BHP Billiton and SAB: Outward Capital Movement and the International Expansion of South African Corporate Giants

Shawn Hattingh (ILRIG)
2007

Abstract

From the 1940s until the mid-1970s, the largest South African corporations, including the South African Breweries (SAB) and Gencor (forerunner to BHP Billiton) thrived under apartheid and its social and economic policies. Indeed, corporations such as Gencor and SAB benefited from the migrant labour system that the apartheid state strengthened and bolstered. Added to this, corporations, such as SAB and Gencor, received various tax incentives for the apartheid state, which included tax breaks for establishing operations in the apartheid homelands. This situation dramatically altered, however, with the global economic crisis that struck in the mid-1970s, which revolved around a crisis of capital over-accumulation and over-production. In this context, South African corporations began to experience problems of profitability under an increasingly ailing economy. In response, South African corporations, like their international counterparts, began expanding internationally in a bid to restore profits. By the 1980s, however, South African corporations faced various barriers such as sanctions and stringent exchange controls. Nonetheless, they implemented various mechanisms to circumvent exchange controls, including transfer pricing. In the case of SAB, they established various paper companies in the Netherlands and ceded their trademarks in South Africa to these companies. Through this, and the royalty payments they made on these trademarks, they were able to move massive amounts of capital out of South Africa to the Netherlands and, thereby, avoid exchange controls and reduce their tax rate in South Africa. Indeed, they also used this capital to expand internationally and avoid sanctions.

Nonetheless, avoiding both sanctions and exchange controls was cumbersome and South African companies began to feel disadvantaged when compared to their international competitors, who did not face political barriers. In this context, many South African corporations began favouring a political settlement in South Africa. Indeed, with a successful political settlement, South African corporations ensured that the post-apartheid state implemented neo-liberal policies that would favour their international expansion. In hindsight, the South African state has served the largest South African corporations well. It was the South African state that allowed the likes of SAB and Gencor/Biliton to restructure and ultimately shift their primary listings to the financial centre of London. With this, the post-apartheid state enabled SAB and Billiton to become massive global players. This was done even though it meant these corporations could, from that point on, freely repatriate their profits out of South Africa and that these corporation's entities in South Africa, ceased to be South African owned .

Introduction

Some of the largest South African corporations - such as Anglo-American, Sanlam, Old Mutual, Liberty Life, South African Breweries (SAB), Gencor/Billiton and Rembrandt - have a long history of expanding and operating internationally[1]. In fact, some of the largest South African companies were already operating as multinationals in the apartheid era. At various stages in their history, depending on the prevailing economic and political climate, these companies used various strategies to expand internationally, including transfer pricing and establishing international investment arms and holdings in countries such as the Netherlands, Luxembourg, Switzerland, and Britain.

This article specifically examines the political and economic context in which the international expansion of South African companies occurred. In doing so, it also provides a brief historical overview of South Africa's political and economic history. It critically examines why and how South African companies moved large amounts of capital out of South Africa during both the apartheid and post-apartheid periods. In doing so, this article tracks the history of the international expansion of two South African-linked companies, BHP Billiton and the South African Breweries (SAB). This includes providing some insight into the mechanisms that they used to expand internationally. Indeed, a section of this paper deals with how SAB used various tactics, relating to the trademarks that it owned, to get money out of South Africa to expand internationally and reduce its overall tax rate in South Africa. Added to this, this article examines the close relationship that existed between these companies and the South African state, whether in its apartheid or post-apartheid guise. To this end, this article will demonstrate that the South African state played a central role in assisting these companies to expand by providing them with various incentives, including tax breaks, export subsidies and tariff protection. This article will also show that it was the post-apartheid state that ultimately allowed both BHP Billiton and SAB to shift their primary listings to the London Stock Exchange and to become massive global players in their respective fields.

Historical context

The roots of the South African economy were laid down with the discovery of diamonds and gold in the late nineteenth century. The largest corporations that came to dominate the apartheid era economy, such as Anglo-American and Gencor (forerunner to BHP Billiton), all had their origins in the diamond rush of 1867 and the gold rush of 1888. Even some of the largest manufacturing concerns in South Africa, such as the South African Breweries (SAB) arose to cater for the market that was created out of the diamond and gold rushes. In fact, the

---

[1] Marais, H. 1998. *South Africa Limits to Change: The Political Economy of Transition*. University of Cape Town Press: South Africa.

structure of the South African economy, whereby the mineral and energy complex is the main driver of the economy, first emerged out of the discovery of gold and diamonds[2].

Initially, the expansion of the mining corporations in South Africa was driven by the influx of capital from the main imperial powers of the late nineteenth century – Britain, the United States and Germany[3]. For example, capital from Britain and the United States was central in facilitating the rise of De Beers and later Anglo-American[4]; while German capital was central in the establishment of General Mining (the forerunner of Gencor/Billiton). Due to the Witwatersrand's low grade ore, hefty capital flows from the imperial countries were a necessity for the establishment and operations of the gold mines during the early years. Another necessity was the supply of cheap labour to ensure that healthy profit margins could be attained. Thus, it was also during the late nineteenth century that the remaining vestiges of independent indigenous societies were smashed, through colonial military might and the imposition of taxes, and people were forced to seek poorly paid employment on white-owned mines, farms and in factories. Following this, during the early 1900s, the state passed various segregationist laws, including pass laws and the 1913 Land Act that led to a massive expropriation of black-owned land and the establishment of Native Reserves. This regulated the supply of migrant black labourers to the mines and further entrenched the situation whereby the black population was turned into an army of cheap migrant labourers. The population in the Reserves received little or no health services, education or any welfare benefits: the responsibility of ensuring that families were maintained fell squarely on the shoulders of black women. Subsistence agriculture in the Reserves also contributed to the social reproduction and maintenance of the migrant labour system[5]. Through this, a system was created that ensured mining corporations and the emerging manufacturing sector could pay appalling wages to migrant labourers from the Reserves[6].

From its earliest inception, the mining industry was organised into a small number of holding companies or mining houses, such as Anglo-American and General Mining (forerunner to Billiton), which each controlled a substantial number of individually incorporated mines. These mining houses would supply financial, technical and managerial services to each of the individual mines. The mining houses kept control over each of the individual mines in their

[2] Fine, B & Rustomjee, Z. 1996. *The Political Economy of South Africa*. Wits University Press: South Africa.
[3] Bond, P. 2005. *Elite Transition: From Apartheid to Neo-liberalism in South Africa*. University of KwaZulu-Natal Press: South Africa.
[4] Fine, B & Rustomjee, Z. 1996. *The Political Economy of South Africa*. Wits University Press: South Africa.
[5] Wolpe, H. 1988. *Race, Class and the Apartheid State*. Unesco Press: United Kingdom.
[6] Legassick, M. 2006. South African political economy. *Society and Nature*: 1-54.

stables through a complicated system of cross-holdings, known as pyramiding[7]. Pyramiding was structured in such a way that hostile takeovers of individual mines by competitors became almost impossible. Later in the twentieth century, pyramiding would become a defining feature of the entire South African economy.

During the late 1920s and early 1930s, strong economic growth in South Africa boosted industrialisation. For example, in the late 1920s Anglo-American established industrial manufacturing operations such as the *African Explosive and Chemical Industries* (AECI) to service its mining interests. Therefore, by the 1950s many of the major mining conglomerates had created forward linkages, through establishing manufacturing concerns, into sectors such as chemicals, steel and engineering[8]. Linked to this, by the 1920s and1930s the largest South African corporations were no longer dependent on imperial capital and were fully controlled by South African capitalists – hence they had already taken on a national character[9]. During this period, the state also became directly involved in the economy by establishing a number of state-owned enterprises such as the steel giant Iskor. Indeed, by the 1930s, South Africa had embarked upon a process of inward industrialisation, which was strongly supported by the state through various mechanisms including tariffs[10]. By the 1930s South Africa was marked by inward industrialisation on the domestic front; while in the global capitalist system it remained an exporter of primary products.

The rapid industrialisation of the 1930s and 1940s, and the demand for labour, also resulted in an accelerated process of urbanisation and many people began to move from the Reserves to the cities. The result was that by the end of the Second World War a semi-permanent black proletariat had emerged in the largest cities. This was accompanied by growing worker militancy, rising wages and unrest in the growing black urban areas[11]. White labourers began to experience greater competition from growing black urbanisation. It was under these circumstances that mining capital, including General Mining and Federale Mynbou (the forerunners to Gencor/Billiton), was concerned that black urbanisation would undermine the cheap migratory labour system. As a result, mining capital was looking for a political ally that

---

[7] Nordas, H. 2001. *South Africa: A Developing Country and Net Outward Investor*. Working Paper. Foundation for Research in Economics and Business Administration: Norway.
[8] Legassick, M. 2006. South African political economy. *Society and Nature*: 1-54.
[9] Nordas, H. 2001. *South Africa: A developing country and net outward investor*. Working Paper. Foundation for Research in Economics and Business Administration: Norway.
[10] Bond, P. 2005. *Elite Transition: From Apartheid to Neo-liberalism in South Africa*. University of KwaZulu-Natal Press: South Africa.
[11] O'Meara, D. 1996. *The Apartheid State and the Politics of the National Party*. Raven Press: South Africa.

could shore up the Reserve system. It was in this context that the National Party was elected into power in 1948 and began implementing apartheid[12].

The National Party immediately implemented various measures to bolster the cheap migratory labour system. Beginning in 1948, it tightened influx control measures and strengthened the pass laws in a bid to reverse the trend of black urbanisation. The various organisations that represented the black population were also systematically attacked by the new apartheid state. The result was that real wages of the black population were dramatically driven down. Thus, the apartheid state played a central role in controlling and allocating black labour. Through this the apartheid state ensured that a cheep supply of labour would be maintained for the mining, industrial and agricultural capitalists. Added to this, the apartheid state's taxation policies favoured the largest corporations in South Africa (this will be discussed in greater detail below with reference to Gencor and SAB)[13]. This encouraged the growing trend towards monopolisation in the South African economy. Along with this, a massive affirmative action programme was implemented to ensure that the lot of the Afrikaans population was improved. English-speaking capital played a central role in this: Anglo-American voluntarily handed over some of its largest and most profitable operations to burgeoning Afrikaner capitalists (more detail on this will be provided below with reference to Gencor). The aim of this was to ensure that the interests of English and Afrikaans capital were merged. During this period, the apartheid state also entrenched the Keynesian economic policies that had been implemented in South Africa along racial lines. In fact, the apartheid state pumped massive amounts of money into education, cultural, recreational and health facilities for whites. Job reservation for whites was also strengthened and the job colour bar was further cemented. Trade unions representing white workers were also given the right to enter into collective agreements with employers[14]. Thus, during the 'golden age' of apartheid, the system was shored up by a cross class alliance between the white capitalists and white working class: each group was served very well by grand apartheid at the expense of the black population.

By the 1960s, the South African economy was booming as a result of the apartheid state's policies. Economic growth from 1960 to 1973 averaged 6% per annum[15]. It was during these boom years that the largest South African corporations, such as Anglo-American, SAB,

---

[12] Marais, H. 1998. *South Africa Limits to Change: The Political Economy of Transition*. University of Cape Town Press: South Africa.
[13] Marias, H. 1998. *South Africa Limits to Change: The Political Economy of Transition*. University of Cape Town Press: South Africa.
[14] Marais, H. 1998. *South Africa Limits to Change: The Political Economy of Transition*. University of Cape Town Press: South Africa.
[15] Legassick, M. 2006. South African political economy. *Society and Nature*: 1-54.

Federale Mynbou and General Mining (forerunners to Gencor/Billiton), used the massive amounts of capital that they had accumulated to begin to initially expand internationally[16]. At the same time, the largest South African corporations radically increased their already expanding presence in all the sectors of the South African economy: they acquired entities across the mining, finance, retail, manufacturing, transport and agricultural sectors. For example, by the 1980s Anglo-American controlled SAB, First National Bank, AECI, and Premier Foods Group; while the Sanlam insurance group controlled Gencor, Trust Bank, Fedfood, SA Drug and the Trek oil company. The conglomerates firmly controlled all of these varied companies within their fold through cross-hold pyramiding[17]. The result of the expansion of these conglomerates was that by the 1980s, five conglomerates – AngloAmerican (which incorporated SAB), Sanlam (which incorporated Gencor/Billiton), Old Mutual, Liberty Life and Rembrandt - came to dominate the South African economy and controlled over 85% of all shares listed on the Johannesburg Stock Exchange[18].

Due to 1960s boom, South Africa also experienced a massive growth in the consumer goods manufacturing sector, which was directed at meeting the demands of white consumers. As part of this trend, many multinational consumer goods producers established manufacturing plants and subsidiaries in South Africa in the 1950s and 1960s. Due to the apartheid boom and the high profit rates that it generated, South Africa also received massive amounts of foreign direct investment up until the mid-1970s. It was in this environment that the SAB decided to shift their headquarters from London to Johannesburg[19].

During the 1970s, the global capitalist system began to experience a crisis relating to the over-accumulation of capital and the over-production of goods. This saw a dramatic decline in profits in the manufacturing sector on a global scale[20]. South Africa itself did not escape this crisis. From the early 1970s, the South African economy began to experience a crisis that revolved and continues to revolve around the over-accumulation of capital and over-production of consumer goods[21]. Too many goods were being produced for the relatively small white South African market. The result of this was a dramatic decline in profit rates in the manufacturing sector as supply far outstripped demand; a trend which has continued up until the present time.

---

[16] Innes, D. 1984. *Anglo: AngloAmerican and the Rise of Modern South Africa*. Raven Press: South Africa.
[17] Fine, B & Rustomjee, Z. 1996. *The Political Economy of South Africa*. Wits University Press: South Africa.
[18] Legassick, M. 2006. South African political economy. *Society and Nature*: 1-54.
[19] Bond, P. 2005. *Elite Transition: From Apartheid to Neo-liberalism in South Africa*. University of KwaZulu-Natal Press: South Africa.
[20] ILRIG. 1998. *An Alternative View of Globalisation*. ILRIG: South Africa.
[21] Pape, J. 2001. The myth of 'sound fundamentals': South Africa in the global economic crisis, in Newman, N, Pape, J. and Jansen, H. *Is There an Alternative: South African Workers Confronting Globalisation*. ILRIG: South Africa.

The deterioration in profitability is perhaps best reflected by the decline in economic growth that the South African economy experienced. Between 1973 and 1984 economic growth in South Africa slowed to an average of 1.9% per annum – by the 1990s economic growth was negative[22]. With the reversal of economic fortunes, there was an upturn in resistance against both capitalism and apartheid in South Africa. This upturn in resistance was perhaps best marked by the 1973 strikes, the 1976 and 1980 student uprisings and the 1984/85 period of insurrection.

Globally from the late 1970s and early 1980s, the largest corporations in the world began to embark upon various strategies to overcome the crisis of profitability. This included expanding internationally into countries that offered higher profit rates; restructuring (and in many cases unbundling non-core manufacturing activities) in order to focus on financial activities and financial speculation; mechanising and reducing the size of their workforces; implementing lean production; and lobbying governments and international institutions to implement neo-liberal economic policies that would favour their interests[23]. A similar process took place in South Africa. Initially, from the late 1970s South African companies, like their international counterparts, began mechanising in a bid to restore profitability. The result was that they cut the size of their workforces dramatically, with the effect that unemployment in South Africa has been steadily increasing since the late 1970s. These measures, however, failed to restore profits to pre-crisis levels. As a result, many of the largest South African companies steered clear of re-investing their capital in the manufacturing sector; they rather turned to speculation on the stock market and in the real estate sector in order to re-establish their profit rates[24]. This too, mirrored the global trend whereby the largest corporations speculated, and continue to speculate, on the stock markets. The problem, however, was and is that this speculation led to a great deal of volatility: in certain years massive profits have been made; while in other years severe losses have been incurred.

The other strategy that the largest South African corporations embarked upon in a bid to overcome the drop in profit rates, like other large multinationals, was to dramatically expand internationally – this allowed them to gain a foothold in more lucrative economies and to hedge against the possible devaluation of the Rand[25]. Thus, from the 1970s, most of the largest South African firms began moving vast amounts of capital out of South Africa into operations in other

[22] Legassick, M. 2006. South African political economy. *Society and Nature*: 1-54.
[23] ILRIG. 1998. *An Alternative View of Globalisation*. ILRIG: South Africa.
[24] Bond, P. 2005. *Elite Transition: From Apartheid to Neo-liberalism in South Africa*. University of KwaZulu-Natal Press: South Africa.
[25] Legassick, M. 2006. South African political economy. *Society and Nature*: 1-54

countries[26]. Up until the early 1980s, this was supported by the South African state, as the South African Reserve Bank allowed many of the largest companies to take large sums of money out of South Africa. By 1985, the South African Reserve Bank had legally allowed the largest South African corporations, such as Gencor and SAB, to invest 5 billion US dollars in Europe and another 4 billion US dollars in North and South America[27]. However, the problem that South African corporations faced was that with exchange controls in place in South Africa, and many of the other countries that they had invested in, it was difficult to repatriate the profits that they were making back to South Africa: indeed, many corporations did not want to repatriate the profits back to South Africa as it did not offer a profitable outlet. Added to this, with the imposition of financial sanctions on South Africa, from the early 1980s onwards, it became difficult and politically sensitive for South African registered companies to operate in many countries. Another problem that South African corporations faced was that during the mid-1980s, the South African state dramatically strengthened exchange control measures due to a crisis in the country's balance of payments. Nonetheless, the largest South African companies implemented various strategies to overcome these obstacles.

In a bid to circumvent the strengthened exchange controls, the largest South African corporations implemented certain mechanisms to illegally by-pass these exchange controls. It was in this context that large South African corporations embarked upon transfer pricing, which involved fraudulent invoicing between their South African operations and international holdings (this will be discussed below in greater detail). It is also widely suspected that the largest South African corporations used the financial and banking institutions that they owned to circumvent exchange controls and move capital out of South Africa. Since the early 1980s, illegal capital flight out of South Africa has been taking place on a massive scale. One study estimated that at least 55 billion US dollars exited South Africa in the form of capital flight between 1970 and 1988[28]. Other researchers have placed this figure even higher, for example another study estimated that between 1980 and 1993 capital flight from South Africa averaged 5.4 % of the Gross Domestic Product (GDP) per year[29]. Capital flight out of South Africa, however, did not end with apartheid. South African corporations have continued to move capital out of South Africa into their international operations. In fact, it has been estimated that during the post-

---

[26] Bond, P. 2005. *Elite Transition: From Apartheid to Neo-liberalism in South Africa*. University of KwaZulu-Natal Press: South Africa

[27] Commonwealth Committee of Foreign Ministers on Southern Africa. 1989. *South Africa: The Sanctions Report*. James Currey: United Kingdom.

[28] Rustomjee, Z. 1991. Capital flight under apartheid. *Transformation (15)*, pp. 89-103.

[29] Mohamed, S. & Finnoff, K. 2004. *Capital Flight from South Africa, 1980 to 2000*. Development Policy Research Unit, University of Cape Town: South Africa.

apartheid era, capital flight has amounted to the equivalent of 9.2% of GDP per year[30]. This, of course, has had a dramatic impact on South Africa's domestic economy. For example, it has been pointed out that capital flight would have had a major effect on South Africa's fiscus since 1970, as it would have drastically reduced the size of South Africa's tax base[31].

In order to avoid sanctions and exchange controls, the largest South African corporations often established international investment companies in countries such as Switzerland, Luxembourg, Jersey, the Netherlands and the United Kingdom. For example, by the 1980s Anglo-American owned a large investment company, MINORCO, under which it placed all of its operations outside of South Africa (SAB and Gencor's international investment companies will be discussed in greater detail below). Through MINORCO, Anglo-American was the single largest foreign investor in the United States[32]. The use of large foreign-registered investment companies had two benefits for South African corporations wishing to operate internationally during the apartheid years. Firstly, it allowed South African companies to largely avoid sanctions. They did this by using their foreign investment companies to acquire corporations in other countries, which due to sanctions South African registered companies could not acquire directly. Secondly, it provided a vehicle for these companies to hold the earnings that they made internationally outside of South Africa; rather than repatriating them back to an unprofitable South Africa. Nonetheless, avoiding sanctions, through foreign investment companies was awkward, and many South African multinationals felt that due to this they were falling behind their international competitors, who could expand into other countries without any political hindrances.

By the late 1980s and early 1990s, many of the largest South African corporations, including SAB, realised that their profit rates could not be restored under apartheid. Although South African corporations could avoid sanctions, through using international holdings, doing so was cumbersome and slowed their rate of expansion. This situation led to sections of South African capital to favour, and in some cases actively work towards, a political settlement in South Africa. To this end, some of the largest corporations began to make contact with the ANC in exile to discuss the future of a post-apartheid South Africa. As 1994 approached, many of the larger corporations presented scenario planning seminars to leading ANC figures in a bid to convince them to adopt neo-liberal economic policies, which would favour capital's interest and

[30] Mohamed, S. & Finnoff, K. 2004. *Capital Flight from South Africa, 1980 to 2000*. Development Policy Research Unit, University of Cape Town: South Africa.
[31] Kahn, B. 1991. *Capital Flight and Exchange Controls in South Africa*. Centre for the Study of the South African Economy and International Finance: United Kingdom.
[32] Innes, D. 1984. *Anglo: AngloAmerican and the Rise of Modern South Africa*. Raven Press: Johannesburg.

re-establish the process of capital accumulation[33]. Added to this, in order to cement their relations with the future government many of the largest South African companies provided funds for the ANC's 1994 election campaign, for example, Anglo-American gave R 150 million to the ANC just prior to the 1994 elections[34]. It appears that these tactics had some impact: by the time of the 1994 elections, the ANC had agreed to an independent Reserve Bank and had steered clear of any more talk of nationalisation. Indeed, the major winners of the political settlement and transition to democracy in 1994 were the largest South African corporations, such as SAB and Gencor/Billiton, as the post-apartheid government has served their interests well.

Since 1994, the post-apartheid state has actively assisted and promoted the agenda of the largest South African corporations domestically and internationally. On the domestic front, the post-apartheid state adopted a neo-liberal economic policy entitled the *Growth, Employment and Redistribution (GEAR)* strategy in 1996. This was undertaken with the explicit aim of returning profitability to the South African economy and furthering the process of capital accumulation. Through GEAR, the South African state has privatised or commercialised various public entities, it has implemented trade liberalisation – which has benefited exporters such as Gencor/Billiton and SABMiller - and it has allowed for some labour market flexibility[35]. Over and above this, and under GEAR, the post-apartheid government has slashed the corporate tax rate from a high of 48% in 1994 to 29% in 2006: in effect embarking on a policy of corporate welfare that has benefited companies such as SAB and Gencor/Billiton. One of the first moves of the post-apartheid government to assist South African capital in the international arena was to scrap the Financial Rand[36] in 1995, which had been called for by capitalists for a long time. What this did, along with special exchange control exemptions offered by the South African state, was to allow the largest South African companies to increase the scope of their international investments, particularly in Africa[37]. Nonetheless, under the auspices of GEAR, financial liberalisation was expanded even further beyond the scrapping of the Financial Rand. Since the introduction of GEAR, controls on outward flowing capital have been eased year on

[33] Bond, P. 2005. *Elite Transition: From Apartheid to Neo-liberalism in South Africa*. University of KwaZulu-Natal Press: South Africa.
[34] ----. 2000. South Africa: Heading north. *Africa Confidential* Vol. 41 No. 2.
[35] Greenberg, S. 2006. *The State, Privatisation, and the Public Sector in South Africa*. AIDC and SAPSN: South Africa.
[36] The Financial Rand was implemented in 1985 in a bid to stem large capital outflows from South Africa. The Financial Rand system provided for two exchange rates for the Rand, one for capital account transactions for non-residents and one for current account transactions. Investments made in South Africa by non-residents could only be sold for Financial Rands, and restrictions were placed on the convertibility of Financial Rands into foreign currencies
[37] Bond, P & Kapuya, T. 2006. On SA Capital in the Region. *OpenSpaces*. Open Society Initiative of Southern Africa: South Africa.

year in order to facilitate the international expansion of South African corporations. In the mid-1990s South African corporations were allowed to take up to R750 million out of the country; by 2004 this figure had increased to R 2 billion each[38].

Perhaps the biggest assistance that the state provided to the largest South African corporations was to allow them to shift their primary listing to the London. In a short period of time, in the late-1990s, the South African state provided permission for Anglo-American; Old Mutual; Billiton; SAB; and Liberty Life to move to the London Stock Exchange (more details regarding the re-listing of SAB and Billiton will be provided below). As part of this process, the largest companies restructured their operations and unbundled their non-core assets. Added to this, they altered their cross-holding pyramid structures and became tightly focused international investment vehicles in their core fields[39]. By creating primary listing on the London Stock Exchange, and shifting their headquarters to the United Kingdom, these companies were also able to unlock 'shareholder value' and gain access to cheaper capital. Before unbundling, and moving to London, Anglo-American and SAB were trading approximately 20% below their net asset value. Once they were unbundled and had listed in London, this situation was reversed: by 2001 Anglo-American shares were valued at 37% above its actual asset value. Added to this, SAB, Billiton, Anglo-American, Liberty Life and Old Mutual all became part of the prestigious Financial Times Stock Exchange (FTSE) 100. This provided them with a massive boost as the enormous international tracker funds are automatically required invest in FTSE 100 companies[40]. With this, these companies were able to accelerate their already rapid international expansion and become truly gigantic global corporations.

Company Backgrounds

BHP Billiton

The origins of BHP Billiton lie with Gencor. Gencor itself was the result of the eventual merger of three mining entities in 1980: Federale Mynbou, General Mining Corporation and the Union Corporation[41]. However, each of these individual companies had a much longer history, which stretched back to the late nineteenth century. For example, the General Mining Corporation was formed in 1895 with capital from Germany. Up until the 1920s, General Mining's sole focus

---

[38] Bond, P. 2005. *Elite Transition: From Apartheid to Neo-liberalism in South Africa*. University of KwaZulu-Natal Press: South Africa.
[39] Carmondy, P. 2002. Between Globalisation and (post) apartheid: the political economy of restructuring in South Africa. *Journal of Southern African Studies* Vol. 28 No. 2: 255-269.
[40] Carmondy, P. 2002. Between Globalisation and (post) apartheid: the political economy of restructuring in South Africa. *Journal of Southern African Studies* Vol. 28 No. 2: 255-269.
[41] Jones, J. 1995. *Through Fortress and Rock*. Jonathan Ball: South Africa.

was on gold. However, in the late 1920s General Mining acquired Phoenix oil, which had a major interest in the Romanian oil fields[42]. The second firm in the trio that became Gencor was Union Corporation. It was established in 1908 with the assistance of British capital. From the 1930s onwards, Union Corporation began diversifying into other sectors of the economy. It was during this period that it established Sappi, which later became one of the largest paper producers in the world. By the 1970s, Union Corporation had also come to own a number of foreign companies, for example, it owned a property investment arm in the United Kingdom. The most important company in what eventually became Gencor, however, was Federale Mynbou. Federale Mynbou was one of a few Afrikaner-owned mining corporations and, as such, received massive support from the apartheid state. When the National Party came to power it furthered the interests of Federale Mynbou through providing it with mining concessions. It also supported the expansion of Federale Mynbou by ensuring that it became the main supplier of Eskom's (the state owned electricity company) coal. In the 1960s, Anglo-American decided to empower a number of Afrikaans companies - one of these was Federale Mynbou. Hence, in 1964/65 Anglo-American effectively gave General Mining Corporation (which it had acquired) to Federale Mynbou[43]. The aim of this was to cement relations between Afrikaner and English capital and the apartheid state. By 1980, Federale Mynbou had become a major player in South Africa's mining sector and, in that year, it finalised its purchase of Union Corporation to become the second largest mining conglomerate in South Africa.

When Gencor came into being, it acquired the international subsidiaries that had been held by General Mining and the Union Corporation. Nonetheless, it continued to expand internationally by establishing new foreign registered investment companies, such as Gatro Investments SA in Luxembourg and Enarotali Gold Project in Jersey along with subsidiaries in Brazil, Australia, Canada, Colombia, Indonesia and the North Sea[44]. Gencor used these well-financed investment companies in Australia and Jersey to prospect in countries, such as Indonesia, during the 1980s. It specifically used its Australian and Jersey companies as a cover to avoid sanctions. Indeed, at the time, due to South Africa's apartheid status, it would have been very politically sensitive for a South African registered company to have been openly investing in countries such as Indonesia[45]. The post-apartheid state also actively assisted Gencor's international expansion by allowing it to take 2 billion US dollars out of South Africa to purchase the mining entity Billiton from Shell in 1994. This deal was made directly possible by the post-apartheid states' first Minister of Finance, Derek Keys. Derek Keys had been the chief

[42] www.miningmx.com/profiles/387942.htm
[43] Morris, R. 2006. Gencor fades, but scars remain. *Cape Times*, February 5.
[44] Jones, J. 1995. *Through Fortress and Rock*. Jonathan Ball: South Africa.
[45] Jones, J. 1995. *Through Fortress and Rock*. Jonathan Ball: South Africa.

executive of Gencor in the 1980s before going into government. As Finance Minister, he persuaded the Governor of the South African Reserve Bank, Chris Stals, to allow Gencor to take the 2 billion US dollars out South Africa to buy Billiton. Months after the deal had been concluded, Keys retired from government to become Billiton's chairman[46]. Linked to this, the post-apartheid state then allowed Gencor to shift ownership of its more profitable South African concerns to Billiton. Once this was complete, the South African state then allowed Billiton plc to establish a primary listing on the London Stock Exchange, and become one of the largest mining entities in the world[47]. This meant that, in effect, Gencor's size in South Africa was dramatically reduced and its most profitable operations in South Africa became owned by a foreign entity: Billiton plc. In 2001, Billiton merged with the Australian mining giant BHP and became BHP Billiton.

SabMiller

SAB was founded in 1892 in order to meet the demand for beer that existed in the Johannesburg area following the gold rush. Within three years, SAB had grown to such an extent that it listed on the Johannesburg Stock Exchange[48]. This was followed by SAB establishing a primary listing on the London Stock Exchange in 1898. By the 1920s, SAB began to diversify out of the brewing industry: by the 1920s it had acquired a number of hotels and a stake in a cool drinks company. With the post-war economic boom, under the apartheid government, SAB took a decision to shift its primary listing and its headquarters to Johannesburg in 1950[49]. By the late 1960s, SAB had diversified its interests into the wine and liquor industry; the food industry; and property management. Throughout this period, SAB was also involved in buying out its competitors in the beer industry, which eventually led to it controlling 98% of the South African beer market[50]. In the 1970s and early 1980s, SAB entered into the general retail sector through its purchase of OK Bazaars, Scotts and Edgars. During this period, it also increased its presence in the casino and hotel industry through acquiring a controlling stake in Southern Sun. Added to this, SAB became involved in the clothing and shoe manufacturing sector through acquiring Da Gama Textiles and the Conshu Group. Other manufacturing entities that SAB had acquired by the late 1980s, included Lion Match and Plate Glass. Thus, like other South African conglomerates, SAB by the 1980s had interests across almost all of the sectors of the South African economy[51].

---

[46] Morris, R. 2006. Gencor fades, but scars remain. *Cape Times*, February 5.
[47] www.ru.ac.za/administrative/comm_dev/rhodos/rhodos20040416.pdf.
[48] http/www.sabmiller.com
[49] www.sabreweries.com
[50] Kennedy, D. 2000. *South African Breweries Group*. The American Graduate School of International Management: United States.
[51] http//www.sabmiller.com

By the early 1950s, SAB had begun to expand internationally. In the 1950s it acquired breweries in both Northern Rhodesia (Zambia) and Southern Rhodesia (Zimbabwe). This was followed by SAB expanding its operations into Botswana, Lesotho, Swaziland and Angola in the 1970s. In the early to mid-1980s, SAB took a decision to establish an international investment structure outside of South Africa. As part of this, it established an investment company based in the Netherlands and the United Kingdom[52] - Westgate International – and used this to invest in companies throughout the world[53]. Again the aim behind this was to circumvent the financial sanctions that had been imposed on South Africa. Between 1983 and 1988, SAB also expanded beyond southern Africa through acquiring a beverage and brewing company in the United States; a brewery in the Canary Islands; and a beverage company in the United Kingdom. Indeed, in 1985 SAB clandestinely purchased Rolling Rock Breweries in the United States. Under SAB, Rolling Rock began to expand massively. The downside for SAB was that Rolling Rock, because of its excellent performance and turn around, began to attract a lot of media attention. Soon, the media uncovered the fact that SAB owned Rolling Rock and had, in acquiring it, circumvented sanctions. Due to this pressure, SAB sold Rolling Rock in 1988 and used the money it generated to, in its own words, "follow a brewing opportunity in the Canary Islands"[54].

With the end of apartheid in 1994, SAB dramatically expanded its presence throughout Africa, Asia and Europe. In the mid-1990s, SAB approached the then Deputy President, Thabo Mbeki, and the Minster of Finance, Trevor Manual, to allow it to shift its primary listing to London. Some of the reasons that it put forward to the South African government and the Reserve Bank for wanting to relocate its primary listing were:

- to gain easier access to capital at lower costs in order to expand internationally;
- to gain the opportunity to escape the volatility that it felt the South African economy was vulnerable to;
- to be in a good position to hedge against the possible devaluation of the Rand;
- and to provide South Africa with the opportunity to improve its profile internationally[55].

The South African state, for its part, decided that the SAB had valid reasons for wanting to shift its primary listing. Thus, it gave SAB permission to shift its listing and headquarters to London.

---

[52] http//www.sabreweries.co.za
[53] http//www.sabreweries.co.za
[54] http//www.noseweek.co.za
[55] Walters, S. & Prinsloo, J. 2002. The Impact of Offshore Listings on the South African Economy. *SA Reserve Bank Quarterly Bulletin*

In preparation, SAB then formed SAB plc in December 1998 and shifted ownership of its South African brewing entities to the new company[56]. As part of this restructuring, SAB then sold most of its South African entities, which were not part of its core beverage business. In the run up to re-listing, SAB sold its interests in such South African companies as Edcon, Conshu, OK Bazaars, Amrel, Afcol and Lion Match[57]. The South African state actively encouraged this unbundling as it was hoping that a small elite of well connected ANC aligned business people would benefit from the sale of these entities through black economic empowerment deals[58]. Finally, on the 8th of March 1999, SAB plc listed on the London Stock Exchange. With this, most of the largest brewing entities in South Africa ceased to be legally South African owned. With the capital it had generated out of restructuring and listing on the London Stock Exchange, SAB made the largest purchase in its history when it bought Miller breweries in the United States for 5 billion US dollars in 2002. With this, it became the second largest beer producing entity in the world.

Historical relationship between SAB and Gencor and the South African state

Although the relationship between companies such as Gencor and SAB and the state were at times complicated, on the whole they have always enjoyed good historical relations with the state. Indeed, as stated above, the apartheid state directly supported the interests of Gencor through state contracts. Added to this, both Gencor and SAB, in turn, supported the apartheid state's homeland policies by setting up various operations in the homelands. Indeed, at one stage it was alleged that Gencor had various homeland ministers on its payroll in order to smooth its operations in these territories, although no concrete figures relating to this were ever provided[59]. The relationship between SAB and Gencor and the apartheid state went far deeper than even supporting the apartheid state's homeland policy. For example, both representatives from Gencor and the SAB served on the apartheid state's notorious National Security Management System (NSMS). The aim of the NSMS was to fight and undermine progressive anti-apartheid forces both locally and internationally[60]. This included undermining anti-apartheid activists through militarily action, through the media, and by combating unions at the workplace. Added to this, SAB and Gencor also had representatives that were economic advisors to apartheid presidents, such as P.W. Botha, through the Presidential Economic Advisory

---

[56] Kennedy, D. 2000. *South African Breweries Group*. The American Graduate School of International Management: United States.
[57] Walker, J. 1999. SAB cup runneth over to London. *Sunday Times*, December 6
[58] www. sacp.org.za.
[59] Van Vuuren, H. 2006. *Apartheid Grand Corruption: Assessing the Scale of Crimes of Profit in South Africa from 1976 to 1994*. Institute for Security Studies: South Africa.
[60] COSATU. 1997. COSATU'S TRC submission: Business and apartheid. *The Shopsteward* Vol 6. No 6.

Committee (EAC)[61]. Indeed, SAB and Gencor, along with other large South African corporations, were instrumental in ensuring that from the late 1980s the apartheid state adopted neo-liberal export-orientated economic policies. Large companies hoped that the adoption of neo-liberal export orientated economic policies would alleviate the problem of over-accumulation and restore their profit rates[62].

SAB and Billiton have kept good relations with the state in its post-apartheid guise. In fact, representatives of some of the largest South African corporations have become economic advisors to the post-apartheid government. During the post-apartheid period some of the leading ANC figures have even been given positions on the Boards of major South African corporations. For example, Cyril Ramaphosa (an ANC National Executive Committee heavyweight) became a board member of SAB and later SABMiller. In the case of SAB, the post-apartheid state wavered the Competitions Act, which was supposed to be aimed at reducing the monopolies that exist in the South African economy. By doing so, the state allowed SAB to continue to remain in control of 98% of the South African beer market[63]. Added to this, representatives of the largest South African linked corporations have also regularly accompanied President Thabo Mbeki on his diplomatic trips throughout Africa. In this way, South Africa has diplomatically opened up investment opportunities for South African linked corporations, such as SAB and BHP Billiton, across Africa[64]. For example, the state played a key role in ensuring BHP Billiton could enter Mozambique, where BHP Billiton's net tax rate is approximately 1%. Added to this, the South African state allowed SAB and Billiton to shift their primary listings to London. This included passing legislation that facilitated the process whereby the likes of SAB and Gencor could freely transfer assets and shares to other companies (Gencor transferred most of its assets to Billiton; while SAB Ltd transferred its assets to SAB plc) without paying any sort of tax on these "transactions". This allowed the largest South African corporations to unbundle in preparation for re-listing in London. The South African state has on many occasions defended its decision to allow the largest South African companies - such as SAB, Billiton, Anglo-American and Old Mutual – to shift their main listings to London. During a media briefing in Parliament in 2000, Finance Minister Trevor Manuel defended government's role in this by stating that: "Competitiveness between countries is not determined by governments but by firms. Firms with a South African character must grow

[61] COSATU. 1997. COSATU'S TRC submission: Business and apartheid. *The Shopsteward* Vol 6. No 6.
[62] Gelb, S. 1991. South Africa's economic crisis: an overview. In Gelb, S (ed.) *South Africa's Economic Crisis*. David Philip: South Africa.
[63]
[64] Bond, P. 2005. *Looting Africa*. UKZN Press: South Africa.

and have access to capital"[65]. Despite Manual's justifications, the relocation of the largest South African companies has had a dramatic affect on South Africa's domestic economy. The re-listing of South African companies on the London Stock Exchange has led to a greater outflow of capital from South Africa. This is because South African legislation allows these companies, and other foreign entities operating in South Africa, to repatriate all of their profits – after tax – out of South Africa[66]. It is also believed that the shift of the largest South African companies to London has directly reduced South Africa's tax base. It has not been the South African people that have benefited from the relocations of the largest South African companies; but rather a small elite of South African capitalists (please see the conclusions of Hilmi's report)

How SABMiller and Gencor/Billiton historically lowered their tax burden

During the apartheid and post-apartheid years, both Gencor (the forerunner to Billiton) and SAB directly benefited from the government's tax policies, through tax concessions and tax breaks. Added to this, many South African corporations have historically lowered their taxes through transfer pricing and establishing shell companies in tax havens and other low tax countries, such as the Netherlands. Indeed, as will be discussed below, at certain points in their history, it has been suspected that SAB and Gecor/Billiton made use of such tactics to lower the taxes that they paid in South Africa.

Tax holidays, concessions and Industrial Development Zones

Gencor and SAB, along with other large South African corporations, benefited from various tax concessions from the apartheid state. Under apartheid it was easy for mining corporations, including Gencor, to write off exploration expenses even on well established very profitable mines. Indeed, it was possible for a corporation to reduce the income of a profitable mine by deducting the working losses of developing the mine along with capital redemption allowances. This, in effect, allowed very profitable mining corporations to end up with a very small taxable income or even a tax loss on paper. Added to this, mines that were considered marginal could get full tax relief[67]. However, in 1986 amendments to the tax act slightly altered this situation. After the amendments, it became somewhat more difficult for mining corporations to deduct new capital expenditure on existing mines; while marginal mines had to apply for tax relief rather than receiving it automatically. Nonetheless, the effective tax rate that mining

---

[65] http://www.pmg.org.za/briefings/000915finance.htm

[66] Van Rensburg, J. 1999. A critical assessment of primary listings of South African companies on offshore stock exchanges. *Trade and Industry Monitor* Vol. 10.; and www.sacp.org.za

[67] Freund, B. 1991. South African gold mining in transition. In Gelb, S (ed.) *South Africa's Economic Crisis*. David Philip: South Africa.

corporations paid, including Gencor, remained low after various allowable deductions had been made[68]. In the case of SAB, it was also a major beneficiary of apartheid state's tax breaks. The apartheid state offered major tax breaks to companies that were willing to invest in industrial parks bordering the homelands. The reason for this was that the apartheid state initially attempted to address the crisis of over-accumulation through providing massive infrastructure for corporations that were willing to set up manufacturing plants bordering the homelands. From the late 1970s to the mid-1980s, SAB received huge tax concessions when it set up various breweries bordering the Transkei and Bophuthatswana[69]. In doing so, SAB was also guilty of actively supporting the apartheid regime's homeland policy for financial gain.

The largest South African corporations have also benefited from certain tax provisions that have been offered by the post-apartheid state. This has included the lowering of corporate taxes by 21% from 1993 to 2006. From 1996 to 1999 the South African state also offered tax holidays to businesses that invested in new manufacturing plants and projects[70]. Added to this, mining corporations such as Gencor/BHP Billiton can also make tax deductions for capital expenditure costs; maintenance and care costs on equipment; wear and tear on equipment; costs on mineral exploration; and certain transport costs[71]. This has been partly responsible for the overall tax contribution of mining corporations to the South African fiscus declining from 9% in 1976 to only 0.5% in 1999[72]. Manufacturing corporations, such as SAB, can also lower their overall tax rate by making deductions for research and development costs; wear and tear on machinery, and certain transport costs[73]. All of this has translated into a situation whereby the contribution of large corporations to South Africa's total tax revenue has plummeted from 27% in 1976 to 11% in 1999[74].

Due to its neo-liberal export orientated macro-economic policies, the post-apartheid state also continues to provide various incentives to companies, such as BHP Billiton and SAB - even though strictly speaking they are legally foreign entities - that are involved in exporting products. For example, the South African state financially assists exporters to cover a portion of their market research costs; outward selling trade missions; outward investment missions; and trade exhibitions. Added to this, the South African government has also established Industrial

---

[68] Freund, B. 1991. South African gold mining in transition. In Gelb, S (ed.) *South Africa's Economic Crisis*. David Philip: South Africa.
[69] South African Breweries. 1997. *Submission to the Truth and Reconciliation Commission*. Unpublished.
[70] Department of Trade and Industry. No Date. *Guide to Investing in South Africa: Industrial Investment Incentives*.
[71] www.northern-cape.gov.za/ncpgds/mining/sec4.pdf
[72] Legassick, M. 2006. South African political economy. *Society and Nature*: 1-54.
[73] Deloitte. 2006. *Incentives 2005/6: Complex Issues, Comprehensive Solutions*. Engineering News: South Africa.
[74] Legassick, M. 2006. South African political economy. *Society and Nature*: 1-54.

Development Zones (IDZs) for export orientated corporations. In doing so, the state redirected funds from the *Reconstruction and Development Programme* (RDP), which were intended to meet people's basic needs, to the IDZs. The state specifically provides rebates on imported goods, raw materials and components used by the export orientated companies operating in the IDZs[75]. Both SAB and BHP Billiton have operations in the IDZs and, therefore, have reaped the benefits of such incentives[76]. In effect, through this, the state has assisted the largest corporations in South Africa, such as Anglo-American, BHP Billiton and SAB to reduce the cost of their products and thereby increase their exports and profitability.

Shell and mailbox companies and the use of tax havens

Historically, the largest transnational South African corporations possessed investment or paper companies in tax havens such as Jersey, the Caymen Islands, Bermuda, Luxembourg and – as will be briefly discussed below - the Netherlands[77]. Indeed, SAB first established paper companies in the Netherlands back in the 1970s – for example, by 1980 SAB had established Niagara 18 B.V. which later became SABMiller International B.V.[78]; while Gencor/Billtion has had paper companies in the Netherlands since at least 1988[79]. During the apartheid years, some South African companies, such as Anglo-American also selected to place their international arms in low tax countries. MINORCO, which was Anglo-American's international arm during apartheid, was registered in Luxembourg[80].

Most of the largest transnationals around the globe elect to have their primary listing and head offices in the major economic centres - such as London, New York and Frankfurt – in order to gain access to massive amounts of capital. This was one of the reasons why companies such as SAB, Gencor/Billiton, Anglo-American and Old Mutual moved to London in the post-apartheid era. However, the tax rates in these global financial centres are often relatively high when compared to other countries. As a result, and in order to lower their taxes, multinational companies often choose to register intermediate holding companies in tax havens or low tax countries, such as the Netherlands. These intermediate holding companies, in turn, hold the actual working subsidiaries in the various countries that the transnationals operates in. Very little actual activity takes place in these intermediate holding companies, except that they receive dividends from the subsidiaries operating in areas such as Africa, Asia, Europe and Latin America where the tax rate is higher than the tax haven or low tax country in which the

---

[75] Deloitte. 2006. *Incentives 2005/6: Complex Issues, Comprehensive Solutions*. Engineering News: South Africa.
[76] www.gcis.gov.za/docs/publications/yearbook/economy.pdf
[77] www.lowtax.net/lowtax/html/offon/southafrica/sasummary
[78] ----. 2003. SAB's dirty secret. http//www.noseweek.co.za
[79] Information on the companies provided by SOMO
[80] Innes, D. 1984. *Anglo: AngloAmerican and the Rise of Modern South Africa*. Raven Press: Johannesburg.

intermediate holding companies are situated. The dividends that flow into these intermediate holding companies are then taxed at the rate that exists in the tax haven or low tax country in which they are situated, rather than in the country of origin or the financial centre in which the head offices are located. Indeed the Netherlands has an extremely low taxation rate on dividends and is, therefore, very popular destination for transnational corporations to set up their intermediate holding companies. It is in this way that transnationals use intermediate holding companies to reduce their overall tax rate[81]. Interestingly, both SAB and BHP Billiton established intermediate holding companies in the Netherlands shortly before shifting their primary listing to London. SAB/SABMiller established SABMiller Africa Asia B.V. in the Netherlands, which controls most of SABMiller's subsidiaries in Africa and Asia[82]. Similarly, Gencor/BHP Billiton established BHP Biliton B.V. in the Netherlands in 1997. BHP Billiton B.V. along with BHP Billiton Finance B.V. and BHP Holdings B.V. (all registered in the Netherlands) hold a 92% share in BHP Billiton South Africa Ltd, which is registered in Jersey. This company in turn controls BHP Billiton SA Holdings Ltd (SA), which controls all of BHP Billiton's subsidiaries in South Africa[83]. Whether and how SABMiller's and BHP Billiton's intermediate holding companies were and are used to receive dividends from other subsidiaries and lower these groups overall tax rates needs further investigation.

Another way that transnational companies can lower their overall tax rate and shift profits from country to country is to locate their trademarks licenses and intellectual property rights in companies that are situated in tax havens or low tax countries. The value of trademarks and intellectual property rights are extremely difficult to establish because they are, in essence, intangible entities. This translates into a situation whereby they can be used as a mechanism to shift profits – through royalty payments - from high taxation countries, or countries where reinvesting the profits is not desirable due to low rates of return, to tax havens or low tax countries such as the Netherlands[84]. Taxes on the royalty payments received are then paid in the low tax country rather than in the country where the head office is situated. Certainly, during apartheid, SAB did just this!

In 1966, SAB entered into an agreement with Carling O'Keef Breweries of Canada to produce Carling Black Label under license in South Africa. On the 29th of April 1980, however, SAB purchased the trademark and rights to Carling Black Label outright from Carling O'Keef for R 14,5 million. They used two paper companies, which were wholly owned by SAB, in order to

---

[81] Tax Justice Network. 2007. *Closing the Flood Gates*. http:wwwtaxjustice.net
[82] Information provided by SOMO on the structure of SABMiller's and BHP Billiton's international structure.
[83] van Dijk, M, Weyzig, F. & Murphy, R. 2006. *The Netherlands: A Tax Haven?* SOMO: The Netherlands.
[84] Tax Justice Network. 2007. *Closing the Flood Gates*. http:wwwtaxjustice.net

facilitate this transaction: one was Southern Investments N.V. registered in the Netherlands Antilles and the other was its subsidiary, Niagara 18 B.V., which was registered in the Netherlands itself. Over the next few years, SAB paid millions of dollars (the exact figure has not been established) to Southern Investments N.V. and Niagara 18 B.V. (and possibly to another company called Avalon, which was registered in Panama) for the use of the Carling Black Label trademark in South Africa[85]. In this way, SAB transferred vast amounts of money to these subsidiary paper companies. Indeed, it appears that for at least the last 25 years, SAB/SABMiller in South Africa has been paying royalties on its Carling Black Label brand to offshore paper companies[86]. Through this, during the apartheid years, SAB avoided the exchange controls that were imposed in South Africa and successfully avoided paying any taxes in South Africa on the money's sent to these subsidiaries[87]. These funds were, in turn, used as one source by SAB to expand internationally in the 1980s and early 1990s in violation of international sanctions. SAB, however, did not pay Carling O'Keef for the Carling Black Label trademark in one lump sum; rather they paid for the trademark in instalments over a 6 year period. SAB, however, illegally recorded these payments as tax deductible royalty payments; rather than a non-tax deductible investment, which it actually was[88]. In this way, they also illegally lowered their South African taxes.

Between 1985 to 1992, Carling South Africa (a wholly owned SAB subsidiary in South Africa) sub-licensed the Carling Black Label brand to SAB's subsidiary breweries in the apartheid homelands of the Transkei and Bophuthatswana. In fact, between 1985 and 1992, Carling South Africa received at least R 48 million (R180 in 2007 value) in royalties for Carling Black Label from the SAB subsidiaries in the Transkei and Bophuthatswana. Carling South Africa and SAB then falsely recoded these royalty payments for tax purposes as being obtained from a "foreign source". This meant that no taxes on these royalty payments were ever paid in South Africa or anywhere else[89]. In 1992, the Receiver of Revenue in South Africa threatened to undertake an audit of SAB. Concerned about its dealings around its sub-licensing practices to the homelands, SAB approached Price WaterHouse in order to establish the legality of its sub-licensing practices. Price WaterHouse categorically informed SAB that, if it was audited, SAB would find itself in trouble with the Receiver of Revenue over the sub-licensing practices and its failure to pay taxes on royalty payments received from its homeland subsidiaries. The Receiver of Revenue, however, never carried out its threat to audit SAB. Nonetheless, SAB decided to

[85] ----. 2003. SAB's dirty secret. http//www.noseweek.co.za
[86] ----. 2003. SAB's lying Dutchmen. http//www.noseweek.co.za
[87] http//www.noseweek.co.za
[88] ----. 2003. SAB's dirty secret. http//www.noseweek.co.za
[89] ----. 2003. SAB's lying Dutchmen. http//www.noseweek.co.za & ----. 2003. SAB's dirty secret. http//www.noseweek.co.za

take action and shift the sub-licensing practices and the payments that they had received, from the homelands' subsidiaries, off-shore in a bid to avoid difficulties should they be audited in the future. To this end, it appears that they established a company called Indol, which was registered in the Netherlands, and ceded the royalty rights for sub-licensing, to the homelands, to this company[90]. In 2003, when the South African media got wind of SAB's practices, SABMiller responded that, at the time (i.e, during the apartheid years), the relevant authorities had been fully apprised regarding the above practices. If this statement is true, it is perhaps no coincidence that SAB was not audited and no action was taken, as top SAB directors were advisors to the apartheid presidents of the time, P.W. Botha and F.W. De Klerk, and sat on the NSMS. Nonetheless, the real losers of this revenue and non-paid taxes were and are the South African people.

By 1997, Niagara 18 had changed its name to SAB International B.V., which in turn later altered its name to SABMiller International (B.V.). SABMiller International B.V, which is still registered in the Netherlands, continues to hold the trademark rights for popular beer brands in South Africa, including Carling Black Label[91]. Indeed, SABMiller International B.V. seems to hold the rights over the majority of SABMiller's brands internationally[92]. For example, SABMiller International B.V. holds the rights to various popular brands sold in the United Kingdom including Castle, Redd's, Dakota, Fruit Frenzi, Brutal Fruit, Sparks, Barena, Appletiser, Peartiser, and Grapetiser [93]. In the light of the above practices it is very interesting that SABMiller continues to hold its trademark rights in an entity that is based in a low tax country, namely the Netherlands. Indeed, it should be investigated whether this arrangement is still being used to transfer money from its operations in high tax countries to the Netherlands in order to lower the groups overall tax rate.

Transfer Pricing

Transfer pricing involves false invoicing and misinvoicing between various subsidiaries of a company and can be used to circumvent exchange controls and to lower a corporations overall tax rate. Transfer pricing took and takes place in two forms: over-invoicing of imports and under-invoicing of exports[94]. Indeed, from the late 1970s onwards many South African corporations regularly deliberately under-priced the goods and services that they exported to

[90] ----. 2003. SAB's lying Dutchmen. http//www.noseweek.co.za & ----. 2003. SAB's dirty secret. http//www.noseweek.co.za
[91] http//www.noseweek.co.za
[92] www.**sabmiller**.com/.../31.+Principal+subsidiary+and+associated+undertakings.htm
[93] http://www.ipo.gov.uk/t-find-adp?propnum=0873635001
[94] Rustomjee, Z. 1991. Capital flight under apartheid. *Transformation (15),* pp. 89-103.

their international holdings. These international holdings would often then sell the goods at full-market prices and invest the excess in expanding their operations or in overseas stock markets and real estate[95]. By examining discrepancies between trade flow figures from South Africa and its various trading partners, it was estimated that between 1970 and 1988, at the very least, 20 billion US dollars was illegally siphoned out of South Africa by corporations through fraudulent invoicing[96]. In this way, these corporations reduced their tax rate in South Africa, circumvented exchange controls and built up capital in foreign countries that could be used to expand internationally. In fact, it was widely suspected, although never concretely proven, that Gencor was heavily involved in under-invoicing the products that it was exporting during the 1970s, 1980s, and early 1990s[97]. It was suspected that the capital Gencor accumulated overseas through this practice was then used to expand into overseas countries. Capital flight from South Africa has continued since the post-apartheid era, and it is widely believed that one way that this has been facilitated is through transfer pricing[98].

Conclusion

South African corporations have a long history of operating internationally. The largest South African corporations have been moving capital out of South Africa, both legally and illegally, for decades in order to fund their international expansion. Indeed, as discussed above, SAB was using trademarks held by its subsidiaries in the Netherlands to shift capital from South Africa to that country. Along with such practices, it must be remembered that companies such SAB and Gencor [BHP Billiton] already had substantial overseas operations during the 1980s and were, in all likelihood, using capital from their South African base to expand their international entities. This international expansion took place in a context where South African companies were involved in a desperate bid to get capital out of South Africa in order to alleviate the problem of capital over-accumulation. Indeed, it also took place in the era of early globalisation (the 1970s and 1980s), where all the largest companies in the world were looking to expand internationally in a bid to find profitable markets. However, South African companies, during the 1970s and 1970s, faced an obstacle to their international expansion in the form of sanctions and an ailing apartheid state. For this reason, they began working towards a democratic solution in South

[95] Kahn, B. 1991. *Capital Flight and Exchange Controls in South Africa*. Centre for the Study of the South African Economy and International Finance: United Kingdom.
[96] Kahn, B. 1991. *Capital Flight and Exchange Controls in South Africa*. Centre for the Study of the South African Economy and International Finance: United Kingdom.
[97] Rustomjee, Z. 1991. Capital flight under apartheid. *Transformation (15),* pp. 89-103.
[98] Mohamed, S. & Finnoff, K. 2004. *Capital Flight from South Africa, 1980 to 2000*. Development Policy Research Unit, University of Cape Town: South Africa.

Africa, which would once again make the largest South African transnationals internationally acceptable. Once the post-apartheid state was in place, many of the largest South African companies actively lobbied to shift their primary listings to London so that they could become truly global investment players. The South African state obliged and allowed SAB and Billiton to list on the London Stock Exchange. Indeed, both the apartheid and post-apartheid state have assisted SAB/SABMiller and Gencor/Billiton in every possible way. During the apartheid era, this took the form of tax breaks and tariff protection. In the post-apartheid era, it has taken the form of implementing GEAR; reducing corporate tax; establishing IDZs; and redirecting the RDP funds to assist companies. This has all been undertaken to the detriment of the majority of South Africans.