Creating a CSR-enabling environment: The role of Government

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1 Introduction

The legacies of apartheid remain firmly entrenched in the social challenges facing South Africa and it seems as if the national government is, at least to some extent to date, unable to deliver social and physical infrastructure, which has necessitated the engagement of the private sector.[1] The (perceived) failure of the welfare state[2] has given further impetus to the move of governments towards tapping into the resources of the private sector in order to address socio-economic challenges. One instance where the resources of the private sector can be used to address socio-economic challenges is through the private sector's corporate social responsibility (CSR) initiatives.[3] Albareda *et al*[4] argue that the challenges faced by post-industrial governments and societies (such as unemployment and poverty) and the demand on governments with limited resources to address the challenges have caused a crisis in the welfare state. This crisis requires a new model of societal governance where innovative new ways have to be found to address the social demands which

[1]See Kloppers *Improving land reform through CSR: A legal framework analysis* LLD Thesis NWU (Potchefstroom) (2012) 101-140. The content of this article is based on a chapter included in the author's aforementioned LLD thesis. Farlam *Working together: Assessing public-private partnerships in Africa* (2005) i.

[2]It should be noted that in 2011 President Zuma explicitly stated that South Africa cannot be a welfare state and that with regards to social support, government cannot afford to pay social grants indefinitely (*Business Report* (2011-11-23) http://www.iol.co.za/business/business-news/we-cannot-be-a-welfare-state-zuma-1(accessed 2013-04-18).

[3]For the purposes of this article, CSR is used as an umbrella term to indicate that businesses have a responsibility towards the societies within which they operate and that this responsibility needs to be managed. For an extensive discussion of various national and international definitions for CSR see Kloppers (n 1).

[4]Albareda *et al* 'The changing role of governments in corporate social responsibility: Drivers and responses' (2006) 6 *Corporate Governance* 347, 388.

cannot be met by the state. The new model of societal governance has given rise to the appearance of partnerships between governments and the private sector working in collaboration to address societal issues through a CSR approach.

The CSR movement has been described as a bundle of trends comprising *regulatory frameworks* aimed at improving corporate practices and leading to changes in these practices, the mobilisation of corporate role players to support the development of states, and a management trend that enhances the legitimacy of a business.[5] Governments are regarded as one of the most important driving forces behind the CSR agenda and as a result have a particularly important role to play in the creation of an enabling CSR environment.[6]

The role of governments is aptly described by Moon and Vogel in Crane *et al*: [7]

> For all the increasing importance of CSR, *public policy remains the most important vehicle* by which private business purposes and broader social objectives can be reconciled. Accordingly, one of the critical dimensions of CSR involves not what firms do voluntarily, but the role they play in affecting government regulation of business. While CSR is often viewed as an alternative to regulation, in many areas, *corporations cannot afford to engage in more responsible behaviour unless public policy requires that all firms act in a similar manner* (emphasis added).

This statement affirms the fact that a purely voluntary approach to CSR without any legislative intervention will not succeed – a clear public policy requiring socially responsible practices by the entire private sector is needed. In general, advocates of legislative involvement in framing a CSR policy highlight the failure of existing voluntary systems as one of the main reasons why the state should play a more important role in the facilitation of CSR.[8] Although governments realise the

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[5]Sahlin-Andersson 'Corporate social responsibility: A trend and a movement, but of what and for what?' (2006) 6 *Corporate Governance* 595, 606; and Boasson 'On the management success of regulative failure: Standardised CSR instruments and the oil industry's climate performance' (2009) 9 *Corporate Governance* 313, 313-314.

[6]Hamann and Acutt 'How should civil society (and the government) respond to "corporate social responsibility"? A critique of business motivations and the potential for partnerships' (2003) 20 *Development Southern Africa* 255, 258; and Hamann 'Corporate social responsibility, partnerships and institutional change: The case of mining companies in South Africa' (2004) 28 *Natural Resources* 278, 278-290. Fox, Ward and Howard define an enabling environment as 'a policy environment that encourages (or mandates) business activity that minimises environmental and/or social costs and impacts while at the same time maintaining or maximising economic gains' (Fox, Ward and Howard *Public sector roles in strengthening corporate social responsibility: A baseline study* (2002) 1), while in a later work Ward suggests that an enabling environment for CSR is 'a product of drivers, the tools and the human capacities and institutions directed towards that goal' (Ward 'Corporate social responsibility in law and policy' in Boeger, Murray, and Villiers (eds) *Perspectives on corporate social responsibility* (2008) ch 2, 11).

[7]Moon and Vogel 'Corporate social responsibility, government, and civil society' in Crane *et al* (eds) *Corporate social responsibility* (2008) ch 13, 318.

[8]Cannon *Corporate responsibility* (1994) 80. According to Albareda *et al* 'even when considered within a voluntarist approach to CR by companies, very few agents would today dispute the role that

importance of encouraging socially responsible business, it should be noted that CSR should not replace regulation or legislation concerning social rights. Furthermore CSR should not be seen as shifting (or outsourcing) the state's responsibility for the provision of basic services (such as education or the provision of health services) to the private sector and thus 'privatising' the state's responsibilities.[9]

In order to ensure an effective policy for CSR, a regulatory foundation that promotes growth, employment and good governance is required whereby all participants have certainty about their rights and responsibilities. Regulation should be consistent, effective, transparent, fair and understandable. Given South Africa's history, legislation should be viewed as one of the main instruments enabling the Government to address the private sector's social, environmental and economic impact. The private sector's social responsibility should accordingly ensure full compliance with the social, environmental and economic laws already in place.

According to Ward[10] it is unarguable that law shapes CSR; that CSR is underpinned by public policy; and that CSR has unquestionable links with law. CSR is linked with law for example through legislative developments where CSR issues have been transformed into law. Laws addressing issues such as misleading advertising, taxation, competition policy, economic empowerment,[11] or company committees,[12] although not labelled as CSR, frames CSR. CSR could further be linked with law through the inclusion of CSR issues in contracts, for example with suppliers.[13]

The aim of this article is to contextualise and analyse the roles and responsibilities of governments in general, and specifically the national government in creating an enabling environment for CSR. This article will refer to the general elements of a government CSR framework and evaluate the current national position against these elements in order to establish the nature and extent of the national CSR policy framework.

2   The roles of governments in strengthening and creating an enabling environment for CSR

In a report compiled for the World Bank, Fox, Ward and Howard[14] identify four

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governments can and ought to adopt in promoting and developing CR' (Albareda *et al* (n 4), 357).
[9] OECD (2004) http://www.oecd.org/dataoecd/32/18/31557724.pdf (accessed 2012-05-03).
[10] Ward (n 6) 9.
[11] For a discussion of legislation addressing black economic empowerment, see Kloppers (n 1) 247-287.
[12] For a discussion of the requirement in the Companies Act that companies should have a social and ethics committee to guide them in CSR matters, see Kloppers (n 1) 304-324 and Kloppers 'Driving CSR through the Companies Act: An overview of the role of the social and ethics committee' (2013) 16/1 *PER* 166-199.
[13] Ward *Legal issues in corporate citizenship* (2003) iii, identifies the inclusion of voluntary codes of conduct, as an example where voluntary approaches to CSR can have a legal context.
[14] Fox, Ward and Howard (n 6) 3.

basic roles that governments have to play in the contemporary CSR agenda. The roles are mandating, facilitating, partnering and endorsing, where the role of governments are primarily centred on government's role as mediator, facilitator or partner.[15] Since the release of this report, authors such as Horrigan[16] and Bell[17] have identified further roles which include enforcing, legitimising, standardising, leveraging and modelling. It should be noted that these roles complement one another and should not be viewed in isolation.[18] The following paragraphs will examine the extent to which governments in general are seen to have a role in shaping the CSR agenda.[19]

2.1   *Mandating (legislative)*

In its mandating role (a role that is regarded as a pivotal CSR regulatory tool),[20] governments provide certain minimum legal standards and targets with which the private sector has to comply. In performing this role, governments make use of their legislative competencies through 'command and control'[21] legislation that makes provision for legal and fiscal penalties for non-compliance and rewards for compliance. Governments' regulatory and enforcement capacity is becoming critically important in the CSR agenda in order to monitor compliance and to act against instances of non-compliance. Governments must be in a position where they are not only able to command the desired behaviour but also have the ability

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[15] Albareda *et al* (n 4) 350.

[16] Horrigan *Corporate social responsibility in the 21ˢt century: Debates, models and practices across government, law and business* (2010) 146-165.

[17] Bell (2002) http://www.g8.utoronto.ca/scholar/2002/bell11062002.pdf (accessed 2011-08-15). The author has identified five potential key roles for government, which are goal setter, leader by example, facilitator, green fiscal authority, and innovator/catalyst.

[18] As an example, Blowfield and Frynas 'Setting new agendas: Critical perspectives on Corporate social responsibility in the developing world' (2005) 81 *International Affairs* 499, 510 note that governments play a dual role of enforcer and facilitator.

[19] According to Ward, '[t]he key challenge, for those governments that choose to engage, is to shape and apply CSR, to the greatest extent possible, to meet both national public policy goals and, at the same time, locally defined needs in areas such as capacity development, employment, environmental protection, social provision and poverty reduction' (Ward (n 6) 20).

[20] Horrigan (n 16) 159 and Michael 'Corporate social responsibility in international development: An overview and critique' (2003) 10 *Corporate Social Responsibility and Environmental Management* 115, 118. Midttun 'Realigning business, government and civil society' (2005) 5 *Corporate Governance* 159, 160 notes that, in order to embed the social dimension into civil society and self-regulatory processes, government will have to play a more prominent facilitating and endorsing role.

[21] The 'command and control' approach is viewed as the traditional approach to regulation and is based on a top-down approach where a government commands behaviour and controls the behaviour with sanctions. Unfortunately the traditional approach is not without its shortcomings. The problems with this approach include the inefficiency of the approach due to under- or over-deterrence, and over-regulation or the lack of monitoring and enforcement. For a discussion of these and other problems with the approach, see Hess 'Corporate social responsibility and the law' in Alouche (ed) *Corporate social responsibility* (2006) ch 8,159-163.

to exercise control in order to ensure compliance. The mere fact that aspects of CSR are addressed through legislation is of little consequence if no enforcement capacity exists. This illustrates the interdependency between the governments' mandating and enforcing roles, in this instance.[22]

In the South African CSR context, an example of Government's mandating role is found in the legislation aimed at empowering black South Africans and providing those citizens with entrance into the mainstream economy through the enactment of the Broad-Based Black Economic Empowerment Act (BEE Act).[23] This Act serves as a good example of how CSR elements can be embedded into the legislative framework as part of a body of CSR-related law and regulation[24] and reinforces CSR across the legislative domains of Government. The BEE Act serves as an example of how an initiative which is not explicitly labelled as a 'CSR initiative' has the potential to advance and promote socially responsible behaviour. However, the Government does not explicitly legislate for CSR outside of the BEE framework, and no encompassing legal framework with regard to CSR exists.[25]

Through its mandating role, Government has the ability to shape the CSR framework and provide clear instructions as to what is expected of businesses. Government could for example make use of its mandating powers and create verifiable CSR measures that need to be complied with before granting a business licence or before entering into a business relationship with the business, thus making compliance a precondition for the conclusion of business.[26]

Despite mandating being a pivotal tool for the establishment of a CSR framework, it should not be considered as the only role that governments have to play in CSR. Governments have a role to play that extends beyond the command and control-style mandating of establishing minimum legal requirements for CSR.

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[22]See para 2.5 for a discussion of government's enforcing role.

[23]53 of 2003 (hereafter referred to as the BEE Act). Issues related to the economic empowerment of historically disadvantaged South Africans form an integral part of the South African CSR agenda. Peters and Roess *The role of governments in promoting corporate responsibility and private sector engagement in development* (2010) 28 identifies BEE as a mandating instrument used to advance CSR-related issues.

[24]For a discussion of legislation with CSR content in the South African context, see Kloppers (n 1) 243-286.

[25]Schaller 'South Africa' in Welzel *et al* (eds) *The CSR navigator – public policies in Africa, the Americas, Asia and Europe* (2007) 122, 123.

[26]See para 3.4 for a discussion of the instruments which a government can use to create an enabling environment for CSR. The use of licensing requirements as a tool to shape socially responsible behaviour is endorsed by Hamann and Bezuidenhout. According to the authors 'the role of the state goes beyond the enforcement of command-and-control regulations. In the first instance, it can use state licensing requirements and state procurement activity to affect corporate behaviour' (Fig (ed) *Staking their claims – corporate social and environmental responsibility in South Africa* 118).

2.2   Facilitating

Governments can use their imprimatur to encourage socially responsible behaviour in the private sector and facilitate CSR by setting clear frameworks to guide business' social behaviour.[27] In the facilitating role governments act as catalysts where CSR initiatives are supported and encouraged but not necessarily directly regulated by law. As facilitator, governments create enabling conditions for CSR. The aim is to create incentives that would encourage the private sector to engage in CSR initiatives or to raise the level of awareness of the CSR agenda or to create conditions which are conducive to CSR.[28] Granting tax rebates for initiatives addressing social problems through enabling tax legislation would be regarded as a government acting as a facilitator. According to Horrigan[29] the role of governments as facilitator includes:

> facilitating CSR *partnerships* and networks, promoting CSR outcomes within government procurement and departmental operations, and *setting an overall framework*, agenda and set of key indicators for CSR outcomes for the greater well-being of the community (emphasis added).

This statement further supports the notion that the role of government is not limited to a single role such as mandating or facilitating. The statement stresses the importance of a partnership approach which is needed between governments and businesses.[30]

The Proudly South African campaign is an example of how Government can act as a facilitator. The campaign was initiated by the National Economic Development and Labour Council (Nedlac) – a Government-led council – and is aimed at encouraging consumers to purchase products that have been manufactured locally in order to help address social problems such as unemployment.[31] In order to make

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[27]Crane *et al* (eds) *The Oxford handbook of corporate social responsibility* 312-313; and Michael (n 20) 118.

[28]Fox, Ward and Howard (n 6) and Horrigan (n 16) 155. Examples of regulatory instruments available to governments in their role as facilitator include the use of incentives, disclosure obligations, or the creation of Ministerial portfolios responsible for CSR. Zerk *Multinationals and corporate social responsibility: Limitations and opportunities in international law* (2006) 36-38, identifies a range of common regulatory strategies which can be employed by governments in facilitating CSR. According to the author '[a]s a form of regulation, incentives are usually popular with companies, for obvious reasons. Regulatory incentives are commonly associated with the *tax system* (which can either reward a company directly, or remove a financial *dis*incentive associated with a socially beneficial course of action). Incentives can also take the form of *preferred status* in public sector procurement processes, or programmes that reward good behaviour with lower administration or licensing costs, or simply with *praise and public recognition, such as award schemes'* (emphasis added). Midttun (n 20) 410 identifies developing or supporting appropriate CSR management tools as examples of the facilitative role of government.

[29]Horrigan (n 16) 156.

[30]The partnership role will be discussed in paras 2.3 and 3.4.2.

[31]See para 3.5.

use of the Proudly South African logo, members must demonstrate their commitment to socially responsible practices and must attest to the local content of their product or services. Members must also demonstrate that their products or services are of a proven high quality, that the company complies with local labour legislation and adheres to fair labour practices, and that the company is environmentally responsible. Unfortunately the membership fees attached to becoming a member of this voluntary association limit its uptake by the majority of South African businesses. The annual membership fee for existing business is calculated as 0.1% of annual sales to a maximum of R500 000. The result of this is that large companies will have to make an annual expenditure of up to R500 000, expenditure that could have been utilised in a more 'CSR-friendly' manner.

2.3   Partnering

Due to issues such as their having budgetary constraints and possessing limited resources it is becoming increasingly evident that governments acting on their own cannot address the ever-increasing needs to provide for their populace The third role of government in promoting the CSR agenda is government's partnering with the private sector.[32] Partnering combines public resources with the resources of the private sector in order to address issues within the CSR agenda, is viewed as an innovative tool for solving social problems, and as way in which to implement CSR.

According to Ward *et al* 'partnering is an essential tool of CSR',[33] which harnesses the strengths of both the private and public sectors, where governments bring in complementary competencies and resources to tackle societal issues.[34] In this role, governments can either be direct contributors and participate directly or act as convenors between other contracting partners.[35] This governmental role is closely related to the role of leveraging,[36] where government-business partnerships have the potential to achieve outcomes which exceed the outcomes of unilateral approaches.

Partnering is of special significance. It can be argued that government-business-community partnerships could provide a possible solution to some of the

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[32]According to Albareda, Lozano and Ysa 'Public policies on Corporate Social Responsibility: The role of governments in Europe' (2007) 74 *Journal of Business Ethics* 391, 401 and Albareda *et al* 'The role of governments in fostering CSR' in Kakabadse and Morsing (eds) *Corporate social responsibility: Reconciling aspiration with application* (2006) ch 7, 116-118, the partnership model, where the government and social actors assume co-responsibility in the establishment of a more inclusive society, is favoured by countries such as Denmark, Finland and Sweden. For a discussion of the application of this model in Nordic countries, see Lozano *et al Governments and Corporate social responsibility* (2008) 69-92.
[33]Ward *et al* (date unknown) http://pubs.iied.org/pdfs/G02247.pdf (accessed 2011-08-12).
[34]Midttun (n 20) 410.
[35]Fox, Ward and Howard (n 6) 5-6 and Crane *et al* (eds) (n 27) 314.
[36]See para 2.8.

difficulties with which, for example, the land reform programme is faced. The inability of the Government to enforce measures to ensure a successful sustainable land reform programme shifts the focus to contributions of the private sector in order to ensure sustainable farming enterprises that contribute to the national economy. In this regard Government could create an enabling framework supported by incentives in order to encourage the private sector to get involved in the land reform programme and become a strategic social investment partner alongside Government.

2.4   *Endorsing*

The fourth role that governments have to play in the contemporary CSR agenda is one of the public endorsement of CSR initiatives where governments show public (and political) support for CSR initiatives through, for example, governmental awards schemes for socially responsible behaviour.[37] Governments need to play an active role in the promotion of CSR as a response *inter alia* to social problems brought about by corporate action. In this regard, governmental endorsement of CSR can be demonstrated for example through governmental funding for projects that provide businesses with guidance on the issue of CSR or governmental funding for research on the issue of CSR.

Horrigan[38] notes that '[g]overnmental endorsement of CSR can facilitate business take-up of favoured standards', and although South Africa has no formal Government policy on CSR with any exclusive legislation aimed at legislating CSR, the Government has taken a decidedly important step towards endorsing CSR with its transformation of the ISO 26000 Standard on Social Responsibility into a national (SANS 26000) Standard. Except for the acceptance of the Standard as a national standard, Government has not provided any further guidance regarding the Standard or any other CSR-related issue.

2.5   *Enforcing*

The enforcement role complements governments' mandating role and enables governments to provide for a system of policing for the regulatory frameworks created though legislation. In this regard, governments have the option to create legislative regulators who will be responsible for the enforcement of a mandatory regulatory framework or they may follow a softer approach where no regulator exists and the policing of compliance is left to the businesses themselves. However, enforcement regimes could also include standards where a less aggressive approach is followed, such as the 'apply or explain' approach advocated in the *King Report on Governance for South Africa* and the *King Code*

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[37]Fox, Ward and Howard (n 6) 6.
[38]Horrigan (n 16) 155.

of Governance Principles. Although these instruments do not have any legislative power and no enforcement body exists, the principles could be applied with success in voluntary government initiatives where the traditional 'carrot and stick' approach is not desired.

2.6   Legitimising

Governments have a crucial role to play in legitimising CSR across the public and private sectors. Through its endorsement, for example, of an overarching CSR policy framework and the provision of official support or the establishment of a dedicated national department, governments are not only providing credence to the position of CSR but also embedding CSR in community consciousness.[39]

2.7   Standardising

According to Horrigan:[40]

> [o]ne of CSR's created needs this century lies in establishing CSR standards of sufficient sophistication and acceptance to embed CSR in mainstream regulation and corporate practice.

Governments should be in a position to provide clarity to businesses regarding CSR norms through the use of legal standardisation and the transformation of 'soft law' standards (such as the Global Reporting Initiative) into 'hard law' which falls in the exclusive domain of government. Governments could also give official status to what they regard as being preferred CSR standards. In this regard it would appear as if the national Government has identified the ISO standard providing guidance on corporate responsibility (ISO 26000) as the preferred standard (although this is not a standard in the strict sense of the word since the standard does not set any requirements to be met or criteria to measure compliance) based on its establishment of the standard as a national standard (SANS 26000). However, Government should not only endorse existing standards. It should become involved in standard-setting, from the development of the standard, the endorsement of the standard, to the adoption of the standard. Government should further play a more prominent role in transforming a standard into a certifiable standard, as well as the monitoring and enforcement of the standard.

2.8   Leveraging

The basic principle behind leveraging is that in the CSR context, CSR as a whole is greater than the sum of its parts. The power of leveraging can be explained through government-business partnerships on CSR where the resources of each of the partners are deployed together in order to achieve a greater combined effect.

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[39]*Id* 152.
[40]*Id* 153.

The outcome of the ideal government-business partnership is greater than that which any of the individual partners can achieve on its own. If Government and the private sector, in the context of land reform, join forces to address the issue of unsustainable and unproductive farms redistributed in terms of the national land reform programme, the outcome might be different from the usual present outcomes. Another example of governments' leveraging role is found in their power as market actors and the use of public procurement.[41] Through the use of public procurement, Government can use its power and resources to do business only with those businesses that incorporate CSR into their strategies. Government should restrict their business relationships with the private sector to those businesses who demonstrate a commitment to socially responsible practices.

2.9   *Modelling/demonstration*

In terms of this role, governments acting in their capacity as market actors should be seen by the public as being socially responsible through the demonstration of their socially responsible practices in their operations and purchasing policies – in other words, governments should lead by example. The demonstrating role 'concerns the role of governments as market actors in their own right'.[42]

Based on these roles, the national Government needs to become an active participant in the CSR discourse and establish conditions where CSR can flourish. Government needs to make the rules and devise incentives for CSR. According to Peters and Roess:[43]

> [c]reating a policy environment that facilitates, provides incentives, encourages or even mandates responsible business activities is crucial to building a sustainable and inclusive economy.

By actively taking part in the CSR discourse and fulfilling these roles, Government can promote the private sector's international image and help the sector to attain a positive competitive advantage and become more attractive investment possibilities to foreign investors, which in turn would be beneficial to domestic enterprise development.[44]

A key element in the fulfilment of Government's identified roles is through the establishment of a strong CSR framework which clearly spells out the Government's CSR policy and policy instruments to create an environment conducive to CSR. The following section will briefly discuss the elements of a government CSR framework as identified by Albareda, Lozano and Ysa.[45]

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[41]See para 3.4.3 for a further reference to public procurement as an instrument used in creating a CSR policy.
[42]Ward *et al* (n 33).
[43]Peters and Roess (n 23) 10.
[44]Fox, Ward and Howard (n 6) 8.
[45]Albareda, Lozano, and Ysa (n 32); Albareda *et al* 'The changing role of governments in corporate social responsibility: Drivers and responses' (2008) 17 *Business Ethics: A European Review* 347,

3   Government CSR framework

3.1   Government CSR policy

The first element of a government CSR framework focuses on a government CSR policy. The CSR policy of a government should have a nuanced vision and mission and the objectives, strategies and priorities of the policy should be clearly identified. The policy should raise CSR awareness, use existing public policies to provide guidance, and promote the overall CSR framework.[46] The vision of a CSR policy could be the integration of social concerns into all business operations (as is the case in Italy) or seeing businesses move beyond mere legal compliance to a situation where socially responsible business behaviour is integrated into businesses' core values (as is the case with the United Kingdom).[47] The strategy to achieve the vision of a CSR policy could be in the form of a multi-stakeholder approach or a more formal top-down approach. The policy could form part of the national policy on sustainable development, for example, or be a policy in its own right that is separate from the sustainable development policy. The objectives of a CSR policy could vary from a more general approach where the CSR culture is promoted among businesses or where businesses are merely supported in the development of their CSR strategies, to the creation of a formal national CSR policy which is applicable to players in the public and private sectors. When formalising a government CSR policy, it is of the utmost importance that the policy identify priorities and issues which are of specific importance to the country, such as poverty reduction, community investment or competitiveness.

In our national context, the first major issue with a government CSR framework is that, to date, the Government does not have a formal CSR policy in which it provides an indication of its vision of or for CSR. Due to this lack of a policy no strategies or priorities for CSR have been identified. It might be argued that the Government's focus on black economic empowerment, for instance, and the encouragement of the private sector to participate in the empowerment drive should be viewed as a national CSR priority due to its specific significance for the country. However, despite the importance of BEE for the country, the Government has to date not formally identified BEE as a CSR priority. The only reasonable conclusion which can be drawn is that the Government to date has not formulated a formal approach to CSR and that a CSR policy is absent.

Simply having a formal CSR policy does not establish a CSR framework. In order to have a meaningful CSR framework, it is necessary to integrate CSR into the internal government structures. Someone within government should take

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353 and Lozano *et al* (n 32) 40-41.
[46]Aaronson and Reeves *The European response to public demands for global corporate responsibility* (2002) 24.
[47]Albareda *et al* (n 4) 355.

responsibility for the CSR portfolio – CSR should have an address in government. The following section will examine this element of the CSR framework.

3.2   *Internal government CSR structure*

The second element of a government CSR framework relates to the internal structure provided by a government, from which a CSR policy may be driven. According to Peters and Roess:[48]

> [i]n order for C[S]R policies to be successful, it is crucial that a clearly defined and visible lead government agency be assigned. This agency will be responsible for defining the policy's rationale, co-ordinating implementation, and engaging in a monitoring and impact assessment process.

This element addresses questions such as: Who within the governmental structures is responsible for the CSR portfolio? What is the position of the designated person? What organisational structure has been established to address CSR, and is the approach centralised, or decentralised? The internal governmental structures vary from instances where the CSR policy falls under state departments (or ministries) concerned with labour and social or environmental affairs (as in Italy), or where the CSR policy is designated to a Minister for CSR (as in the United Kingdom) who is responsible for coordinating CSR across all levels of govern-ment.[49] The UK Government's adoption of the concept of CSR, its incorporation into a public policy framework, and the creation of the portfolio for CSR in the UK Department of Trade and Industry represent the most important endorsements of CSR by any government.[50] The positioning of a CSR portfolio within governmental structures is not only a very powerful endorsement of the CSR notion, but is also probably the most significant legitimisation of CSR. The approach by the UK Government enables it to establish a policy framework which encourages and enables responsible behaviour throughout the private sector.[51] In other words, reinforcing governmental capacity (through the creation of a CSR portfolio within a government structure) represents a crucial condition for the establishment of a CSR framework and improving the impact of CSR.

If the questions raised in this paragraph are asked in the local context, the answers would provide further evidence of the lack of institutional commitment to

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[48]Peters and Roess (n 23) 41-42.
[49]Albareda *et al* (n 45) 355.
[50]Crane *et al* (eds) (n 28) 313. This view is endorsed by Moon *Government as a driver of Corporate social responsibility* (2004) 11, who describes the ministerial posts as having provided a 'focal point' for CSR within the government structures.
[51]Albareda *et al* (n 4) 393. For a discussion of the integration of CSR into the UK government and the UK policy framework, see Moon (n 52) 1-27. For a discussion on the policy approaches by other European governments such as the Danish, Austrian or Dutch governments, see Aaronson and Reeves (n 46) 23-29.

CSR. Unlike the position in many developed countries, South Africa (as a developing country) does not have a co-ordination point for CSR, with no ministerial portfolio or national department tasked with overseeing a CSR portfolio, and no organisational structure as such has been established to address CSR. The Department of Trade and Industry is the most active public sector actor with reference to the promotion of CSR through its oversight over the BEE framework, but despite this, 'the lack of a CSR co-ordination point and of evaluation of CSR activities by the government point to limited public policymaking'[52] and are 'considered indicative of a public policy that displays little engagement with the issue as such'.[53]

3.3   CSR responsibilities at different levels of government

This section builds on the previous section and assesses whether or not a CSR policy involves different levels of government or if it is concentrated within a central government. If a national policy on CSR is not properly coordinated with regional and local authorities it is likely that the policy will have little effect on those targeted by the policy. No clear evidence exists that CSR responsibilities are delegated to the various levels of Government within the national context.

3.4   The scope of CSR policy

Globally (South Africa included), the need exists for a CSR policy framework which is clear and progressive and which creates an enabling environment the purpose of which is to promote CSR, and which consists of an appropriate mix between legislation and voluntary (market-driven) initiatives.[54] Various policy instruments (or combinations of instruments) are available to governments, which can be used to provide content to a CSR policy and create an enabling environment.[55] Policy instruments include regulation and self-regulation, partnerships and public procurement requirements, each of which will be discussed in the following paragraphs.

3.4.1   Regulation and self-regulation

The first instrument at governments' disposal is linked to its mandating role and

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[52]Schaller (n 25) 123. To a lesser extent the National Treasury is responsible for the implementation of public-private partnerships – partnerships which could include BEE and CSR elements.
[53]*Id* 135.
[54]Ward and Smith *Corporate social responsibility at a crossroads: Futures for CSR in the UK to 2015* (2006) vi and 36.
[55]Fox, Ward and Howard (n 6) 7-11. Peters and Roess (n 23) 16-18, identify awareness-raising, partnering, soft law and mandating as types of government intervention in CSR. For a discussion of CSR public policy instruments and activities within the South African context, see Schaller (n 23) 131-134.

enables governments to formulate policy through the use of formal regulation and in so doing to express public-sector engagement with CSR. Chahoud *et al*[56] aptly describe the mandating role as follows:

> Regulatory frameworks set out the boundaries for permissible behaviour in the market. They are particularly important in cases where markets do not incentivise or even disincentivise socially responsible or desirable behaviour. As there is no automatic inducement for corporations to behave responsibly, heavy sanctions and fines often need to be threatened to force corporate actors to behave in a socially responsible manner.

A clearly defined and strong regulatory framework is advantageous to both the private sector and the societies in which businesses operate and establishes the boundaries for corporate conduct. In its creation of an enabling CSR environment, the legal system must provide supportive infrastructure that assists the private sector in regulating itself. Should the private sector fail to accept this responsibility the legal system should act as an enforcing mechanism and in this regard regulation is likewise necessary to create a framework for non-regulatory instruments. However, the possibility exists for voluntary regulation or standards to gain political endorsement and evolve into legal or quasi-legal minimum requirements over time. A possible example could be the evolution of the recommendations made in the *Code of Governance for South Africa – 2009* into legal requirements where, for example, all companies are required to draft integrated reports.[57]

A role exists for both voluntary and legally binding standards. Governments still have a pivotal role to play in shaping corporate behaviour. A recent World Bank Report[58] states in this regard:

> Public sector regulatory and enforcement capacity plays a critically important role in underpinning CSR. When minimum environmental standards are established and evenhandedly implemented by public sector actors or by citizens acting on rights reflected in public sector action, market-based signals can work to reward those players who go further. Without that capacity or the necessary attention to fundamental citizens' rights, businesses face substantial difficulties in finding and maintaining appropriate boundaries for their CSR interventions, and they may find themselves pressured into activities that are beyond their core competence and represent a financial drain on business rather that a sensible CSR investment.

Although self-regulation is generally proposed as an alternative to the direct governmental intervention of command and control legislation, self-regulation in many instances entails various degrees of government involvement.[59]

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[56]Chahoud *et al Corporate Social Responsibility (CSR) and Black Economic Empowerment (BEE) in South Africa – a case study of German transnational corporations* (2011) 40.
[57]See Kloppers (n 1) 362-364 for a discussion of integrated reporting.
[58]Fox, Ward and Howard (n 6) 7.
[59]Hess (n 21) 166.

3.4.1.1 Minimum legal requirements

The conventional mandating role of a government is setting and ensuring compliance with minimum legal requirements and standards on environmental or social issues through the use of a range of instruments. These instruments vary from direct legislation to a softer approach which is more reliant on self-regulation. The danger of the softer approach is that those who are being regulated have a variety of choices available to them and may interpret the rules or regulations in the manner that best suits the business. Reports can be edited in order to emphasise those matters in which the business is excelling and to omit any subjects which could cause damage to the firm's reputation.[60]

An example of Government's use of minimum requirements to formulate a policy is the use of the BEE generic scorecard. This scorecard identifies targets for the various elements of the scorecard which have to be met in order for the business to receive the maximum number of points. The higher the score on the scorecard, the more likely it is that a business would for example be regarded as a preferred business partner when Government contracts are awarded. However, due to the fact that complying with the BEE Act is not compulsory (companies that do not have a procurement relationship with the Government are not obliged to comply), the Act has limited mandatory power and according to Chahoud *et al*[61] falls within the realm of 'soft law'. The Act illustrates how the Government can, through its mandating role, compel companies to have a social conscience and to act responsibly.[62]

3.4.1.2 Taxes

One of the most effective instruments at a government's disposal in framing a CSR policy is the use of fiscal incentives such as taxes. Through the use of taxes, governments are in a position to either punish social irresponsibility or to reward and incentivise socially responsible practices.[63] In the command-and-control approach which governments use in fulfilling their mandating role, taxes features prominently as a control measure.

Taxes are increasingly being used as an instrument to 'punish' or deter practices which could be labelled as being undesirable. As an example, in response to the environmental threat of climate change the South African Government is considering imposing a carbon tax aimed at taxing excessive carbon emissions. Government is considering the implementation of a flat-rate specific excise tax

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[60]Sahlin-Andersson (n 5) 597. This issue is commonly referred to as corporate 'greenwash'.
[61]Chahoud *et al* (n 56) 37.
[62]Esser and Dekker 'The dynamics of corporate governance in South Africa: Broad Based Black Economic Empowerment and the enhancement of good corporate governance principles' (2008) 3 *Journal of International Commercial Law and Technology* 157, 168.
[63]Ward *et al* (n 32).

based for example on passenger vehicle carbon emissions exceeding a determined level. Government has also proposed to increase the levy applied to electricity generated from non-renewable sources such as coal,[64] while section 12(L)(2) of the Income Tax Act makes provision for an allowance for energy efficiency savings.

However, the Income Tax Act makes no reference to or special provision for CSR expenditure as deductible expenditure in terms of the Act. If it is accepted that CSR expenditure should result in the improvement of society, one would expect the Government to grant a full income tax deduction of this type of expenditure. Unfortunately socially responsible expenditure is not incentivised for example through an enhanced recognition of the expenditure (where the actual expenditure is multiplied perhaps by a factor of 1.5 in order to provide for a greater deductible sum) or with the provision of an additional deduction beyond the normal deductibility.[65] In fact businesses considering incurring expenses related to (or labelled as) CSR should, as a result of the workings of section 11(a) of the Income Tax Act*,* make sure that the expenses actually qualify as deductible expenses.

3.4.1.3   *Company-community agreements*

Company-community agreements should form the basis of interaction between businesses and the communities with whom they interact and contribute to through their CSR initiatives. These agreements play an unmistakeable role in stakeholder engagement and representation. Within the South African context, the Government does not require companies to enter into stakeholder engagement through mandatory engagement. However, the Government of Ghana has realised the importance of these agreements (which in the Ghanaian context are referred to as social responsibility agreements). Logging companies in Ghana are by law required to conclude a social responsibility agreement with the customary owners of the land on which they wish to establish plantations.[66] These agreements should include a description of the development contributions which would emanate from the company's operations and should be fully negotiated with the local community. In order to protect the local community the agreement must also be approved by a government-appointed evaluation committee. This agreement protects the local community and is an attempt to ensure that local communities receive benefits from business operations on their land.[67] These agreements show some similarities with the Shared Responsibility Agreements found in Australia.[68]

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[64]Anon 'Taxation notes: Budget review 2011' (2011) 50 *Income Tax Reporter* 65.

[65]Section 12(H) of the Income Tax Act serves as an example where taxpayers are allowed, in addition to the deductions allowable in terms of the Act, to deduct an additional amount of R30 000 for certain qualifying apprenticeships that are incorporated into a registered learnership agreement.

[66]Although the national government is not a party to the agreement it does play a facilitating role.

[67]Fox, Ward and Howard (n 6) 11. For a discussion of the Ghanaian position, see Mayer and Vermeulen *Company-community forestry partnerships – from raw deals to mutual gain?* (2002) 77-82.

[68]For a discussion of SRAs, see Poroch 'Welfare reform and indigenous empowerment' (2006) 1 *Australian Aboriginal Studies* 3-11; Lawrence and Gibson 'Obliging indigenous citizens?' (2007) 21

3.4.1.4   Company reporting

Company reporting plays a crucial role in fostering an ethos of accountability and transparency, but despite this, to date no comprehensive CSR reporting requirements exist. CSR reporting has the potential to further strengthen the ethos of accountability and transparency and it is therefore something which governments should consider when formulating their CSR policies.

According to O'Rourke[69] governments have an important role to play in both mandating and facilitating CSR reporting. In their mandating role governments can legally mandate CSR reporting and set standards for corporate reporting and legislatively prescribe reporting to promote socially responsible behaviour. In the milieu of UK pension funds, trustees are now legally required to disclose how they take social, environmental and ethical factors into consideration when making investment decisions.[70] Governments could also choose to follow a less direct approach and instead of legally mandating CSR reporting support the development of voluntary guidelines for CSR reporting.[71] Although not exclusively addressing CSR reporting, the approach to integrated sustainability reporting advocated in the *King II* and *King III Reports* could possibly be viewed as an example of Government's playing a facilitating role in company reporting.[72] However, it should be noted that the initiative to draft a code of governance was largely a business-led initiative and Government merely participated in some of the processes in the drafting of the code.

Although not regulated by law, companies listed on the JSE are now required to report on social, environmental and financial issues annually in an integrated fashion. In order to strengthen corporate disclosure on social and environmental issues, Government should consider transforming this requirement into a minimum standard for all companies, and not just those listed on the JSE.

3.4.1.5   Mandatory labelling and certification schemes

Labelling can be used as an instrument through which CSR is linked to law.[73] It

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Cultural Studies 650-671; and Strakosch 'A reconsideration of the political significance of shared responsibility' (2009) 55 *Australian Journal of Politics and History* 80-96.

[69]O'Rourke *Opportunities and obstacles for corporate social responsibility reporting in developing countries* (2004) 31-32.

[70]Aaronson and Reeves (n 46) 26 and Fox, Ward and Howard (n 6) 5. The trustees of a pension fund are required to draft a Statement of Investment Principles where amongst other things they should report on the *extent* or *if at all* social, environmental and ethical factors have been taken into consideration when making investment decisions. This approach emphasises the fiduciary responsibility of the board of a retirement fund to invest members' savings in a way that promotes socially responsible investing.

[71]O'Rourke (n 69) 32.

[72]According to Hess (n 21) 172, 'sustainability reporting' is an example of information-based regulation where the basic goal of the approach is to provide stakeholders with enough information for them to be able to judge their corporate accountability.

[73]Ward (n 6) 18.

relies on public assurances that a business has complied with an established set of standards or certification criteria. In general, labelling is a means of communicating relevant information to the public. A 'social' label would thus provide proof to consumers of a product that it was produced by a socially responsible business and that socially responsible practices were followed in the production of the product. These labels are normally displayed on the product itself or in the window displays of the retailer. Most labelling or certification schemes,[74] whether they are government-sponsored or initiated by business, are characteristically voluntary in nature with little or no enforcement and little or no consequences for non-compliance. However, one of the methods through which voluntary labelling schemes can be transformed into mandatory schemes is through the inclusion of the label as a pre-condition for doing business with Government, where failure to comply with the requirement effectively excludes the business from receiving any Government contracts. The process can be further strengthened by expanding the compliance requirement for example to supply chain producers, thus compelling them to comply as well.

Within the national context no state-sanctioned social (or CSR) label exists that can be used by businesses as a mark identifying them as socially responsible businesses. It is argued that a Government developed (or endorsed) CSR label based on a well-defined set of requirements would not only demonstrate Government's commitment to CSR but would also enable businesses to be labelled in a positive way. In order to ensure the credibility of the label it is proposed that Government should identify verifiable standards against which businesses can be externally assessed (either by a designated Government department or Government-certified assessment institutions) and their actions verified.[75] Government should thus establish monitoring structures which could for example conduct regular ongoing inspections and unannounced inspections (much like the labour inspectors inspecting compliance with the basic conditions of employment)[76] in order to ensure compliance with the label's requirements. Government's involvement in the labelling process should further add to the legitimacy of the label and hopefully the uptake of the label by the business community. A well-supported Government-driven CSR label should help improve labour practices, since those businesses who wish to receive the label would have to ensure that their labour practices were in compliance with set standards. The label would also serve as an important instrument to stimulate social concern among businesses and consumers and raise awareness

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[74]The Proudly South African initiative is an example of a voluntary national labelling initiative. The SA8000 Standard, which is an auditable standard addressing issues surrounding employment, is an example of a voluntary certifiable scheme.

[75]The aim of formulating verifiable parameters for a social label is to enable consistent implementation across the scope of application of the label.

[76]Sections 63 to 70 of the Basic Conditions of Employment Act 75 of 1997 regulate the situation regarding labour inspectors.

of the important role that CSR has to fulfil in improving the socio-economic position of many South Africans.

3.4.2   Partnerships

Governments can engage the private sector through public-private partnerships in order to address socio-economic issues more effectively. Ward *et al*[77] note that partnerships as a policy instrument/approach:

> are potentially a valuable way for public sector actors to seek to combine the skills and competences of public and private sector actors as well as civil society in areas of broad societal concern such as HIV/AIDS or sustainable economic development.

As was noted above, partnering is also one of the central roles that a government has to play in establishing an enabling CSR environment. However, the question should be asked: As an instrument, how sustainable is this approach? One of the dangers of the partnership approach is that all of the parties are not necessarily fully committed to the partnership, resulting in the situation where the success of the partnership is dependent upon only one of the partners. This would not be sustainable. What happens when one of the partners is unable to continue – what would the effect on the community be? It is accordingly of the utmost importance that the level of commitment of the parties should be assessed carefully. Another possible challenge to the partnership approach is the danger of dependency. This term refers to the situation where one of the partners becomes totally dependent on the other partners, as opposed to being self-supporting. This danger is especially prevalent in partnerships where local communities are involved, and the community becomes dependent on the contributions of the other parties.

Despite the possible dangers of the partnership approach, the most noticeable advantage of this approach is the potential to leverage additional resources or to free up existing resources which could be used to address socio-economic challenges.

With reference to the partnership approach and the role of CSR it should be noted that Government has taken an important step towards embedding the notion of CSR in the corporate world. The new Companies Act 71 of 2008 which reshaped Corporate Law and became effective on 1 May 2011 is a prime example of a legislative intervention by Government towards creating an enabling environment for CSR. Although the Companies Act makes no reference to CSR, the Companies Regulations, 2011 released under the Act, now require companies falling within a certain category to establish a social and ethics committee.[78] In terms of regulation

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[77]Ward *et al* (n 33).

[78]For a more complete discussion of the role of the social and ethics committee and its relation to CSR, see Kloppers (n 14).

43(5)(a) of the Companies Regulations, 2011 the committee should monitor the company's activities having regard to any relevant legislation, other legal requirements or prevailing codes of best practice with regard to matters concerning issues such as social and economic development, good corporate citizenship and consumer relationships. This step taken by Government now officially requires companies to have regard for CSR issues and it is likely that it will have a notable effect on CSR and its practical implementation.

3.4.3   Public procurement and public procurement guidelines

Public procurement could potentially become a vital tool in the Government toolbox, if it procures goods or services from socially preferable businesses only, and in so doing includes CSR-related requirements in public procurement contracts and practices.[79] Through the use of public procurement Government would fulfil some of the roles discussed in paragraph 2, such as mandating, facilitating, partnering, and endorsing.[80] Public procurement is based on the power of a government's purse where the public sector procures goods or services from the private sector or where goods or services are supplied to the country.[81] Through the use of this purchasing power, Government is in a position where it can attach conditions or set requirements which have to be met before entering into an agreement with a private sector supplier. Through this leveraging and the use of public procurement guidelines, Government has the ability to embed CSR into corporate contracts. The inclusion of CSR requirements into Government contracts would have the further advantage of influencing those companies that do not directly deal with the public sector but which act as suppliers to companies that do have Government contracts. With reference to BEE, the effect of this trickle-down effect is that although companies at the bottom of the supply chain are not bound by the BEE requirements, compliance with the requirements becomes a necessity for future business transactions with those companies that do supply the public sector.

Given the country's history, it became necessary to give preferential treatment to those who were unable to meaningfully participate in the economy before 1994. One of the measures taken to address this situation was the enact-

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[79] Bolton 'Government procurement as a policy tool in South Africa' (2006) 6 *Journal of Public Procurement* 193, remarks that Government procurement has often been used to promote aims which are not directly linked to the primary aim of procurement. The author also notes that it is not 'uncommon for governments to use procurement as a means of promoting objectives unconnected with the immediate object of procurement' (Bolton 'The use of Government procurement as an instrument of policy' (2004) 121 *SALJ* 619.

[80] See paras 2.1-2.4.

[81] Chahoud *et al* (n 56) 37 note that the South African Government is the largest producer of goods and services in the country.

ment of the Preferential Procurement Policy Framework Act,[82] which provides a framework for the implementation of the procurement policy as envisaged in section 217 of the Constitution. Section 2 of the Act makes provision for the use of a preference point system in a preferential procurement policy. Preference points may be allocated for specific goals which may include contracting with persons or categories of persons historically disadvantaged by unfair discrimination, or which relate to the implementation of programmes linked to the Reconstruction and Development Programme. Acting in accordance with section 5 of the PPPFA on 8 June 2011 the Minister of Finance promulgated the new Preferential Procurement Regulations, 2011[83] that make specific provision for the allocation of preference points based on the BEE status of the contracting party.[84]

In terms of the Preferential Procurement Regulations, 2011 a preference point system of 80/20 for tenders for the acquisition of goods, works or services of less than R1 million will be used, and for those exceeding R1 million a preference point system of 90/10 will be used. The 20 in the case of the 80/20 and the 10 in the case of the 90/10 preference point system are linked to the tenderer's BEE recognition level[85] in terms of the BEE generic scorecard.[86] In the case of a tender of less than R1 million, if the tenderer has the status of a level 1 BEE contributor, the tenderer would receive the maximum (20) points, whereas if the tenderer is a level 8 BEE contributor it would receive only 2 out of the possible 20 points.[87] The points scored by the tenderer with regard to the BEE recognition level must be added to the points scored for the price criteria.

These measures provide a clear indication of how Government can, through the use of its purchasing power, advance social objectives and use public procurement as a key mechanism to implement legislation. A consideration of the preference point system makes it clear that businesses that comply with the BEE requirements (and assist black South Africans to contribute to the economy meaningfully)[88] are more likely to receive Government tenders than those which do not. A strong link exists between CSR and BEE and a number of the elements

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[82]5 of 2000 (hereafter referred to as the PPPFA).
[83]GN R502 in *GG* 34350 of 2011-06-08 (hereafter referred to as the Preferential Procurement Regulations 2011).
[84]These regulations applied to public entities with effect after 2011-12-07.
[85]Tenderers must submit proof of their BEE status by way of a BEE status level verification certificate given by an accredited verification agency (Preferential Procurement Regulations 2011 9).
[86]For a discussion of the BEE generic scorecard, see Kloppers (n 1) 266-270.
[87]The same approach is followed for tenders exceeding R1 million. In the case of a tender of more than R1 million, if the tenderer has the status of a level 1 BEE contributor, the tenderer would receive the maximum (10) points, whereas if the tenderer is a level 8 BEE contributor it would receive only 1 out of the possible 10 points (Preferential Procurement Regulations 2011 6-7).
[88]See Kloppers (n 1) 251-252 for the definition of 'black persons' for the purposes of BEE.

of the BEE scorecard have CSR content.[89] Based on the link between CSR and BEE, Government has, possibly unintentionally, already made CSR a requirement for Government contracts, thus setting a minimum requirement that has to be met. Although in this instance, CSR is implied in the preferential procurement framework, it would have contributed even more to establishing a CSR framework if the Government had explicitly included requirements in the procurement framework which are labelled 'CSR'.

3.5   *The CSR role of other organisations*

The final topic to be addressed in a government CSR policy framework is the CSR role of other organisations such as government agencies, intermediary organisations or multi-stakeholder organisations.[90] In order to provide further support to a CSR policy framework, some governments lead or are involved in multi-stakeholder forums which drive CSR. The Italian Government has, for example, established a CSR-Multi-Stakeholder Forum as well as the Italian Centre for Social Responsibility, while the Norwegian Government leads a multi-stakeholder forum, the Kompakt, which operates as a consultative body on CSR issues.[91]

In the South African context, no Government agency or multi-stakeholder organisation led by Government and exclusively focussing on CSR exists. However, Government has created the National Economic, Development and Labour Council (Nedlac),[92] which is tasked with promoting the goals of economic growth, participation in economic decision making, and social equity.[93] Unfortunately Nedlac has not taken an official stance on CSR to date, and the furtherance of a CSR policy framework does not feature in the Council's objectives. However, given the representation in the Council as well as the Council's focus on economic growth and participation in economic decision-making and social policy, it is argued that the Council has the potential to become a very important role player in the establishment of a CSR policy framework. With access to Government, organised business, labour and community groupings, the Council is the ideal multi-stakeholder forum through which CSR can be advanced.

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[89]Hamann *et al* 'Universalizing corporate social responsibility? South African challenges to the International Organization for Standardization's new social responsibility standard' (2005) 110 *Business and Society Review* 1, 9 note that BEE is the most prominent South African conception related to CSR and that BEE could correspond to a 'negotiated definition of what CSR means in the South African context' (Hamann *et al id* 10).

[90]Albareda (n 47) 353.

[91]*Id* 357.

[92]Nedlac was established in terms of the National Economic, Development and Labour Council Act 35 of 1994.

[93]Section 5(a) of the National Economic, Development and Labour Council Act.

4   What can the South African Government do to promote CSR?

Based on the evidence, Schaller[94] concludes that the CSR public policy in South Africa can be described as being in the early second generation of maturity.[95] This classification is based on the fact that within the national position, no single point of co-ordination for CSR exists, nor does Government evaluate CSR activities. Despite these shortcomings there is some development and application of CSR policy.[96] Government has not explicitly dedicated policies, programmes or institutions to CSR. The question that needs to be addressed is what Government can do to promote CSR.

The following are examples of Government action which is required to establish a well-functioning CSR public policy. These recommendations are primarily based on the discussions in the previous paragraphs which identified gaps in the current situation.

The first recommendation specifically addresses the issue of a CSR policy. Although the Government has approved the ISO 26000 Standard on Social Responsibility as a national standard (SANS 26000:2010), it was noted that the South African Government currently does not, other than the accepted standard, have a publicised stand on CSR, nor does it have a formal policy or strategy for CSR. It is recommended that Government should through consultation with structures such as Nedlac formulate an integrated CSR strategy supported by a strong public policy. In this regard greater collaboration between the public and private sectors is necessary, especially with reference to addressing social issues. Government should give consideration to the development of multi-stakeholder partnerships such as the UK Ethical Trading Initiative, which provides standards for businesses and encourages monitoring.

In order to oversee the implementation of a national CSR policy, it is recommended that Government establish a national department dedicated to CSR and make CSR a ministerial portfolio or include CSR into an existing portfolio. In support of the national department it is proposed that a CSR information centre be established, which could provide guidance to the private sector on issues such as the implementation of a CSR policy within a business or the provision of assistance with the identification of CSR initiatives.

It is further recommended that Government should make greater use of tax incentives/disincentives to reward/penalise behaviour. It should be made worthwhile

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[94]Schaller (n 23) 123.
[95]Welzel *et al* (eds) *The CSR Navigator – public policies in Africa, the Americas, Asia and Europe* (2007) 42, identifies seven CSR public policy maturity dimensions used to determine if a CSR public policy has reached the first, second or third generation of CSR policies.
[96]Schaller (n 25) 123.

to become socially responsible or conversely it should be made expensive not to behave with social responsibility. The use of dedicated tax deductions for CSR expenditure should be considered. If, as an example, a company provides finance to an emerging farmer, it is argued that although such expenditure is not strictly speaking incurred in the production of income and in relation to the company's trade, such expenditure should nevertheless be deductible to the extent that it enables the emerging farmer to become economically active and to meaningfully participate in the economy. Finally it is proposed that Government should strongly consider the creation of a social label which could be utilised by businesses to illustrate to the public and other businesses that it is a socially responsible business which complies with pre-determined criteria set for socially responsible businesses. By enhancing the visibility of CSR and by giving greater public recognition to businesses that are being socially responsible, Government will encourage more businesses to become socially responsible.

The challenge facing Government is to determine which regulatory approach would lead to the greatest social benefit. The implementation of these recommen-dations would contribute firstly to the establishment of a formal CSR policy supported through legislation and other less mandatory instruments. Secondly, if the policy were to be properly managed and enforced, the policy would grow in stature and evolve into a third generation CSR policy that could be regarded as having cutting-edge CSR policies with mature CSR practices and established partnerships.

5   Conclusion

As early as 1958 Levitt[97] stated that 'government's job is not business, and business's job is not government'. Although this might still be true to some extent the roles of government and business are becoming less distinguishable. In general, government plays a central role in stimulating the economy through procurement policies, while business is providing services or infrastructure through its CSR initiatives which in Levitt's time would have been considered the exclusive domain of government. To this extent the traditional roles of government and business are becoming blurred and Wood[98] rightfully notes that government and the private sector are natural allies. The fact that government and the private sector are so regarded implies that government has an important role to fulfil in creating a regulatory framework that would enable the private sector *inter alia* to fulfil its social roles. However, in a country with such a high degree of social exclusion, it is becoming increasingly necessary to build

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[97]Levitt 'The dangers of social responsibility' (1958) 36 *Harvard Business Review* 41, 47 and Levitt 'Business and the plural society' 1960 (Spring) *Modern Age* 173, 176.
[98]Agle *et al* 'Toward superior stakeholder theory' (2008) 18 *Business Ethics Quarterly* 153, 162.

compliance through enhancing the state's capacities in fiscal, regulatory and enforcement areas.[99] The need to enhance the state's capabilities is partially brought about by the fact that the voluntary approach to CSR has not been able to meaningfully address issues caused by decades of oppression, and further legislative interventions might be required.

In order to ensure an effective framework for CSR, a regulatory foundation that promotes equality, growth, employment and good governance is required within which all participants would have certainty about their rights and responsibilities. An effective regulatory framework for CSR would not only provide the 'rules of the game' but would also provide a level playing field on the basis of which socially responsible practices could be developed and measured.

The analysis of the elements of a CSR framework has shown that South Africa has a very limited national CSR policy framework with no explicit measures which are labelled as CSR. It appears as if the current national public policy fails to provide an appropriate enabling environment for CSR and that Government views CSR as a supplement to governmental activity. This situation is in stark contrast to that in the UK, for example, where the ministers within the Department of Trade and Industry are specifically tasked with the CSR portfolio.

The objectives of this article were to contextualise and analyse the role that Government has to play in the creation of an enabling environment for CSR. From the discussion of the various roles that governments in general play in the establishment of a CSR policy framework, it has become evident that governments have a crucial role to play in the formulation and implementation of a CSR public policy due to the failure of the voluntary business-led approach. Each of the roles identified is applicable to the South African Government, which unfortunately is not fulfilling all of them. Government should take a more visible stand on the issue of CSR and the recommendations made in section 4 above would serve this purpose exceptionally well.

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[99]Fig (ed) (n 26) 87.