality (the limit to one's knowledge and therefore, to the ability to contractually provide for all contingencies) all combine to necessitate the vesting of managers with discretion. Such discretion, however, creates opportunities for selfinterested behavior by the managers. This temptation to self-aggrandize is reinforced by having different sets of information available to agents and principals (whether it be managers and members of the board, or the board and the stakeholders). This information asymmetry can mean that those who in practice discipline the managers may not be able to monitor cheaply the performance of the managers.

Disciplining errant managers can also be a difficult problem when there are missing markets, such as the market for corporate control. And even when no markets are missing, it seems that management have become increasingly adept at entrenching themselves. The literature on corporate governance tells of chief executives vested with wide discretionary powers who have exploited this scope to entrench themselves and their allies on the board, sometimes using the resources of the organization to perpetuate their tenure. This was rampant in the USA during the wave of mergers and corporate takeovers in the 1980s.

Some of the self-perpetuation ploys have even been defended on efficiency grounds. Take, for the example, the case of golden parachutes. A golden parachute is a clause in a compensation contract providing for very attractive benefits in the event that a manager leaves after a control change. The efficiency arguments run as follows: Career executives have a legitimate right to expect protection of the rewards earned through years of hard, skillful work. Without adequate protection, executives would fight for their dues, thereby diverting attention from valuable activities.

A cynical opinion would consider this a veiled threat or, at the very least, an admission that managers abuse their office–that they do use the resources of the organization to pursue entrenchment. The managers threaten in the following terms: Unless you bribe me, I will not give my best. Moreover, I will waste your resources trying to defend whatever quasi-rents I am able to extract from you.2 An alternative view would suppose that if executives have made a valuable specific investment, it would be curious that raiders would so often be eager to dismiss them. It seems more reasonable to suppose that raiders fire managers with bad records who also happen to be the ones more likely to resist vigorously such takeover initiatives. Nonetheless, we note that some firms have become target of takeovers by altogether doing too well.

More commonly, people object to golden parachutes on the grounds that they defend entrenched managers, not the firm, and that they are costly for stockholders. As a matter of fact, the parachutes are financial insurance contracts (options), except that in this case, the insurance is bought and paid for by the stockholders for the benefit of the managers. Moreover, if they are too lucrative, managers may be too ready to encourage a control-change.

These safe-bailout devices may also encourage valuable managers to leave the firm after a control change, thus reducing the expected after-takeover value of the firm. Thus, it might actually make desired takeovers less likely. Thus far, we have tried to underscore the idea that managers take the issue of "self-succession" seriously, and that corporations recognize this.

4. De facto and de jure control

Checks on the tendency to self-perpetuate can be expected to come from those who govern the corporation, usually understood to be the board of directors. In deciding whether the directors really have de facto control, consider the following: The directors must rely on the officers of the firm to provide them with information needed to make decisions. By controlling the flow of information to the board and by setting the agenda, the senior executives may have effective control of many of the decisions that are nominally controlled by the board.

The board members are effectively chosen by the senior executives and thus are beholden to them. Granted, the shareholders elect the board, but they invariably simply select from the menu of candidates on the proxy statement circulated by management. Therefore, management effectively decides who is nominated.

Milgrom and Roberts (1992) characterize stockholders of modern corporations as owners who have vested so much decision rights in their agents that they (the owners) are left with few residual rights: “Rights that are strictly delimited and enumerated.” These authors argue that if the residual claimants are not in a position to control the decisions that affect the value of their assets, then the incentive properties that have been claimed for ownership are obviously weakened. It follows that if the incentive for ownership is weakened, corporate governance stands indicted.

5. Quasi-rents and executive compensation; tasks and temptations

One of the most serious efficiency effects of the “self-succession” game is the influence costs.3 Influence costs are unavoidable in view of the huge amounts of quasi-rent (hereafter called rent) implicit in the relatively fat compensation packages of corporate managers. Firms create rents whenever they pay higher-than-market wages to motivate workers in jobs where good performance is vital and monitoring is difficult, as in the case of CEOs. Firms may also offer premium wages to attract and to retain superior workers or to reduce turnover among employees who have received specialized training. Also, rents may be created when workers are trained in skills that are of value to other employees because the trained workers will later be able to demand higher wages or move to a new employer for a higher wage.

The ability, in an organization, to generate and to distribute rents implicitly to juniors confers additional ways and means by which management may entrench itself. It allows venal managers to suborn subordinates who may otherwise act as a source of information to either the board or to stock-holders (“the whistle blowers”). In practice, some rents arise in the form of perks and the consumption of perquisites. Summing up, therefore, it should not be too surprising that corporate managers seek to entrench themselves. But why not by a demonstrably superior performance?

An answer to why managers are reluctant to place their faith on “performance” lies in what Kerr (1975) has called “the Folly of Rewarding A, While Hoping for B.” Kerr calls attention to the existence of distorted incentives and the problems they create. He concludes that two main causes of distorted incentives are “fascination with an ‘objective’ criterion [where] individuals seek to establish simple quantifiable standards against which to measure and reward performance,” and “overemphasis on highly visible behaviors, [when] some parts of the task are highly visible while others are not”.4 In addition, little direct empirical evidence exists on the connection between effort and retention of CEOs. However, it would appear that many of the acquisitions and takeovers of the 1980s were based on criteria other than the lack of diligence on the part of the managers. We are again reminded that some firms became prime targets by doing altogether too well.

The question that naturally arises from the preceding discussions is whether the huge amounts that executives get paid motivate them to do a good job running the companies entrusted to them. Or are the huge compensation packages in fact the result of managerial moral hazard, with the CEOs lining their pockets at the expense of the owners of the firms? It is abundantly clear that senior executives have remarkably broad responsibilities and broad discretion in determining their behavior and the objectives and policies their firms will pursue. Therefore, a system that seeks to provide incentives to senior executives may need to be concerned not just with any single dimension of their behavior, such as how hard they work, but also with how they allocate their time and attention among different concerns. The theory of performance contracting suggests that explicit incentive (direct performance) pay should become more important at the top of the hierarchy. This indicates that the intensity of incentives should be higher when the marginal productivity of effort is higher and when the potential responsiveness to incentives is greater. One would suppose that the quality of the "top gun" should have a greater impact on overall organizational performance. The wide discretion given to CEOs also means that they have more ways in which they can be responsive to increased incentives. But why pile incentives upon incentives? Some shareholders may ask why we are bribing managers to do what they are paid to do in the first place?

A further issue in motivation is why managers would shy away from profitable but risky investments? One explanation is that the returns to the investments are not solely the financial ones accruing to the risk-neutral owners of the firm. Of concern also are the effects of the investment return on the manager's human capital. Often their human capital is by far their most valuable asset. Being essentially non transferable, there is little hope of diversifying away the risks attached to it and so, without some incentive for risk taking, managers may sensibly be reluctant to "stick their necks out."

6. Perceptions of ownership and corporate expectations

In the preceding section, we presented arguments that link the intensity of incentives to its potential responsiveness (presumably along a single, well defined, dimension). But what happens now that the concept of corporate governance has become encompassing, moving beyond stockholders and creditors to embrace a more diverse constituency, with heterogeneous and changing preferences? With corporate responsibility and social accountability mixing with all the 'isms, "mission setting" and incentive problems in the private sector are increasingly becoming similar to those in governments. In governments, the multiplicity of tasks, and the fuzziness of objectives combine to render the design of incentives very difficult.

Ultimately, this suggests that to properly evaluate corporate performance in Africa, it might be useful to do a survey of the tasks and temptations facing managers, as well as a survey of "corporate expectations" and perceptions of ownership. We should not take for granted a general understanding of whose interests should count in managing the corporation. In all industrialized nations, the matters of corporate responsibility and social accountability by firms and multinational corporations have become increasingly relevant.

In a now-dated survey conducted in Japan regarding perceptions of ownership and interests [Aoki (1984)], presidents of major firms, senior executives, and middle managers were polled regarding their perceptions of ownership. They were asked: On whose interests should corporations be run? and To whom do corporations actually belong? The results were unexpected and most revealing. The number of respondents mentioning employees as those on whose interests the firm should be run (80%) was almost as large as those mentioning stockholders (87%). And most company presidents indicated that the firm should belong to both groups, with society as a whole also getting many votes.

On the question of whose interests were actually being served, the most common answer was employees, with shareholders coming second. Again, most of the presidents mentioned both groups, but a full 20 percent indicated that shareholders' interests did not count in running the firm. With the growing interest worldwide in social accountability, it may not be surprising to find that these views (in its many shades) are not limited to Japan.

7. Cross-continental trends

Only very recently has cross-country information on corporate governance issues begun to emerge. Currently, a wealth of information is coming from the European Union as a by-product of the European Commission's 1988 Transparency Directive on voting rights. Another source of data is the on-going international research initiative, the European Corporate Governance Network [ECGN]. Becht and Roell (1999) briefly preview the field survey on large shareholdings in Europe carried out under the ECGN initiative. One of the most striking facts to emerge from the survey is that blockholdings in Europe are much higher than in the USA, and that the separation of ownership and control manifests itself in a fundamentally different way in Europe than in the USA.

The authors report that "while in the USA the main agency problems seem to arise from conflicts of interests between managers and dispersed, in-sufficiently interventionist shareholders, in much of continental Europe there are generally large blockholders present who can and do exercise control over management." In Europe, then, the main potential conflict of interest lies between interventionist major shareholders and powerless minority share-holders.

Another insight into cross-cultural differences in corporate governance is offered by Bianco and Casavola (1999), who describe the ownership and concentration structure in Italy. As in most of continental Europe, ownership is characterized by a high degree of concentration, both for listed and unlisted firms. There is also a limited separation of ownership and control of firms, with governance structures built around familial relationships, and a widespread use of pyramidal groups. Pyramidal groups are organizations where legally independent firms are controlled by the same entreprenueur (the head of the group) through a chain of ownership relations.

8. The record in Africa: analytical framework

Modigliani and Miller (1958) postulated conditions under which capital structure is irrelevant. However, when information is imperfect, financial structure matters, as does the range of available financial instruments. Financial structure, ownership and corporate control are inextricably linked. The pattern of financing (financial structure) affects the kinds of securities issued. Securities are not simply claims on cash flow; they confer certain rights on decision making and control (i.e., they define alternative governance modes). According to Williamson (1988), debt governance works out of rules, while equity governance allows much greater discretion. Equities typically confer on the holders, the right to elect directors through voting, whereas debt entitles the holders to repossess collateral when the company defaults on promised payments. The rights attached to securities become critical when managers of companies act in self-interest.

However, La Porta, Lopez-de-Silanes, and Shleifer (1998) remind us that the view that securities are inherently characterized by some intrinsic rights is incomplete, predicated as it were, on the legal environment in which the securities are operative. Therefore, differences in legal protections might help explain capital structure across countries. Legal rules pertaining to the rights of investors, and to the quality of enforcement of those rules cover such issues as the ease of participation in corporate voting; the ease of communication and the rights to lawful assembly; legal protection against expropriation by management; the ability of creditors to realize collaterals in the case of de-fault; and the difficulty for management in seeking unilateral protection from creditors.

Collectively, these rules measure the ease with which investors can exercise their powers against management, and hence shed some light on the quality (or potential thereof) of corporate governance across countries. Al-though, the theoretical literature is rich in prescriptions on how to rank governance systems, what emerges in empirical work is primarily based on the feasible set of data available at a point in time. For instance, La Porta, Lopez de Silanes, Shleifer, and Vishny (1998) construct some measures of quality governance in terms of protection of (minority) shareholder rights, protection of creditor rights, and law enforcement. Also, between 1992 and 1995, three study groups have produced codes of good conduct or of best practice for boards in the UK. The recommendations contained in the three sets of reports, came to be known in 1998, as the Combined Code (Short, 1998). In the US, the largest public pension fund, Calpers (California Public Employees' Retirement System) has as well proposed recently 37 principles of good governance. Calpers intends to grade the companies on their compliance with these principles and to publicize the results, so as to induce proxy votes for companies that comply least (in principle, if not in practice). Drawing from the various sources in the literature, we summarize these governance factors in Table 1.

9. The Record

Below, we present a comparative institutional record of corporate governance in a sample of African countries, followed by some country specific remarks. We focused on those indicators that were not only available, but were easily measurable in terms of more objective criteria. Being accessible in a wider selection of African countries was an added advantage in deciding on the indicators to use. Consequently, we did not directly measure such indicators as quality of "rule of law" or "legal enforcement," or "accounting standards." We would like to note, however, that a global comparative evaluation of countries on legal rules etc. ranks high, the African countries in the sample (La Porta et al., 1998). The countries listed in the sample are Kenya, Nigeria, South Africa, and Zimbabwe. In "shareholder rights around the world", South Africa scored 5(4) where 4 is the mean for country group in the English-law origin while the rest of the listed African countries each scored 3. To provide a fairer perspective, it should be noted also that the mean for French-origin, German-origin, and Scandinavian-origin country groups are 2.33, 2.33, and 3.0 respectively. In "creditor rights around the world," all the sample African countries scored 4(3.11) with the exception of South Africa that scored 3. Similarly as reported above, the mean for the other law-origin countries are 1.58, 2.33, and 2.0 respectively. In "rule of law," Kenya scored 5.42, Nigeria 2.73, South Africa 4.42, and Zimbabwe 3.68. The mean for the English-origin group is 6.46, French-origin 6.05, German-origin 8.68, and Scandinavian-origin 10. All countries in the Scandinavian group scored a perfect 10.

The broadest indicator used in our survey are Structure of the Board, and Product Market Competition. Other indicators such as the existence of market for corporate control, and data on ownership concentration are reported for a smaller subset of countries. The countries reviewed (in one form or another) are, in alphabetical order, Botswana, Côte d'Ivoire, Egypt, Ghana, Kenya, Mauritius, Namibia, Nigeria, South Africa, Swaziland, Zambia, and Zimbabwe. The twelve countries which we evaluate belong to the set of 21 African countries with stock markets although the inactive status of the Abidjan Exchange (in Côte d'Ivoire), following the opening of the Regional Stock Exchange [BVRM] reduces the active set to twenty. And although some of our data source were published in 1999 and 2000, the currency of the information embodied in the data ranges from 1993 in the case of some of the reported company data for Ghana to 1998 in the case of South Africa.

Table 1: Catalog of Indicators of Quality Corporate Governance

Implicit incentives: Implicit incentives: Market for corporate takeover acts an agency of external control. It is one of the mechanisms by which the Monitor is monitored	Threat of management change from the market for corporate control, through takeovers and proxy fights, and bankruptcy or reorganizations Other implicit incentives
Other implicit incentives: Product market competition and monitoring by capital markets	Competition provides a yardstick for performance evaluation. Also, by increasing the threat of bankruptcy, it reduces complacency. Performance monitoring by capital markets occurs through institutional investors: pension funds, mutual funds, banks, venture capitalists, concentrated private ownerships
Explicit incentives: Compensation packages (bonuses and stock options)	Compensation base: Compensation should not be based on factors outside the manager's control. Bonus based compensation induces managerial myopia, based as it were on current profits. Conversely, stock options induce a long-term view, and are based on market data. So the articulation between both incentives matter if we are to avoid incentive imbalance. Both are complements.
Board elections: how are directors elected?	Nomination rules for rotation on the board. Majority and super-majority rules for elections.
How are directors removed?	Term limitations (some form of mandatory retirement for directors)? What are the opportunities for removing members of the board for malfeasance or nonfeasance?
Board succession rules in place?	Does the company require CEO's recommendation as to her successor should she/he unexpectedly become disabled?
Board composition	-Proportion of outside directors [greater than 50% means majority in the firm; over 80% means super majority (John, and Senbet, 1998)] -Foreign-director ratio -Is CEO also the chair of the board (this arrangement could imply management entrenchment)? Is it unlawful in the country to combine both portfolio, or does it differ across companies?
Board size	Diminishing marginal returns to size (Lipton and Lorsch, 1992; Jensen, 1993). Evidence that CEO's incentives from compensation and the threat of dismissal greater if board size is small (Yermack, 1996)
Committee structure: To accomplish their tasks, boards operate through committees	-Monitoring committee group consists of nominating cmte, compensation cmte, and audit cmte. -Productivity committee group consists of finance cmte, investment cmte, and strategic cmte
Assessing the character of the board: whether active or indolent?	-Are there explicit rules (in the corporate law of the country or articles of association) that audit cmte be made up on non executive directors (i.e., outsiders)? -Is the compensation cmte dominated by outsiders? Are these members largely executives in other companies? -Can outside directors seek independent professional advice at company's expense? -Independent nominating cmte? (According to Calpers, "independent" means composed entirely of outside directors.) -Independent compensation cmte? -Independent audit cmte?
Investor activism: monitoring can be speculative or active. "Active" means forward looking. "Speculative" means relating to past performance. Active monitoring requires control so as to implement	-What is the process for putting shareholder resolutions to the ballot? Are shareholder resolutions feasible? A shareholder resolution is a measure requesting or instructing the board and management to follow particular policies. They represent attempts by stockholders to direct the affairs of the firm without replacing the board or management.

new ideas or oppose bad policies or managers.	-Are class action suits (on behalf of shareholders) possible? -Are derivative suits on behalf of the corporation possible? -Speculative monitoring by rating agencies, creditors, and the media affect equity value (and hence compensation) -Is there an active shareholder's association -Ease of communication between investors and between company and investors (quality of communications infrastructure) -Proxy by mail allowed? -Cumulative voting or proportional representation? "Cumulative" means that you can vote all your shares for a single director -Is the minimum proportion of shares that entitles a shareholder to call an Extraordinary shareholders meeting less or equal to 10%? -Oppressed minority mechanism in place? This pertains to the existence of judicial avenues to challenge decisions of management or assembly, or to exit by having the company purchase their shares when the minorities object to certain fundamental changes. Changes such as mergers, asset dispositions, or amendments to the Articles of Association -Are proxy fights made very costly due to securities regulatory constraints?
Composition of ownership: Activism is linked to structure of ownership Ownership concentration	Institutional or insiders: banks, pension funds, mutual funds, households, non financial business, government, foreign Dispersed or block holdings? What is the three-shareholder concentration ratio, i.e., fraction of ownership by the three largest shareholders?
Creditor rights, and bankruptcy law (La Porta et al., 1998)	-Are creditors consent required to file for reorganization? -Is there an automatic stay of execution on secured assets? -Management does not remain on the job during reorganization?
Accounting standards	Transparency and quality of disclosure of financial information, including auditing and reporting standards

Notes: Regardless of the scope for misbehavior, explicit and implicit incentives partly align managerial interests with that of the firm. "cmte" means committee. In a proxy fight, a stockholder or a group seeks either election to the board, or support by a majority of the shareholders for a resolution on a specific corporate policy.

Table 2 presents an indication of potential peer competition that exists within each sector of the economy. In practice, competition is likely to be more vigorous than revealed by these numbers. The reason is that there are private companies that are well managed which are unlisted but compete within the same sector as listed companies. So, the given numbers represent baseline market discipline. All the reported figures are not current as at the publication of the source document, because of publication lags.

Table 3 shows comparative data on the distribution of size of board of directors of firms by sectors across countries. The data for Nigeria and South Africa are relatively more current (based on reported statistics as at end year 1998). John and Senbet (1998) summarize an empirical study by Yermack (1996) on board size. The main findings are that, the market penalizes large boards– between 4 and 10–beyond which no systematic relationship appears to exist; profitability ratios and asset utilization ratios deteriorate rapidly over the range of board sizes between 4 and 10, and less discernable beyond; CEO incentives from compensation and the threat of dismissal operate more strongly in firms with small boards. The study also found that the market rewards the separation, within the same company, of the positions of CEO and Chairperson of the Board. Judging corporate governance quality on this criterion obviously requires looking beyond averages

Table 2: Sectoral Distribution of Listed Firms

Standard Industrial Classification	Botswana	Egypt	Ghana	Kenya	Mauritius	Namibia	Nigeria	South Africa	Swaziland	Zambia	Zimbabwe
Agriculture	-	23	-	9	1	3	5	-	-	-	7
Construction	-	224	-	-	3	3	18	31	-	1	6
Financial, insurance & real estate	7	125	6	17	20	6	40	198	2	3	11
Manufacturing	1	198	12	13	17	3	66	105	1	3	26
Mining	1	10	2	2	1	5	9	66	-	1	8
Services	-	201	-	4	3	1	11	53	1	-	2
Transport, electrical & communications	-	71	1	-	-	-	-	74	-	-	2
Wholesale & retail Trade	3	38	2	7	1	4	6	55	-	-	6
Others	-	-	-	-	-	-	7	17	-	-	1
Totals	12	890	23	52	46	25	155	599	4	8	68

Notes: The country figures differ in their dates of currency, all of which depend on the latest date for which data was available at the time of compilation. Although published in 1998, some of the information is based on reported data as far back as 1993. Others are more current. These variations are noted in the text. Nonetheless, the numbers indicate potential peer competition in each sector.

Sources: McGregor's Who Owns Whom in Sub- Saharan Africa excluding South Africa, 1st edition, Johannesburg, South Africa: Purdey Publishing, 1998; McGregor's Who Owns Whom in South Africa, 19th edition, Johannesburg, South Africa: Purdey Publishing, 1999; "Mbendi- Stock Exchanges in Africa," http:// www. mbendi. co. za, and http:// www. gksoft.com/ govt/ en

Table 3: Average Board Size per Firm Per Sector

	Botswana	Ghana	Kenya	Mauritius	Namibia	Nigeria	South Africa	Swaziland	Zambia	Zimbabwe
Agriculture			5	16	11	8				9
Construction				8	10	9	8		8	9
Finance, Insurance & Real Estate	11	9	8	10	12	9	9	8	9	10
Manufacturing	7	8	8	11	11	8	9	14	8	8
Mining	12	12	6	4	10	8	7		17	8
Others						12	8			5
Services		7	11	14	9	9	14		10	
Transport, Electrical & Communications		7	13	11			9			7
Wholesale and Retail Trade	9	8	19	11	8	9	8			9
National average board size	10	9	10	10	11	9	8	12	9	8
CEOs as Chairperson	NA	5(23)	5(54)	2(43)	NA	NA(*)	NA(+)	NA	NA	NA
Modal board size	12	7(9)	7(9)	9,10	11,12	10	4	14	8	8(6)

Notes: Authors compilation based on data from McGregor's Who Owns Whom (in Sub- Saharan Africa 1998, and in South Africa 1999), and the Nigerian Stock Exchange Factbook 1999. Numbers have been rounded off to nearest whole numbers. The figures for South Africa are based on a sample of 300 firms listed on the Johannesburg Stock Exchange, while the figures for Nigeria are based on all the companies listed on the Lagos Stock Exchange, as reported in the Factbook. "NA" means not available. For the row containing "CEO as Chairperson," 5(23) means that 5 of the 23 reporting companies combine these positions. For the "modal board size," 7(9) means that 7 and 9 are common but that 7 dominates. NA(*) means that although data is not available for Nigeria, the author is certain that many corporations in Nigeria combine the positions, a fact that has been the subject of much controversy in the popular press, attracting also the attention of the Securities and Exchange Commission. Additionally, Ahmad (1998), p. 68, cites five banks in liquidation in Nigeria to which this is applicable. NA(+) means that while overall numbers for South Africa are not available here, there are companies that combine both positions. At least, three major blue chips (Anglo, Billiton, and Old Mutual) still do, even though Chapter 7 of the King Commission Report on corporate governance in South Africa (released in November 1994) recommends against such practice. Anglo and Old Mutual together control 34% of all listed companies on the Johannesburg Stock Exchange in 1997.

to the distribution of the absolute numbers. We consider this distribution (modal board sizes) next.

In Botswana, the most frequently occurring board size is 12; in Côte d'Ivoire 8 (out of 31 listed firms, with one company having a combined CEO/Chairperson); in Ghana 7* and 9 (asters denotes the dominant size); in Kenya 7* and 9; in Mauritius 5, 9* and 10*; in Namibia 11 and 12 (split evenly); in Nigeria 10; in South Africa 4; in Swaziland14; in Zambia 8; in Zimbabwe 6 and 8*. Evidently, South Africa is the only country with a good record on this criterion, while Namibia is inconclusive. At the extreme side of sizes, we note two financial services companies in Mauritius having 21 and 22 directors.

Although data on structure of ownership and concentration as well as on mergers and acquisitions are scanty (and generally not available), we have patchy evidence from popular press, providing some insight into the state of a .airs in some countries. In principle, most countries in opening up to privatization and market liberalization have endorsed mergers and acquisitions. In practice, most applications still have to be cleared by the competition commission in various countries, and approved by the securities commission. Generally, from reading the press, approvals have been forthcoming.

In late October 2000, African Lakes Plc announced its acquisition bid for TelCorp Limited. If approved by the Kenya Monopolies Commission, it will represent the biggest technology takeover in Kenya's corporate history. The takeover is said to come at a time when both parent groups had just launched rival business-to-business e-commerce exchanges. TelCorps owns Electrade which is a $7m joint venture with General Electric. Africa Lakes Plc owns Africa Online, a leading internet access provider in Kenya. Another subsidiary of Africa Lakes is Altech with regional operations in Kenya, Zambia, and Zimbabwe. In Nigeria, mergers and acquisitions are commonplace. Similarly, in Zimbabwe where there has actually been a spurry of mergers and acquisitions in the late 90s particularly in the financial services sector. South Africa has a demonstrated record of acquisitions and merger activities. The number of deals in 1998 were 605, and in 1999 were 914. However, outright hostile takeover attempts have been few. So far, none has been successful.

Goldstein (2000) describes the most recent and the first large-scale hostile takeover bid in the history of market for corporate control in South Africa. It involved an attempt in November 1999 by NEDCOR banking group to ac-quire at least 50.1 percent of STANBIC. The merger would have placed the new group in the global 150 banks. The target company resisted and every-body got pulled into the fight–the Central Bank, the Competition Board, the court, and politics. STANBIC antitakeover defenses included appointing to its board, the immediately past Reserve Bank Governor, and Transnet Managing Director, who is a senior party member of the ruling party, the African National Congress. To appreciate the significance of this move, consider that Transnet is South Africa's largest state-owned enterprise [SOE], measured in terms of turnover, and second in terms of total assets. Also, it is the largest employer of labor among the SOEs, accounting for 100,592 employees. The distant second is Telkom, the national telephone network carrier, with 57, 496 employees and third ranked in total assets and turnover.

The last issue we visit is the structure of ownership and ownership concentration. It appears that in the few cases in which data is available, many of the listed firms belong to both local and multinational investors, the ultimate owners of which are unreported. It is certainly possible that in many of the countries, politicians have used nominee companies to stake their interests in corporations. Hence, the widespread incidence of "crony capitalism" and lackluster enforcement of the Rule of Law in many African nations.6

La Porta et al. (1998) construct an ownership concentration measure in which they cumulate the ownership stake of the three largest shareholders among the top ten publicly traded firms worldwide. They find the mean concentration ratio to be 46 percent, leading them to conclude that, "Dispersed ownership in large public companies is simply a myth" (p. 1146). They find that even in the USA, the average for the 10 "most valuable" companies is 20 percent. In their global sample, Nigeria, South Africa, and Zimbabwe score 0.40 (0.45), 0.52(0.52), 0.55(0.51) respectively. Respectively, the numbers in the parenthesis are the median value for the countries. In South Africa, where wealth is most concentrated, Anglo alone controlled 60.1 percent of the listed firms on the Johannesburg Stock Exchange in 1987. In 1991, the top five shareholders controlled 84.9 percent, and in 1997, approximately 66.4 percent (Goldstein, 2000, Table 2).

Despite the existence of concentrated ownership either in personal or institutional format, the problem of corporate governance has largely persisted. As a matter of fact, it can be argued that there is a moral hazard aspect to concentrated holding: Large blockholders monitoring a firm may use their private information to extract rents from the firm, the extent of which depends on the labyrinth of crony capitalism in the system or the quality of Rule of Law (understand: protection of minority rights). On the other hand, the events unfolding during the hostile bid by NEDCOR for STANBIC revealed investor activism at work even if in this case the intervention of a very large investor proved insufficient to close the deal. Old Mutual, the second largest institutional investor in South Africa in 1997, controls NEDCOR, is the single largest STANBIC investor, and supported the merger. It threatened to off load STANBIC shares if the merger stalled. Yet, the management fought undeterred. Going beyond a mere metaphor, this event may have taken the term, management entrenchment, to a new height.

10. Policies for improving governance

The quality of corporate governance may not be independent of the quality of state governance. The quality of the state provides the backbone (the "soft-core" infrastructure) upon which board of directors can govern, and upon which the shareholders can "redirect" the directors or monitor the Monitor. Based on the ideas and lessons presented in this paper, it is clear that the idea embodied in the concept of corporate governance is applicable to a wider class of problems, including relationships where no formal delegation is explicitly involved.

As the boundaries of the firm become more blurred, placing firms at the center of a network of relationships rather than traditionally as owners of a clearly defined set of capital assets, so has governance become more subtle and sophisticated, more of art than science. If therefore, a firm is a nexus of contracts, it is easy to understand how securities are not simply claims on cash flow, but rights of decision making and control (i.e., they define alternative governance modes). Obviously, the rights attached to financial securities become critical when managers of companies act in self-interest. Rights which are in turn predicated on the legal environment in which the securities are operative. And since procedure is of essence, as is usually the case under systems that rely on institutions, therefore, policies which promote equal protection and opportunity under the law are absolutely essential to achieving good governance. Pushing outcomes towards equal protection includes reducing the cost of seeking redress so that de jure protection approximates de facto protection. When the exercise of rights is prohibitively expensive, such rights are effectively denied.

Making boards effective requires policies that impact on both "the carrot and the stick." The carrot concerns the fact that directors in Africa and elsewhere for that matter, earn fees. Stock related compensation would work better as it aligns their interests with that of the long-term growth of the companies. Although derivatives are not traded in Africa, private contracts can be crafted that mimics cal l options on the stock of the companies.7 A stable policy environment will ultimately give rise to the development of these features of the capital market. Markets will evolve to serve the needs of the participants but such evolution often risk derailment in bad (understand: unstable) policy environments.

To complement the fresh carrot, there has to be an effective stick. You can't "stick" effectively unless the state provides the enabling environment in the nature of Rule of Law. Threats to punish will lack the bite when there are no credible enforcement mechanisms. So, failures of government invariably affect the quality of corporate governance.

To conclude the discussion on the effectiveness of boards, we visit the core issue of board room dynamics. The boards of directors are known to work through committees [see Table 1]. Working through committees raises the issue of "board room culture" which in turn brings into the analysis, the role of tradition, expectations, perceptions and morality. So, if directors who do not follow the wishes of stockholders are removed, what then are the wishes of the stockholders? Discerning the desires of stakeholders are of importance particularly since the concept of corporate governance has become encompassing, moving beyond stockholders and creditors to embrace a more diverse constituency, with heterogenous and changing preferences. The appropriate choices to be made on behalf of stakeholders are not self-evident, even granting that the interest of the stockholders should be paramount (or should it?) And even when the desired behavior maybe clear, there are issues about whether it will be pursued. How would the retrenchment or dismissal of employees be conditioned when there are strong interdependencies in the nature of the "extended family system" that can turn one dismissal into the bankruptcy of an entire clan or village? Such concern often leads to politicization of an ostensibly business decision as was the case in NEDCOR vs. STANBIC told above (but for a different reason). Nonetheless, NED-COR/ STANBIC illustrates that business can get politicized. The higher the stakes, the greater the likelihood.

Without doubt, the nature of representations that stakeholders can expect from boards of corporations, depends on the social background of representatives, as well as on their consciousness or substantive orientations. In particular, a dimension of representation called "consciousness" is concerned with how representatives see the interests they represent and how they act on behalf of those interests. How they serve those interests is shaped by opportunities to influence events. These opportunities may in turn be shaped by the social, cultural and political settings of that economy. We believe that social orientations matter because culture–defined as a shared set of values, way of thinking, and beliefs about how things should be done–can be a powerful force. Cognitive psychologists find that preferences are not fixed but variable. In particular, that "preferences depend on the framing of choices, the context in which choices are made, and the method by which choices are elicited" (Kuran, 1998, p. 232). "The method by which choices are elicited" clearly relates to our discussion of board room dynamics. According to Kuran (1998), when constraints that regulated our actual choice do not restrain our values, we are left in a situation where our values require of us an impossible set of behavior. This is typical of what happens in some ethnically divided African countries with fiscal federalism. The pressure to "bring the bacon home" to constituencies often generate corrupt practices in otherwise morally upright representatives. "The state of having values that cannot be satisfied within the prevailing physical and financial constraints may be called moral overload. This condition inevitably generates moral dissonance, psychological discomfort stemming from the feeling that one's personal values remain unfulfilled" (ibidem, p.233).

It is fairly straightforward and comforting to prescribe that countries should enact corporate laws designed to reduce the threshold for Extraordinary General meetings, make proxy fights more likely, promote a vibrant market for corporate control, and eschew crony capitalism. In short, deal with all the issues listed in Table 1. And in addition, get rid of corruption since corruption is closely linked to corporate governance. A corrupt system influences corporate governance through its impact on the calculus of crime and punishment, as well as on the credibility of the apparatus for enforcing corporate rules, procedures and regulations. What is not so straightforward, and certainly not comforting is to note that the necessary laws already exist in books of most of the African countries. And that these laws are encumbered by crony capitalism and moral overload. Privatization, clearly defined property rights, and progress with the rule of law ultimately will resolve crony capitalism. Unfortunately, we do not have answers on how to engineer a repair of moral overload.

Now, allow us to tell you a story. Hollywood makes two kinds of evil. They remind us of the problem of governance, but we will let you judge for yourself. The evil inside and the evil outside. The evil outside lurks in the corner making all kinds of menace. Our hero and heroine decide to put an end to that, and we are happy to watch Superman and Wonderwoman do their thing. And the neighborhood sleeps well henceforth. On the other hand, we watch the “exorcist” and are horrified and frustrated as the evil inside destroys both the hero (the exorcist) and the heroine (the little girl’s loving mother). In this alternative Hollywood incarnation, the “dark side” wins by masterfully exploiting the struggle by these two mortals, to sort the shifting perception of good and evil (the schizophrenia) in the adorable little Megan.

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