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**WESTERN CAPE**

**RE-THINKING THE CORPORATE SOCIAL RESPONSIBILITY  
REGULATORY FRAMEWORK IN SOUTH AFRICA.**



**UNIVERSITY *of the***  
**WESTERN CAPE**

Mini-thesis submitted in partial fulfillment of the requirements for the LLM Degree, University  
of the Western Cape.

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## KEYWORDS

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Corporate social investment

King IV report

Corporate citizenship

Sustainable development

Stakeholders



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## PLAGARISM DECLARATION

I declare that 'Re-thinking the Corporate Social Responsibility Framework in South Africa' is my own work, which has not been submitted before any degree or examination in any other university. In addition, all the sources that I have used or quoted have been indicated and acknowledged as complete references.

Student: Sabrina Gulam Silva Yusuf

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Date: 6<sup>th</sup> December 2018



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Signature:



Date: 10 December 2018

## DEDICATION

*For Yusuf and Rachel*

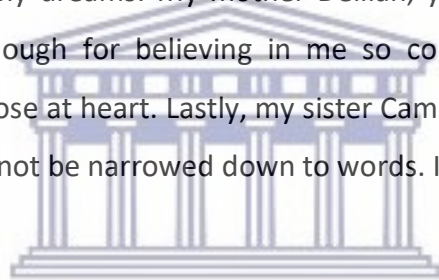


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## ACRONYMS AND ABBREVIATIONS

CSR	Corporate Social Responsibility
BBBEE	Broad-Based Black Economic Empowerment
EU	European Union
EMS Forum	European Multi-stakeholder Forum
JSE	Johannesburg Stock Exchange
MHSA	Mine Health and Safety Act
NEMA	National Environmental Management Act
NWA	National Water Act
SEC	Social and Ethics Committee

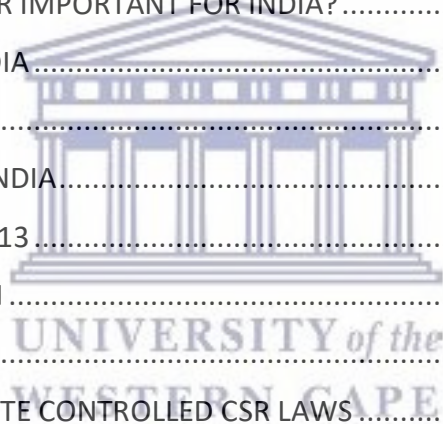


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## CHAPTER 1

### 1. INTRODUCTION

*“The 19<sup>th</sup> Century saw the foundations laid for modern corporations; this was the century of the entrepreneur. The 20<sup>th</sup> Century became the century for management...The 21<sup>st</sup> Century promises to be a century of governance, as the focus swings to the legitimacy and the effectiveness of the wielding of power over corporate entities worldwide.”* – 2002 King Report on Corporate Governance.<sup>1</sup>

Corporate governance is a principle that has had multiple evolving definitions. The Cadbury Report (also known as *Financial Aspects of Corporate Governance*) of 1992 is a report that sets out recommendations for best practice of a company board.<sup>2</sup> Although the Cadbury Report was ideally formulated to apply to companies in the United Kingdom, its recommendations have formed the basis of many international codes over the years. It refers to corporate governance as the “system by which companies are directed and controlled”.<sup>3</sup> Solomons also explores the definitions of corporate governance in her book titled ‘Corporate Governance and Accountability’. She acknowledges the existence of ‘narrow’ definitions and ‘broader’ definitions. Narrow definitions are more concerned with corporate accountability to a company’s shareholders.<sup>4</sup> On the other hand, broader definitions seek to identify corporate accountability to shareholders and stakeholders. This definition encompasses a larger group of people, which include the society at large, future generations and the environment. For the purposes of this research, the broader definition will be utilised. Simply put, corporate governance refers to the practice in which companies are managed and controlled.<sup>5</sup> This is achieved through balancing the interests of the many stakeholders of a company such as;

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<sup>1</sup> The King Report on Corporate Governance 2002.

<sup>2</sup> Dedman E ‘The Cadbury Committee recommendations on corporate governance – a review of compliance and performance impacts’ (2002) 4 *International Journal on Management* 335.

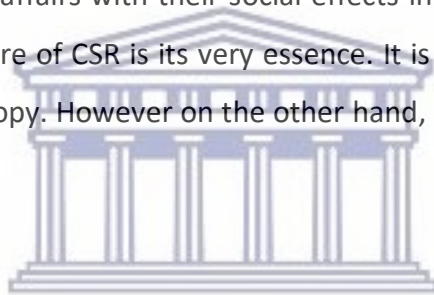
<sup>3</sup> Smerdon R *A practical guide to corporate governance* (1998) 1.

<sup>4</sup> Solomons J *Corporate governance and accountability* 4ed (2003) 14.

<sup>5</sup> Naidoo R *Corporate governance: An essential guide for South African companies* (2018) 1.

employees, shareholders, suppliers, management, the government and many others.<sup>6</sup> Corporate governance aims to create an environment whereby the company is managed in a way which promotes the interests of the stakeholders.<sup>7</sup> These include, but are not limited to; the balance of powers in a company, compliance with laws and regulations, identification and management of potential risks, and ensuring accountability for its actions. In a nutshell, corporate governance can be viewed as the responsible leadership, governing and sustainability of a company. On the other hand, Corporate Social Responsibility (CSR) can be viewed as a branch of corporate governance and this shall be discussed further below.

In many parts of the world, CSR functions as a voluntary code of conduct. This means that corporate entities are usually guided by a set of principles of good intent. Corporate entities are expected to self-regulate their affairs with their social effects in mind. Some scholars strongly believe that the voluntary nature of CSR is its very essence. It is a value that has to be realized through free will and philanthropy. However on the other hand, other scholars believe that this flexibility can be misused.<sup>8</sup>



CSR is a fairly new concept in the world of corporate governance. It began gaining popularity and media attention during the 20<sup>th</sup> century.<sup>9</sup> It is important to note, from the outset, that CSR carries different meanings to different people. To some, CSR is simply ticking boxes and a compliance related effort.<sup>10</sup> While to others, it's a holistic movement aimed at taking responsibility of the company's effect on social and environmental well-being.<sup>11</sup> With that said, it is safe to establish that there is no one universally correct definition of CSR. The "Green Paper – Promoting a European framework for Corporate Social Responsibility" of the European

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<sup>6</sup>Stakeholders are groups or individuals that have a direct or an indirect interest in a company. This interest can be related to the company's performance, its management, or its overall activities.

<sup>7</sup>Roussouw J & Van Der Watt 'A Corporate governance in South Africa'(2002) 37 *Journal of Business Ethics* 289.

<sup>8</sup>Scholtz B & Calitz A 'Voluntary and Mandatory Company Sustainability Reporting: A Comparison of Approaches' (2014) *Enviroinfo Conference* 3.

<sup>9</sup> Martinez J & Fernandez M 'Corporate Social Responsibility: Evolution Through Institutional and Stakeholder Perspectives' (2015) *European Journal of Management and Business Economics* 9.

<sup>10</sup> Waller M 'Much Corporate Responsibility is box-ticking' available at <https://www.thetimes.co.uk/article/much-corporate-responsibility-is-box-ticking-9drzfk37vl> (accessed on 28th November 2018).

<sup>11</sup> Garcia M 'What Are the Functions of Corporate Social Responsibility' available at <https://bizfluent.com/info-8459857-functions-corporate-social-responsibility.html> (accessed on 28th November 2018).

Commission describes it as a concept whereby companies integrate social and environmental concerns in their business operations on a voluntary basis.<sup>12</sup> On the other hand, the International Standards Organisation (ISO), explained social responsibility as "a balanced approach for organisations to address economic, social and environmental issues in a way that aims to benefit people, communities and society".<sup>13</sup> For the purpose of this study, the ISO definition will be used.

## 2. CORPORATE SOCIAL INVESTMENT AND CSR

CSR and Corporate Social Investment (CSI) are terms that are used to describe how companies should conduct themselves. There has been a certain degree of confusion in terms of the definition of these terms.<sup>14</sup> Some scholars believe they represent different things, while others are of the opinion that these terms may be used interchangeably.<sup>15</sup> Since the definition of CSR has already been explored, attention will now be paid to CSI. It has been noted that CSI is a facet of CSR. CSR is regarded as an umbrella term that incorporates how a company manages itself, its relationship with stakeholders and its social consciousness. On the other hand, CSI adopts a proactive approach aimed at development of communities and the uplifting of society.<sup>16</sup> It has been noted that CSI does not operate as a separate function, it is considered a way in which a company fulfils its broader social and environmental obligations.<sup>17</sup> Trialogue concurs by stating that CSI is a fraction of the CSR movement.<sup>18</sup> For the purposes of this thesis, the main focus will be on broader concept of CSR.

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<sup>12</sup>*The Green Paper: Promoting a European framework for Corporate Social Responsibility* (DOC 01/9, 18<sup>th</sup> July 2001)

<sup>13</sup>Goyal M 'Insights of Corporate Social Responsibility: Leadership Personified' (2013) 15 *Journal of Business and Management* 16.

<sup>14</sup>Hanks J 'Defining sustainable development, CSR, CSI and LED' available at <https://incitesustainability.wordpress.com/2009/02/16/defining-sustainable-development-csr-csi-and-led/> (accessed on 12<sup>th</sup> May 2018).

<sup>15</sup>Triologue 'What is Corporate Social Investment (CSI)?' available at <http://trialogueknowledgehub.co.za/index.php/csi-resources/what-is-csi> (accessed on 28<sup>th</sup> November 2018).

<sup>16</sup>Hanks J 'Defining sustainable development, CSR, CSI and LED' available at <https://incitesustainability.wordpress.com/2009/02/16/defining-sustainable-development-csr-csi-and-led/> (accessed on 12<sup>th</sup> May 2018).

<sup>17</sup>Triologue 'What is Corporate Social Investment (CSI)?' available at <http://trialogueknowledgehub.co.za/index.php/csi-resources/what-is-csi> (accessed on 28<sup>th</sup> November 2018).

### 3. THE SOUTH AFRICAN CONTEXT

In South Africa, there are several drivers that drive CSR. However, to truthfully understand the current state of CSR in South Africa, it is important to understand where this need stems from. After the end of the apartheid regime, the government had to step in to address the socio-economic effects left behind. These ranged from poverty, unemployment, racism, unequal distribution of wealth and many others. Amongst many schemes aimed at addressing these effects, CSR was one of them, as it was believed that it was a vital component of social transformation.<sup>19</sup> Through the 1996 Constitution<sup>20</sup> and other legislation, the government has made commendable strides in encouraging the inclusion of CSR initiatives in the running of companies. For example, the government introduced the Broad-Based Black Economic Empowerment (BBBEE) Act of 2003<sup>21</sup> as a means of creating equal opportunities to previously disadvantaged groups. Guidelines in the BBBEE Act made reservations for programs that were aimed at promoting CSR.<sup>22</sup> Apart from the BBBEE Act, there are several other Acts that promote CSR. These include but are not limited to; the Mineral and Petroleum Resources Development Act 28 of 2002,<sup>23</sup> the Mine Health and Safety Act 29 of 1996,<sup>24</sup> the Employment Equity Act 55 of 1998,<sup>25</sup> and many others.

It is important to note that, despite all the above mentioned measures, CSR remains a voluntary effort in South Africa. The first publication of the King Report in 1994 marked the institutionalization of corporate governance in South Africa.<sup>26</sup> The King IV is a code on corporate governance. It is a set of guidelines that sets out ethical and effective leadership for companies, banks, state-owned enterprises, non-governmental organisations and others. This

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<sup>18</sup>Triologue 'Defining CSR' available at <http://triologue.co.za/csi-definition-and-regulation/> (accessed on 12<sup>th</sup> May 2018).

<sup>19</sup>Ramlall S 'Corporate social responsibility in post-apartheid South Africa' (2012) 8 *Social Responsibility Journal* 274.

<sup>20</sup>Section 8(2) of the Constitution, 1996.

<sup>21</sup> Broad- Based Black Economic Empowerment Act 53 of 2003.

<sup>22</sup>Kloppers H 'Driving corporate social responsibility through black economic empowerment' (2014) 18 *Law Democracy and Development* 59.

<sup>23</sup> Mineral and Petroleum Resources Development Act 28 of 2002.

<sup>24</sup>Mine Health and Safety Act 29 of 1996.

<sup>25</sup>Employment Equity Act 55 of 1998.

<sup>26</sup> The King Report on Corporate Governance, 2002.

code places a duty on these entities to disclose their financial performance and their social performance altogether.<sup>27</sup> One of the key principles in King IV specifically, is promotion of corporate citizenship.<sup>28</sup> This highlights the fact that a company should conduct itself in a manner that promotes good corporate citizenship. This includes monitoring the company's activities and how their output affects the society in which it operates. It emphasizes on the importance of incorporating measures that ensure compliance with public safety regulations, consumer protection, protection of human rights and the overall development and uplifting of the society. On the other hand, the Johannesburg Stock Exchange (JSE) requires all listed companies to apply the principles of the King code.<sup>29</sup> In other words, all King IV principles are mandatory for all listed entities. However, this is still not sufficient to take away the voluntary 'feeling' of complying with CSR, especially for non-listed companies. Another noteworthy reason for the inefficiency in CSR could be linked to widespread corruption in many corporate structures, however this thesis will not explore this in depth.

### 3.1 THE COMPANIES ACT 71 OF 2008

The Companies Act 71 of 2008 became effective on 1<sup>st</sup> May 2011.<sup>30</sup> This Act brought about a lot of changes in company law, which did not exist prior to its promulgation. The Act regulates corporate governance but makes no explicit reference to CSR in particular. This adds on to its voluntary nature. It is only when there are separate legal requirements mandating companies to integrate CSR into their daily tasks, that companies will take it seriously. However it is important to note that there are a few sections in the Act that relate to CSR. Section 7 lists the purposes of the Act. Section 7(d) particularly highlights the fact that a company shall be seen as a means of achieving economic and social benefits.<sup>31</sup> Section 72(4) states that the Minister may

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<sup>27</sup> Du Plessis J & Keong Low C *Corporate Governance Codes for the 21<sup>st</sup> Century: International Perspectives and Critical Analyses* (2017) 254.

<sup>28</sup> King Report on Corporate Governance (King IV).

<sup>29</sup> Le Roux C 'The Johannesburg Stock Exchange Socially Responsible Investment Index' available at <http://www.qaaaccounting.com/the-johannesburg-stock-exchange-socially-responsible-investment-index/> (accessed on 12<sup>th</sup> May 2018).

<sup>30</sup> Companies Act 71 of 2008.

<sup>31</sup> Section 7(d) of the Companies Act.

prescribe the need for the establishment of a social and ethics committee.<sup>32</sup> This is explicitly set out in regulation 43 of the Act.<sup>33</sup> It is acknowledged that the government has made attempts to ensure that companies are more socially conscious, however these efforts are not enough to fully enjoy the benefits of CSR.

#### **4. PROBLEM STATEMENT**

In South Africa, the application of CSR is still largely a voluntary practice.<sup>34</sup> Despite being guided by different regulations and codes, companies have the freedom and autonomy to decide on its application and implementation. It is possible for companies to choose not to engage in CSR friendly mechanisms because of its voluntary nature. Unfortunately, this has led to the creation of an uncertain atmosphere coupled with the lack of uniform application of principles. In reality, this creates a situation whereby it is difficult to ensure that all companies practice CSR. An environment that is uncertain and lacking in uniformity can be the root of a series of problems. Therefore, to ensure that companies are responsible and loyal to their social responsibility duties and that there is certainty and accountability, it is important to mandate CSR. This will help collate all regulations and codes under one instrument.

#### **5. SIGNIFICANCE OF THE PROBLEM**

It is important for CSR to be formally recognized and passed as a law in parliament. In recent years, many consumers have started paying close attention to not only the product or the services on offer, but also the overall image of the company. This has been one of the leading influencers of the stakeholders' decision-making power. Especially now, in the age of social media and the internet, consumers want to engage and be associated with companies that are

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<sup>32</sup>Section 72(4) of the Companies Act.

<sup>33</sup>Regulation 43 of the Companies Act.

<sup>34</sup> Johannes J *Corporate social responsibility in South Africa: How corporate partnerships can advance the sustainability agenda* (LLM thesis, University of the Western Cape, 2016) 31.

socially and environmentally conscious and are giving back to the community.<sup>35</sup> These sentiments are shared equally with employees.<sup>36</sup> Many young employees are also very conscious of the image and reputation of the company that they work for. According to a survey conducted by MonsterTRAK, 92% of young graduates stated that they would want to work for an environmentally friendly company.<sup>37</sup> This in turn exerts pressure on companies to be more active in their social standing and to incorporate CSR into the core of their business strategies and initiatives.

A functioning CSR plan can positively contribute to the long-term sustainable development of the company.<sup>38</sup> Scholars have debated this view extensively. On one hand, some believe that CSR and sustainable development cannot complement each other. This is based on the premise that the sole function of companies is money making thus making them uninterested and unable to perform socially responsible functions.<sup>39</sup> While on the other hand, scholars believe that these two concepts can work together simultaneously.<sup>40</sup> A well-integrated CSR strategy can contribute towards the sustainable development of a company. This can be realized through the use of environmentally friendly practices and efficient operational practices, meaning that resources may be preserved which can contribute to the longevity and the development of a company.<sup>41</sup> With that said, the need for 'harder' regulation in the form of an Act can be beneficial in ensuring sustainability.

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<sup>35</sup>Peretz M 'Want to Engage Millennials? Try Corporate Social Responsibility' available at <https://www.forbes.com/sites/marissaperetz/2017/09/27/want-to-engage-millennials-try-corporate-social-responsibility/#e8504046e4e4> (accessed on 12<sup>th</sup> May 2018).

<sup>36</sup>Jenkin M 'Millennials Want To Work For Employers Committed To Values and Ethics' available at <https://www.theguardian.com/sustainable-business/2015/may/05/millennials-employment-employers-values-ethics-jobs> (accessed on 24<sup>th</sup> May 2018).

<sup>37</sup> Odell A 'Working for the Earth: Green Companies and Green Jobs Attract Employees' available at <https://www.greenbiz.com/news/2007/10/16/working-earth-green-companies-and-green-jobs-attract-employees> (accessed on 12<sup>th</sup> May 2018).

<sup>38</sup>Mariri T 'Corporate social responsibility as a tool for sustainable development in Africa: How Important is Context?' available at <http://www.polity.org.za/article/corporate-social-responsibility-as-a-tool-for-sustainable-development-in-africa-how-important-is-context-2012-09-25> (accessed on 11<sup>th</sup> May 2018).

<sup>39</sup>Moon J 'The Contribution of Corporate Social Responsibility to Sustainable Development' (2007) 15 *Sustainable Development* 297.

<sup>40</sup>Moon J 'The Contribution of Corporate Social Responsibility to Sustainable Development' (2007) 15 *Sustainable Development* 297.

<sup>41</sup>Kokemuller N 'Sustainable Development and Corporate Social Responsibility' available at <http://work.chron.com/sustainable-development-corporate-social-responsibility-5749.html> (accessed on 11<sup>th</sup> May 2018).



CSR can be very good for business. Apart from the abovementioned benefits, it has been shown that a good CSR track record can retain and attract investors.<sup>42</sup> It is important to note that due to globalization, the corporate landscape is evolving. This has shifted the focus to the undeniable connected relationship between businesses and the community. As a result, investors and customers are increasingly conscious of their investments and their purchases altogether. Forbes reported that, investors do feel that there is a shortage of impact-worthy social impact projects.<sup>43</sup> Therefore, it is vital for businesses to re-think their strategies around social responsibility. On a similar note, a 2009 survey acknowledged that South Africa is the third most attractive outsourcing destination in the Africa, in terms of people skills and information technology.<sup>44</sup> This industry alone has been reported to generate approximately 6 to 8 million rand annually in the Western Cape alone.<sup>45</sup> This already highlights that South Africa is a desirable destination. With that established, it is safe to say that, by mandating CSR coupled with the growing demands of stakeholders, South Africa has the potential of being at the forefront in terms of investments.

It is important to have 'hard' laws regulating CSR so as to avoid exploitation and free riding. It is a known fact that some corporations do engage in CSR only as a publicity mechanism, and not for its core values.<sup>46</sup> In addition, it is important to safeguard health and safety conditions for workers, to ensure that the environment is protected and to have one solid and certain law

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<sup>42</sup>Keys T & Malnight T 'Making the Most of Corporate Social Responsibility' available at <https://www.mckinsey.com/featured-insights/leadership/making-the-most-of-corporate-social-responsibility> (accessed on 11th May 2018).

<sup>43</sup> Prosser D 'How Social Impact Investment Deliver Superior Returns' available at <https://www.forbes.com/sites/davidprosser/2017/02/09/how-social-impact-investment-delivers-superior-returns/#319870ed7a52> (accessed on 11th May 2018).

<sup>44</sup>Kolver L 'SA Only Ranks Third in Africa As an Attractive Outsourcing Destination' available at [http://www.engineeringnews.co.za/article/south-africa-is-the-third-most-attractive-outsourcing-country-2009-04-03/rep\\_id:4136](http://www.engineeringnews.co.za/article/south-africa-is-the-third-most-attractive-outsourcing-country-2009-04-03/rep_id:4136)(accessed on 12th May 2018).

<sup>45</sup>Weldon T 'SA Becoming Increasingly Attractive as Outsourcing Destination' available at <https://www.itweb.co.za/content/okYbe9MXRxdvAWpG> (accessed on 14th May 2018).

<sup>46</sup>Gayo S 'Mandatory and Voluntary Corporate Social Responsibility Policy Debates in Indonesia' (2012) *ICIRD* 5.

covering all bases. This will in turn reduce the number of corporate mishaps and relieve the burden from the government.<sup>47</sup>

## 6. RESEARCH QUESTION

This thesis examines the question: Whether the current voluntary CSR regulatory framework in South Africa is sufficient in fully appreciating and implementing CSR, or whether there is a need for enactment of state controlled CSR laws.

### 6.1 RESEARCH OBJECTIVES

This thesis aims to fulfill the following objectives;

- To explore the history and the evolution of CSR in South Africa.
- To examine and analyze the current legal framework that is governing CSR in South Africa (the Constitution, Companies Act, the King Codes, the JSE Index and supplementary acts of parliament).
- To evaluate the gaps that in the framework and the need to address the gaps that exist.
- To determine whether South Africa can draw lessons from countries that have mandated CSR and/or have more developed frameworks
- To propose recommendations that South Africa may adopt while mandating CSR.

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<sup>47</sup>Kashyap G 'Mandatory CSR spending – a blessing or a burden?' available at [https://www.peoplematters.in/article/c-suite/mandatory-csr-spending-a-blessing-or-a-burden-2657?utm\\_source=peoplematters&utm\\_medium=interstitial&utm\\_campaign=learnings-of-the-day](https://www.peoplematters.in/article/c-suite/mandatory-csr-spending-a-blessing-or-a-burden-2657?utm_source=peoplematters&utm_medium=interstitial&utm_campaign=learnings-of-the-day)(accessed on 26<sup>th</sup> May 2018).

## 7. METHODOLOGY

This research is a desktop study. It will be based on a combination of various primary sources and secondary sources. With regard to primary sources, this thesis seeks to explore different Acts of parliament, codes of governance, regulations and other policies. In terms of secondary sources, this thesis will interrogate and explore various journal articles, scholarly materials and an array of internet sources. This thesis will adopt a combination of research methodologies. It will explore the historical and current framework of CSR in South Africa through a legal lens. This exploration will embody an analytical approach. It is important to note that this thesis is not a comparative study. However, it will engage with two alternative jurisdictions in an attempt to draw valuable lessons and suggestions. These two jurisdictions are India and the European Union (EU). India is a good choice because it is the first country in the world to enact CSR laws. As a result of a number of corporate failures, India became serious with the promulgation of CSR laws. With that said, South Africa can learn valuable lessons from this that can be applied locally. The EU is equally a good jurisdiction to draw lessons from due to its CSR regulations. It is interesting to see how a large body of 28 countries has managed to mainstream CSR and create a non-financial reporting directive that applies uniformly throughout the union. Despite the fact that it is still largely voluntary, it can serve as a solid benchmark for South Africa.

## 8. OVERVIEW OF THE CHAPTERS

The chapters in this thesis will be presented as follows;

### Chapter 1

Chapter 1 serves as an introductory chapter. This chapter will introduce the theme of the thesis. It mainly consists of background to the research, research questions, objectives of the research, significance of this study, and the methodology that will be used.

### Chapter 2

Chapter 2 seeks to explore the landscape of CSR in South Africa. This will be achieved through an analytical exploration of the history of CSR and how it shaped today's framework. This chapter further examines the current regulatory framework. This will include an overview of the components that make up this framework, namely; the Constitution, the Companies Act, the King Codes, the FTSE/JSE RI and other Acts of parliament.

### Chapter 3

Chapter 3 explores alternate jurisdictions. This chapter is twofold. First, this chapter will look at the situation in the EU. It will explore the evolution of CSR in the EU, and how the union arrived at the current framework. Lastly, it will look at India and how their CSR regulations have evolved over the years. Most importantly, this part will explore the main reasons that led to the adoption of a mandatory CSR provision.

## Chapter 4

Chapter 4 will explore the gaps in the South African regime. This chapter will analyse what particularly is lacking in the system and how this void can be filled. In doing this, this chapter will examine the importance of legal certainty as a running theme. Through this theme it will look at the developments in environmental law, especially in the mining industry. It will touch up on director's duties and the role of the Social and Ethics Committee in terms of the Companies Act and in terms of King IV. In addition it will also import lessons from the EU and India that South Africa may consider while making the shift from voluntary to mandatory CSR.

## Chapter 5

Chapter 5 will conclude the research and provide recommendations that South Africa can adopt.



## CHAPTER 2 – THEN AND NOW

This chapter seeks to explore the landscape of CSR in South Africa. This will be achieved through an exploration of the history of CSR and how it shaped today's framework. This chapter further examines the current regulatory framework in South Africa. It will include an overview of the components that make up this framework, namely; the Constitution, the Companies Act, the King Codes, the Johannesburg Stock Exchange Index and other Acts of parliament.

### 1. INTRODUCTION

The concept of CSR has come a long way. It has been around and has been constantly evolving from the 20<sup>th</sup> century. Sources cite its existence dating back to the early 1920's, however, it was Bowen in 1953 that formally brought this concept to the forefront.<sup>48</sup> In the beginning, CSR was a rather narrow theory that revolved around ethics. However, over time, it has evolved to incorporate a wide array of factors such as corporate citizenship, philanthropy, sustainability, deeper social consciousness, amongst many others.<sup>49</sup> Currently, CSR has gained importance and popularity in the corporate realm for a wide range of reasons ranging from customer demands to increased performance. With that said, governments have paid more attention to CSR and its consequent implementation. This has been done through ratification of international conventions, introduction of codes of good practice, creation of assessment indices and many others.

In South Africa, the idea of CSR has a very unique history. It was brought to light through the apartheid regime that existed in South Africa from 1948 to 1994.<sup>50</sup> The very nature of the regime left behind a huge gap of inequalities and struggles between South Africans.

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<sup>48</sup>Moura-Leite R 'Historical Background of Corporate Social Responsibility' (2001) 7 *Social Responsibility Journal* 529.

<sup>49</sup>Chen C 'The Major Components of Corporate Social Responsibility' (2011) 2 *Journal of Global Responsibility* 87.

<sup>50</sup>Byrnes M 'Life in Apartheid-Era South Africa' available at <https://www.citylab.com/equity/2013/12/life-apartheid-era-south-africa/7821/> (accessed on 4<sup>th</sup> June 2018).

Consequently, CSR was mandated with the task of bridging the gaps in ways that will be discussed further below. Currently, South Africa has made serious praise-worthy strides in terms of CSR since the end of the apartheid regime. The current legal framework in South Africa emphasizes CSR friendly initiatives through the following ways. Some of the most prominent guidelines are the King IV<sup>51</sup> and the Companies Act<sup>52</sup>, there are also industry specific legislation; such as the BBEE Act,<sup>53</sup> Mine Health and Safety Act,<sup>54</sup> and the JSE Social Responsible Investment Index.<sup>55</sup> This chapter will explore the legal framework of CSR in South Africa. It will touch on its evolution and current stance.

## 2. GENERAL HISTORY OF CSR

Howard Bowen, in his book, formally brought the idea of CSR to light in 1953.<sup>56</sup> It is important to note that although there have been traces of forms of CSR in publication prior to the 1950's, Bowens book is regarded the foundation of modern day CSR. From a historical perspective, ethical decision-making in the business world is not a new concept. Research suggests that there has been evidence of similar practices from western thinkers such as Cicero, and non-western thinkers dating back to the first and the fourth century.<sup>57</sup> Carried on during the nineteenth century, events such as the active boycotting of products made from slave labourers show the continued existence of the concept of business ethics.<sup>58</sup> Some researchers believe that CSR is not a totally new concept, it is simply a modern interpretation of the pre-existing

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<sup>51</sup>King IV, 2016.

<sup>52</sup>The Companies Act 71 of 2008.

<sup>53</sup> The Broad Based Black Economic Empowerment Act 53 of 2003.

<sup>54</sup> The Mine Health and Safety Act 29 of 1996.

<sup>55</sup>JSE 'JSE and Sustainability' available at <https://www.jse.co.za/about/sustainability> (accessed on 4th June 2018).

<sup>56</sup> Hack L & Kenyon A 'A Critical Corporate Social Responsibility (CSR) Timeline: How Should it be Understood Now?' (2006) *International Journal of Management Cases* 46.

<sup>57</sup>Aßländer M 'Honourableness or Beneficalness? Cicero on Natural Law, Virtues, Glory and (Corporate Reputation)' (2013) 116 *Journal of Business Ethics* 755.

<sup>58</sup> Gonzalez-Perez & Leonard (eds) *International Business, Sustainability and Corporate Social Responsibility* (2013) 45.

question of the role of businesses in the society.<sup>59</sup> Fabig & Boele second this thought, and are of the opinion that the only novel addition to this concept is that modern day CSR discussions involve a broader outlook than before.<sup>60</sup> In other words, it is now a global debate that involves much wider issues such as sustainability, human rights, reputation and holistic development.

During the 1950's, Bowen published a book that formally pronounced and explored CSR. In his book titled 'Social Responsibilities of a Businessman' Bowen successfully conceptualizes this theory by examining and questioning the responsibilities that businesses have in terms of the society.<sup>61</sup> The book has been cited extensively and considered the foundation and the root of the theory of CSR. In addition to his book being responsible for acknowledging that businesses do have a social responsibility, it also takes credit for laying down the preliminary definition of CSR. In this definition, Bowen emphasizes the need of businesses to engage in 'actions that are desirable to the values of our society'.<sup>62</sup> It is evident that Bowen encourages businesses to put the society first in their undertakings through business ethics and philanthropy. This outlook set the benchmark for the modern evolution of CSR.

Apart from Bowen's ground breaking book, there are two other significant pieces of work that were useful in shedding light on the existence and development of CSR. These comprise of a study by Preston that was conducted in 1977,<sup>63</sup> and another one by Carroll in 1979.<sup>64</sup> Preston approached the concept from a different angle. He formulated a matrix that outlined four precise stages that were used to identify CSR. These stages are as follows: stage 1) awareness of an issue, stage 2) analysis and planning, stage 3) feedback on policy developments and lastly, stage 4) the implementation.<sup>65</sup> It is important to note that Preston's matrix was heavily

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<sup>59</sup>Beger-Walliser G 'Redefining Corporate Social Responsibility in an Era of Globalization and Regulatory Hardening'(2018) 55 *American Business Law Journal* 171.

<sup>60</sup>Fabig H & Boele R 'The Changing Nature of NGO Activity in a Globalizing World: Pushing the Corporate Social Responsibility Agenda' (2009) *IDS Bulletin* 63.

<sup>61</sup>Bowen H *Social Responsibilities of a Businessman* (2013) 135.

<sup>62</sup>Midtown B 'Is Corporate Social Responsibility Enough? available at <http://www.midtown-bie.com/news/corporate-social-responsibility-enough/> (accessed on 6<sup>th</sup> June 2018).

<sup>63</sup>Clarkson M 'A Stakeholder Framework for Analyzing and Evaluating Corporate Social Performance' (1995) 20 *Academy of Management Review* 93.

<sup>64</sup>Visser W 'Revisiting Carroll's CSR Pyramid: An African Perspective' in Pedersen R (ed) *Corporate Citizenship in Developing Countries* (2006) 54.

<sup>65</sup>Clarkson M 'A Stakeholder Framework for Analyzing and Evaluating Corporate Social Performance' (1995) 20 *Academy of Management Review* 93.



critiqued for lack of clarity on key terms such as what constitutes 'social'.<sup>66</sup>

In 1979 Carroll developed another model for CSR. This model is credited for being used as the base of most modern day CSR definitions. Carroll's model was seen as an advantage above Preston's in that it was seen to be more comprehensive and integrative. The model comprised of three elements, namely; corporate social responsibility, corporate social responsiveness and social issues.<sup>67</sup> Carroll's model acknowledged that a business is expected to fulfil; social, legal, ethical and philanthropic obligations.<sup>68</sup> Only when the four expectations are met will CSR be fully realized. Unlike Preston, Carroll recognized social issues as protection of the environment and discrimination amongst others. These issues were also used as categories to measure 'social'. It was applauded for its ability to incorporate different dimensions in one model, however critiqued for being somewhat vague and for failing to appreciate its dynamic capabilities such as cultural appreciation.<sup>69</sup> The model was based on American circumstances, and when applied to alternate scenarios, the results were somewhat conflicting. Visser, was of the opinion that Carroll's model was not practical in some circumstances, especially for Africa.

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In the recent past, CSR has experienced growth in terms of clarity and depth of the concept altogether. As abovementioned, the concept initially was very shallow and narrow in its understanding. It encapsulated the existence of a social responsibility that is owed and one that has an ethical and legal background. However since the 1980s, there has been an evolution in terms of the understanding of CSR. It has been noted that ethical and legal requirements are just a fraction of the bigger picture. There are many other considerations that have to be looked while implementing proper CSR mechanisms. In the modern day, CSR has been linked to different socio-economic aspects such as increased productivity, attraction of foreign investors

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<sup>66</sup>Clarkson M 'A Stakeholder Framework for Analyzing and Evaluating Corporate Social Performance' (1995) 20 *Academy of Management Review* 93.

<sup>67</sup> Carroll B 'Carroll's Pyramid of CSR: Taking Another Look' (2016) *International Journal of Corporate Social Responsibility* 2.

<sup>68</sup> Riley J 'Carroll's CSR Pyramid' available at <https://www.tutor2u.net/business/reference/carrolls-csr-pyramid> (accessed on 12th June 2018).

<sup>69</sup>Zabin I 'An Investigation of Practicing Carroll's Pyramid of Corporate Social Responsibility in Developing Countries: an Example of Bangladesh Ready-made Garments' (2013) 12 *IOSR Journal of Business and Management* 78.

<sup>70</sup> Visser W 'Revisiting Carroll's CSR Pyramid: An African Perspective' in Pedersen R (ed) *Corporate Citizenship in Developing Countries* (2006) 55.

and sustainable development.<sup>71</sup> It is only at this time where nations began paying closer attention to this concept, its benefits and its needs. As a result, apart from national regulations, there have been several international conventions that seek to promote this ethical practice. These include, but are not limited to; the OECD guidelines for Multinational Enterprise, the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the International Labour Standard (ILO) social standards, and many others.<sup>72</sup>

### 3. SOUTH AFRICA

To fully capture the current influence of CSR in South Africa, it is vital to explore the history of the country and how it has contributed to the evolution of CSR.



#### 3.1 THE APARTHEID REGIME

It is no news that South Africa's historical background is tainted with severe inequalities. This is a product of the apartheid regime that took over South Africa from 1948 to 1994. The word 'apartheid' means 'apartness' in Afrikaans.<sup>73</sup> During this era, a policy of racial separation was introduced, and racial discrimination was institutionalized.<sup>74</sup> This policy aimed to separate the whites from the blacks and other racial minorities (such as Indians and coloureds). South Africans were categorised into three main groups; whites, blacks, and coloureds (of mixed race). This classification determined how one was treated and non-compliance was met with

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<sup>71</sup>Thuy B 'CSR brings success to investors' available at <http://www.vir.com.vn/csr-brings-success-to-investors-55877.html> (accessed on 17th June 2018).

<sup>72</sup>ILO 'International Instruments and Corporate Social Responsibility. A Booklet to Accompany Training on the Labor Dimension of CSR: from Principles to Practice' available at [http://www.ilo.org/empent/Publications/WCMS\\_101247/lang--en/index.htm](http://www.ilo.org/empent/Publications/WCMS_101247/lang--en/index.htm) (accessed on 28th November 2018).

<sup>73</sup>SAHO 'A History of Apartheid in South Africa' available at <https://www.sahistory.org.za/article/history-apartheid-south-africa> (accessed on 17th June 2018).

<sup>74</sup>Msomi N & Sihalo W 'Racism is Still a Threat to South Africa's Democracy' available at <http://www.csvr.org.za/media-articles/latest-csvr-in-the-media/2262-racism-still-a-threat-to-south-africas-democracy> (accessed on 17th June 2018).

harsh punishment such as imprisonment.<sup>75</sup> Black people and coloured people were denied any meaningful participation in many opportunities. Particularly, the black majority were denied fundamental rights. They were singled out from participating in building the economy, banned from owning land and assets, had limited access to medical care and education and denied proper and equal employment opportunities.<sup>76</sup> As a result of this severe injustice, many black people were left displaced, unskilled, poor, uneducated, sick (HIV/AIDS) and hopeless. Although many changes have taken place after the end of apartheid in 1994, the aftermath of the regime can unfortunately be felt to date.

In 1994, the apartheid regime came to an end.<sup>77</sup> This marked the start of a new promising chapter for South Africans. For many, democracy meant hopeful new beginnings and a total transformation of the country to address the open wounds left behind by the apartheid government. The new ruling party, the African National Congress (ANC) was tasked with the job of formulating policies that would address past injustices and bridge the gap between torn South Africans.<sup>78</sup> Ensuring that the past injustices were mended was a vital component of the ANC mandate as the black majority invested their trust on them to deliver a brighter future. There were a number of programs that were initiated after 1994. These included programs promoting transformation and affirmative action, equality, employment, education, skills development, medical care, and addressing the HIV/AIDS epidemic.<sup>79</sup> This was all to ensure that everyone is presented with equal opportunities to better their future, and the country's future altogether. It is important to note that, there were forms of CSR related mechanisms in South Africa even before the apartheid regime came to an end. These were codes of conduct by American companies based in South Africa, they were also known as the Sullivan Principles.

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<sup>75</sup>SAHO 'A History of Apartheid in South Africa' available at <https://www.sahistory.org.za/article/history-apartheid-south-africa> (accessed on 17th June 2018).

<sup>76</sup>SAHO 'A History of Apartheid in South Africa' available at <https://www.sahistory.org.za/article/history-apartheid-south-africa> (accessed on 17th June 2018).

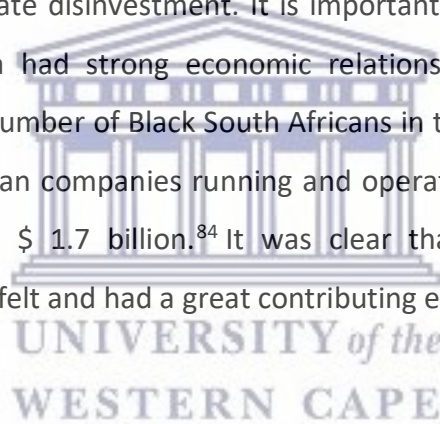
<sup>77</sup> SAHO 'The Collapse of Apartheid in South Africa: Coming Together of Internal and External Pressures' available at <https://www.sahistory.org.za/article/collapse-apartheid-grade-12> (accessed on 19th June 2018).

<sup>78</sup> Sander P 'South Africa: The Rise and Fall of the ANC' available at <https://www.dw.com/en/south-africa-the-rise-and-fall-of-the-anc/a-42603926> (accessed on 17th June 2018).

<sup>79</sup> SAHO 'South Africa's Key Economic Policies Changes' available at <https://www.sahistory.org.za/article/south-africa's-key-economic-policies-changes-1994-2013> (accessed on 22nd June 2018).

### 3.2 THE SULLIVAN PRINCIPLES

The Sullivan Principles were a set of codes of conduct by American-owned companies in South Africa.<sup>80</sup> These Principles were initially formulated in 1977 by Reverend Leon Sullivan, an African-American board member of General Motors.<sup>81</sup> The original aim of the principles was to exert pressure on the apartheid government to rethink its state-sanctioned segregation.<sup>82</sup> In other words, they were a pledge to advocate for equal treatment of non-whites. It was believed, at that time, that only sanctions could dismantle the apartheid regime in South Africa. Consequently, Sullivan advocated for the freedom and equality of black South Africans by presenting the apartheid government with an ultimatum. He strongly stated that if the apartheid government was to uphold its separationist policies, the American government was going to proceed with immediate disinvestment. It is important to note that during this time, the United States of America had strong economic relations with South Africa.<sup>83</sup> General Motors employed the largest number of Black South Africans in the country. During the 1970's, there were almost 350 American companies running and operating in South Africa, with total investments of approximately \$ 1.7 billion.<sup>84</sup> It was clear that the presence of American companies in South Africa was felt and had a great contributing effect.



A year after the principles were proposed, almost 100 American firms had signed the agreement.<sup>85</sup> This number almost doubled by mid-1980s. The document contained six principles that had to be upheld by American companies operating in South Africa. They hoped to encourage development of marginalized racial groups by increasing involvement in decision-

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<sup>80</sup>Lashgari MK & Gant D 'Social Investing: The Sullivan Principles' (2006) 47 *Review of Social Economy* 75.

<sup>81</sup>Lashgari MK & Gant D 'Social Investing: The Sullivan Principles' (2006) 47 *Review of Social Economy* 75.

<sup>82</sup> Sullivan R 'The Sullivan Principles and the Change in South Africa' available at <http://digitalcollections.library.cmu.edu/awweb/awarchive?type=file&item=494984> (accessed on 25<sup>th</sup> June 2018).

<sup>83</sup> Sullivan R 'The Sullivan Principles and the Change in South Africa' available at <http://digitalcollections.library.cmu.edu/awweb/awarchive?type=file&item=494984> (accessed on 25<sup>th</sup> June 2018).

<sup>84</sup> Davis J 'General Motors in South Africa: Secret Contingency Plans in the Event of Civil Unrest' (1978) *South African Perspectives* 1.

<sup>85</sup>Feder J 'Sullivan Asks End of Business Links with South Africa' available at <https://www.nytimes.com/1987/06/04/business/sullivan-asks-end-of-business-links-with-south-africa.html> (accessed on 29<sup>th</sup> June 2018).

making and the betterment of living and working conditions. The six principles touched upon; non-segregation in working and living facilities, equal employment practices and opportunities for all, equal compensation for the same or comparable amount of work for all, training non-whites for supervisory and technical roles, increasing the number of non-whites in leadership positions, and improving the quality of life for non-whites in terms of housing, recreation, health facilities etc.<sup>86</sup> It is evident that the Sullivan principles were a mechanism that was put in place to challenge corporations and to promote social justice. This was encouraged through the implementing of fair and equal labour practices. This in turn would help empower and improve the overall wellbeing of the employees. It is important to note that as much as the principles were a great initiative, they did not escape criticism.

Many believed that the principles were not a clever approach to end apartheid as they lacked a political element and were purely economic.<sup>87</sup> They failed to tackle real issues that South Africans faced such as racial segregation and the inability to vote. Others went as far as accusing Sullivan of being unrealistic and using the principles as a front to secure his position in the corporate realm.<sup>88</sup> However, some writers have positively praised Sullivan for his continued courage. According to Roth, she believes that Sullivan should be credited for creating one of the biggest transformations in social justice in the twentieth century.<sup>89</sup> It is important to note that the apartheid government was not very pleased with this movement and stated punishment for anyone found disobeying apartheid laws.<sup>90</sup> In a nutshell, as much as there are mixed reactions regarding their effect, the Sullivan Principles managed to positively contribute to creating awareness for the need for desegregation and equal treatment.

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<sup>86</sup>Mangaliso M 'South Africa: Corporate Social Responsibility and the Sullivan Principles' (1997) 28 *Journal of Black Studies* 228.

<sup>87</sup>Mangaliso M 'South Africa: Corporate Social Responsibility and the Sullivan Principles' (1997) 28 *Journal of Black Studies* 229.

<sup>88</sup> Tyson J 'Sullivan Principles: Camouflage or Catalyst?' available at <https://www.thecrimson.com/article/1980/2/8/sullivans-principles-camouflage-or-catalyst-pthe/> (accessed on 3<sup>rd</sup> July 2018).

<sup>89</sup>Roth M 'Sullivan Principles' available at <http://philadelphiaencyclopedia.org/archive/sullivan-principles/> (accessed on 11<sup>th</sup> July 2018).

<sup>90</sup>Feder B 'Apartheid Deadline Troubles Sullivan' available at <https://www.nytimes.com/1987/06/01/business/apartheid-deadline-troubles-sullivan.html?module=ArrowsNav&contentCollection=Business%20Day&action=keypress&region=FixedLeft&pgtype=article> (accessed on 11<sup>th</sup> July 2018).

### 3.3 POST-APARTHEID SOUTH AFRICA

Post-apartheid South Africa marked the beginning of a new dawn. It was at this moment where the meaning and the need for CSR began gaining more relevance in the society.

#### 3.3.1 THE RECONSTRUCTION AND DEVELOPMENT PROGRAM

In 1994, the apartheid regime was successfully dismantled. South Africa held its first democratic election and the ANC was elected as the ruling party.<sup>91</sup> The ANC took over a fragile South Africa with the hopes of carefully mending and unifying it. One of the first noteworthy policies implemented by the ANC was the Reconstruction and Development Program (RDP) introduced in 1994. The RDP was a socio-economic policy put forth by the ANC to address the aftermath of the apartheid regime.<sup>92</sup> It was drawn up after a series of careful and thorough negotiations and meetings between the ANC and all relevant stakeholders such as the Congress of South African Trade Unions, the South African Communist party and civil society.<sup>93</sup>

The plan of action focused on the alleviation of poverty and the transformation of the socio-economic climate. As mentioned above, the apartheid regime left behind a huge gap of inequalities between South Africans. Apart from this, many people had been killed, maimed and displaced. Therefore something had to be done and it was believed that the RDP would collectively rebuild the nation and create peace and stability amongst the people. In addition, it was believed that lifting people from poverty would in turn contribute to the creation of a stable economy and promote holistic development.<sup>94</sup> There were six basic principles that underlined the programme, and they included a program that was; sustainable, people-driven, that promoted peace and security, that aimed to build the nation, that promoted economic

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<sup>91</sup> Pule A 'SA's Democratic Story an Inspiration' available at <https://www.vukuzenzele.gov.za/sa's-democratic-story-inspiration> (accessed on 13th July 2018).

<sup>92</sup>Wessels D 'South Africa's Reconstruction and Development Programme: A Better Life For All' (1999) 3 *Journal of Social Sciences* 236.

<sup>93</sup> SAHO 'South Africa's Key Economic Policies Changes(1994-2013)' available at <https://www.sahistory.org.za/article/south-africa's-key-economic-policies-changes-1994-2013> (accessed on 13th July 2018).

<sup>94</sup>Wessels D 'South Africa's Reconstruction and Development Programme: A Better Life For All' (1999) *Journal of Social Sciences* 237.

growth, and one that merged reconstruction and development.<sup>95</sup> It is evident that the RDP program was a multi-faceted program that aimed to tackle most issues that the people faced. These issues included; lack of housing, youth under development, lack of education and training, inadequate medical services and many others.

Shortly after its inception, the RDP was replaced with the Growth, Employment and Redistribution (GEAR) policy in 1996.<sup>96</sup> Many were of the opinion that the RDP failed to fulfil its promises and it was a failure. A large volume of backlash came from housing related matters.<sup>97</sup> The RDP embarked on a journey of building as many houses as possible to realise its goals. Critics believe they were over ambitious in this regard, which was a contributing cause to its downfall.<sup>98</sup> There were issues several issues with the housing project such as the location of the houses. Some houses were located at isolated areas that lacked basic facilities such as hospitals and schools. A separate complaint related to the quality of the material used, substandard materials meant low quality structures that posed a risk to the owners.<sup>99</sup> All this and a series of other issues marked the end of the RDP, which was subsequently replaced with the revamped GEAR. GEAR had strong hopes of reducing poverty through boosting economic growth. It has been labelled a moderate failure for failing to achieve its goal in the intended period, however, GEAR can be praised for taking South Africa a step closer in development.<sup>100</sup>

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<sup>95</sup> Bailey S 'RDP Housing: A Success or Failure?' available at <http://www.cplo.org.za/wp-content/uploads/2017/02/BP-432-RDP-Housing-May-2017.pdf> (accessed on 18th July 2018).

<sup>96</sup> Knight R 'South Africa: Economic Policy and Development' available at <http://richardknight.homestead.com/files/sisaconomy.htm> (accessed on 18th July 2018).

<sup>97</sup> Bailey S 'RDP Housing: A Success or Failure?' available at <http://www.cplo.org.za/wp-content/uploads/2017/02/BP-432-RDP-Housing-May-2017.pdf> (accessed on 18th July 2018).

<sup>98</sup> Corder C 'The Reconstruction and Development Program: Success or Failure?' (1997) 41 *Social Indicators Research* 188.

<sup>99</sup> Mokgalapa S 'Quality of RDP Housing Remains Poor' available at <http://www.politicsweb.co.za/news-and-analysis/quality-of-rdp-housing-remains-poor--stevens-mokqa> (accessed on 19th July 2018).

<sup>100</sup> Streak JC 'The GEAR Legacy: Did GEAR Fail or Move South Africa Forward in Development' (2004) 21 *Development Southern Africa* 287.

### 3.3.2 UBUNTU

The concept of Ubuntu is deeply enshrined in the African culture. Archbishop Desmond Tutu, in 2008, defined the word to mean ‘the essence of being human’.<sup>101</sup> It is closely associated with notions like brotherhood, personhood, and connectedness.<sup>102</sup> After 1994, the concept of Ubuntu was used as a tool to reconnect South Africans through the promotion of peace and reconciliation. These elements were vital to the transformation journey that South Africa was about to embark on post-apartheid. Ubuntu recognises that human beings are connected, and one must always be conscious of the people around them. This ideology was carried through the transformation, socially, legally and politically.<sup>103</sup> As much as the word ‘Ubuntu’ is not mentioned in the current constitution, its values are carried out through concepts like the value of human dignity.<sup>104</sup>

### 3.3.3 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

The Constitution of the Republic of South Africa was enacted in 1996 by Parliament under the governance of the late (then President) Nelson Mandela.<sup>105</sup> According to section 2, the constitution is the supreme law of the land, and any conduct that is inconsistent with it shall be declared invalid.<sup>106</sup> This shows that the provisions contained in the constitution have to be strongly upheld in one-way or the other. With that said, one of the goals found in the preamble is “to improve the quality of life of all citizens”.<sup>107</sup> On the other hand, the Bill of Rights contained in chapter 2 of the constitution actively promotes values of democracy, freedom and

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<sup>101</sup> Metz T ‘What Tutu’s Ubuntu Credo Teaches the World About Justice and Harmony’ available at <https://www.news24.com/Analysis/what-tutus-ubuntu-credo-teaches-the-world-about-justice-and-harmony-20171005> (accessed on 20th July 2018).

<sup>102</sup> Flipping W ‘Ubuntu: Applying African Philosophy in Building Community’ available at [https://www.huffingtonpost.com/reverend-william-e-flippin-jr/ubuntu-applying-african-p\\_b\\_1243904.html](https://www.huffingtonpost.com/reverend-william-e-flippin-jr/ubuntu-applying-african-p_b_1243904.html) (accessed on 20th July 2018).

<sup>103</sup> Ogude J ‘The Meaning and Value of Ubuntu in Human and Social Development in Africa’ available at <https://www.templetonworldcharity.org/projects/meaning-and-value-of-ubuntu-human-and-social-development-africa> (accessed on 20th July 2018).

<sup>104</sup> There are Constitutional Court cases that confirm the underlying value of Ubuntu to the Constitution. See *S v Makwanyane and Another* at para 302 as per Mokgoro J, *Minister of Home Affairs v Fourie (Doctors for Life International and Others, Amici Curiae); Lesbian and Gay Equality project and Others v Minister of Home Affairs* 2006 (10 SA 254 (CC) at para 48 as per Sachs J.

<sup>105</sup> Constitution of the Republic of South Africa, 1996.

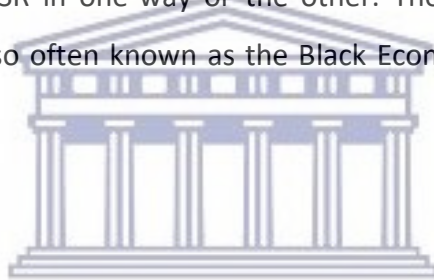
<sup>106</sup> Section 2.

<sup>107</sup> Constitution of the Republic of South Africa, 1996.



human dignity.<sup>108</sup> Therefore, this together places a duty on natural and juristic persons to consider their behaviour in the light of the constitution and most importantly, the Bill of Rights.

After the ANC took power, it has actively promulgated a series of Acts of parliament that aimed to promote transformation post-1994. Some of these Acts are industry specific and some are not. All these Acts expect the industry to be more socially conscious, to promote social cohesion and to give back to the community. Examples of these Acts include but are not limited to; the Mining and Health Act,<sup>109</sup> the Broad Based Black Economic Empowerment Act (BBBEE),<sup>110</sup> the Employment Equity Act 55 of 1998,<sup>111</sup> the National Empowerment Fund Act 105 of 1998,<sup>112</sup> the Skills Development Act 97 of 1998 (as amended in 2003)<sup>113</sup> and many others. All these Acts seek to promote CSR in one-way or the other. The Broad-Based Black Economic Empowerment Act (BBBEE), also often known as the Black Economic Empowerment Act (BEE) deserves special mention.



### 3.3.4 THE BBBEE ACT

The BBBEE Act was promulgated in 2003.<sup>114</sup> In the same light of unification and transformation, the Acts' objectives are twofold. The first objective is to ensure that Black people were afforded equal opportunities in the ownership, control and the running of companies.<sup>115</sup> The second objective is to minimize income inequality gap that existed between people.<sup>116</sup> In an attempt to understand how the Act contributed to CSR, it is important to have basic background knowledge on how it works. For the purposes of the Act, 'black people' are defined as African,

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<sup>108</sup> Constitution of the Republic of South Africa, 1996

<sup>109</sup> Mining Health and Safety Act 29 Of 1996.

<sup>110</sup> Broad-Based Black Economic Empowerment Act 53 of 2003.

<sup>111</sup> Employment Equity Act 55 of 1998.

<sup>112</sup> National Empowerment Fund Act 105 of 1998.

<sup>113</sup> Skills Development Act 97 of 1998.

<sup>114</sup> Broad-Based Black Economic Empowerment Act 53 of 2003.

<sup>115</sup> Pillay C 'Brush Up On Your BEE Knowledge' available at <https://www.smesouthafrica.co.za/Brush-up-on-your-BEE-knowledge/> (accessed on 22<sup>nd</sup> July 2018).

<sup>116</sup> Pillay C 'Brush Up On Your BEE Knowledge' available at <https://www.smesouthafrica.co.za/Brush-up-on-your-BEE-knowledge/> (accessed on 22<sup>nd</sup> July 2018).

Indian, and coloured South African citizens, and those entitled to be citizens.<sup>117</sup> Therefore, while trying to advance economic transformation, the Act entrusted the Minister of Trade and Industry for guidelines. These guidelines come in the form of codes of good practice and the establishment of an Advisory Council to the President.<sup>118</sup>

In 2007, the Minister of Trade and Industry put forth BBBEE Codes of Good Practice.<sup>119</sup> These codes were amended in 2013. These codes seek to provide clear guidelines for the operating and the measurement of BBBEE across all sectors. They are binding on all state organs and public entities.<sup>120</sup> This is important in ensuring that no one gets an upper hand. In other words, it seeks implementation and measurement that is equal and fair in all sectors of the economy. The Codes were crafted specifically through section 9 of the Act with an aim to promote the objectives of the Act.<sup>121</sup> These objectives highlight a wide array of issues such as; meaningful participation in building the economy, transforming the racial profile of companies' owners, promotion of investments by black people, encouraging and empowering black people to hold leadership positions, helping rural communities to access economic opportunities, and improving access to finance for black economic empowerment.<sup>122</sup>

Apart from the framework highlighting implementation guidelines, the codes also include a scorecard system.<sup>123</sup> This scorecard has five elements (with specific weighting) that have to be taken into consideration. These elements include; equity ownership, management, enterprise development, skills development and corporate social investment.<sup>124</sup> With that said, firms will

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<sup>117</sup>Broad-Based Black Economic Empowerment Act 53 of 2003.

<sup>118</sup>Department of Trade and Industry 'Economic Empowerment' available at [http://www.dti.gov.za/economic\\_empowerment/bee.jsp](http://www.dti.gov.za/economic_empowerment/bee.jsp) (accessed on 21st July 2018).

<sup>119</sup>Department of Trade and Industry 'Economic Empowerment' available at [http://www.dti.gov.za/economic\\_empowerment/bee.jsp](http://www.dti.gov.za/economic_empowerment/bee.jsp) (accessed on 21st July 2018).

<sup>120</sup>Department of Trade and Industry 'Economic Empowerment' available at [http://www.dti.gov.za/economic\\_empowerment/bee.jsp](http://www.dti.gov.za/economic_empowerment/bee.jsp) (accessed on 21st July 2018).

<sup>121</sup> Section 9 BBBEE Act.

<sup>122</sup>Department of Trade and Industry 'Economic Empowerment' available at [http://www.dti.gov.za/economic\\_empowerment/bee.jsp](http://www.dti.gov.za/economic_empowerment/bee.jsp) (accessed on 21st July 2018).

<sup>123</sup> Legal G 'What is the New B-BBEE Scorecard and How Does it Work?' available at <https://www.golegal.co.za/new-b-bbee-scorecard-how-work/> (accessed on 22<sup>nd</sup> July 2018).

<sup>124</sup> Legal G 'What is the New B-BBEE Scorecard and How Does it Work?' available at <https://www.golegal.co.za/new-b-bbee-scorecard-how-work/> (accessed on 22<sup>nd</sup> July 2018).

be allocated points that reflect their compliance with the Act and the abovementioned elements. It is important to note that there is no explicit legal obligation to comply with BBBEE requirements. However, a firm's BBBEE status is an important factor and could possibly affect its reputation and its financial opportunities. While trying to access government and other tenders, BBBEE ratings are a strong requirement for a successful tender.<sup>125</sup> This shows that a firm is conscious of its expectations and is on board with the transformation agenda. In addition, some industries require a good BBBEE rating in order to obtain a licence (such as mining).<sup>126</sup> Therefore there is an external pressure and in the firms interest to comply with BBBEE requirements and obtain a good rating. Thus, the BBBEE Act can be viewed as one of the instruments that aligns with the duties and responsibilities that CSR seeks to promote.

### 3.4. THE KING REPORTS ON CORPORATE GOVERNANCE

The first of the series of King Reports on Corporate Governance was issued in 1994.<sup>127</sup> It includes guidelines on the corporate governance and operation of companies in South Africa. It is purely based on principles and guidelines therefore making it non-legislative. Since 1994, there have been 3 additional reports that have been issued.

#### 3.4.1 KING I

The first King Report was issued in 1994. It was issued by the King Committee on Corporate Governance. Mervyn King, a judge of the Supreme Court of Appeal chaired the committee on corporate governance that published this report.<sup>128</sup> This report was responsible for guiding the newly democratic South Africa on the dynamics of a free economy. This was an important

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<sup>125</sup>ValashiyaA 'Advantages of Being BBBEE Compliant' available at <http://sabera.co.za/blog/2018/06/06/advantages-bbbee-compliant/> (accessed on 24<sup>th</sup> July 2018).

<sup>126</sup>ValashiyaA 'Advantages of Being BBBEE Compliant' available at <http://sabera.co.za/blog/2018/06/06/advantages-bbbee-compliant/> (accessed on 24<sup>th</sup> July 2018).

<sup>127</sup>Walker D 'King Code and Developments in Corporate Governance' available at <http://www.mondaq.com/southafrica/x/113790/Corporate+Governance/King+Code+And+Developments+In+Corporate+Governance> (accessed on 24<sup>th</sup> July 2018).

<sup>128</sup>Walker D 'King Code and Developments in Corporate Governance' available at <http://www.mondaq.com/southafrica/x/113790/Corporate+Governance/King+Code+And+Developments+In+Corporate+Governance> (accessed on 24<sup>th</sup> July 2018).

precautionary measure for South Africa especially after the corporate blunders that were happening at that time. It was significant as it helped put corporate governance into perspective. The report was recognised internationally for being one of the most 'comprehensive publications on the subject'.<sup>129</sup> It promoted an inclusive approach to corporate governance that took into consideration stakeholders. Although remarkable at that time, it had to be replaced due to evolving global dynamics and changes in domestic laws.

### 3.4.2 KING II

The second King Report (King II) replaced King I in March 2002. It reviewed and expanded on the knowledge and guidelines that were expounded in King I. It applied to all listed companies, the public sector and financial institutions.<sup>130</sup> Apart from reviewing and expanding on King I, it also introduced new aspects of corporate governance. This new approach included firmer principles and was not purely economic in its thinking. It embraced different aspects such as; sustainable growth, reporting, auditing and many others. It also introduced the concept of the triple bottom line reporting.<sup>131</sup> This encapsulated consciousness of; the people, the planet and profit.

King II went over and beyond a financial focus to embrace the economic, social and environmental aspects of companies' actions. It encouraged and promoted its principles so that all companies could adopt them. These principles highlighted the following areas; directors and their responsibilities, risk management, internal audit, integrated sustainable reporting, and accounting and auditing.<sup>132</sup> In addition, King II was also adopted in part as a Johannesburg Stock

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<sup>129</sup> IODSA 'King Committee on Corporate Governance' available at <http://www.ecseonline.com/PDF/King%20Committee%20on%20Corporate%20Governance%20-%20Executive%20Summary%20of%20the%20King%20Report%202002.pdf> (accessed on 24<sup>th</sup> July 2018).

<sup>130</sup> National Treasury 'Corporate Governance- King II Report on Corporate Governance' available at <http://www.treasury.gov.za/legislation/pfma/public%20entities/Protocol%20on%20Corporate%20Governance%20in%20the%20public%20sector.pdf> (accessed on 24<sup>th</sup> July 2018).

<sup>131</sup> Yaxley H 'The Difference Between King III and King II' available at <http://www.prconversations.com/difference-between-king-ii-and-king-iii-reports-on-governance/> (accessed on 24<sup>th</sup> July 2018).

<sup>132</sup> Kakabadse A & Korac-Kakabadse N 'Corporate Governance in South Africa: Evaluation of the King II Report (Draft)' (2010) 2 *Journal of Change Management* 309.

Exchange (JSE) listing requirement.<sup>133</sup> This meant that companies that were listed on the JSE had to explain how they have complied with King II and if not, a justification of their non-compliance in their annual reports. This was to enable stakeholders to track progress and to evaluate their company.

### 3.4.3 KING III

In 2009, the third edition of the King code (King III) was introduced. It applied to all entities regardless of the manner of their incorporation. It replaced King II due to the promulgation of the Companies Act 71 of 2008 (new Companies Act) and the changes that came with it.<sup>134</sup> King III aimed to improve the quality of leadership in companies by letting directors know what is expected of them as leaders. Under King III, companies had to produce an annual integrated report of how they have complied with the Code and how their actions have both positively and negatively impacted the community in question.<sup>135</sup>

King III dealt with a number of elements. It was divided into nine chapters and housed 75 principles.<sup>136</sup> Apart from revising elements contained in King II, it also unveiled new elements of Corporate Governance that had not been listed in prior South African reports. This just added on to meaningful contribution and the ground-breaking track record that the reports have had since their inception. Under this report, companies have had to consider the impact of IT and its importance in corporate governance.<sup>137</sup> This showed how contemporary the code was while keeping up with emerging trends. It also introduced the different concepts linked to the new Companies Act, which will be discussed further below.

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<sup>133</sup> IODSA 'King Committee on Corporate Governance' available at <http://www.ecseonline.com/PDF/King%20Committee%20on%20Corporate%20Governance%20-%20Executive%20Summary%20of%20the%20King%20Report%202002.pdf> (accessed on 24<sup>th</sup> July 2018).

<sup>134</sup> Pierce V 'King III What Does it All Mean?' available at <http://www.polity.org.za/article/king-iii-what-does-it-all-mean-2009-12-01> (accessed on 25<sup>th</sup> July 2018).

<sup>135</sup> Pierce V 'King III What Does it All Mean?' available at <http://www.polity.org.za/article/king-iii-what-does-it-all-mean-2009-12-01> (accessed on 25<sup>th</sup> July 2018).

<sup>136</sup> King III, 2009.

<sup>137</sup> King III, 2009.

King III had a wider yet firmer approach, as compared to King II. It adopted a flexible principles-based approach rather than a rigid 'one-size-fits-all' approach.<sup>138</sup> This is because it acknowledged that not every principle will be applicable to every type of business. It set its influence on three core principles, namely; leadership, corporate citizenship and sustainability.<sup>139</sup> It promoted responsible and ethical leadership, as this would guide sustainable development. Sustainability was given prominence because it is believed to be a good source of opportunities. In practice, King III was responsible for establishing the need for a Social and Ethics Committee (SEC), the functions and relevance thereof shall be discussed further in the next section.<sup>140</sup> And lastly, corporate citizenship was given importance as it would open doors to social transformation and greater efficacies, which would be beneficial to the triple bottom line.<sup>141</sup> King III had an interesting approach that was known as 'apply or explain'.<sup>142</sup> This feature mandated management to describe how they applied the principles of King III and if they did not, to explain the reason why. This disclosure feature enabled stakeholders to engage in meaningful discussion with regards to the companies' decisions. However, this already showed how an entity was given the liberty to choose whether to comply with the code or not. King III was not law and failure to comply did not result in any punitive damages. Though it is important to note that the JSE listing requirements still applied.

Since the new Companies Act was promulgated after King III, it changed the company law landscape in South Africa. With that said, King III was expected to be in tune with the updated legislation. Therefore, in many aspects, King III embodied several elements of the new Companies Act. A good example is with the director's duties. The code required directors to act in the best interest of the company while upholding the three core elements of King III as

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<sup>138</sup> Pierce V 'King III What Does it All Mean?' available at <http://www.polity.org.za/article/king-iii-what-does-it-all-mean-2009-12-01> (accessed on 25th July 2018).

<sup>139</sup> Bowmans 'Quick Guide to Corporate Governance and King III' available at <http://services.bowman.co.za/Brochures/OnlineServices/CorporateGovernance/Corporate-Governance-King-3.pdf> (accessed on 25th July 2018).

<sup>140</sup> King III, 2009.

<sup>141</sup> Pierce V 'King III What Does it All Mean?' available at <http://www.polity.org.za/article/king-iii-what-does-it-all-mean-2009-12-01> (accessed on 25th July 2018).

<sup>142</sup> Bowmans 'Quick Guide to Corporate Governance and King III' available at <http://services.bowman.co.za/Brochures/OnlineServices/CorporateGovernance/Corporate-Governance-King-3.pdf> (accessed on 25th July 2018).

mentioned above.<sup>143</sup> Similarly, section 76 of the new Companies Act states that a director must act in the best interests of the company too.<sup>144</sup> Therefore, the code can be seen as a guideline that emphasized the contents of the Act, but did not force compliance. The influence of the new Companies Act will be discussed in depth in the following section of this chapter.

### 3.4.4 KING IV

King IV is the last and latest report on Corporate Governance in South Africa. It was published in November 2016 and came into operation on 1<sup>st</sup> April 2017. There was a need for revision of King III due to the following reasons. As it has occurred with prior revisions, changes have happened globally and with domestic legislation that required updating of the report. Some of these changes are in line with technological advancements and information security.<sup>145</sup> A separate reason for the updating of the code was convenience. King III was said to have many requirements and principles that caused a lot of confusion during application. Many types of companies (such as non-profit organisations) were unsure of which principles to apply and how to apply them.<sup>146</sup> Therefore, King IV embodies changes that lacked in King III and introduced new approaches to corporate governance in South Africa.<sup>147</sup>

The King IV Code sets out guidelines and principles that serve as the current benchmark for Corporate Governance in South Africa. It is applicable to all entities regardless of their form of incorporation. It is a principles and outcomes-based code.<sup>148</sup> This means that its focus is not only on the mere application of rules but also the outcomes that will be achieved. It seeks to

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<sup>143</sup> IODSA 'King III' available at <http://admin.sun.ac.za/admin/Finance/new/docs/king%20III.pdf> (accessed on 26<sup>th</sup> July 2018).

<sup>144</sup> Section 76.

<sup>145</sup> Crisp J 'King IV Report: Risk, Compliance and Assurance' available at <http://www.barnowl.co.za/insights/king-iv-report-risk-compliance-and-assurance/> (accessed on 27<sup>th</sup> July 2018).

<sup>146</sup> PWC 'Local Government and King III' available at [https://salga.org.za/Documents/Municipalities/Municipla%20Focus/Municipal%20Public%20Accounts%20Committee%20MPAC/10-08285\\_IOD-Discussion-Paper-on-LG-KingIII\\_04.pdf](https://salga.org.za/Documents/Municipalities/Municipla%20Focus/Municipal%20Public%20Accounts%20Committee%20MPAC/10-08285_IOD-Discussion-Paper-on-LG-KingIII_04.pdf) (accessed on 27<sup>th</sup> July 2018).

<sup>147</sup> Nienabar R 'King IV Report on Corporate Governance in South Africa' available at [http://www.sara.co.za/sara/1\\_%20King%20IV%20%20Report\\_reward%20implications\\_06062017.pdf](http://www.sara.co.za/sara/1_%20King%20IV%20%20Report_reward%20implications_06062017.pdf) (accessed on 26<sup>th</sup> July 2018).

<sup>148</sup> Crisp J 'King IV Report: Risk, Compliance and Assurance' available at <http://www.barnowl.co.za/insights/king-iv-report-risk-compliance-and-assurance/> (accessed on 27<sup>th</sup> July 2018).

promote a 'hands on approach' to corporate governance. This code is praised for representing and having a true outlook on the practical side of corporate governance.<sup>149</sup> It aims to make application of principles simpler, more fluid, and much easier for all entities through its summarised principles. It is clear that the code has made efforts to have a more inclusive approach in terms of stakeholder involvement. In addition, it greatly emphasizes integrated reporting.<sup>150</sup> This in turn allows for greater transparency and accountability of the company's actions. In a nutshell, it exerts pressure on firms to be continuously conscious of their actions in the daily running of their business.

King IV has been applauded for the changes that it has brought forth. As mentioned above, King IV has tried to adopt a simple approach to ease application for a wider audience. It has achieved this through successfully summarizing the 75 principles found in King III to 16 principles (plus one for investors) in King IV.<sup>151</sup> In doing so, it clearly differentiates between principles, practices and governance principles so as to have more clarity and make application less exhausting. Principles shall be achieved through application of practices. These principles were simplified and have recommended practices that could be incorporated in the daily running of all types and sizes of companies with ease. The changes that have been made in King IV, aim to improve integrated thinking through corporate governance. King IV has moved away from King III's 'apply or explain' approach to a different approach. King IV explores a new 'apply and explain' approach.<sup>152</sup> Entities are now expected to apply the code's principles and to explain how they have done so. This method (applying and reporting) hopes to create an environment where entities are more in touch with the principles of corporate governance in their daily running. It hopes to move away from the mechanical 'tick-box' approach, to encouraging entities to consciously apply good corporate governance principles in every decision they make.

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<sup>149</sup> Watson S 'Practical Implications of King IV' available at <http://www.polity.org.za/article/practical-implications-of-king-iv-2016-05-10> (accessed on 27th July 2018).

<sup>150</sup> Nienabar R 'King IV Report on Corporate Governance in South Africa' available at [http://www.sara.co.za/sara/1\\_%20King%20IV%20%20Report\\_reward%20implications\\_06062017.pdf](http://www.sara.co.za/sara/1_%20King%20IV%20%20Report_reward%20implications_06062017.pdf) (accessed on 26th July 2018).

<sup>151</sup> PwC 'King IV- Steering Point' available at <https://www.pwc.co.za/en/publications/king4.html> (accessed on 29th July 2018).

<sup>152</sup> Maharaj A & Combrink J 'King IV- The Why, The What and The What Now?' available at <https://www.mazars.co.za/Home/News/Articles/KING-IV-THE-WHY-THE-WHAT-AND-THE-WHAT-NOW/> (accessed on 29th July 2018).



In addition to the ease of application, the principles in King IV possess unique flexibility. This flexibility seeks to facilitate and encourages the broad acceptance of corporate governance in South Africa. In turn, this puts a strong emphasis on the importance of inclusivity in the code through sectoral supplementation. In the code, reservations have been made for different sectors such as; small and medium enterprises (SME's), municipalities, Non-Profit Organisations, pension funds and many others.<sup>153</sup> Each of these supplements includes a detailed explanation on sector specific terminology, recommendations, and how the principles can be adopted to fit the entity in question.

King IV has a strong view on transparency. It makes it clear that an entity should not operate in a vacuum, but rather as an important element of society to achieve good corporate citizenship.<sup>154</sup> It notes that the actions of an entity do sometimes have an effect (both positive and negative) on the society it operates in. Therefore to ensure harmonious co-existence, it is vital to have an open and civil relationship with the society through transparency. King IV hopes to achieve this by promoting goal setting, delegation of responsibility, and evaluation through reporting. Another way this can be achieved is through the entity's affairs such as; transparency in tax policies, audit disclosures and in remuneration.<sup>155</sup> This was evident in 2017, where King IV provisions were declared mandatory for all companies that are listed on the JSE. This shall be discussed further in the next section.

Similar to King III, King IV has face lifted concepts that existed prior. Apart from the shift to an 'apply and explain' model, King IV also re-introduced the need for a SEC.<sup>156</sup> It is important to note that past reports (such as King III) have touched upon the importance of SEC's, however King IV goes a step further. This is possibly so as to be in line with the enhancement of ethical governance. With that said, the SEC's prominence is quite visible in King IV. It explores in depth

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<sup>153</sup>Pwc 'King IV- Steering Point' available at <https://www.pwc.co.za/en/publications/king4.html> (accessed on 29th July 2018).

<sup>154</sup>Maharaj A &Combrink J 'King IV- The Why, The What and The What Now?' available at <https://www.mazars.co.za/Home/News/Articles/KING-IV-THE-WHY-THE-WHAT-AND-THE-WHAT-NOW>(accessed on 29th July 2018).

<sup>155</sup> Foster R 'King IV: What Has Changed?' available at <https://www.skillsportal.co.za/content/king-iv-what-has-changed> (accessed on 29th July 2018).

<sup>156</sup>Dialogue 'Beyond Compliance: Social and Ethics Committee Under King IV' available at <http://dialogue.co.za/beyond-compliance-social-ethics-committees-king-iv/> (accessed on 29th July 2018).

and in detail the need and the functioning of this committee. This includes the setting up of the committee, and it also outlines the roles of the members. King IV recommends that all organisations create a structure that will govern and oversee the social and ethics performance of that organisation. Another addition to the code is the concept of information technology. As mentioned above, King III did appreciate information technology however King IV focuses on a new aspect. It views information and technology as two separate elements.<sup>157</sup> With that said, management is required to provide equal administration of both elements.

The efforts of the King codes have had and continue to have far reaching effects. Despite being a form of 'soft law', there have been instances where it has been used as a reference to influence rulings in a court of law. In *Mthimunye-Bakoro v Petroleum Oil and Gas Corporation of South Africa (SOC) Limited and Another*,<sup>158</sup> Davis J passed his judgement based on precedent set in the judgment in *South African Broadcast Incorporation Limited v Mpofo and Another*.<sup>159</sup> In this judgment, a full bench gave approval for specific corporate governance principles by relying on provisions set out in the King code. In *Democratic Alliance v South African Broadcasting Corporation SOC Ltd and Others*, Schippers J points out SABC's corporate governance failures by citing appropriate standards as set out in King III.<sup>160</sup> Furthermore, in *Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company Limited and Others*, the court explored different aspects of corporate governance through the King code.<sup>161</sup> Through the code, the court touched up on the essence of corporate governance, the expectations from the Board of directors, and the importance of social responsibility.<sup>162</sup> From this discussion one can gather that the King codes' influence is slowly infiltrating the judiciary. This infiltration is a clear indication of the persuasive powers and values that the code holds. Ultimately, these values

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<sup>157</sup>Myburg F 'The Key Differences Between King III and King IV' available at <http://www.polity.org.za/article/the-key-differences-between-king-iii-and-king-iv-2017-01-11> (accessed on 29th July 2018).

<sup>158</sup>*Mthimunye-Bakoro v Petroleum Oil and Gas Corporation of South Africa (SOC) Limited and Another* (12476/2015) [2015] ZAWCHC 113; 2015 (6) SA 338 (WCC).

<sup>159</sup>*South African Broadcast Incorporation Limited v Mpofo and Another* [2009] 4 ALL SA 169 (GSJ).

<sup>160</sup>*Democratic Alliance v South African Broadcasting Corporation Soc Ltd and Others* (12497/2014) [2015] ZAWCHC 182; [2016] 1 All SA 504 (WCC); 2016 (3) SA 468 (WCC) (27 November 2015).

<sup>161</sup>*Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company Limited and Others* (7655/05, 7655/05) [2006] ZAGPHC 47 (15 May 2006).

<sup>162</sup>*Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company Limited and Others* (7655/05, 7655/05) [2006] ZAGPHC 47 (15 May 2006).

could be used as a stepping stone in the possible transition to stricter CSR control in South Africa.

### 3.5. THE JOHANNESBURG STOCK EXCHANGE

The Johannesburg Stock Exchange (JSE) is an institution where stocks are bought and sold. The JSE is the largest stock exchange in Africa and in the top 20 in the world.<sup>163</sup> Apart from facilitating the buying and selling of stock, the JSE is also responsible for regulation of the stock and of investors. Companies listed on the JSE are required to comply with the JSE Listing Requirements. After the publication of King III in 2010, the JSE incorporated aspects of the code into the JSE Listing Requirements.<sup>164</sup> This set the JSE apart as being one of the first stock exchange institutions in the world that promoted social consciousness. This was known as the JSE Socially Responsible Index (SRI). In 2015, the SRI was replaced with the FTSE/JSE Responsible Investment (RI) index. However, to fully capture the essence of the FTSE/JSE RI index, it is vital to briefly explore the JSE SRI index.



#### 3.5.1 THE JSE SRI INDEX

The JSE SRI index was launched in 2004. It was a one of its kind index in an emerging market. It hoped to track the sustainability performance of companies listed on the JSE in South Africa. Companies were assessed based on set criteria that embodied elements of the triple bottom line, for a score.<sup>165</sup> It embodied a purely environmental, social and governance (ESG) focus. This criterion includes an assessment on; environmental issues, health and safety issues,

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<sup>163</sup> JSE 'JSE Remains Amongst Top Regulated Exchanges' available at <https://www.jse.co.za/articles/jse-among-top-regulated-exchanges> (accessed 29th July 2018).

<sup>164</sup> JSE 'JSE and IoDSA Collaborate on Corporate Governance Guidelines' available at <https://www.jse.co.za/news/jse-and-iodsa-collaborate-on-corporate-governance-guidelines> (accessed on 29th July 2018).

<sup>165</sup> Gladyssek O & Chipeta C 'The Impact of the Socially Responsible Investment Index Constituent Announcements on Firm Price: Evidence from the JSE' (2012) 15 *South African Journal of Economic and Management Sciences* 430.

stakeholder engagement, governance reporting and many others.<sup>166</sup> The JSE SRI index was effective for several reasons. It had a positive impact on companies as it pushed them employ friendly CSR methods. In addition, companies with good scores on the index stood a chance of being selected by prospective investors. It is evident that the index is a step in the right direction. For example, in 2010, out of 109 companies that were assessed, more than half met the criteria.<sup>167</sup> In 2015, it was replaced by the FTSE/JSE RI index.

### 3.5.2 THE FTSE/JSE RI INDEX

In 2015, the JSE took a step further by entering into an agreement with Financial Times Stock Exchange (FTSE) Russell.<sup>168</sup> FTSE Russell is an international index supplier. The JSE decided to replace the SRI with the Responsible Investment Index so as to promote and create more awareness of corporate governance and sustainability. It hopes to encourage companies to incorporate CSR friendly practices and to support sustainability in their practices. This index seeks to assess a company's performance based on the disclosure that it makes rather than what it does.<sup>169</sup> In 2017, the JSE declared King IV's provisions to be mandatory for all listed companies. This is the first form of mandatory application derived from King IV.<sup>170</sup> Listed companies were now expected to fully disclose all their activities in the annual report. This disclosure includes how they implemented good corporate governance and their remuneration policy. Furthermore, this disclosure is measured against a set of standards set by the JSE. Companies are reviewed twice a year, in June and in December. The process entails measuring up against two indices; the FTSE/JSE Responsible Investment index and the FTSE/JSE Responsible Investment Top 30 index.<sup>171</sup> It is important to note that compliance with this index

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<sup>166</sup>Le Roux C 'The Johannesburg Stock Exchange Socially Responsible Index' available at <http://www.gaaaccounting.com/the-johannesburg-stock-exchange-socially-responsible-investment-index/> (accessed on 29<sup>th</sup> July 2018).

<sup>167</sup>Le Roux C 'The Johannesburg Stock Exchange Socially Responsible Index' available at <http://www.gaaaccounting.com/the-johannesburg-stock-exchange-socially-responsible-investment-index/> (accessed on 29<sup>th</sup> July 2018).

<sup>168</sup> FTSE 'FTSE Russell About Us' available at <http://www.ftserussell.com/about-us> (accessed on 29<sup>th</sup> July 2018).

<sup>169</sup> Webber Wentzel 'Launch of the new FTSE/JSE Responsible Investment Index Series' available at <http://www.polity.org.za/article/launch-of-the-new-ftsejse-responsible-investment-index-series-2015-10-15> (accessed on 29<sup>th</sup> July 2018).

<sup>170</sup>Dlamini S 'JSE Makes King IV Provisions Mandatory for Listed Entities' available at <https://www.iol.co.za/business-report/jse-makes-king-iv-provisions-mandatory-for-listed-entities-9915866> (accessed on 29<sup>th</sup> July 2018).

<sup>171</sup> Webber Wentzel 'Launch of the new FTSE/JSE Responsible Investment Index Series' available at <http://www.polity.org.za/article/launch-of-the-new-ftsejse-responsible-investment-index-series-2015-10-15> (accessed on 29<sup>th</sup> July 2018).

is compulsory for every company that has been listed on the JSE and if it meets the requirements, such as being listed on the FTSE All World Index.<sup>172</sup> Companies are encouraged to have a good track record because the FTSE/JSE RI index is an international assessment. This gives the company an extra push and makes it stand out globally to future investors. In a nutshell, the efforts and commitment displayed by the JSE can be seen as a successful force that seeks to promote the regulation of CSR in South Africa.

### **3.6. THE COMPANIES ACT**

The Companies Act 71 of 2008 (the new Companies Act) came into effect in 2011.<sup>173</sup> It replaced the old Companies Act 61 of 1973. The new Act is responsible for transforming the company law landscape in South Africa. Apart from the Act, there are also company regulations that help with application. The changes in the Act affect almost every type of business in the country in terms of regulation of the company. These changes range from new requirements while registering a company to regulating shareholder agreements and business rescue processes. However, for the purposes of this chapter, focus will be on CSR related provisions.

#### **3.6.1 THE SEC**

As a result of CSR becoming more apparent, there was a general consensus that there is a need for big companies to be more responsible.<sup>174</sup> This Companies Act does make provision for this through different sections in the Act. However, this provision is not enough and this shall be discussed further below. It is important to note that the Act makes no explicit mention of CSR. However from the demands of section 72, CSR related expectations could be inferred. Section 72 (4) (a) gives the Minister of Trade and Industry the authority to appoint a SEC, by

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<sup>172</sup> JSE 'JSE Launches new FTSE/JSE Responsible Investment Index Series' available <https://www.jse.co.za/articles/jse-launches-new-ftse-jse-responsible-investment-index-series> (accessed on 29th July 2018).

<sup>173</sup> Companies Act 71 of 2008.

<sup>174</sup> Deloitte 'The Companies Act: The Social and Ethics Committee and the management of the Ethics Performance of the Company' available at [https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA\\_SocialAndEthicsCommitteeAndTheManagementOfTheEthicsPerformance\\_24032014.pdf](https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_SocialAndEthicsCommitteeAndTheManagementOfTheEthicsPerformance_24032014.pdf) (accessed on 29th July 2018).

regulation.<sup>175</sup> It is evident that big companies, especially those that have direct effects on the society, are actively encouraged to give back to the communities in which they operate. They are now legally bound to be more active and conscious about the decisions they make. In addition, this codification solidifies the fact that social consciousness in corporate governance is steadily gaining traction. Section 72(4)(a) only extends its application to listed companies, state-owned companies, and companies with significant public interest. Therefore, it is safe to say that, the King IV's recommendations on SEC's have a much wider ambit and have a further reach compared to those listed in the Companies Act.

It is through regulation 43 that section 72 (4) (ii) takes effect. Regulation 43 spells out all the requirements needed while setting up the committee.<sup>176</sup> In terms of regulation 43, only certain types of companies are mandated to set up this committee as mentioned above. These are; state owned companies, public listed companies and any company with a listed public interest score in terms of regulation 26(2).<sup>177</sup> Regulation 26(2) provides a method that enables the calculating of a company's public interest score at the end of each financial year. In effect, this leaves out companies that fall out of the regulations requirements. Furthermore, this committee must be headed by at least three directors or prescribed officer and one has to be non-executive. A non-executive director is an external director that is not physically involved with the daily running of the company.<sup>178</sup> This distinct requirement translates to upholding the notion of transparency in the running of the company. It is already evident that as much as this provision has a legal bearing, it still fails to cover companies that fall out of the requirements in regulation 43(1). This loophole could be exploited to escape social responsibility. Therefore, from the on-going discussion once can gather that the stipulations of section 72 and regulation 43 are useful. However, they are not enough as they fail to stretch their reach as far as King IV in terms of SECs.

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<sup>175</sup>S 72(4)(a).

<sup>176</sup>Reg 43.

<sup>177</sup>Reg 43.

<sup>178</sup>Companies Act 71 of 2008.

### 3.6.2 DIRECTORS' DUTIES

Many professionals strive to attain managerial positions in companies, such as being directors. However, many are unaware of the responsibilities that this title bears. Section 76 of the Act spells out what is expected of a director in South Africa.<sup>179</sup> This section is responsible for outlining the duties and responsibilities of directors. Prior to enactment of the Act, director's duties in South Africa were governed by common law and precedent (case law). Under common law, director's duties comprised of their overarching fiduciary duty, and the duty of care and skill.<sup>180</sup> The Companies Act codified the common law position, although common law still finds application as long as it is consistent with the Act. It is important to note that the codification of these duties has had profound and far-reaching effects on the corporate landscape in South Africa. Section 76 is responsible for creating a dispensation of statutory fiduciary duties for directors. It can be inferred that the legislature has set the pedestal very high for directors for a specific reason. This is to encourage directors to be mindful in their decision-making and to discourage them from dishonesty. It is important to understand that the definition of a director has been broadened. In terms of sections 75 and 76, the definition is expanded to include a member of the audit committee or committee of the board of the company (even if such person is not a director of the company), also any person occupying the position of a director or alternate director and prescribed officers as defined.<sup>181</sup>

Under section 76, directors are required to act in good faith for a proper purpose and in the best interest of the company. Directors are also obliged to exercise reasonable care. This entails acting with the degree of care, skill and diligence (which may reasonably be expected of a person, measured both objectively and subjectively). In addition, directors also have a duty to act in the best interests of the company. In other words, a director is not permitted to utilise their position, power, or information to, for example, gain advantage for any external person and/or cause harm to the company.<sup>182</sup> Section 76(2) steers away from the common law duties by introducing a new feature to the director's duties. This entails placing a duty on directors to

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<sup>179</sup> S 76.

<sup>180</sup> Lumb G 'Director's Fiduciary Duties' available at <https://www.cliffedekkerhofmeyr.com/en/news/press-releases/2010/directors-fiduciary-duties.html> (accessed on 12th September 2018).

<sup>181</sup> Ss 75-76.

<sup>182</sup> S 76(3).

disclose any material information to the company board.<sup>183</sup> This raises a question as to whether the new Act has introduced duties that are too harsh to the director, compared to the well-known common law duties. This may be the case, however, section 76(4) seeks to present an appropriate defence for the director, also known as the business judgment rule. This rule comprises of an objective and a subjective element. Under the business judgment rule, a director is deemed to be free of liability if the director has taken reasonably diligent steps to become informed of the matter, had no material personal interest, and had a rational basis for believing that the decision was in the best interest of the company.<sup>184</sup> In the unlikely event where a director fails to abide to the duties, this may result in the director being held liable in terms of section 77 of the Act. Section 77 encapsulates extensive and voluminous circumstances that can render a director liable.<sup>185</sup> In terms of section 77(2)(a) of the Act, a director of a company may be held liable (in accordance with the principles of the common law relating to the breach of a fiduciary duty) for any loss, damages or costs sustained by the company as a consequence of a breach by the director of the duties contemplated, inter alia, in section 76 of the Act.<sup>186</sup> This was evidenced by the judgment in *S v Blue Platinum Ventures* whereby a director was held liable in his personal capacity for the first time in South Africa.<sup>187</sup> With that said, it is clear that the legislature intended to ensure that directors are held accountable for their actions. Thus, one can attest that this stance positively contributes and solidifies the purpose of transparency and ethical leadership that is enshrined in CSR.

### 3.7 ENVIRONMENTAL RELATED ACTS

In a South African context, it is impossible to explore CSR without looking at it from an environmental angle. This is due to the fact that South Africa is riddled with mines, and is responsible for producing and exporting a large number of minerals and metals. The mining industry is a very lucrative industry that supports approximately 4.5 million dependants and

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<sup>183</sup>S 76(2).

<sup>184</sup>S 76(4).

<sup>185</sup> S 77.

<sup>186</sup>S 77(2)(a).

<sup>187</sup>*S v Blue Platinum Ventures (Pty) Limited and Another (A588/15) [2015] ZAGPPHC 980.*



contributes approximately R304.4 billion to the GDP (2016).<sup>188</sup> As much as the mining sector has had vast positive contributions to the country as a whole, its negative effects cannot go unnoticed. According to the South African Human Rights Council, the mining sector is saturated with challenges ranging from land, water, housing and the environment.<sup>189</sup> From an environmental perspective, many mining companies have been accused of causing severe irreversible damage to the environment by dumping of waste, pollution of the soil, air, and water. To ensure protection of the environment and minimizing of the damage caused thereof, there have been several acts of parliament that have been passed.

In terms of section 19(2) of the Companies Act, a person is not, solely by reason of being an incorporator, shareholder or director of a company, liable for any liabilities or obligations of the company, except when stated otherwise.<sup>190</sup> However, there have been instances where a director of a company may be held liable personally, especially in terms of environmental violations. In terms of the Mineral and Petroleum Resources Development Act, 28 of 2002 (MPRDA), any person convicted under this Act could be liable to a fine or to imprisonment or both.<sup>191</sup> Section 24N (8) of the National Environmental Management Act 107 of 1998 (NEMA), states that the directors of a company are jointly and severally liable for any negative impact on the environment, whether advertently or inadvertently caused by the company.<sup>192</sup> Furthermore, section 34(7) of NEMA states that any person who was a director at the time when the offence was committed is guilty of the said offence in terms of Schedule 3, and liable to the specified penalty.<sup>193</sup> Schedule 3 lists provisions that would attract application of section 34(7) of NEMA. In terms of liability, a person convicted in terms of NEMA could be liable to a

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<sup>188</sup> Chamber of Mines 'Facts and Figures 2016' available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjbmObrp6neAhXEKMAKHZ6aD9IQFJAAeqQICBAC&url=http%3A%2F%2Fwww.mineralscouncil.org.za%2Findustry-news%2Fpublications%2Ffacts-and-figures%2Fsend%2F17-facts-and-figures%2F442-facts-and-figures-2016&usq=AOvVawOxBscqhV9798BcbOUDBT4p> (accessed on 21<sup>st</sup> June 2018).

<sup>189</sup>Rall K 'South Africa: How Mining Damages Communities and the Environment' available at <https://www.hrw.org/news/2018/08/27/south-africa-how-mining-damages-communities-and-environment> (accessed on 21<sup>st</sup> June 2018).

<sup>190</sup>S 19(2).

<sup>191</sup> The Mineral and Petroleum Resources Development Act, 28 of 2002.

<sup>192</sup>S 24N(8), National Environmental Protection Act 107 of 1998.

<sup>193</sup>S 34(7) NEMA.

fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or both.<sup>194</sup> With that said, it can be gathered that companies may not get off scot-free after committing environmental offences. Laws in place help magnify the importance of companies to be present, and to reflect a high level of commitment to good corporate citizenship. The effect of such laws translates to their effectiveness and the fact that similar lessons can be imported in other areas of law as well. In other words, environmental regulations have proved to be effective insofar as environmental offences are concerned. Thus, to ensure similar effectiveness in CSR, lessons from environmental legislation could provide a good point of reference.

#### 4. CONCLUSION

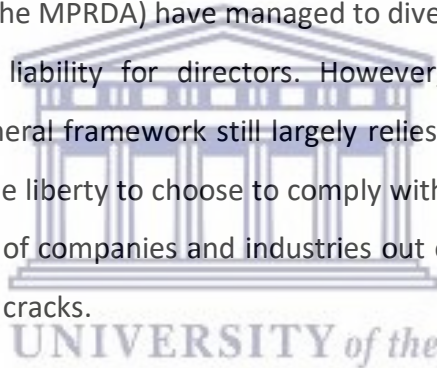
The CSR landscape has evolved greatly in South Africa. Coming from an era where segregation and inequality was institutionalized, to having world-class social responsibility guidelines is a huge step in the right direction. This chapter has examined the growth of CSR, it has traced changes that happened during the apartheid regime, and post-apartheid. From the Sullivan Principles to the Ubuntu philosophy, South Africa has truly redeemed itself in so many ways. Another remarkable Act is the BBBEE, to date it is responsible for displaying strong commitment to social development programs. These programs aim to improve the access to education, health care, housing, skills development, and other economic development. Apart from being beneficial to the community, being BBBEE compliant also makes a company attractive to investors. BBBEE has truly made commendable strides in addressing historical imbalances.

The King Reports on Corporate Governance seek to provide guidelines and promote good corporate governance. To date, there have been four revisions of the code. Currently, the King IV is responsible for all corporate governance matters. It is clear that the King code has evolved to cater for all types of companies in terms of application of the code. It has summarized its

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<sup>194</sup> S 24(G) NEMA.

principles and began working together with the JSE. Together with the JSE, King IV mandates application to all listed companies. It is clear that the King code has received widespread acceptance for its efforts. To an extent, courts have begun using it as a reference in their rulings. Furthermore, the King code and the Companies Act have also brought forth a valuable dimension to CSR. This is through the introduction of a SEC. A SEC is vital component to a company that aspires to be a good corporate citizen. It is tasked with ensuring that there is implementation, monitoring and reflection of their actions. It is important to note that this is the only solid form of pressure that the law exerts on companies in terms of CSR. Another commendable addition is the proactive nature of environmental legislation. It is well known that South Africa is home to many mines. With that said, issues of environmental degradation are widespread. Thus, in the name of good governance and sustainability, environmental legislation (such as NEMA and the MPRDA) have managed to divert from the track and put forth strict penalties and personal liability for directors. However, the bigger picture remains unchanged, and is that the general framework still largely relies on self-regulation and is non-legislative. This gives entities the liberty to choose to comply with good CSR practices or not. As a result, it leaves certain types of companies and industries out of the loop, which could result in principles falling through the cracks.



In the final analysis, this chapter has established the existing framework that regulates CSR in South Africa. From this, one can gather that there is still work that has to be done. The current framework is largely voluntary which ultimately creates confusion and instability in the system. Therefore, the need for stricter control presents itself. Against this background, the next chapter visits alternate jurisdictions with the view of unearthing lessons that could be imported into the South African system.

### CHAPTER 3 – CSR IN THE EUROPEAN UNION AND IN INDIA

Chapter 3 explores alternate jurisdictions. This chapter is twofold. The first part of this chapter will study the European Union. Here, this chapter will trace the evolution of CSR to where it is currently. It delves into regulatory mechanisms of CSR in the European Union and its voluntariness. The second half of the chapter will study India. India is the first country in the world to legislate CSR. This part of the chapter will explore the history of CSR in India and the main reasons that led to the adoption of a CSR Act. At the end, this chapter will conclude by highlighting the key lessons obtained from the two jurisdictions.

This chapter is important for the following reasons. Countries like India and Denmark do not fully believe in the self-regulation of CSR. In this context, the Danish perspective is only used for comparative purposes and will not be discussed in detail. The lack of faith in self-regulation is based on the premise that making CSR mandatory will create a win-win situation for the company and the society.<sup>195</sup> Large companies already make a lot of money. In most cases, the running of their business has a direct effect on the society in which they operate. Thus, to be fair, it is only logical for them to be conscious of their surroundings. In India, the Companies Act of 2013 made CSR compulsory.<sup>196</sup> This was mainly to encourage large firms to give back to their communities in one way or another. The Act laid down detailed requirements for types of companies that were bound by its provisions. Implementation is usually mandatory for much larger companies compared to smaller ones. Similarly, the Danish government has also established mandatory requirements for CSR. The Danish government enforces a mandatory reporting requirement for listed companies and large companies. The Danish government seeks

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<sup>195</sup> Singh A 'CSR + Transparency: Can Voluntary Disclosure Increase Shareholder Value?' available at <https://www.forbes.com/sites/csr/2012/02/14/csr-transparency-can-voluntary-disclosure-increase-shareholder-value/#2bc5c96728e9> (accessed on 13<sup>th</sup> August 2018).

<sup>196</sup>The Companies Act 18 of 2003.

to use CSR as a tool of increasing the competitiveness of the Danish market in the global economy. However, for the purposes of this chapter, focus will be on India

## PART ONE: THE EUROPEAN UNION

### 1. INTRODUCTION

CSR is a global phenomenon that is practiced in many countries worldwide. As with legal principles, CSR frameworks vary from jurisdiction to jurisdiction. Some countries uphold the voluntary nature of CSR that aims to give the company the liberty to freely incorporate social and environmental elements in their daily functioning. It is alleged that CSR was designed to be voluntary.<sup>197</sup> However, other countries believe that CSR should not be a voluntary practice but rather a mandatory one.<sup>198</sup> This is because many companies try to bypass the system by only complying with requirements on paper but rarely implementing these practices in reality. The number of corporate failures that have been occurring in the recent past fuelled this thinking.

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The European Union (EU) is an advocate for CSR in the region. It views CSR as a self-regulatory mechanism. The European Commission strongly believes that CSR has numerous benefits to the EU. These benefits include building a cohesive society, triumphing innovation, lowering costs and many others.<sup>199</sup> The EU has continually showed its support for CSR in numerous ways throughout the years. Companies are encouraged to stretch their influence past economic benefits by including social and environmental strategies. In 2001 it passed a Green Paper that

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<sup>197</sup>Villamayor J 'Voluntary Corporate Social Responsibility: The Power of Convictions' available at <https://juanvillamayor.wordpress.com/2010/09/29/csr-mandatory-or-voluntary/> (accessed on 2<sup>nd</sup> August 2018).

<sup>198</sup>Goenka H 'Why Is It a Good Idea To Mandate Corporate Social Responsibility' available at <https://economictimes.indiatimes.com/opinion/et-commentary/why-it-is-a-good-idea-to-mandate-corporate-social-responsibility/articleshow/16101647.cms> (accessed on 2<sup>nd</sup> August 2018).

<sup>199</sup> European Commission 'Corporate Social Responsibility (CSR)' available at [https://ec.europa.eu/growth/industry/corporate-social-responsibility\\_en](https://ec.europa.eu/growth/industry/corporate-social-responsibility_en) (accessed on 2<sup>nd</sup> August 2018).

proposed CSR to be incorporated into EU policy.<sup>200</sup> Furthermore in 2002, the EU hosted the European Multistakeholder Forum.<sup>201</sup> This forum established a platform for open dialogue between EU members regarding the evolution and development of the CSR agenda. There have been many initiatives put forth in the EU regarding CSR. Therefore, CSR is not a new topic in the EU. It is important to note that through this transitional period, a shift had occurred. This shift gave birth to two separate movements in the EU. The first group is advocating for stricter control in form of a legislative framework. They are of the opinion that mandatory compliance is the only way companies will abide to CSR thoroughly. However on the other hand, the second group is fighting to keep CSR voluntary, with minimal external or policy interference.<sup>202</sup>

## 2. THE EUROPEAN UNION

The EU is a unified body of 28 European member states that share common values.<sup>203</sup> It was formed in 1993 in the Netherlands. This union focuses on deeper cooperation in trade, border control, environmental protection, research and development and many others. Three main organs govern the EU, and these are; the Parliament, the EU Council, and the European Commission.<sup>204</sup> The EU also seeks to uphold certain values, which range from; human dignity, democracy, rule of law, human rights and many others. These values are responsible for

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<sup>200</sup>IISD 'The European Union Green Paper on CSR' available at [https://www.iisd.org/business/issues/eu\\_green\\_paper.aspx](https://www.iisd.org/business/issues/eu_green_paper.aspx) (accessed on 2nd August 2018).

<sup>201</sup>European Union 'European Multistakeholder Forum on Corporate Social Responsibility' available at [https://europa.eu/newsroom/events/european-multistakeholder-forum-corporate-social-responsibility\\_en](https://europa.eu/newsroom/events/european-multistakeholder-forum-corporate-social-responsibility_en) (accessed on 2nd August 2018).

<sup>202</sup>Esken B *Corporate Social Responsibility in the European Union – A Concept in Need of a Hybrid Multi-Level Governance Solution* (Bachelor Thesis, University of Twente, 2010) 2.

<sup>203</sup> European Union 'Countries' available at [https://europa.eu/european-union/about-eu/countries\\_en](https://europa.eu/european-union/about-eu/countries_en) (accessed on 13th August 2018).

<sup>204</sup> European Parliament 'Three: 3 Main Institutions of the EU' available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20090525STO56250+0+DOC+XML+V0//EN> (accessed on 13<sup>th</sup> August 2018).

forming the basis of the EU and are codified in the Lisbon Treaty and the EU Charter of Fundamental Rights.<sup>205</sup>

## 2.1 THE EVOLUTION OF CSR IN EUROPE

In the recent past, the European business environment has transformed greatly. There has been a lot of buzz about the CSR concept and what it holds for businesses. However, tracing the history of CSR in Europe can be a somewhat elaborate task. This is due to the fact that the EU is comprised of 28 different member states. These member states have joined the EU at different economic and social stages, and thus, each member state is unique in its own right. With that said, it is acceptable to rather trace CSR development of the EU as a unit. The concept of CSR came to light in the EU in 1996. CSR Europe was formed in 1996 by former European Commission president, Jacques Delors.<sup>206</sup> It started off rather small with 20 business leaders with the aim of creating a platform for open dialogue on CSR matters. It connected business minded individuals who shared a passion for sustainable practices throughout Europe. CSR Europe had a vision of using this platform to express their concerns and to communicate their CSR related aspirations to the EU.<sup>207</sup>



CSR Europe managed to gain a lot of popularity in the business community. As a result, EU heads of state were compelled to act on the plea by CSR Europe at the Lisbon Summit. The plea included a vision to make Europe 'capable of sustainable economic growth with more and better jobs and greater social cohesion by 2010.'<sup>208</sup> In other words, they were encouraged to participate actively in making more sustainable decisions. As a result of this plea, the European Commission in conjunction with relevant stakeholders formulated a green paper. This green

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<sup>205</sup> European Parliament 'Values and Objectives' available at <https://europarlamenti.info/en/values-and-objectives/values/> (accessed on 13<sup>th</sup> August 2018).

<sup>206</sup> Grayson D & Hodges A 'Europe: CSR Campaign Update' available at <https://ccbriefing.corporate-citizenship.com/2002/12/01/europe-csr-campaign-update/> (accessed on 14<sup>th</sup> August 2018).

<sup>207</sup> CSR Europe 'History' available at <https://www.csreurope.org/history> (accessed on 14<sup>th</sup> August 2018).

<sup>208</sup> Murray A 'Corporate Social Responsibility in the EU' (2003) *Centre For European Reform* 25.

paper was known as the European Commission's Green Paper 'Promoting a European Framework for Corporate Social Responsibility'.<sup>209</sup>

## 2.2 THE EUROPEAN COMMISSION GREEN PAPER, 2001

The European Commission's Green Paper was published in July 2001.<sup>210</sup> After a successful petition, it was drafted to bring CSR Europe's plea to light. This green paper is an important milestone in terms of the spread of CSR in the EU. It is a 35 page detailed document that seeks to promote sustainable practices both in the EU and internationally. It was declared as a medium that can foster sustainability and profitability for companies.<sup>211</sup> In other words, it can be used to create a win-win situation whereby companies and the society can both benefit from each other. However, Eberheard-Harribey, in his article states that the EU was relatively late to accept CSR in comparison to other CSR related initiatives on the European scene.<sup>212</sup> This is somewhat the case, as there have been prior CSR related initiatives that did not receive much attention, such as the World Business Council on Sustainable Development created in 1992.<sup>213</sup>

To understand the green paper well, it is important to lay down the definition of CSR as per the Commission. The definition is responsible for clarifying many doubts regarding the true essence of CSR. The Commission defines CSR as 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis'.<sup>214</sup> From this, one can infer the following. First, in terms of the Commission, companies are required to engage with both the society and the environment. This is despite the common understanding that CSR only deals with social issues and not the

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<sup>209</sup> Murray A 'Corporate Social Responsibility in the EU' (2003) *Centre For European Reform* 25.

<sup>210</sup> *The Green Paper on Promoting a European Framework for Corporate Social Responsibility* (DOC 10/9 of 18<sup>th</sup> July 2001).

<sup>211</sup> Tencati A & Perrini F 'New Tools To Foster Corporate Social Responsibility Behavior' (2004) 53 *Journal of Business Ethics* 174.

<sup>212</sup> Harribey L 'Corporate Social Responsibility as a New Paradigm in European Policy: How CSR Comes to Legitimate the European Regulation Process (2006) 6 *Corporate Governance International Journal of Business in Society* 361.

<sup>213</sup> Harribey L 'Corporate Social Responsibility as a New Paradigm in European Policy: How CSR Comes to Legitimate the European Regulation Process (2006) 6 *Corporate Governance International Journal of Business in Society* 361

<sup>214</sup> *The Green Paper on Promoting a European Framework for Corporate Social Responsibility* (DOC 10/9 of 18<sup>th</sup> July 2001).



environment. Second, it is emphasized that CSR should not be running separately from the business strategy. It is important to incorporate CSR in daily business operations. Third, this engagement is of a voluntary nature. On the other hand, the green paper further dissects the definition into two. The first portion deals with CSR as an internal dimension. This examines how CSR can be promoted and integrated into a company's strategy internally. In other words, it touches upon things like employee satisfaction, health and safety regulations, managing environmental impacts and many others.<sup>215</sup> It is acknowledged that having satisfied employees and being more environmentally conscious has helped boost productivity and competitiveness. The second portion of the definition deals with the external dimension. It explores how companies are more than just profit making machines. It acknowledges that globalisation and the spread of multinational companies have resulted in the creation of a global village. Which in turn necessitates good corporate citizenship so as to co-exist harmoniously. This dimension focuses on external issues such as local communities, suppliers and consumers and the promotion of human rights.<sup>216</sup> It respects that CSR has a strong human rights element. This is duly recognised and protected by international instruments such as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises.<sup>217</sup>

The green paper had a specific vision for CSR in Europe. It hoped to encourage and develop innovative practices throughout the EU.<sup>218</sup> These practices were to deliver a high level of understanding coupled with transparency and accountability.<sup>219</sup> As a result, European companies and citizens were expected to be aware of their respective roles in contributing to the larger agenda. This holistic approach to CSR was to be achieved in a number of suggested methods. The green paper acknowledged that prior strategic planning was vital to realising the

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<sup>215</sup>*The Green Paper on Promoting a European Framework for Corporate Social Responsibility* (DOC 10/9 of 18<sup>th</sup> July 2001).

<sup>216</sup>*The Green Paper on Promoting a European Framework for Corporate Social Responsibility* (DOC 10/9 of 18<sup>th</sup> July 2001).

<sup>217</sup>*The Green Paper on Promoting a European Framework for Corporate Social Responsibility* (DOC 10/9 of 18<sup>th</sup> July 2001).

<sup>218</sup>Antsova M &Csikosova A 'Influence of European Union Policy to Corporate Social Responsibility' (2015) 23 *Procedia Economics and Finance* 734.

<sup>219</sup>Antsova M &Csikosova A 'Influence of European Union Policy to Corporate Social Responsibility' (2015) 23 *Procedia Economics and Finance* 735.

CSR agenda. This meant that management and directors had to be equipped with the necessary skills and tools to ensure functionality.<sup>220</sup> In addition, companies were encouraged to keep an open mind to the idea of change. This is because the new strategy would have lasting changes on routine, planning and the overall management of the company.

After the green paper was issued, the Commission opened the floor for consultations.<sup>221</sup> These consultations hoped to gather knowledge and input from different stakeholders. This information was to be a vital component in the building of a brand new CSR framework for the EU. It is clear that the EU adopted a 'soft law' approach to the issue.

The Green Paper was the first instrument that formally advocated for CSR in the EU.<sup>222</sup> Although it was embraced by a lot of people, it equally received a lot of backlash. As a result of the consultations, many stated their fears and concerns with the green paper. Some people believed that it embodied a purely business or economic perspective.<sup>223</sup> Another criticism targeted the voluntary nature that the green paper was advocating for. Many Non-governmental organisations (NGO's) were unimpressed by this. They envisioned CSR as a separate regulatory framework that would exert more pressure for companies to comply with its requirements.<sup>224</sup> In other words, they believed that with CSR being voluntary, companies would fail to adhere and there was a need for something stricter. Another striking criticism came through the vagueness of the definition. Critics expressed how uncertain they were about what exactly the Commission was aiming to achieve.<sup>225</sup> With that said, it is safe to say that there was a conflict between people that wanted it to be voluntary, and others who advocated

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<sup>220</sup>Bohnic R 'Corporate Social Responsibility: (A European Legal Perspective)' (2014) 20 *Canterbury Law Review* 27.

<sup>221</sup>Euractiv 'EU-wide Corporate Social Responsibility Strategy Launched' available at <https://www.euractiv.com/section/social-europe-jobs/news/eu-wide-corporate-social-responsibility-strategy-launched-green-paper-now-online/> (accessed on 18<sup>th</sup> August 2018).

<sup>222</sup>Bohnic R 'Corporate Social Responsibility: (A European Legal Perspective)' (2014) 20 *Canterbury Law Review* 21.

<sup>223</sup>MacLeod S 'Corporate Social Responsibility within the European Union Framework' (2005) 23 *Wisconsin International Law Journal* 545.

<sup>224</sup>MacLeod S 'Corporate Social Responsibility within the European Union Framework' (2005) 23 *Wisconsin International Law Journal* 545.

<sup>225</sup>MacLeod S 'Corporate Social Responsibility within the European Union Framework' (2005) 23 *Wisconsin International Law Journal* 546.

for stricter regulations. Carrying on the topic of stricter regulations, it is important to note that the European Parliament has passed a directive to this effect.

### **2.3 NON-FINANCIAL REPORTING IN TERMS OF THE EU DIRECTIVE**

In the EU, there are laws that seek to uphold the spirit of CSR. However, their adequateness is debatable. A noteworthy directive is directive 2014/95/EU of the European Parliament. This directive amends directive 2013/34/EU and explores the necessity of non-financial disclosures of large companies.<sup>226</sup>It requires large companies to report on non-financial aspects of their running. This directive was placed to support companies in achieving the goal of transparency. Large companies are expected to disclose their non-financial performance in terms of social, environmental, ethical and other non-financial aspects.

Directive 2014/95/EU only applies to large companies. These companies are required to be public companies that employ more than 500 employees such as banks, listed companies, insurance agencies and others.<sup>227</sup> It is already clear that this directive leaves out smaller companies that do not meet the 500-employee mark. Directive 2014/95/EU places a duty on qualifying companies to disclose how they have stretched their reach past profit making. The disclosure has to include issues like; the environmental contribution, social responsibility, anti-corruption, anti-bribery, the protection of human rights, and diversity on the company board (in terms of age, gender, etc). It is important to note that in terms of reporting, companies are given the freedom to choose their preferred guidelines. The European Commission has published a set of reporting guidelines in 2017, however these are not mandatory. Companies may choose to report in terms of other guidelines such as the UN Global Compact, ISO 260000,

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<sup>226</sup> European Commission 'Non-Financial Reporting' available at [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en)(accessed on 18th August 2018).

<sup>227</sup> European Commission 'Non-Financial Reporting' available at [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en)(accessed on 18th August 2018).

or the OECD guidelines for multinational enterprise.<sup>228</sup> One can gather that the efforts displayed by the EU Commission are praiseworthy. This is due to the fact that they have managed to strongly emphasize the importance of transparency through its directive. This is a step in the right direction for the EU.

## 2.4 THE EUROPEAN MULTISTAKEHOLDER FORUM ON CSR (EMS FORUM)

As a consequence of the feedback from the green paper, there was a need to take CSR a step further. As a result, the European Multistakeholder Forum (hereafter EMS Forum) on CSR was established. It was entrusted with the project of helping to carefully define and clarify the doubts held by critics of the green paper.<sup>229</sup>

The EMS Forum on CSR was created in July 2002. The Commission established the forum with the vision to encourage dialogue and expand on the understanding of CSR and its functioning, after the green paper. This understanding was to be exchanged between businesses, trade unions, the civil society and all relevant stakeholders. The overarching objective was to foster CSR through the promotion of transparency, innovation and compliance with CSR norms.<sup>230</sup> This was to be achieved through educating key role players on the relationship between CSR and sustainable development. In other words, the forum hoped to clarify green paper doubts so as to pave the way forward. As a result, the Forum issued its final report after 20 months of deliberation in June 2004.

The final report contains condensed recommendations that have been gathered from the round table discussions. These discussions focused on key areas relevant to the region such as;

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<sup>228</sup> European Commission 'Non-Financial Reporting' available at [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en) (accessed on 18th August 2018).

<sup>229</sup>Loew T 'The Results of the European Multistakeholder Forum on CSR in the view of Business, NGO and Science' (2005) *Institute 4 Sustainability* 3.

<sup>230</sup>Cooperatives Europe 'EU Multi-Stakeholder Forum on CSR' available at <https://coopseurope.coop/resources/news/eu-multi-stakeholder-forum-corporate-social-responsibility> (accessed on 22nd August 2018).

the knowledge of CSR, small and medium enterprises (SMEs), transparency, and development. The report contains nine non-binding recommendations that are aimed at all relevant stakeholders, EU institutions and companies.<sup>231</sup> These recommendations include; raising awareness on CSR concepts, exchanging information and principles, engaging in research, encouraging cooperation between companies in integrating CSR methods, introducing CSR in educational institutions, creation of a welcoming environment that will foster CSR, and ensuring public authorities play their role in CSR effectiveness.<sup>232</sup>

The EMS Forum final report has undoubtedly made a valuable contribution to the understanding and the conceptualization of CSR in the EU. It is responsible for bringing different people together to foster deeper cooperation and understanding. Also, it has been praised for appreciating and coordinating different opinions with the aim of normalizing the concept of CSR in the EU. However, it is important to note that the final report also received a lot of criticism. De Buck, Secretary General of the Union of Industrial and Employers Confederations of Europe (UNICE) was very unimpressed with the experience. He claimed that the process was unnecessarily tiresome and complicated.<sup>233</sup> Some critics believe that the 20 months of round table deliberations have failed to yield fruitful results. This is based on the fact that the recommendations are non-binding, therefore not very useful in defining the way forward.<sup>234</sup> As a result, there has been an evident creation of parallel schools of thought, with businesses on the one side, and NGO's, trade unions and other stakeholders on the other side. NGOs define CSR as conforming to valid and expected norms of corporate conduct.<sup>235</sup> On the other hand, businesses prefer a softer and more lenient approach. They are strong believers

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<sup>231</sup> Broughton A 'Multi-stakeholder forum issues CSR recommendations' available at <https://www.eurofound.europa.eu/publications/article/2004/multi-stakeholder-forum-issues-csr-recommendations> (accessed on 2nd August 2018).

<sup>232</sup> Broughton A 'Multi-stakeholder forum issues CSR recommendations' available at <https://www.eurofound.europa.eu/publications/article/2004/multi-stakeholder-forum-issues-csr-recommendations> (accessed on 2nd August 2018).

<sup>233</sup> Loew T 'The Results of the European Multistakeholder Forum on CSR in the view of Business, NGO and Science' (2005) *Institute 4 Sustainability* 18.

<sup>234</sup> Loew T 'The Results of the European Multistakeholder Forum on CSR in the view of Business, NGO and Science' (2005) *Institute 4 Sustainability* 22.

<sup>235</sup> Kinderman D 'CSR in the EU 1993-2013: Institutional Ambiguity, Economic Crises, Business Legitimacy and Bureaucratic Policies' (2013) 51 *Journal of Common Market Studies* 713.

that market freedom is indispensable that if they are required to implement CSR, it should come out of their free will and not be imposed. Businesses are strong advocates of the voluntary nature and dynamism of CSR. However, NGO's believe that a firmer approach, in the form of a legal framework is vital to fully realize the CSR agenda in the EU. The NGO's believed that the report failed dismally in putting forth a mechanism that will cater to compliance and monitoring.<sup>236</sup> To put everything into perspective, Amnesty International stated that the report had good intentions, but there still needs to be a lot more dialogue to achieve its goals in the future.<sup>237</sup> With that said, it is clear that the Commission had to revise its plans so as to pave the way for the future of CSR in the EU.

## 2.5 FUTURE OF CSR IN THE EU

The European Commission created Europe 2020 in 2010, following the end of the Lisbon Strategy. It is a 10-year plan that seeks to advance the economy of the EU and to promote sustainable development. It is an initiative that hopes to achieve 'smart, sustainable and inclusive growth' which is in harmony with national and European regulations and policies.<sup>238</sup> Many believed that it was a necessary move especially after the financial crisis that shook the Eurozone in 2008.<sup>239</sup> This new strategy hopes to create a better environment for recovery and the stability of the European economy. It encapsulates a number of targets that should be met during the course of its existence, in this case, by the year 2020. These targets include boosting the economy of the EU, creating employment opportunities, deepening social cohesion and holistic sustainable growth.<sup>240</sup>

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<sup>236</sup>Loew T 'The Results of the European Multistakeholder Forum on CSR in the view of Business, NGO and Science' (2005) *Institute 4 Sustainability* 22.

<sup>237</sup>Loew T 'The Results of the European Multistakeholder Forum on CSR in the view of Business, NGO and Science' (2005) *Institute 4 Sustainability* 22.

<sup>238</sup>Rexhepi G & Kurtishi S 'Corporate Social Responsibility (CSR) and Innovation – The Drivers of Business Growth' (2013) *75 Procedia Social and Behavioral Sciences* 538.

<sup>239</sup>Bongardt A & Torres F 'The Competitiveness Rationale, Sustainable Growth, and the Need For Enhanced Economic Coordination' (2010) *45 Review of European Economic Policy* 136.

<sup>240</sup>Bongardt A & Torres F 'The Competitiveness Rationale, Sustainable Growth, and the Need For Enhanced Economic Coordination' (2010) *45 Review of European Economic Policy* 140.

The Europe 2020 strategy highlights social innovation as one of its key goals.<sup>241</sup> This is a very distinct approach to CSR in the EU. It is important to understand that the EU as a collective is the world's second- largest economy.<sup>242</sup> With that said, it is clear that their actions do have a large sphere of influence. This influence can be felt throughout neighbouring countries and the global market. Thus, it is extremely important that the EU government does all in its power to mainstream CSR. In terms of innovation, companies are encouraged to be more creative not only in terms of ground breaking technological advancements, but also in terms of CSR. They are compelled to be aware of their social and environmental effects.<sup>243</sup> It is important to note that, it is the proactive nature of companies that will collectively assist in fulfilling the Europe 2020 goals. In a nutshell, as much as CSR still remains voluntary in the EU, visions like Europe 2020 create hope for more control.



## 2.6 THE DEADLOCK

As mentioned above, one of the key issues that have managed to slow down the progress of CSR in the EU is enforcement. It is vital to briefly revisit this conflict for the purposes of this study. There are strong opposing views in terms of whether CSR should be a voluntary practice or a mandatory practice. Currently, CSR is largely a voluntary mechanism that companies adhere to out of their own free will. This is obviously with the exception of certain aspects such as non-financial reporting as per directive 2014/95/EU.

This debate is not a recently discovered debate. It has roots dating back to the publication of the Green Paper by the European Commission in 2001. The buzz regarding these two issues began after the discussions of the Green Paper. As already mentioned, two distinct perspectives emerged. Companies strongly believed that CSR should remain voluntary. In that sense,

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<sup>241</sup> European Commission 'Growth- Social Innovation' available at [http://ec.europa.eu/growth/industry/innovation/policy/social\\_en](http://ec.europa.eu/growth/industry/innovation/policy/social_en) (accessed on 2nd August 2018).

<sup>242</sup> Budiman A 'Few See EU as Worlds Top Economic Power Despite its Relative Might' available at <http://www.pewresearch.org/fact-tank/2017/08/09/few-see-eu-as-worlds-top-economic-power-despite-its-relative-might/> (accessed on 2<sup>nd</sup> August 2018).

<sup>243</sup> Rexhepi G & Kurtishi S 'Corporate Social Responsibility (CSR) and Innovation – The Drivers of Business Growth' (2013) 75 *Procedia Social and Behavioral Sciences* 538.

companies could have the freedom to stretch their influence past profit making if they desired. This would in turn allow companies to have a flexible approach in implementing CSR suited to their unique needs and wants.<sup>244</sup> However on the other hand, NGO's strongly felt that there should be stricter control in terms of CSR. They feel that the Commission failed them by failing to ensure that companies actually abide to social, environmental and ethical decision-making.<sup>245</sup> Despite mandatory reporting and auditing, they still believe that it is inefficient due to the lack of independent monitoring. In addition, non-financial reporting is only applicable to larger companies, this in turn leaves behind a large number of smaller companies that should have an equal duty unaccounted for. NGO's believe that the only way of realising the CSR agenda is for it to be enshrined in legislation.<sup>246</sup> It is important to note that both perspectives present rather valid arguments, however, this argument shall be discussed further in the following chapter.



## 2.7 PART ONE CONCLUSION

Part one focused on CSR in the EU. It is evident from the abovementioned explanation that the EU took its time in adopting and accepting CSR. This can be attributed to the fact that the EU is a union. This union is comprised of 28 different member states with 28 different legal systems. This can pose a challenge in trying to achieve the uniform application and widespread acceptance of certain policies and regulations, CSR being one of them. However, it is important to note that despite this challenge, the EU has made efforts in bringing this concept to light in numerous occasions, and achieving measurable success at each attempt.

CSR Europe was one of the first advocates for good corporate citizenship in the EU. Through this, CSR Europe managed to submit a plea at the Lisbon Summit requesting CSR to be more

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<sup>244</sup>Euractiv 'CSR Back on the EU Agenda' available at <https://www.euractiv.com/section/social-europe-jobs/linksdossier/corporate-social-responsibility-back-on-the-eu-agenda/> (accessed on 23<sup>rd</sup> August 2018).

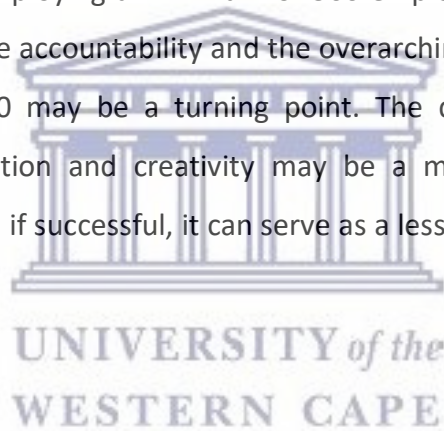
<sup>245</sup>Euractiv 'CSR Back on the EU Agenda' available at <https://www.euractiv.com/section/social-europe-jobs/linksdossier/corporate-social-responsibility-back-on-the-eu-agenda/> (accessed on 23<sup>rd</sup> August 2018).

<sup>246</sup>Euractiv 'CSR Back on the EU Agenda' available at <https://www.euractiv.com/section/social-europe-jobs/linksdossier/corporate-social-responsibility-back-on-the-eu-agenda/> (accessed on 23<sup>rd</sup> August 2018).



recognized in the EU. As a result of the successful plea, the Green Paper was born in 2001. This document hoped to create awareness and to foster sustainable practices in the EU and internationally. However, as much as it was a step in the right direction, it received a lot of backlash for being vague and for promoting the voluntary application of CSR. Consequently, this created a deadlock between believers of voluntary application and seekers of mandatory application. It is important to note that, this argument still exists despite the enactment of the EMS Forum.

In terms of mandatory application, directive 2014/95/EU of the European Parliament deserves a mention. This directive requires large companies to produce a detailed report on all non-financial ventures. It is submitted that this directive is flawed. This is due to the fact that it only focuses on large companies employing a minimum of 500 employees. As a result, smaller and medium companies may escape accountability and the overarching responsibility. However, for future reference, Europe 2020 may be a turning point. The distinct approach adopted by Europe 2020, such as innovation and creativity may be a modern tool that manages to mainstream CSR in the EU. And if successful, it can serve as a lesson to other jurisdictions in the world.



## PART TWO: INDIA

### 3. INTRODUCTION

India is the first country in the world to legislate CSR. This change came into operation for the first time in 2014 as a result of the amendment of the Companies Act of 2013 (hereafter the Act).<sup>247</sup> As a result, companies were now legally obliged to uphold and apply good CSR in their business strategy. However, before exploring the Act in greater detail, it is noteworthy to briefly look at why CSR is important, particularly in the Indian context.

### 4. WHY IS MANDATORY CSR IMPORTANT FOR INDIA?

India has the world's second largest population in the world. It currently has approximately 1.3 billion people in total, a figure that is steadily growing.<sup>248</sup> According to research by the United Nations, India is projected to surpass China as the most populated country in the world by 2022.<sup>249</sup> Despite having the sixth fastest growing economy in the world, many Indians are still living in quite dire conditions. It is submitted that a large population coupled with other contributing factors have actively caused a strain on the government, especially with service delivery. It is noted that, unfortunately, the government has had a difficult time meeting certain demands on their own.<sup>250</sup> Therefore, it is vital to have private sector involvement so as to bring forth transformation in the society. This will in turn, lift the burden off the governments' shoulders, and boost the relationship between the two. India is already making praiseworthy

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<sup>247</sup>The Companies Act 18 of 2013.

<sup>248</sup> Financial Express 'World Population Day: 1.3 Billion and Rising' available at <https://www.financialexpress.com/india-news/world-population-day-1-3-billion-and-rising-why-india-needs-to-focus-on-effective-family-planning-methods/1240059/> (accessed on 22<sup>nd</sup> August 2018).

<sup>249</sup> Akkoc R 'Mapped: India Predicted to Become Worlds Most Populous Country by 2022' available at <https://www.telegraph.co.uk/news/worldnews/asia/india/11770757/Mapped-India-predicted-to-become-worlds-most-populous-country-by-2022.html> (accessed on 22<sup>nd</sup> August 2018).

<sup>250</sup> Fiinnovation 'Need of Undertaking CSR Activities in India' available at <http://www.fiinnovation.co.in/blog/undertaking-csr-activities-india/> (accessed on 11<sup>th</sup> August 2018).

strides in terms of CSR. Thus, in an attempt to understand what influenced the legislature to make such a ground breaking decision, it is vital to delve into the history of CSR in India.

#### 4.1 HISTORY OF CSR IN INDIA

CSR has its roots deeply entrenched in India's history. Although the term 'CSR' may be a modern appearance to many, the concept has been around for a very long time. This concept has evolved in terms of cultural and religious norms in India. In terms of Mauryan records, philosophers of that time had practiced ethical principles in business.<sup>251</sup> In addition, there have been several forms of informal CSR throughout Indian history, for example, the practice of sharing with the less fortunate and different forms of community engagement.<sup>252</sup>

India is known for its richness in culture. This is true, mostly in terms of religious beliefs. The values of the Indian society are deeply entrenched in religion and the various beliefs that follow. It is notable that the development of CSR in India runs parallel with religion. In Islam, the practice of Zakaat falls under one of the five pillars of the religion.<sup>253</sup> Zakaat typically requires the giving of a portion of your earnings to the less fortunate. In terms of Hinduism, the practice of Dharmada is widely acceptable. It is a tradition of giving whereby the seller obtains a monetary contribution from the buyer, which will then be given to charitable causes.<sup>254</sup> Similarly, in Sikhism the custom of giving is also widely practiced. Sikhs prescribe to the practice of Daashaant, which is similar to Islam's Zakaat.<sup>255</sup> It is evident that in India, the concept of giving is not a western construct. There have been traces of informal practices of CSR over time, which will unfold throughout the evolution process discussed below.

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<sup>251</sup>Ganapathy S 'Education As a Cornerstone for CSR: A Collaborative Pathway to Development and Growth' available at <http://www.businessworld.in/article/Education-As-A-Cornerstone-Of-CSR-A-Collaborative-Pathway-To-Development-And-Growth/12-11-2017-131129/> (accessed on 24<sup>th</sup> August 2018).

<sup>252</sup> Baraka D 'Dwayne Baraka's Ramblings on CSR' available at <http://www.dwaynebaraka.com/blog/2015/04/16/history-of-csr-in-india/> (accessed on 24<sup>th</sup> August 2018).

<sup>253</sup>Laha K 'Corporate Social Responsibility in Ancient Indian Wisdom: An Analysis' (2016) 2 *International Journal of Legal Developments and Allied Issues* 18.

<sup>254</sup>Laha K 'Corporate Social Responsibility in Ancient Indian Wisdom: An Analysis' (2016) 2 *International Journal of Legal Developments and Allied Issues* 19.

<sup>255</sup> CSR Vision 'PSEs Lead the CSR Way' available at <http://www.csrvision.in/public-sector-enterprises-lead-the-csr-way/> (accessed on 24<sup>th</sup> August 2018).

## 4.2 THE FOUR PHASES

It has been submitted that the evolution of CSR in India took place in four distinct phases.<sup>256</sup> It is important to note that these phases are not cast in stone and may overlap each other at times. This evolution embodied different aspects of Indian tradition, culture, politics and religion.

The first phase began stretched from 1850 to 1914.<sup>257</sup> During this phase, charitable acts were the main driver behind CSR. During this time, religion, industrialization, culture and family values played a big role in how things were run.<sup>258</sup> It was common for big business owners with lucrative turnovers to reserve a chunk of their earnings to be shared with the community. This would usually happen through supplying them with food and other needs or through building a place of worship for the community. During pre-industrialization, common modern day household names such as Tata and Bajaj were responsible for improving the position of CSR in the society. They created trust funds, charitable organisations, medical institutions and many others.<sup>259</sup> In this era, corporations were mainly responsible to their direct owners and their managers. Any act out of the profit making agenda was purely charitable and philanthropic.<sup>260</sup>

The second phase of the evolution happened from 1910 to 1960.<sup>261</sup> This period is important to India as a country as it marked the independence and liberation movement. It was during this period when the philosophical teachings of leaders such as Mahatma Gandhi began infiltrating the society. His principle of non-violence transcended to economic aspects.<sup>262</sup> In an attempt to improve working conditions, he publicly condemned capitalism, as it was, in his opinion,

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<sup>256</sup> Soul Ace 'Evolution of CSR in India' available at <http://www.soulace.in/blog/evolution-of-csr-in-india/> (accessed on 24<sup>th</sup> August 2018).

<sup>257</sup> Ghanghas A 'Various Phases of Corporate Social Responsibility in India' (2018) 3 *International Journal of Academic Research and Development* 862

<sup>258</sup> Ghanghas A 'Various Phases of Corporate Social Responsibility in India' (2018) 3 *International Journal of Academic Research and Development* 862.

<sup>259</sup> Nagwan S 'Evolution of Corporate Social Responsibility in India' (2014) 3 *International Journal of Latest Technology in Engineering, Management & Applied Science* 164.

<sup>260</sup> Soul Ace 'Evolution of CSR in India' available at <http://www.soulace.in/blog/evolution-of-csr-in-india/> (accessed on 24<sup>th</sup> August 2018).

<sup>261</sup> Ghanghas A 'Various Phases of Corporate Social Responsibility in India' (2018) 3 *International Journal of Academic Research and Development* 862.

<sup>262</sup> Economic Discussions 'Economic Ideas of Mahatma Gandhi' available at <http://www.economicdiscussion.net/articles/economic-ideas-of-mahatma-gandhi/21133> (accessed on 25<sup>th</sup> August 2018).

responsible for exploiting poor people. This was in touch with his principle of non-violence. Gandhi also put out economic laws, these laws promoted social harmony and morality. He encouraged big industrialists to be more lenient to the society at large. As a result of his teachings, big companies set up trusts that funded different developmental programs such as; educational programmes, rural development, service delivery, and the uplifting of women in society.<sup>263</sup> During the second phase of the evolution, the corporation was responsible to its direct owners, managers and its employees.

Phase three lasted from 1950-1990. During this time, Public Sector Undertakings (PSU's) were prominent in India.<sup>264</sup> PSU's are any state-owned public enterprise. For an enterprise to qualify as a PSU, the government has to own the majority of the shares. They were created to ensure that wealth was distributed equally amongst people in the society. However, as a result of their failure to accomplish this, the society turned its focus elsewhere. Private sector enterprises began displaying a higher degree of involvement in labour and environmental issues. It is important to note that, after 1965 the society together with the private sector became increasingly aware of the importance of good corporate governance.<sup>265</sup> As a result, all relevant stakeholders held a nationwide workshop on CSR.<sup>266</sup> This was vital in explaining and exploring what transparency and accountability meant, especially in the Indian context. During this phase, the corporation was responsible to the owners, managers and specific targeted environments.

The final phase of the evolution began in the 1980s. In this final stage, the concept that was initially viewed as charity or an act of philanthropy has now become a responsibility.<sup>267</sup> Owing to changes in global and local economic landscapes, India experienced a boom in the economy.

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<sup>263</sup>Nagwan S 'Evolution of Corporate Social Responsibility in India' (2014) 3 *International Journal of Latest Technology in Engineering, Management & Applied Science* 164.

<sup>264</sup> Banerjee R 'Evolution of CSR in India' available at [http://www.janafoundation.org/wp-content/uploads/2015/10/evolution\\_of\\_csr\\_in\\_india.pdf](http://www.janafoundation.org/wp-content/uploads/2015/10/evolution_of_csr_in_india.pdf) (accessed on 29th August 2018).

<sup>265</sup> Banerjee R 'Evolution of CSR in India' available at [http://www.janafoundation.org/wp-content/uploads/2015/10/evolution\\_of\\_csr\\_in\\_india.pdf](http://www.janafoundation.org/wp-content/uploads/2015/10/evolution_of_csr_in_india.pdf) (accessed on 29th August 2018).

<sup>266</sup>Jana Foundation 'Evolution of CSR in India' available at [https://www.janafoundation.org/wp-content/uploads/2015/10/evolution\\_of\\_csr\\_in\\_india.pdf](https://www.janafoundation.org/wp-content/uploads/2015/10/evolution_of_csr_in_india.pdf) (accessed on 29th August 2018).

<sup>267</sup>Sood A &Arora B 'The Political Economy of Corporate Responsibility in India' (2006) 18 *The United Nations Research Institute for Social Development* 11.

This boom meant that there was more money in the system to be used for philanthropic missions. Also, flowing from the shift that took place in phase three, corporations began exploring the concept deeper. Research began showing how these acts can be beneficial to corporations in the long run.<sup>268</sup> In addition, Western importers who sourced goods from India began being more conscious about the labour standards.<sup>269</sup> At this stage, corporations are not only responsible to their owners, and managers, they are also responsible to the community at large. A combination of the above mentioned factors are responsible for setting in motion what we see as the current stance of India in terms of CSR.

#### 4.3 CSR IN MODERN DAY INDIA

As mentioned above, India is the first country in the world to legislate CSR. However, before the Act came into operation, there were other mechanisms that were put in place to promote good corporate citizenship. The National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Businesses (NVGs) were made available in 2011.<sup>270</sup> This was a framework that was designed to promote business responsibility in India. The Ministry of Corporate Affairs was responsible for setting up a committee of experts to come up with the most accurate guidelines. The main function they seek to serve is to encourage companies to be more conscious of the society and the environment altogether.<sup>271</sup> As a result of industrialization and globalisation, a great wave of foreign direct investment has made its mark on the Indian private sector. Consequently, India became one of the world's fastest growing economies. However, these economic victories came with a price. There are reports of ill labour practices, severe damage to the environment and high level of pollution amongst many

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<sup>268</sup>Jana Foundation 'Evolution of CSR in India' available at [https://www.janafoundation.org/wp-content/uploads/2015/10/evolution\\_of\\_csr\\_in\\_india.pdf](https://www.janafoundation.org/wp-content/uploads/2015/10/evolution_of_csr_in_india.pdf) (accessed on 29th August 2018).

<sup>269</sup>Ghanghas A 'Various Phases of Corporate Social Responsibility in India' (2018) 3 *International Journal of Academic Research and Development* 862.

<sup>270</sup>Vandana K 'What are the National Voluntary Guidelines & Why They Matter' available at <http://responsiblebiz.org/national-voluntary-guidelines/> (accessed on 26<sup>th</sup> August 2018).

<sup>271</sup>Vandana K 'What are the National Voluntary Guidelines & Why They Matter' available at <http://responsiblebiz.org/national-voluntary-guidelines/> (accessed on 26<sup>th</sup> August 2018).

others.<sup>272</sup> Therefore, it was necessary to formulate a set of voluntary recommendations to ensure companies are abiding to good business practices. It is important to note that the NVG's, in their voluntary nature, are applicable uniformly to all companies irrespective of size or sector. The NVG's comprise of nine principles, and they are as follows;<sup>273</sup>

- Businesses should conduct and govern themselves with ethics, transparency and accountability.
- Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle.
- Businesses should promote the well-being of all employees.
- Businesses should respect the interests of, and be responsive to, all stakeholders, especially those who are disadvantaged, vulnerable and marginalised.
- Businesses should respect and promote human rights.
- Businesses should respect, protect, and make efforts to restore the environment.
- Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner.
- Businesses should support inclusive growth and equitable development.
- Businesses should engage with and provide value to their customers and consumers in a responsible manner.<sup>274</sup>

The abovementioned principles were used as a point of reference while legislating CSR under the Act. The Act will now be explored in greater detail.

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<sup>272</sup>Khandelwal A 'National Voluntary Guidelines for India Inc: From CSR to Responsible Business' available at <http://india.carbon-outlook.com/content/national-voluntary-guidelines-india-inc-csr-responsible-business> (accessed on 27th August 2018).

<sup>273</sup>Vandana K 'What are the National Voluntary Guidelines & Why They Matter' available at <http://responsiblebiz.org/national-voluntary-guidelines/> (accessed on 26<sup>th</sup> August 2018).

<sup>274</sup> For the purposes of this study, it is sufficient to list the guidelines and not necessary to expand on the contents of each guideline.

## 5. THE COMPANIES ACT 2013

The Companies Act mandates companies to engage in socially responsible activities.<sup>275</sup> Before the enactment of this Act, the application, and the extent of CSR was at the discretion of the company in question. However, since 2014, companies are legally obliged to perform prescribed social actions as part of the larger CSR agenda. Mandatory application of CSR is found in Section 135 of the Act.<sup>276</sup> This section explicitly spells out the application of CSR. It requires companies, which meet a stated criterion to set aside two percent of their average profit of the last three years to CSR related activities. It is notable that the Act has widened the ambit of application to include different types of companies. This Act applies to many types of companies such as, private limited companies, public limited companies, holding and subsidiaries companies, and all foreign companies that have operating offices in India. For section 135 to kick in, the company is required to have a net worth of INR 500 crores or more, or a turnover of INR 1000 crores or more, or a net profit of INR 5 crores or more. Thereafter, the two percent will be calculated from an average of three financial years. The Act submits that, on failure to comply with the provisions of this section, the Board is required to explain in their report, the reasons for non-compliance. However, it is important to note that there aren't any penal provisions for non-compliance with the required amounts in terms of the Act. Despite this, companies are required in terms of section 135(5) to include reasons for non-compliance in its report.<sup>277</sup>

All qualifying companies are required to set up a CSR Committee. Section 135 (1) requires the company to set up a Committee of the Board.<sup>278</sup> This Committee shall comprise of 3 or more directors, out of which at least one should be an independent director. For the purposes of the Act, section 149 (6) of the Act defines who an independent director is.<sup>279</sup> An independent director is a director other than the managing director who possesses the necessary expertise

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<sup>275</sup>Lal N 'Mandatory CSR in India: Help or Hindrance?' available at <https://www.eco-business.com/news/mandatory-csr-india-help-hindrance/> (accessed on 27<sup>th</sup> August 2018).

<sup>276</sup>Section 135 of the Companies Act 2013.

<sup>277</sup>Section 135(5).

<sup>278</sup>Section 135(1).

<sup>279</sup>Section 149(6).



and has no pecuniary relationship with the company.<sup>280</sup> Section 135 (3) sets out the duties and responsibilities of the CSR Committee.<sup>281</sup> A CSR Committee is tasked with the responsibility of formulating a CSR Policy, which will thereafter be submitted to the Board. It is vital that the Policy's formulation is in sync with Schedule VII of the Act. Schedule VII lists instances where an activity shall be recognised as CSR, however this will be explored further below. In addition to formulating a CSR Policy, the Committee is also responsible for recommending the amount of expenditure to be utilised on CSR activities and for monitoring the Policy after approval by the Board.

It has been made clear that CSR activities should be separated from the normal course of business. For the purposes of the Act, section 135 is read together with Schedule VII of the Act. As mentioned above, section 135 (3) (a) states that Schedule VII shall be consulted while formulating their Corporate Social Responsibility Policy.<sup>282</sup> Schedule VII is responsible for listing activities that qualify as CSR. This contains a number of activities, which touch on key problem areas such as, eradication of poverty, environmental sustainability, promotion of education, and many others.<sup>283</sup> With that said, it is submitted that any activity that falls outside the ambit of Schedule VII, does not qualify as CSR for the purposes of the Act. Schedule VII requires qualifying companies to give preference to local surrounding areas while executing their CSR duties.<sup>284</sup> However, considering how some states are more prosperous than others, this may create social imbalances in the long run.

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<sup>280</sup>Section 149(6).

<sup>281</sup>Section 135(3).

<sup>282</sup>Section 135(3)(a).

<sup>283</sup>In terms of Schedule VII to the Act.

<sup>284</sup>In terms of Schedule VII to the Act.

## 6. PART TWO CONCLUSION

Part two of this chapter examined India. India is a one of its kind example, and a pioneer in terms of the mandatory application of CSR. Through the Companies Act of 2013, India legislated CSR. This meant that companies were obliged to apply and abide to CSR and its requirements. It is key to understand that history of CSR is deeply rooted in Indian religion, traditions, cultures and values. Through this, it has been noted that the evolution of CSR occurred in four distinct phases. Where phase one began in 1850 to phase four which is currently running.

Before the Companies Act was enacted, CSR was a voluntary measure. It was governed by specific guidelines known as the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Businesses (NVG's). They comprised of nine guidelines that aspired to make businesses more environmentally and socially conscious. The NVG's were used as a reference during the enactment of the Act. After the Act came into operation, Section 135 governed CSR. It required qualifying companies to set aside two percent of their earnings over three consecutive financial years. This sum was to then be used for CSR related activities contained in Schedule VII. The Act also calls for the establishment of a CSR Committee, which will be responsible for the creation of a CSR Policy.

In a nutshell, India remains victorious in terms of the recognition of CSR. However it is important to understand that there are several concerns. One of the concerns lies in the activities listed in Schedule VII. This calls for CSR activities to be local area specific. It is submitted that, in the long run, this could create development that is not uniform in specific areas. Also, as much as the Act requires mandatory compliance, there are no penal repercussions for non-compliance with the stated amounts. This may cause confusion in application, and may dampen the strict nature of the provision. Therefore, there may be a need for amendments in the future, however, the Act in itself is a step in the right direction.

## 7. FINAL CONCLUSION

It is clear that the concept of CSR is slowly gaining traction in the world. Different countries have embraced CSR in different ways, usually unique to their needs. It is noted that both the EU and India have taken steps to mainstream CSR in their respective rights. The EU has, as above-mentioned, embarked on a journey that seeks to make corporate citizenship and sustainability more prominent in the union. This is evident through the recent Europe 2020 initiative that seeks to promote CSR through a different perspective, namely, innovation and smart technology. However, it is important to note that this slow progress has caused a few hurdles. The most prominent conflict that arose was the deadlock between parties seeking stricter mechanisms, and parties satisfied with its voluntary nature. It is important to note that to date, CSR remains a voluntary practice in the EU realm.

On the other hand, India has taken it a step further by mandating CSR through an Act of Parliament. The Companies Act of 2013 made this possible. Through section 135, the Act calls upon companies to set aside a portion of their earnings. This portion is to be utilized in CSR activities in line with Schedule VII of the Act. It is submitted that India is at the forefront of this transformation. Although this is a step in the right direction, there have been concerns that have surfaced. As discussed above, Schedule VII requires local area specific spending. This may create a situation whereby specific areas are more developed than others. This is foreseeable as not all regions in India are equally prosperous. Another concern lies in punitive action. Despite there being a certain amount devoted to CSR spending, the Act makes no reference to any fines or proceedings for failure to abide. This may create room for abuse.

The EU and India are both at different stages in their acceptance of CSR. This is due to various reasons such as; geographical differences, economic differences, political differences and many others. However in terms of CSR, one of the most striking differences is the preferred mode of implementation. As stated prior, the EU has adopted a softer voluntary approach. In terms of this approach, companies are advised and given the freedom to build in CSR concepts into their business strategy. In other words, CSR in the EU is expected to run simultaneously with the business of the company. On the contrary, India has chosen to enforce stricter control. Through

the Companies Act, companies are mandated to apply CSR. This is a slightly stricter approach as compared to the EU. Here, CSR is not seen as a core element of the daily running of a company. CSR in terms of the Act is an activity that runs separate to daily corporate interactions. With that said, it is clear that these two jurisdictions have adopted different methods of implementing CSR. However, what remains constant is their efforts to mainstream the concept. Now that alternate jurisdictions have been explored, the next chapter will identify the need for CSR laws in South Africa.



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## CHAPTER 4- THE NEED FOR STATE CONTROLLED CSR LAWS

Chapter 4 will explore the gaps in the South African CSR regime. This chapter will identify what particularly is lacking in the system and how this void can be filled. In doing this, this chapter will examine the importance of legal certainty as a running theme. Through this theme it will look at the developments in environmental law, especially in the mining industry. It will touch up on directors' duties and the role of the Social and Ethics Committee in terms of the Companies Act and in terms of King IV. In addition it will also import lessons from the EU and India that South Africa may consider while making the shift from voluntary to mandatory CSR.

### 1. INTRODUCTION

This study seeks to bring to light the need for stricter control in terms of CSR in South Africa. Currently, CSR is a practice that is guided by several instruments of a voluntary nature such as the King Code, and the FTSE/JSE RI INDEX.<sup>285</sup> It has been established that there are certain industry specific acts of parliament that seek to uphold principles of CSR and the notion of good corporate citizenship. These include sections of the Companies Act,<sup>286</sup> the National Environmental Management Act (NEMA),<sup>287</sup> the Mineral and Petroleum Resources Development Act (MPRDA),<sup>288</sup> and many others. What can be gathered from these acts is the fact that they usually focus on a specific industry or seek to respond to specific needs. This, in turn, creates a lot of confusion and inconsistencies in application. Especially in certain cases of industries that have not been covered by law. As a result, the larger community only benefits from a limited number of companies, while there are several other companies and industries that equally owe a duty to society. The central discussion in this chapter will be on the problematic effects of this piecemeal approach, and the subsequent importance of having

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<sup>285</sup> It is important to note that King IV is binding on all listed companies.

<sup>286</sup> The Companies Act 71 of 2008.

<sup>287</sup> The National Environmental Management Act 107 of 1998.

<sup>288</sup> The Mineral and Petroleum Resource Development Act 28 of 2002.

stricter and consistent rules. This will be achieved through emphasizing the need and importance of achieving certainty of the law. Through this running theme, the chapter revisits key topics in this study such as; the SEC, the duties of directors, environmental legislation (especially in the mining industry), and draw lessons from the EU and India.

## 2. LEGAL CERTAINTY AND THE NEED FOR LAW

As much as it has been over 25 years after apartheid, South Africa is still struggling to recover. Research conducted by the World Bank suggests that South Africa has the largest income inequality in the world.<sup>289</sup> This can be attributed to a wide range of issues such as, widespread poverty, the historical background of the country, the economy, education, unemployment, and many others.<sup>290</sup> This looming dark cloud can be said to be the sole cause of the stalling progress of the country. However, it is important to note that since the end of the apartheid regime, there has been major positive changes that have made South Africa stand out. South Africa has been at the forefront on the African continent through many different achievements. According to the International Monetary Fund (IMF), South Africa had the largest economy in Africa in 2016, followed by Nigeria.<sup>291</sup> Apart from international success, there have been numerous home-grown victories that deserve mention. These came through the undivided effort displayed by the African National Congress (ANC). The ANC government has implemented a wide array of programs that were designed to bring about positive change. The Institute of Race Relations released a report titled 'Life in South Africa; Reasons for Hope' in November 2016.<sup>292</sup> This report shed light on the positive victories that South Africa has attained post-apartheid. These victories touch on factors such as; economic growth, health, education, and

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<sup>289</sup>Beaubien J 'The Country With the Worlds Worst Inequality is..' available at <https://www.npr.org/sections/goatsandsoda/2018/04/02/598864666/the-country-with-the-worlds-worst-inequality-is> (accessed on 5th October 2018).

<sup>290</sup>Beaubien J 'The Country With the Worlds Worst Inequality is..' available at <https://www.npr.org/sections/goatsandsoda/2018/04/02/598864666/the-country-with-the-worlds-worst-inequality-is> (accessed on 5th October 2018).

<sup>291</sup> BBC 'South Africa Regains 'Africas Biggest Economy' Title From Nigeria' available at <https://www.bbc.com/news/world-africa-37045276> (accessed on 5th October 2018).

<sup>292</sup> Institute of Race Relations 'Life in South Africa: Reasons for Hope' available at <https://irr.org.za/reports/occasional-reports/files/life-in-south-africa-reasons-for-hope.pdf> (accessed on 5th October 2018).

the overall quality of life. According to this report, the economy has grown significantly from R1.65 trillion in 1994 to R3.06 trillion in 2015.<sup>293</sup> In addition, there has been a spike in students attending higher education institutions– with 807,000 students enrolled in 2015, versus 385,200 in 1994. These are figures that have never been recorded before. Furthermore, according to the General Household Survey report published in 2017, the percentage of households without proper sanitation has significantly declined from 12,6 per cent in 2002 to 3.1 per cent in 2017.<sup>294</sup>

Despite the abundance in resources and a long list of victories, South Africa still remains a developing country. On the other side of the spectrum, South Africa is in a dark place and is still struggling profusely. Apart from having the largest income inequality in the world, it is also home to a host of socio-economic issues that continue to delay progress. Issues such as crime and poverty have continued to shake the country. It has been estimated that approximately 57 people are murdered every day.<sup>295</sup> In addition, 2017-2018 saw an unexpected rise of cash-in-transit heists. There have been 238 heists in 2017-2018, from 152 in 2016 and 137 in 2015.<sup>296</sup> It is without a doubt that, these are alarming figures that are not conducive to economic growth. These figures point to the fact that there is a big problem in the country that has either been ignored or has not been addressed fully yet. It is common knowledge that the government is the people's protector and is expected to step in during unstable times. However, gathering from the abovementioned figures, it is safe to say that the government is overburdened. Therefore, in an attempt to create a better atmosphere for all, it is important to distribute the weight to other able key players in our society.

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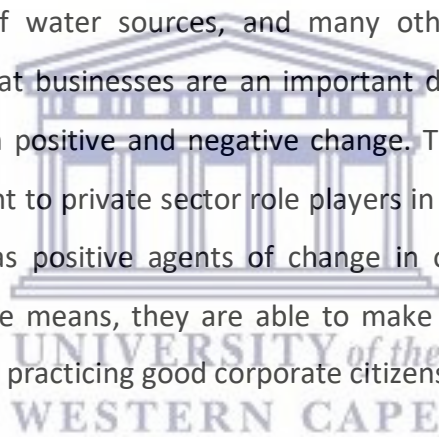
<sup>293</sup> Institute of Race Relations 'Life in South Africa: Reasons for Hope' available at <https://irr.org.za/reports/occasional-reports/files/life-in-south-africa-reasons-for-hope.pdf> (accessed on 5th October 2018).

<sup>294</sup> Statistics South Africa *General Household Survey* (2017) 41.

<sup>295</sup> Joseph C 'South Africa's Crime Statistics: Denial at its Worst' available at <https://www.news24.com/MyNews24/south-africas-crime-statistics-denial-at-its-worst-20180917> (accessed on 29th September 2018).

<sup>296</sup> Sictsha A 'Crime stats South Africa 2018: the murder rate increased by 6.9%' available at <https://www.thesouthafrican.com/crime-stats-south-africa-murder-rate-2018/> (accessed on 29th September 2018).

As mentioned prior, businesses are an integral component to our society. They are responsible for providing goods and services, for creating employment, for building the economy, and much more. They generate a lot of income that is vital to the growth and betterment of the country. In 2016, the mining industry alone employed about 7.9 per cent of all private sector labor, and approximately 6 per cent of all people employed in South Africa.<sup>297</sup> Also in 2016, activities in the mining industry were responsible for contributing approximately 7.3 percent to the country's gross domestic product (GDP).<sup>298</sup> It is clear that businesses actions have far reaching effects. On the other hand, they also sometimes find themselves in undesirable spaces. This happens in instances where they engage in; unfair labour practices, damage to the environment, malpractice, and many others. Mining activities have been criticized for causing severe irreversible damage, especially to the environment. These range from air pollution, land degradation, contamination of water sources, and many others.<sup>299</sup> It is evident from the abovementioned discussion that businesses are an important dimension to the society. They have the power to effect both positive and negative change. Thus, it is wise to consider the possibility of dividing the weight to private sector role players in our society. Businesses can be tasked with the duty to act as positive agents of change in our society. In line with their powerful influence and capable means, they are able to make a positive contribution to the wellness of our society through practicing good corporate citizenship.



To enable businesses in practicing good corporate citizenship, it is important to lay the appropriate foundation. This foundation comes in the form of a path that promotes clear, concise, and uniform laws. Gustav Radburch, a German legal theorist regarded legal certainty,

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<sup>297</sup> Chamber of Mines 'Facts and Figures 2016' available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjbmObrp6neAhXEKMAKHZ6aD9IQFJAAeqQICBAC&url=http%3A%2F%2Fwww.mineralscouncil.org.za%2Findustry-news%2Fpublications%2Ffacts-and-figures%2Fsend%2F17-facts-and-figures%2F442-facts-and-figures-2016&usq=AOvVawOxBscqhV9798BcbOUDBT4p> (accessed on 5<sup>th</sup> October 2018).

<sup>298</sup> Chamber of Mines 'Facts and Figures 2016' available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjbmObrp6neAhXEKMAKHZ6aD9IQFJAAeqQICBAC&url=http%3A%2F%2Fwww.mineralscouncil.org.za%2Findustry-news%2Fpublications%2Ffacts-and-figures%2Fsend%2F17-facts-and-figures%2F442-facts-and-figures-2016&usq=AOvVawOxBscqhV9798BcbOUDBT4p> (accessed on 5<sup>th</sup> October 2018).

<sup>299</sup>McCarthy T 'The Impact of Acid Mine Drainage in South Africa' (2011) 107 *South Africa Journal of Science*2.



purposiveness and justice as the three main pillars of law.<sup>300</sup> It is notable that legal certainty plays a big role in a functioning legal system. In addition, Alexy submits in his research that for legal certainty to be present, it must be authoritatively issued and socially efficacious.<sup>301</sup> Flowing from that thought, it is noteworthy to incorporate useful lessons from the Constitution. Section 2 of the Constitution states that 'The constitution is the supreme law of the Republic, law or conduct inconsistent with it is invalid, and the obligations imposed upon it must be fulfilled'.<sup>302</sup> This means that for a law to be valid and applicable, it has to conform to the needs of the constitution. Consequently this leads to the invalidity of any law that is not in line with the constitutional mandate.

As explored in chapter 2 of this study, the preamble of the constitution and the Bill of Rights, speaks to the idea of the promotion of human dignity, equality, and to improving the quality of life of all citizens.<sup>303</sup> This is a duty that is placed upon, and should consequently be upheld by natural and juristic persons, businesses included.<sup>304</sup> Therefore, with that said, it can be gathered that persons failing to comply with the said requirements, are in violation of the Constitution. The Chief Justice of South Africa, Honourable Mogoeng Mogoeng, while speaking on the importance of the rule of law in South Africa stated the following. He admitted that good governance is achieved through compliance with conventional, legislative and constitutional governance prescripts.<sup>305</sup> This profound statement can also be applicable in achieving good corporate governance in particular. By seeking to uphold the constitutional mandate, through the prioritization and the enactment of CSR laws, good corporate governance is not too far from reach. It is noted that there has been some form of control in terms of the CSR over the years. Instruments such as the King Reports and innovative frameworks such as the JSE Index

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<sup>300</sup>Mexeina J 'Some Realism About Legal Certainty in the Globalization of the Rule of Law' in Sellers M (ed) *The Rule of Law in Comparative Perspective. IusGentium: Comparative Perspectives on Law and Justice* 3ed (2011) 43.

<sup>301</sup>Alexy R 'Legal Certainty and Correctness' (2014) 12 *International Journal of Constitutional Law* 513.

<sup>302</sup> Section 2 Constitution of the Republic of South Africa, 1996.

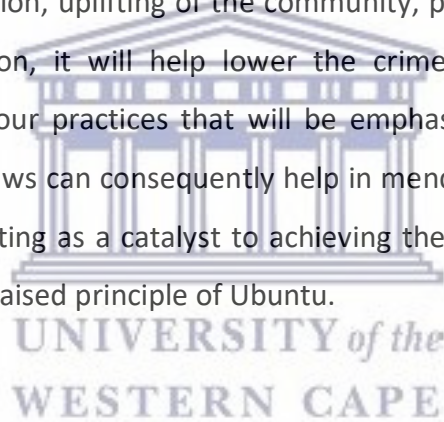
<sup>303</sup> Section 7.

<sup>304</sup> Section 7.

<sup>305</sup> De Vos P 'Transcript: Chief Justice Mogoeng on the Rule of Law in South Africa' available at <https://constitutionallyspeaking.co.za/transcript-chief-justice-mogoeng-on-the-rule-of-law-in-south-africa/> (accessed on 13<sup>th</sup> October 2018).

have both positively contributed to progressing CSR on a local and a global scale. However, there is still a lot of room for improvement.

If businesses are faithful to the constitutional mandate, then peace, good corporate governance, and sustainable economic development is well within reach. By promulgating a CSR act that is clear, certain, and that promotes the constitution can help alleviate the burden off the government's shoulders. Furthermore, this would ensure that thorough thought and adequate resources are allocated to different stakeholders of a business. This would in turn assist in creating a harmonious environment where different stakeholders can easily co-exist. This should preferably be done through the promotion of principles such as, employee satisfaction, customer satisfaction, uplifting of the community, protection of the environment, and many others.<sup>306</sup> In addition, it will help lower the crime rates through the creation, retention, and overall fair labour practices that will be emphasized. Having in particular, all inclusive, and consistent CSR laws can consequently help in mending the disparities left behind by the apartheid regime by acting as a catalyst to achieving the rainbow nation dream. All of which will be in line with the praised principle of Ubuntu.



### 3. THE MINING INDUSTRY

The mining industry is one of South Africa's most lucrative industries. The South African earth is blessed with many precious resources such as gold, coal, copper, diamonds, uranium and others.<sup>307</sup> Since the gold rush in the 19<sup>th</sup> century, mining has played an important role in the development of the country. Proceeds have boosted the economy, uplifted the infrastructure, attracted foreign direct investment, and contributed to the overall development of the

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<sup>306</sup>Asemah E 'Business Advantages of Corporate Social Responsibility Practice: A Critical Review' (2013) 18 *International Knowledge Sharing Platform* 48.

<sup>307</sup> Chamber of Mines 'Facts and Figures 2016' available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjbmObrp6neAhXEKMAKHZ6aD9IQFJAAeqQICBAC&url=http%3A%2F%2Fwww.mineralscouncil.org.za%2Findustry-news%2Fpublications%2Ffacts-and-figures%2Fsend%2F17-facts-and-figures%2F442-facts-and-figures-2016&usq=AOvVaw0xBscqhV9798BcbOUDBT4p> (accessed on 5<sup>th</sup> October 2018).

country.<sup>308</sup> Apart from generating high-level income for the country, this industry has also been responsible for severe damage to the environment and other labour related issues. To fully understand the extent of the damages caused, it is vital to briefly explore the mining process. Mining activities usually take two broad forms. These are; surface mining and underground mining. Surface mining entails a process whereby the surface rock or soil covering the mineral deposit, is totally stripped away exposing the mineral deposit.<sup>309</sup> While underground mining happens when the surface rock or soil is left intact and the mineral deposit is accessed through excavation.<sup>310</sup> Currently, South Africa practices both forms of mining. Therefore, regardless of the method employed, it can be established that both activities do contribute to the irreversible damage of the environment over a period of time.

### 3.1 ENVIRONMENTAL DAMAGE

It is estimated that about 1.6 million people live in or around mine dumps in South Africa.<sup>311</sup> An undisputed fact lies in the reality that the people found living in these settings are usually disadvantaged.<sup>312</sup> It is clear that mining activities have resulted health risks for these people. It has been submitted that, even after taking into consideration all variables, there was still a very solid link between people living in these areas and higher levels of diseases such as asthma and chronic bronchitis.<sup>313</sup> According to a judgment handed down in *Nkala and Others v Harmony Gold Mining Company Limited and Others*, the mining industry has 'left in its trail tens of thousands, if not hundreds of thousands, of current and former underground mineworkers who

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<sup>308</sup>Bakari S 'Why is South Africa Still a Developing Country?' available at [https://mpr.aub.uni-muenchen.de/80763/1/MPRA\\_paper\\_80763.pdf](https://mpr.aub.uni-muenchen.de/80763/1/MPRA_paper_80763.pdf) (accessed on 14th October 2018).

<sup>309</sup>Ottavini J 'The Difference Between Surface Mining and Underground Mining' available at <http://usize-africa.com/project-africa/difference-between-surface-mining-and-underground-mining> (accessed on 14th October 2018).

<sup>310</sup>Ottavini J 'The Difference Between Surface Mining and Underground Mining' available at <http://usize-africa.com/project-africa/difference-between-surface-mining-and-underground-mining> (accessed on 14th October 2018).

<sup>311</sup>Nkosi V 'How Mine Dumps in South Africa Affect the Health of Communities Living Nearby' available at <https://theconversation.com/how-mine-dumps-in-south-africa-affect-the-health-of-communities-living-nearby-77113> (accessed on 20th October 2018).

<sup>312</sup>Nkosi V 'How Mine Dumps in South Africa Affect the Health of Communities Living Nearby' available at <https://theconversation.com/how-mine-dumps-in-south-africa-affect-the-health-of-communities-living-nearby-77113> (accessed on 20th October 2018).

<sup>313</sup>Nkosi V 'How Mine Dumps in South Africa Affect the Health of Communities Living Nearby' available at <https://theconversation.com/how-mine-dumps-in-south-africa-affect-the-health-of-communities-living-nearby-77113> (accessed on 20th October 2018).

suffered from debilitating and incurable silicosis and pulmonary tuberculosis'.<sup>314</sup> It is important to note that there has been some action taken in the hope of fixing the problem. As much as many claim that these solutions are ineffective, there has been some sliver of hope especially through holding high-ranking officials liable. Examples of such cases will be discussed further in the next section.

#### 4. DIRECTORS' DUTIES

Judge Innes in *Dadoo Ltd v Krugersdorp Municipal Council*,<sup>315</sup> and section 19(2) of the Companies Act<sup>316</sup> state that the director of a company is not personally liable for any obligations of the company. However, it is widely known that the law does carry exceptions and therefore, directors of a company may be held personally liable in specific instances. In South Africa, director's duties are set out in common law, and have further been codified through the Companies Act. Generally, a director of a company is required to conduct themselves in a manner that mirrors the requirements of the common law and the Companies Act. The director has a fiduciary duty to act in good faith and for a proper purpose in the best interests of the company and also acting with due care, skill and diligence.<sup>317</sup> Failure to conduct themselves in the prescribed manner could lead to liability such as, fines, or even being disqualified from the position.<sup>318</sup> It is clear that much is expected from directors and proven breach will lead to the abovementioned consequences. Apart from the Companies Act, other industry specific acts have also solidified this stance. Especially in environmental law through acts like the MHSA and the NEMA.

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<sup>314</sup>*Nkala and Others v Harmony Gold Mining Company Limited and Others* (48226/12, 31324/12, 31326/12, 31327/12, 48226/12, 08108/13) [2016] ZAGPJHC 97; [2016] 3 All SA 233 (GJ); 2016 (7) BCLR 881 (GJ); 2016 (5) SA 240 (GJ) (13 May 2016).

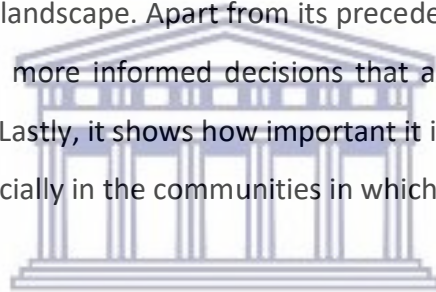
<sup>315</sup>*Dadoo Ltd vs Krugersdorp Municipal Council* 1920 AD 530.

<sup>316</sup> Section 19 (2) Companies Act.

<sup>317</sup> Section 76 Companies Act.

<sup>318</sup> Section 77 Companies Act.

In the case of *S v Blue Platinum Ventures*, the North Gauteng High Court delivered a groundbreaking judgment.<sup>319</sup> For the first time in South Africa, a director was held personally liable for mining-related environmental offences. The community members of the Batlhabine village, in Limpopo, were enraged with the degradation caused by the mine. In a joint effort with an environmental advocacy group, they proceeded to lay criminal charges against the mine and its directors. Matome Maponya, the managing director of Blue Platinum Ventures pleaded guilty to contravening section 24F of the NEMA.<sup>320</sup> The court subsequently handed down a five-year suspended sentence, with conditions that the damage was to be rehabilitated in a stipulated time frame.<sup>321</sup> What is striking about this judgment is the fact that there was no option for a fine. This highlights how serious the court was with its judgment, because failure thereof would result in direct imprisonment. It is submitted that this precedent setting case is extremely vital to the South African corporate landscape. Apart from its precedent setting power, it also exerts pressure on directors to make more informed decisions that are in the best interests of the company and its shareholders. Lastly, it shows how important it is to ensure that corporates are conscious of their actions, especially in the communities in which they operate.



In the case of *Aurora: Pamodziliquidators v Mandela & Co* of 2015, Aurora directors were found guilty for reckless management.<sup>322</sup> In 2009, Aurora was entrusted with the management of two of Pamodzi Gold's mines. Shortly thereafter, the directors stripped assets of the liquidated mines. As a result, this action had severe consequences to the mines and their stakeholders. It is submitted that operations came to a halt, debtors could not be paid, and more than 5300 workers lost jobs.<sup>323</sup> Judge Eberhardt Bertelsmann ruled that the five directors were personally liable to pay R1.5 billion for the damages caused.<sup>324</sup> The directors attempted to appeal this judgment at the Supreme Court of Appeal (SCA), however this was appeal was dismissed. This is

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<sup>319</sup>*S v Blue Platinum Ventures (Pty) Limited and Another (A588/15) [2015] ZAGPPHC 980.*

<sup>320</sup>*S v Blue Platinum Ventures (Pty) Limited and Another (A588/15) [2015] ZAGPPHC 980.*

<sup>321</sup> Kings S 'Mining Boss Found Liable For Company's Environment Damage' available at <https://mq.co.za/article/2014-02-04-director-found-liable-for-companys-environment-damage> (accessed on 19th October 2018).

<sup>322</sup>*Engelbrecht N.O and Others v Zuma and Others (25965/2012) [2015] ZAGPPHC 403; [2015] 3 All SA 590 (GP).*

<sup>323</sup> Fin24 'Aurora Directors Found Guilty' available at <https://www.fin24.com/Companies/Mining/Aurora-directors-found-guilty-20150625> (accessed on 13th October 2018).

<sup>324</sup>*Engelbrecht N.O and Others v Zuma and Others (25965/2012) [2015] ZAGPPHC 403; [2015] 3 All SA 590 (GP).*

another case that shows the importance of directors' duties. Failure to make informed decisions that are in the company's best interests could have serious, irreversible, and long lasting effects. In this particular scenario, 5300 workers were left without jobs. This is clearly in conflict with the very essence of good corporate governance and most importantly, CSR.

In a separate case, the directors of Blyvooruitzicht and Village Main Reef gold mine have found themselves in court for environmental pollution. The MPRD Act clearly states that the holder of the mining right is liable for any environmental liability arising from the closure of the mining site up until the minister has issued a closure certificate in terms of the act.<sup>325</sup> In June 2011, Blyvooruitzicht had put itself under provisional liquidation. However, it has failed to clear up the polluted sites, despite being directed to do so. The sites contain high quantities of tailings with high radioactivity dosages that could potentially be harmful to the environment and the surrounding community. Apart from tailings, there has also been large amounts of dust fallouts and spillages that have not been cleaned off yet. A concentration of 2776mg/m<sup>2</sup>/per day was recorded while the permissible amount should ideally be less than 600mg/m<sup>2</sup>/per day.<sup>326</sup> The accused failed to take the necessary steps to ensure that pollution does not occur. Therefore the consequences do impose economic, social and environmental strains on the surrounding community and the local government. The accused could face a 10-year jail sentence, a R10 million fine, or both if found guilty of the abovementioned offences.<sup>327</sup>

Apart from the reported cases, there have been several unreported cases of a similar nature. In *S v Anker Coal and Mineral Holdings (Pty) Ltd*, the director and the company were convicted for the contravention of environmental legislation.<sup>328</sup> Anker Coal pleaded guilty for drilling, mining in a wetland, disrupting groundwater flow, and failing to implement the necessary anti-

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<sup>325</sup> Section 43 MPRDA.

<sup>326</sup>Bega S 'Mining Directors Face R10m Fine, Jail Time for Pollution' available at <https://www.iol.co.za/business-report/companies/mining-directors-face-r10m-fine-jail-time-for-pollution-8142857> (accessed on 13th October 2018).

<sup>327</sup>Bega S 'Mining Directors Face R10m Fine, Jail Time for Pollution' available at <https://www.iol.co.za/business-report/companies/mining-directors-face-r10m-fine-jail-time-for-pollution-8142857> (accessed on 13th October 2018).

<sup>328</sup>*S v Anker Coal and Mineral Holdings (Pty) Ltd* unreported case no 8/11 (26<sup>th</sup> June 2009).

pollution measures. As a result, the Ermelo Magistrate court convicted them for contravening the NEMA, the National Water Act 36 of 1998, and the MPRDA.<sup>329</sup>The managing director was sentenced to five years' imprisonment, wholly suspended for five years, and that he rehabilitates all the areas damaged by the mining activities within a certain period.<sup>330</sup> This case is of high importance as it was the first time a South African court has found a mining company guilty of environmental offences.

*S v Golfview Mining (Pty) Ltd* is another unreported case that caught a lot of attention.<sup>331</sup> The Highveld Headwaters Protection Group, laid charges against the mine on behalf of the farmers in Mpumalanga.<sup>332</sup> As a result, Golfview Mining was forced to come forth and take responsibility for their actions. After entering into a plea agreement, the court consequently ordered one of the largest fines for environmental offences. Golfview Mining was guilty of contravening 2 pieces of environmental legislation namely, the NEMA and the NWA. Ultimately, the mining company was required to pay a fine of R4 million, to specific entities such as the Mpumalanga tourism and environment department.<sup>333</sup> What is unique about this unreported case is that it is the first case whereby a company and the director were found guilty of environmental offences. Furthermore, it also highlights the power of civil society and the importance of being conscious of the community in which one operates.

South African courts are beginning to adopt a stricter approach to directors and their duties. This is definitely a step in the right direction as it exerts pressure on directors to conduct themselves in a manner that upholds the true essence of corporate citizenship. If a director furthers his own interest instead of the company's, he is in breach of the overarching fiduciary duty. Therefore, directors are consequently expected to be present in their decision-making or

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<sup>329</sup>*S v Anker Coal and Mineral Holdings (Pty) Ltd* unreported case no 8/11 (26<sup>th</sup> June 2009).

<sup>330</sup>*S v Anker Coal and Mineral Holdings (Pty) Ltd* unreported case no 8/11 (26<sup>th</sup> June 2009).

<sup>331</sup> *S v Golfview Mining (Pty) Ltd* unreported case no 82/11(July 2009).

<sup>332</sup> *S v Golfview Mining (Pty) Ltd* unreported case no 82/11(July 2009).

<sup>333</sup>*S v Golfview Mining (Pty) Ltd* unreported case no 82/11(July 2009).

risk being held personally liable for failure thereof. One running theme in most of the abovementioned cases is how the court does not simply cut off its power after securing a conviction. It goes further and requires the perpetrator to exercise damage control of some sort on the site itself. In CSR, a breach of duties deprives the company and all its stakeholders of the company's full potential. Be it in terms of economic gains, employee satisfaction, holistic sustainability, harmonious co-existence with the community, and many others. With that said, it is vital to acknowledge the efforts put forth by the judiciary in conjunction with environmental legislation. This is in line with mainstreaming CSR and can equally be imported to other industries as well. If similar mechanisms and the degree of implementation successfully infiltrate other industries, the dream of CSR may be well within our reach.

## 5. THE SEC

The establishment of the SEC was first introduced in the Companies Act of 2008. The Act states that it is imperative that companies set up a SEC.<sup>334</sup> This provision is targeted at boards of listed public companies, state owned enterprises (SOEs), companies with a Public Interest Score above 500 in any two of the past five years (in terms of section 26), and any other company that possesses a strong public interest.<sup>335</sup> This assumes that companies don't operate in a vacuum, and social responsibility is important. In addition, the activities of most companies usually have (direct or indirect) social effects. With that said, it is important that they ensure operations are in line with the good corporate governance agenda.

Section 72 of the Companies Act (read with Companies Regulation 43) gives power to the Minister of Trade and Industry to call on companies to establish a SEC.<sup>336</sup> It can be gathered that companies are encouraged to adopt an 'out of the box' mentality and stretch their reach past profit making. It is evident that the number of corporate blunders is globally on the rise, therefore it is vital to explore preventative measures. Thus, development of a social conscience

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<sup>334</sup> Section 72 Companies Act.

<sup>335</sup>Section 72(4) Companies Act.

<sup>336</sup> Section 72 Companies Act.



is a key-contributing factor to ensuring good corporate citizenship. The SEC will act as a monitoring structure that seeks to ensure all functions of the company comply with CSR needs. The act prescribes the composition of the committee as follows. It must have a minimum of three members. These members can either be prescribed officers or directors of the company. However, at least one of them has to be a non-executive director.<sup>337</sup>

Furthermore, regulation 43 spells out the types of activities that a SEC is required to oversee. These include: social and economic development, ethical management, good corporate citizenship, environmental protection, health and safety, consumer relationships, and labour and employment issues.<sup>338</sup> Section 72(8) bestows the SEC with the necessary powers it requires to properly execute its duties and its functions.<sup>339</sup> It encourages transparency by giving the SEC power to attend general meetings and to gather necessary information from management or from any employee. Apart from its monitoring function, the SEC is also tasked with reverting back to shareholders at the company's Annual General Meeting. This is where the committee would report back to the shareholders on how they have incorporated social consciousness in to the company.<sup>340</sup> It is important to note that the act is unclear whether the SEC is expected to compile a written report on their activities or not. One can agree that the creation of a SEC as a legal obligation is a step in the right direction. However, as much as it is a step in the right direction, its sufficiency in comparison to King IV is questionable. King IV presents a more detailed and thorough outlook on the setup and functioning of a SEC, which will now be discussed in the following section.

## 6. KING IV – SEC

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<sup>337</sup>Regulation 43(3).

<sup>338</sup> Regulation 43.

<sup>339</sup> Section 72(8) Companies Act.

<sup>340</sup> Section 72(8) Companies Act.

Apart from the Companies Act, the King Code on Corporate Governance also mentions the need for a similar structure. It was through King III that a high level of transparency was required. King III hoped to achieve inclusivity, innovation, social transformation, and overall sustainability.<sup>341</sup> In its first chapter, King III looked at ethical leadership and corporate citizenship. The board was entrusted with the duty to ensure that the company is seen as a responsible citizen, and conducts itself in a socially responsible manner. However, to remain current and coherent, the focus will be on King IV, which is the code that is currently in operation.

King IV gives one a deeper look into the need of the establishment of a SEC as required by the Companies Act. Part 5 of King IV deals with corporate citizenship, governing structures and delegation of duties thereof.<sup>342</sup> It calls for the creation of a SEC as a sub-committee to the Board that will be in charge of creating an ethical culture. In terms of King IV, the SEC is expected to oversee and encourage ethical leadership and social consciousness. It is seen as an in-house officer that ensures that the company is engaging in ethical decision-making and good corporate citizenship. Apart from a supervisory role, King IV also gives the SEC the role of reporting. The SEC is responsible for reporting back to the stakeholders on the level of organisational ethics that have been employed.<sup>343</sup> This ties in to the idea of stakeholder involvement and overall inclusivity. In terms of the recommended practices, King IV takes a step further than the Companies Act to encourage companies that are not required to set up a SEC by law to give thought to the formation of a body that will execute similar functions.<sup>344</sup> This emphasizes how active King IV is in terms of ethical responsibility. King IV puts an interesting twist to the composition of the committee. To encourage impartiality and inclusiveness, it introduces a different dimension to the board. It calls for more non-executive members to form

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<sup>341</sup>Triologue 'King III and Integrated Reporting' available at <http://trialogue.co.za/king-iii-and-integrated-reporting/> (accessed on 22<sup>nd</sup> October 2018).

<sup>342</sup>Triologue 'Beyond Compliance: Social and Ethics Committee Under King IV' available at <http://trialogue.co.za/beyond-compliance-social-ethics-committees-king-iv/> (accessed on 22<sup>nd</sup> October 2018).

<sup>343</sup> PWC 'King IV-Steering Point' available at <https://www.pwc.co.za/en/publications/king4.html> (accessed on 22<sup>nd</sup> October 2018).

<sup>344</sup>Triologue 'Beyond Compliance: Social and Ethics Committee Under King IV' available at <http://trialogue.co.za/beyond-compliance-social-ethics-committees-king-iv/> (accessed on 22<sup>nd</sup> October 2018).

the committee, as this will help uncover unbiased and unprejudiced opinions. This is different from the Companies Act that only calls for one non-executive member to be part of the board. In the same spirit of transparency, King IV also adopts a similar approach in terms of the composition of the risk governance committee,<sup>345</sup> which the Companies Act does not regulate. Also, King IV holds transparency at a higher standard. Especially in terms of issues like CEO disclosures and committee memberships. In terms of CEO disclosures, King IV is clear about disclosure on remuneration of directors and prescribed officers. It goes a step further by calling for deeper insight such as; a notice period of termination of the CEO's contract, and all other necessary information.<sup>346</sup>

King IV has a much wider ambit than the Companies Act. This can be gathered from the abovementioned discussion. One can see that King IV seeks to ensure thorough application of ethical leadership and social responsibility. It does this by ensuring that no stone is left unturned in the process. The code actively tries to manage and regulate every necessary avenue, in an attempt to mainstream CSR and corporate governance in South Africa. This depth of detailed information goes down to procedures and processes. One can see that it has a further reach than the Companies Act in many instances. It could be beneficial to have legislated provisions that have a further reach than voluntary provisions. Thus, for a country like South Africa, this may be an area that requires more attention.<sup>347</sup>

## 7. LESSONS FROM THE EU

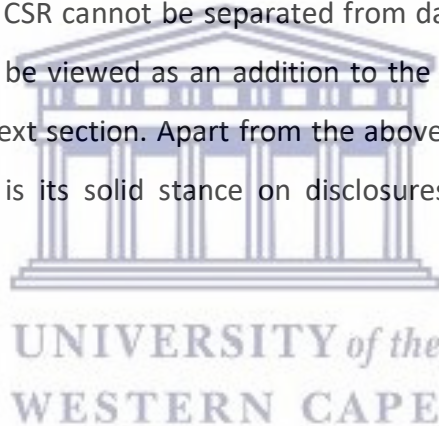
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<sup>345</sup>Knopjes B 'Changes in King IV: The Impact on Companies' Approach to Risk' available at <https://www.isometrix.com/changes-in-king-iv-the-impact-on-companies-approach-to-risk> (accessed on 22nd October 2018).

<sup>346</sup> PWC 'King IV-Steering Point' available at <https://www.pwc.co.za/en/publications/king4.html> (accessed on 22nd October 2018).

<sup>347</sup> A country that is still trying to address the effects left behind by the apartheid regime.

The EU has embraced the CSR agenda in its own unique way. As mentioned earlier, some studies suggest that the EU took time in putting CSR in the forefront. This view can be attributed to the fact that it is a large body with a unique mix.<sup>348</sup> Its steady pace is evident through the time spent and the series of blueprints and consultations that were explored deeper in the previous chapter. Nonetheless, despite this, the EU has shown that it is on board with the promotion of corporate citizenship. It seeks to incorporate not only social concerns, but also environmental aspects into their application. Like the majority of countries around the world, CSR in the EU is still also a largely voluntary mechanism that equips the company with the choice and medium of application.<sup>349</sup> Another unique factor lies in how CSR should be intertwined with the business strategy. The EU views CSR as an internal process that is embodied in every step of the business process.<sup>350</sup> Every decision made has to be in light of CSR. Therefore, with that said, CSR cannot be separated from daily business operations. While in the Indian context, CSR can be viewed as an addition to the business operations. However this shall be discussed in the next section. Apart from the abovementioned, what South Africa can take home from the EU, is its solid stance on disclosures, especially in terms of non-financial disclosures.



## 7.1 DIRECTIVE 2014/95/EU

Article 288 of the Treaty on the Functioning of the European Union describes what a directive is and what it typically entails. Article 288 gives the Commission the power to create directives and other regulatory frameworks so as to give effect to the Unions mandate.<sup>351</sup> In terms of this article, a directive is a legislated act that binds all member states. It gives the member state the authority and freedom on how it will be transcended into their national laws. Directive 2014/95/EU of the European Parliament speaks on non-financial disclosures as well as

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<sup>348</sup> Marx Z *CSR Reporting in the EU Under Directive 2014/95/EU: A Case Study on Danish Influence on EU CSR Policy* (LLM Thesis, University of Eastern Finland, 2017) 25.

<sup>349</sup> European Commission 'Corporate Social Responsibility (CSR)' available at [https://ec.europa.eu/growth/industry/corporate-social-responsibility\\_en](https://ec.europa.eu/growth/industry/corporate-social-responsibility_en) (accessed on 23rd October 2018).

<sup>350</sup> Tschoop D 'Corporate Social Responsibility: A Comparison Between United States and the European Union' (2005) 12 *Corporate Social Responsibility and Environmental Management* 58.

<sup>351</sup> EU Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community (2007) 306/01.

disclosures on diversity.<sup>352</sup> This directive actively promotes transparency and a higher degree of accountability. By it being legislated in the European Parliament, one can infer that it is a focus area that should be taken seriously. It is important to note that, after being transcended into national member state laws, member states will be expected to comply with the disclosure requirements. These include reporting on the environment, social and employee relations, human rights, and anti-corruption and bribery.<sup>353</sup>

## 7.2 IMPORTANCE OF NON-FINANCIAL DISCLOSURES

Corporate disclosure is a vital component to the prosperity of a business. It is submitted that disclosure and transparency are essential to good corporate governance.<sup>354</sup> Transparency entails creating an environment where there is a free flow of accurate information between directors, auditors, management and stakeholders. When a company familiarizes itself with the practice of reporting, it also opens up many more opportunities for the company. As much as figures in a financial report are important, non-financial reporting is also gaining popularity. Non-financial corporate disclosures help companies enhance their social responsibilities. They assist in the evolution from a typical tick-box approach, to a more inclusive approach that will subsequently assist them in creating a sustainable future. Companies are encouraged to report on their ethical backbone, social and environmental undertakings, and overall sustainability practices.<sup>355</sup>

## 7.3 REVISITING THE FTSE/JSE RI INDEX

South Africa has received praise for having very forward-thinking mechanisms in place. One of these creations includes the FTSE/JSE RI INDEX. Qualifying companies are required to make disclosures on social, environmental, and governance issues. It has been acknowledged that

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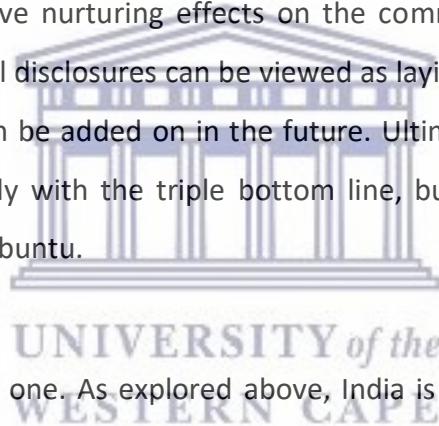
<sup>352</sup>EU directive 2014/96/EU.

<sup>353</sup> European Commission 'Non-Financial Reporting' available at [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en) (accessed on 23rd October 2018).

<sup>354</sup>Fung B 'The Demand and Need for Transparency and Disclosure in Corporate Governance' (2014) 2 *Universal Journal of Management* 72.

<sup>355</sup>Perrini F 'The Practitioners Perspective to Non-Financial Reporting' (2006) 48 *California Management Review* 81.

there have been more companies reporting after the Index was created.<sup>356</sup> However, it is important to highlight that its voluntary nature has already begun to show its weaknesses. An assessment study showed that the number of companies in the mining industry have declined in terms of governance reporting.<sup>357</sup> Reporting less on important issues such as governance may raise the suspicion of either minimal compliance or severe malpractice. Therefore to ensure that South Africa fully benefits from corporate governance and CSR in particular, it is important to tighten control. Employing means similar to the EU directive 2014/95/EU may help create a sense of uniformity in application. The legal bearing will put pressure on companies to integrate social consciousness in their business strategy. This will consequently result in a higher level of compliance, and not the bare minimum. As a result, transparency and accountability will be within reach and easily attainable. Through this, the stakeholders will feel more involved, which shall have nurturing effects on the community at large. In a nutshell, having mandatory non-financial disclosures can be viewed as laying down a solid foundation for other elements of CSR that can be added on in the future. Ultimately, this will create a ripple effect that ties in well not only with the triple bottom line, but also with the constitutional mandate and the principle of Ubuntu.



## 8. INDIA

The Indian case is a significant one. As explored above, India is the only country in the world with mandatory CSR spending. Through section 135 of the Companies Act 18 of 2013, the Indian parliament managed to mandate qualifying companies to put aside 2 per cent of their profits for CSR.<sup>358</sup> Many academics have expressed their concerns on the Indian model. On one hand, there are researchers applauding the Indian Parliament for being a 'game changer'.<sup>359</sup> While on the other end of the spectrum, Indian companies are condemning the act for taking

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<sup>356</sup> JSE 'SRI Index encourages companies to improve transparency' available at <https://www.jse.co.za/news/sri-index-encourages-companies-to-improve-transparency> (accessed on 28th October 2018).

<sup>357</sup> Corruption Watch 'Mining for Sustainable Development' available at <https://www.corruptionwatch.org.za/wp-content/uploads/2017/10/Mining-for-Sustainable-Development-report-South-Africa-2017.pdf> (accessed on 29th October 2018).

<sup>358</sup> Section 135(1).

<sup>359</sup> Konadu V & Japhet K 'Debate on Mandatory Corporate Social Responsibility' available at [https://www.researchgate.net/publication/301542245\\_DEBATE\\_ON\\_MANDATORY\\_CORPORATE\\_SOCIAL\\_RESPONSIBILITY](https://www.researchgate.net/publication/301542245_DEBATE_ON_MANDATORY_CORPORATE_SOCIAL_RESPONSIBILITY) (accessed on 28th October 2018).

away their freedom.<sup>360</sup> However statistical data has suggested that there is hope in the new model. Kapoor notes that after this provision came into operation, 75 per cent of companies in the private sector have begun implementing it.<sup>361</sup> Similarly, other research suggest that from 2015 to 2016 India saw a 28 per cent growth in CSR spending compared to the previous years.<sup>362</sup> What makes the Indian model so heartening is the fact that non-compliance carries no penalties but companies are still willing to stretch their reach by complying with section 135. Furthermore, by legislating CSR, India has shown its commitment towards good corporate citizenship and the promotion of sustainable practices on a global scale.

Section 135 (1) of the Companies Act requires the setting up of a corporate social responsibility Committee of the Board.<sup>363</sup> This is a similar idea to the SEC described in the South African Companies Act and the King IV. In India, this Committee shall comprise of three or more directors, one of which has to be an independent director. In addition, the Committee is expected to formulate a CSR policy that will be recommended to the Board for approval. This CSR policy shall include all the activities that the company seeks to implement in compliance with Schedule VII. The Committee is also tasked with recommending an amount to be spent and with monitoring.<sup>364</sup> It can be gathered that the CSR Committee is give much more power to execute their duties in the Indian context rather than in South Africa. It can be inferred from section 135 that this Committee is entrusted with and expected to be more hands on with the preparation and execution of CSR. In addition to the powers conferred, what makes this stand out even more is the fact that it has legal backing to ensure implementation. In a nutshell, it must be credited that in this specific instance, South Africa is not too far behind for having legislated a similar body, the SEC. Provisions of the South African Companies Act are a step in

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<sup>360</sup>The Indian Express '2% CSR Spend on Cards for India Inc' available at <http://archive.indianexpress.com/news/2--csr-spend-on-cards-for-india-inc/747860/> (accessed on 22<sup>nd</sup> October 2018).

<sup>361</sup>Kapoor GK & Dhamija S 'Mandatory CSR Spending- Indian Experience' (2017) 3 *Emerging Economy Studies* 103.

<sup>362</sup>Shira D 'Corporate Social Responsibility in India' available at <https://www.india-briefing.com/news/corporate-social-responsibility-india-5511.html/> (accessed on 22<sup>nd</sup> October 2018).

<sup>363</sup> Section 135(1) Companies Act.

<sup>364</sup> Section 135 Companies Act.

the right direction however, it would be wise to extend its scope to mirror King IV and to take from the Indian provision necessary additions.

South Africa can borrow valuable lessons from the Indian model. As seen above, South Africa holds the title for the largest global income inequality. On a similar note, India is home to the second largest poverty concentration in the world.<sup>365</sup> This places these two extremes in a position where they could learn from one another. With the number of voluntary regulatory frameworks in South Africa, it can be gathered that they are halfway to mandating CSR. It is believed that only through this route, will countries be in a better position to balance economic and societal needs adequately. This is due to the fact that there is a legal obligation to act. With that said, it is particularly important for countries with socio-economic disparities, like South Africa to consider legislating practices like CSR. Evidently, voluntary guidelines to CSR have proven to be inefficient in the South African context. Therefore, the best option to explore could be public and private wealth, through government influence.



## 9. CONCLUSION

It is clear that there is a need for state controlled laws to govern the implementation of CSR. The current mechanism is multi-faceted and comprehensive however, its voluntary approach makes it susceptible to abuse. In addition, the mere fact that there are a number of frameworks and laws that control specific portions also act as a barrier to good CSR. This fragmented approach defeats the purpose of legal certainty and undermines the true essence of CSR.

South Africa is struggling with post-apartheid socio-economic issues. The widespread unemployment and rising crime rates point to a severe problem in the country. It is high time

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<sup>365</sup>Kharas H 'The Start of a New Poverty Narrative' available at <https://www.brookings.edu/blog/future-development/2018/06/19/the-start-of-a-new-poverty-narrative/> (accessed on 25<sup>th</sup> October 2018).



that the government considers delegating some of its powers to other key players in the community. This would create a win-win situation whereby the burden of the government's shoulders would be relieved, and the society would equally benefit. Therefore, if the notion of corporate citizenship were mandated, it would actively contribute to mainstreaming CSR by infiltrating an area that holds a lot of wealth, and that is the corporate realm.

One does not have to look very far to see the effects of state controlled laws. A good example is the exceptional work that has been delivered by our courts through environmental legislation. In the recent past, there has been a good record of convictions for environmental offences especially in the mining industry. Directors have been held personally liable and awarded hefty fines for offences committed. This clearly illustrates the severity of environmental degradation, its effects on the community in general, and the seriousness of the judiciary in serving justice. Cases like *S v Blue Platinum Ventures* and *S v Anker Coal and Mineral Holdings* have shown the far reaching capabilities of the law. These cases delivered unique judgements that have not been seen before in South Africa. One can take home very valuable lessons from the cases discussed in this chapter and the forward thinking attitude of environmental legislation and the courts. If such legislation proved to be effective in environmental legislation, there is a strong chance that it can also be beneficial to the full CSR agenda.

Section 72 of the Companies Act calls for the formation of a SEC. It is important to note that this is the only legal obligation that provides for CSR in the act. Apart from the Companies Act, King IV also mentions the importance of a SEC. This committee is intended to serve as a monitoring body that ensures ethical leadership and good corporate citizenship is practiced in the company. As abovementioned, the King IV covers a wider scope in terms of the SEC and its duties. It calls for a higher level of transparency and accountability by requiring more than one independent director in the composition of the SEC. This is the case so as to ensure impartiality and unbiased decision making. It would be more beneficial to have legislation covering a wider

ambit than a voluntary framework. With that said, the legislature could consider King IV as a point of reference while making amendments to the current regime.

The EU and India can serve as inspiration to South Africa in several instances. The EU has professed its unfettered perspective through directive 2014/95/EU. Despite being a large body of 28 member states, the EU has still managed to promulgate a directive that seeks to promote social transparency. This directive mandates all the 28 member states to diversity and non-financial disclosures. This encourages member states to be open about their CSR strategies at least in terms of environmental matters, social and employee relations, anti-bribery and human rights. On the other hand, India sets an even higher standard. By being the first in the world to legislate corporate spending, India has given the CSR agenda a lot more significance. In addition, research already shows that in only 5 years of this provision being operational, the results are already praiseworthy. Despite being one of the most populated countries in the world with a host of socio-economic difficulties, one can infer that the government is putting a lot of thought and effort in initiatives that promote sustainability. In a nutshell, South Africa can use different methods employed in different spheres (both national and international) to create a unique framework that would give better effect to CSR. It is good to note that pre-existing regulatory frameworks (such as King IV, the FTSE/JSE RI INDEX, environmental law) are an added advantage in this process as they could always be used as a point of reference. Against this background, chapter 5 concludes this study and suggests possible recommendations to the current framework.

## CHAPTER 5 – CONCLUSION AND RECOMENDATIONS

### 1. INTRODUCTION

The main aim of this thesis was to revisit and rethink the current CSR framework that exists in South Africa. In order to assess the current framework, this study went back in history and traced evidence of CSR to this day. To put the South African case in perspective, alternate jurisdictions and instruments were explored. From this discussion, a number of lessons can be drawn. This chapter seeks to conclude this study, and bring forth certain lessons that could be used as a point of reference for future provisions.

### 2. CONCLUSION

Before exploring any further, it was of vital importance to examine the full picture of CSR in South Africa. Chapter 2 was responsible for capturing CSR as it is seen today. This chapter examined the history of CSR from the apartheid regime to date. It was established that the apartheid regime has created a very unique case for South Africa. The inequality, segregation, and institutionalized racism have all been contributing factors to the modern day dilemma. One of the first points of reference to a CSR-like concept happened during the apartheid regime. This was through a set of principles known as the Sullivan Principles. These were prescribed for American companies operating in South Africa. The main relevance of these principles was to empower companies to show their support. This support was mainly centred on breaking barriers of inequality that were presented by the regime. The Sullivan Principles exerted pressure on South Africa to abolish institutionalized segregation. Many people believed that this was truly the first opposition that the regime faced which, consequently led to it being used as a blueprint to end apartheid.<sup>366</sup> After apartheid came to an end, South Africa held its first

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<sup>366</sup>Marshall University 'Sullivan Principles' available at <http://www.marshall.edu/revleonsullivan/principles.htm> (accessed on 29th October 2018).

democratic elections that saw the ANC take office in 1994. Due to the socio-economic conditions that were a direct consequence of apartheid, a serious intervention was needed. The ANC formulated a number of programs and policies that aimed to bridge the rift that apartheid created. Projects such as the RDP and GEAR were responsible for rebuilding and transforming the country. It is important to note that all these efforts ran parallel to the national dream that was the upholding of the principle of Ubuntu. To date, Ubuntu has been one of the strongest pillars that have contributed to bringing South Africans together. Apart from national acceptance, the principle of Ubuntu has also gained worldwide recognition for its humble and humanly attributes.

The term 'Ubuntu' has been written in the epilogue of the South African constitution. This only points to its importance and its value to the society. The Constitution of the Republic of South Africa of 1996 was a turning point for South Africa. This document has laid the foundation to many victories that the country has since then won. The constitution has been praised for being one of the most 'forward-thinking' constitutions in the world.<sup>367</sup> It incorporates different elements that seek to give life to the country's dream. In terms of corporate responsibility, chapter 2 speaks to this. The Bill of Rights entrusts a natural or a juristic person to uphold democracy, freedom, and human dignity. With that said, it can be inferred that the duty is not only on the government or on a natural person, but it has been extended to juristic persons.<sup>368</sup> This proves as a solid foundation that can be used to give effect to CSR being a legal obligation in South Africa.

One of the most noteworthy creations of the ANC government was the enactment of the BBBEE Act. This act is responsible for transforming the socio-economic landscape in South Africa. The BBBEE Act has a very strong agenda, and this is the promotion of holistic growth. The apartheid

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<sup>367</sup> Van Staden M 'Is the South African Constitution the Best in the World?' available at <https://rationalstandard.com/is-the-south-african-constitution-the-best-in-the-world/> (accessed on 29<sup>th</sup> October 2018). As already discussed in chapter 2, paragraph 3.3.

<sup>368</sup> As evidenced by Section 7 of the Companies Act.

regime specifically excluded black people from meaningful participation in the economy. Thus, the act aimed to unleash the full potential of the South African workforce by affording previously disadvantaged members of the society equal opportunities. This applied to the workplace, community engagement, preferential procurement, empowerment of black women, and many others.<sup>369</sup> In a nutshell, the BBBEE system has had countless contributions to socio-economic development, however to pinpoint directly to CSR, there are other frameworks that have a further reach.

It is impossible to discuss CSR without mentioning the King Report on corporate governance. This code seeks to embody and promote the full purpose and object of good corporate governance. Through King I, King II, King III, and the current King IV, the notion of corporate governance has evolved immensely. This code is responsible for raising awareness and setting standards for ethical leadership and good corporate citizenship. Through this code, corporate entities are expected to conduct themselves in a manner that is socially and ethically acceptable. Through the years, the code has been updated to give effect to current needs. King IV places transparency on a high pedestal. It enforces this through the fact that it is a principles-based and an outcomes-based code. It adopts an ‘apply and explain’ approach. This supposes that principles will be applied, and an explanation for this application is expected. It is a form of ‘soft law’ as its provisions are only mandatory to companies listed in the JSE. Furthermore, it also mentions the need for a SEC. The need of a SEC seems to be more emphasized in King IV, as compared to the Companies Act. This can be attributed to the fact that King IV has a much broader scope, and attention to detail is higher than the act. One can question the shortcomings of the King code since it presents itself as a full package. However, the greatest drawback from this almost perfect code is the fact that it remains greatly voluntary. The provisions that appear in the King code do not in any form or manner mandate application to all entities, except listed companies. This leaves other entities out of the picture and hands them

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<sup>369</sup>Poore D ‘Theoretical Perspectives and the Implementation of the BBBEE Policy Framework’ (2013) 4 *Mediterranean Journal of Social Sciences*636. As discussed in chapter 2, paragraph 3.4.

the full right to consider the application of these provisions, or not. Unfortunately, this feature can be subject to abuse or misuse if not monitored closely.

The only legally binding provision that relates to CSR is contained in the Companies Act. Through section 72 and regulation 43, a company is expected to formulate a SEC that will ensure that the company successfully integrates CSR in its business strategy. There is a striking difference between the requirements that are contained in the Act, and the requirements in King IV. In terms of the composition of the SEC, King IV seems to hold transparency at the core of its agenda by requiring more than one non-executive and unbiased director. Considering the fact that transparency lies at the core of good corporate citizenship, this puts the Act's credibility into question by default. One thing that the act has made clear is the duties of directors. Through the Act, directors' duties that were previously regulated by common law have now been legislated. Section 76 requires a high level of care from the directors. One of the key roles that a director plays is ensuring that his decisions support the broader purpose of effective corporate governance. This translates into exercising proper care, skill and diligence in their decision-making. Directors are also required to put transparency at the core of their functions by ensuring that all decisions and actions are in full favour of the company. Abuse of power and failure to comply could result in them being held liable under section 77. Apart from the Companies Act, there are other industry specific Acts that give effect to the purpose of CSR in South Africa. Environmental protection acts like NEMA, MPRDA, and the NWA have in their own right contributed to furthering the CSR agenda.

After establishing the current South African framework, chapter 3 explored frameworks in alternate jurisdictions. This chapter examined the EU and India respectively. The main purpose of this comparative segment was to compare and learn from other jurisdictions. With that said, what was gathered from this exploration is discussed below. In terms of the EU, CSR was a steady realisation. The EU paced itself carefully in terms of appreciating CSR and its essence. This gradual approach can be accredited to the fact that the union is a large body with

particular needs and aspirations. Here, CSR is a purely voluntary phenomenon. Through bodies such as the European Commission, corporate citizenship has received widespread influence and recognition. The movement began gaining traction through an independent body known as CSR Europe. This groups' plea is responsible for creating a favourable environment that mainstreamed CSR as we know it today.

The efforts of CSR Europe translated into the Green Paper of 2001. This Green Paper marked a monumental turning point in the EU. The Green Paper aimed to provoke thoughts and debates on CSR. In addition, it was responsible for laying down the definition of CSR as per the European Commission. Owing to the fact that CSR was not a household name, it was important to put out a definition that would clarify and enhance understanding. The Commission defined CSR as a concept where companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis. Two important aspects can be gathered from this definition. The first is that it is important to have a positive social and environmental track record. And lastly, this concept should not operate in a vacuum but should infiltrate day-to-day business interactions. The Green Paper also examined CSR in detail, and provided information about the expectations and goals related to sustainable practices and good corporate citizenship. On the other hand, it received some criticism for not being detailed enough and most importantly for advocating for voluntary application. Entities such as NGO's were appalled by the Green Paper's voluntary nature as they envision something stricter, probably like directive 2014/95/EU. Directive 2014/95/EU is the only form of CSR that requires mandatory application. This directive seeks to promote transparency through non-financial reporting. Qualifying companies are required to be transparent and report on non-financial issues such as; their environmental and social contribution, anti-corruption methods, and others. From this, it can be gathered that the EU has made efforts to promote CSR in the union. However the deadlock between mandatory and voluntary application still exists. It will be exciting to see how the future of CSR in Europe evolves, especially through projects like Europe 2020.

In terms of mandatory application, India reigns supreme in this regard. Through its Companies Act of 2013, it has managed to become a pioneer by legislating CSR. India has had traces of CSR in its history, these traces were mainly based in religion and Indian traditions. Religious practices like Zakaat and Daashaant all have similar philanthropic foundations that seek to promote brotherhood and generosity. Over time, CSR in India has evolved over four phases to reach its modern day form. Before the Act came into operation, the NVGs were responsible for governing corporate governance. The NVGs laid down nine voluntary guidelines that promoted good business practices. It is important to note that the NVGs were used as a reference point while drafting the current CSR provision.

Through Section 135 of the Act, companies are obliged to set aside two percent of their average profits of the last three financial years to performing prescribed social activities. These social activities have to correspond and be in line with the activities listed in Schedule VII. Section 135 finds wide application, it applies to all private limited companies, public limited companies, holding and subsidiaries companies, and all foreign companies that have operating offices in India. Furthermore, from section 135, companies are also required to formulate a CSR committee. This Committee has a similar function to the SEC mentioned in King IV and the South African Companies Act. What makes the Indian CSR Committee unique is the fact that it is tasked with creating a CSR Policy from scratch. This Policy will thereafter be submitted to the company Board for perusal and subsequent approval before implementation takes place. The Committee is also responsible for the suggestion of an estimated amount to be used in implementing its respective CSR duties. It is important to note that in the Indian context, CSR is prioritized differently. In South Africa, CSR is strongly encouraged to be part and parcel of the business strategy however, in India it functions separately. Interestingly, as much as CSR is a legal obligation in India, there is no mention of any penal consequences for non-compliance. What one can establish from chapter 3, is the stark differences and similarities of CSR adoption in different jurisdictions.



Having explored different jurisdictions, it was important to bring the focus back to South Africa. Chapter 4 was responsible for exposing the gaps in the current regime, and establishing why the current framework is not sufficient. It shows how South Africa can do much better in terms of controlling CSR. This chapter's theme explores the core of legal certainty. Legal certainty is seen as a valuable ingredient that is necessary to achieving a functioning and an efficient legal system. A functioning legal system is vital to any country, especially South Africa. It has been noted in this chapter that the country is currently experiencing a lot of socio-economic turbulence. These issues range from; widespread crime, the lack of efficient service delivery, unemployment, and many others. Therefore, to give effect to the Bill of Rights and the Constitution of the Republic of South Africa, delegating tasks to other key players could be a fruitful suggestion. These should include key players in our societies, such as big businesses and other corporate entities. This is because they are usually financially sound, and in most cases their activities do have a direct or indirect effect on the society.



Furthermore, the mining sector and environmental legislation were also taken into account. This was done to capture the full picture of the gaps that exist, and the capabilities of our legislature and our judiciary. It has been noted that mining is one of the most lucrative industries in the country. As much as it is a key contributor to the economy, the nature of its activities is known to have far reaching effects. Acts such as the MPRDA, the NEMA, the MHSA, and the NWA, have all brought some hope. Courts have begun handing down harsher sentences for directors found liable for contravening environmental acts, and abusing their position of power. Cases such as *S v Golfview Mining (Pty) Ltd*, *S v Blue Platinum Ventures*, and *Aurora: Pamodzi liquidators vs Mandela & Co* have all displayed how big corporations and their management have had their day in court for different offences. This encourages compliance with related acts, fiduciary duties, and acts as an overall deterrent factor.

Section 72 of the Companies Act contains the only form of legislated CSR . This calls for the formation of a SEC. It must be remembered that King IV also contains a similar provision. The only difference between the two lies in how meticulous King IV is. All in all, section 72 must be recognised as a step in the right direction. It pushes companies to have more than profit on their agenda. Together with regulation 43, it enables an entity to practice a higher level of transparency.

### **3. RECOMMENDATIONS**

This thesis aims to assess the current CSR framework in South Africa. In doing so, it also aims to revert with lessons and recommendations that could be used to improve corporate spending. From the ongoing discussion, the following recommendations are being proposed.



#### **3.1 A PROPOSAL FOR REVISITING THE CURRENT FRAMEWORK**

It has been gathered that the main factor hindering effective CSR in South Africa could be attributed to its voluntary nature. When large corporations are given the freedom to apply CSR or not, more than often they fail to do so. In cases where they choose to apply CSR, it is usually more procedural and on paper and less of a practical engaged action. This creates a situation whereby the society is at loss as many corporations fail to fully discharge their duties.

#### **3.2 THE COMPANIES ACT**

South Africa could either choose amend the Companies Act or promulgate a fresh CSR act. If it chooses to amend the Companies Act, it could do so by including a clear and concise section that target corporate spending alone, similar to the case in India. This section could be read with the only CSR section in the Act, that is Section 72. In addition, this section would have a

have a stipulated amount to be used for CSR activities, for different types of companies. The current framework fails to provide and ensure full implementation of good CSR. The very fact that there is a mixture of voluntary codes and industry specific legislation creates instability in application. The current piecemeal approach is hindering progress and undermining the capabilities of the corporate realm. By amending the Companies Act to include a CSR provision, this would send a powerful statement to the corporate community about the seriousness of the matter. Having a law that encourages environmental protection, social integration, ethical standards, and good corporate citizenship, would indeed put South Africa in the forefront once again. In addition, mandatory CSR spending would not only ensure good corporate citizenship, but it would also uphold the Constitution, the Bill of Rights, and the principle of Ubuntu.

It is important to note that the existing frameworks makes mandating CSR slightly less tedious. There are a number of existing, and functional frameworks and regulations mentioned in this study that could be used as a backbone to the amendments. These include the King Code, the FTSE/JSE RI, the BBBEE Act, existing environmental legislation, and many others. As discussed in previous chapters, all these frameworks have had noteworthy impacts to the CSR agenda. Strong points from these frameworks could be imported into a new Act or an amendment thereof. Strong points such as inclusivity of the BBBEE Act, thoroughness of King IV, strict implementation in environmental legislation, and the firm approach displayed by the FTSE/JSE RI. This Act will function as an umbrella regulation that houses different branches and types of provisions that all give effect to the CSR agenda. With that said, it is hard to imagine how an entity may escape its duties.

### **3.3 THE KING CODE**

Instruments such as the King Code are of great importance and value to corporate governance. Despite being largely voluntary, or a form of 'soft law', its comprehensive and out-of-the-box approach is an example to be followed. Evident from discussions in previous chapters, it is

clear that King IV has wider and more detailed requirements and recommendations than the Companies Act. It embodies a wider scope, and hopes to leave no stone unturned. One can gather that King IV specifically explores things in more depth and detail than the Act itself. This is evident through its standard of transparency in the composition of the SEC, and other progressive provisions. As much as the Companies Act makes provision for a SEC, it is not as detailed as King IV. It is easy to say that, through this, the Act is somehow lacking to a certain extent, and that King IV has an upper hand. Therefore, to make up for this gap, it could be beneficial for the legislature to adopt King IV's wider scope on the SEC in possible future amendments to the Act.

Other than the appreciation for its detailed nature, King IV has also proved to be a reliable source of information. As much as it is voluntary, it is becoming so prominent in corporate governance that some courts have begun using it as a standard of care in their rulings. Court cases such as *Mthimunye-Bakoro v Petroleum Oil and Gas Corporation of South Africa (SOC) Limited and Another* and *Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company Limited and Others*<sup>370</sup> have both shown how the King Code was used to complement judgments. With that in mind, it is safe to say that provisions of King IV are sufficient in the eyes of the judiciary. They are seen to be of high quality and are deserving of more recognition. The mere fact that these provisions were admissible in a court of law translates to their strong persuasive power, and all that is lacking is formal legal backing. Therefore it could be highly beneficial to consider fully legislating King IV due to the fact that it has already proven to be a sufficient instrument.

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<sup>370</sup>As previously discussed in chapter 2.

### 3.4 CERTAINTY

Whichever route the legislature chooses to take in re-thinking the current framework, there are valuable lessons that can be taken from the EU and India respectively.

In terms of the EU, it is stated that CSR should be part of the daily business running. The EU emphasizes that ethical standards and corporate citizenship is to be fused into the business strategy so as to fully reap the benefits of CSR. As much as CSR is still largely voluntary, one can infer that they are clear about the mode of implementation. Such an approach helps alleviate the risk of confusion and also promotes certainty and uniform application. South Africa can learn from the EU in this regard. Such a uniform implementation strategy coupled with legal backing will help South Africa attain a higher level of good corporate governance. Furthermore, this will consequently translate in the appreciation of Constitutional standards, and the upholding of the principle of Ubuntu. In addition, an equally valuable lesson from the EU is in directive 2014/95/EU. This directive applies to all 28 member states of the EU. This shows that as much as the union comprises of different legal perspectives, certainty in terms of non-financial reporting is prioritized. Most importantly, mandating non-financial reporting can help minimize risk. Therefore, it is recommended that South Africa employs this viewpoint.

The Indian case presents a very practical model. What can be imported is its bravery to put forth a legislative reform. By abandoning the *laissez faire* approach India has taken a positive stand that other countries have failed to. The Indian government is putting pressure on corporate entities to provide support that can help tackle some of the country's worst challenges. Through section 135, Indian companies have a legislated duty to include corporate social spending in their budget. This corresponds with the principle of legal certainty and uniformity that has shown to be a weakness in the South African case. Similarly, South Africa

possesses a unique set of challenges that equally deserve attention. If not handled, these challenges can keep breaking down and eroding the potential of the country and its workforce. Therefore, due to the fact that there are already existing forms of 'soft law' such as the King Code, and other supplementary regulations such as the JSE listing requirements. It can be accepted that legislating CSR in South Africa is not a far-fetched suggestion.

#### **4. CLOSING REMARKS**

This thesis has established and highlighted the gaps that exist in the current framework that governs CSR in South Africa. Furthermore, it has also shown that there is a strong need to revisit and rethink the existing framework. This is absolutely necessary particularly in light of the promotion of corporate governance not only in the country, but also on the African continent. It must be noted that, the current framework has been extremely beneficial in mainstreaming a concept that was not considered important. However, there is still work to be done. Thus, through the existing framework together with lessons from other jurisdictions, South Africa can attempt to address the shortcomings that currently exist. It is important to have a single and uniform instrument with legal backing that advocates for CSR. Success stories in environmental legislation highlight the capabilities of our legislature and our judiciary. In addition, King IV in its entirety is worth legislating as it has already proved its might in our courts. However, more specifically provisions such as the SEC deserve legal backing. Lastly, the bravery displayed by India and the EU are examples to be followed. These countries have shown that despite their conditions, corporate citizenship was still given priority. In conclusion, the need for comprehensive law that ensures uniform application of CSR cannot be over emphasized.

## BIBLIOGRAPHY

### Books

Bowen H *Social Responsibilities of a Businessman* (2013) Iowa City: University of Iowa Press.

Du Plessis J & Keong Low C *Corporate Governance Codes for the 21<sup>st</sup> Century: International Perspectives and Critical Analyses* (2017) Switzerland: Springer International Publishing.

Gonzalez-Perez & Leonard (eds) *International Business, Sustainability and Corporate Social Responsibility* (2013) Bingley: Emerald Group Publishing House.

Naidoo R *Corporate governance: An essential guide for South African companies* (2018) Cape Town: Juta.

Smerdon R *A practical guide to corporate governance* (1998) London: Sweet & Maxwell.

Solomons J *Corporate governance and accountability* 4ed (2003) West Sussex: Wiley and Sons.

### Case law

*Dadoo Ltd vs Krugersdorp Municipal Council* 1920 AD 530.

*Democratic Alliance v South African Broadcasting Corporation Soc Ltd and Others* (12497/2014) [2015] ZAWCHC 182; [2016] 1 All SA 504 (WCC); 2016 (3) SA 468 (WCC) (27 November 2015).

*Engelbrecht N.O and Others v Zuma and Others* (25965/2012) [2015] ZAGPPHC 403; [2015] 3 All SA 590 (GP).

*Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company Limited and Others* (7655/05, 7655/05) [2006] ZAGPHC 47 (15 May 2006).

*Mthimunye-Bakoro v Petroleum Oil and Gas Corporation of South Africa (SOC) Limited and Another* (12476/2015) [2015] ZAWCHC 113; 2015 (6) SA 338 (WCC).

*Nkala and Others v Harmony Gold Mining Company Limited and Others (48226/12, 31324/12, 31326/12, 31327/12, 48226/12, 08108/13) [2016] ZAGPJHC 97; [2016] 3 All SA 233 (GJ); 2016 (7) BCLR 881 (GJ); 2016 (5) SA 240 (GJ) (13 May 2016).*

*South African Broadcast Incorporation Limited v Mpofo and Another [2009] 4 ALL SA 169 (GSJ).*

*S v Anker Coal and Mineral Holdings (Pty) Ltd* unreported case no 8/11 (26<sup>th</sup> June 2009).

*S v Blue Platinum Ventures (Pty) Limited and Another (A588/15) [2015] ZAGPPHC 980.*

*S v Golfview Mining (Pty) Ltd* unreported case no 82/11(July 2009).

### **Chapters in books**

Mexeina J 'Some Realism About Legal Certainty in the Globalization of the Rule of Law' in Sellers M (ed) *The Rule of Law in Comparative Perspective. IusGentium: Comparative Perspectives on Law and Justice* 3ed (2011) Springer: Dordrecht.

Visser W 'Revisiting Carroll's CSR Pyramid: An African Perspective' in Pedersen R (ed) *Corporate Citizenship in Developing Countries* (2006) Copenhagen: Copenhagen Business School Press.



### **Codes**

The King I Report on Corporate Governance in South Africa, 1994.

The King II Report on Corporate Governance in South Africa, 2002.

The King III Report on Corporate Governance in South Africa, 2009.

The King IV Report on Corporate Governance in South Africa, 2016.

### **Constitution**

The Constitution of the Republic of South Africa, 1996.



## Green Paper

*The Green Paper: Promoting a European framework for Corporate Social Responsibility* (DOC 01/9, 18<sup>th</sup> July 2001).

## Internet sources

Akkoc R 'Mapped: India Predicted to Become Worlds Most Populous Country by 2022' available at <https://www.telegraph.co.uk/news/worldnews/asia/india/11770757/Mapped-India-predicted-to-become-worlds-most-populous-country-by-2022.html> (accessed on 22nd August 2018).

Bailey S 'RDP Housing: A Success or Failure?' available at <http://www.cplo.org.za/wp-content/uploads/2017/02/BP-432-RDP-Housing-May-2017.pdf> (accessed on 18th July 2018).

Bakari S 'Why is South Africa Still a Developing Country?' available at [https://mpra.ub.uni-muenchen.de/80763/1/MPRA\\_paper\\_80763.pdf](https://mpra.ub.uni-muenchen.de/80763/1/MPRA_paper_80763.pdf) (accessed on 14th October 2018).

Banerjee R 'Evolution of CSR in India' available at [http://www.janafoundation.org/wp-content/uploads/2015/10/evolution\\_of\\_csr\\_in\\_india.pdf](http://www.janafoundation.org/wp-content/uploads/2015/10/evolution_of_csr_in_india.pdf) (accessed on 29th August 2018).

Baraka D 'Dwayne Baraka's Ramblings on CSR' available at <http://www.dwaynebaraka.com/blog/2015/04/16/history-of-csr-in-india/> (accessed on 24<sup>th</sup> August 2018).

BBC 'South Africa Regains 'Africa's Biggest Economy' Title From Nigeria' available at <https://www.bbc.com/news/world-africa-37045276> (accessed on 5th October 2018).

Beaubien J 'The Country With the Worlds Worst Inequality is..' available at <https://www.npr.org/sections/goatsandsoda/2018/04/02/598864666/the-country-with-the-worlds-worst-inequality-is> (accessed on 5th October 2018).

Bega S 'Mining Directors Face R10m Fine, Jail Time for Pollution' available at <https://www.iol.co.za/business-report/companies/mining-directors-face-r10m-fine-jail-time-for-pollution-8142857> (accessed on 13th October 2018).

Broughton A 'Multi-stakeholder forum issues CSR recommendations' available at <https://www.eurofound.europa.eu/publications/article/2004/multi-stakeholder-forum-issues-csr-recommendations> (accessed on 2nd August 2018).

Bowmans 'Quick Guide to Corporate Governance and King III' available at <http://services.bowman.co.za/Brochures/OnlineServices/CorporateGovernance/Corporate-Governance-King-3.pdf> (accessed on 25th July 2018).

Budiman A 'Few See EU as Worlds Top Economic Power Despite its Relative Might' available at <http://www.pewresearch.org/fact-tank/2017/08/09/few-see-eu-as-worlds-top-economic-power-despite-its-relative-might/> (accessed on 2<sup>nd</sup> August 2018).

Byrnes M 'Life in Apartheid-Era South Africa' available at <https://www.citylab.com/equity/2013/12/life-apartheid-era-south-africa/7821/> (accessed on 4<sup>th</sup> June 2018).

Chamber of Mines 'Facts and Figures 2016' available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjbmOb rp6neAhXEKMAKHZ6aD9IQFjAAegQICBAC&url=http%3A%2F%2Fwww.mineralscouncil.org.za%2Findustry-news%2Fpublications%2Ffacts-and-figures%2Fsend%2F17-facts-and-figures%2F442-facts-and-figures-2016&usq=AOvVaw0xBscqhV9798BcbOUDBT4p> (accessed on 21st June 2018).

Cooperatives Europe 'EU Multi-Stakeholder Forum on CSR' available at <https://coopseurope.coop/resources/news/eu-multi-stakeholder-forum-corporate-social-responsibility> (accessed on 22nd August 2018).

Corruption Watch 'Mining for Sustainable Development' available at <https://www.corruptionwatch.org.za/wp-content/uploads/2017/10/Mining-for-Sustainable-Development-report-South-Africa-2017.pdf> (accessed on 29th October 2018).

CSR Europe 'History' available at <https://www.csreurope.org/history> (accessed on 14th August 2018).

Crisp J 'King IV Report: Risk, Compliance and Assurance' available at <http://www.barnowl.co.za/insights/king-iv-report-risk-compliance-and-assurance/> (accessed on 27<sup>th</sup> July 2018).

Deloitte 'The Companies Act: The Social and Ethics Committee and the management of the Ethics Performance of the Company' available at [https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA\\_SocialAndEthicsCommitteeAndTheManagementOfTheEthicsPerformance\\_24032014.pdf](https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_SocialAndEthicsCommitteeAndTheManagementOfTheEthicsPerformance_24032014.pdf) (accessed on 29th July 2018).

Department of Trade and Industry 'Economic Empowerment' available at [http://www.dti.gov.za/economic\\_empowerment/bee.jsp](http://www.dti.gov.za/economic_empowerment/bee.jsp) (accessed on 21st July 2018).

De Vos P 'Transcript: Chief Justice Mogoeng on the Rule of Law in South Africa' available at <https://constitutionallyspeaking.co.za/transcript-chief-justice-mogoeng-on-the-rule-of-law-in-south-africa/> (accessed on 13<sup>th</sup> October 2018).

Dlamini S 'JSE Makes King IV Provisions Mandatory for Listed Entities' available at <https://www.iol.co.za/business-report/jse-makes-king-iv-provisions-mandatory-for-listed-entities-9915866> (accessed on 29th July 2018).

Economic Discussions 'Economic Ideas of Mahatma Gandhi' available at <http://www.economicdiscussion.net/articles/economic-ideas-of-mahatma-gandhi/21133> (accessed on 25th August 2018).

Euractiv 'CSR Back on the EU Agenda' available at <https://www.euractiv.com/section/social-europe-jobs/linksdossier/corporate-social-responsibility-back-on-the-eu-agenda/> (accessed on 23<sup>rd</sup> August 2018).

European Commission 'Corporate Social Responsibility (CSR)' available at [https://ec.europa.eu/growth/industry/corporate-social-responsibility\\_en](https://ec.europa.eu/growth/industry/corporate-social-responsibility_en) (accessed on 2nd August 2018).

European Commission 'Growth- Social Innovation' available at [http://ec.europa.eu/growth/industry/innovation/policy/social\\_en](http://ec.europa.eu/growth/industry/innovation/policy/social_en) (accessed on 2nd August 2018).

European Commission 'Non-Financial Reporting' available at [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en) (accessed on 18th August 2018).

European Parliament 'Three: 3 Main Institutions of the EU' available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20090525STO56250+0+DOC+XML+V0//EN> (accessed on 13<sup>th</sup> August 2018).

European Parliament 'Values and Objectives' available at <https://europarlamenti.info/en/values-and-objectives/values/> (accessed on 13<sup>th</sup> August 2018).

European Union 'Countries' available at [https://europa.eu/european-union/about-eu/countries\\_en](https://europa.eu/european-union/about-eu/countries_en) (accessed on 13th August 2018).

European Union 'European Multistakeholder Forum on Corporate Social Responsibility' available at [https://europa.eu/newsroom/events/european-multistakeholder-forum-corporate-social-responsibility\\_en](https://europa.eu/newsroom/events/european-multistakeholder-forum-corporate-social-responsibility_en) (accessed on 2nd August 2018).

Feder B 'Apartheid Deadline Troubles Sullivan' available at <https://www.nytimes.com/1987/06/01/business/apartheid-deadline-troubles-sullivan.html?module=ArrowsNav&contentCollection=Business%20Day&action=keypress&region=FixedLeft&pgtype=article> (accessed on 11<sup>th</sup> July 2018).

Feder J 'Sullivan Asks End of Business Links with South Africa' available at <https://www.nytimes.com/1987/06/04/business/sullivan-asks-end-of-business-links-with-south-africa.html> (accessed on 29th June 2018).

Fiinnovation 'Need of Undertaking CSR Activities in India' available at <http://www.fiinnovation.co.in/blog/undertaking-csr-activities-india/> (accessed on 11<sup>th</sup> August 2018).

Financial Express 'World Population Day: 1.3 Billion and Rising' available at <https://www.financialexpress.com/india-news/world-population-day-1-3-billion-and-rising-why-india-needs-to-focus-on-effective-family-planning-methods/1240059/> (accessed on 22<sup>nd</sup> August 2018).

Fin24 'Aurora Directors Found Guilty' available at <https://www.fin24.com/Companies/Mining/Aurora-directors-found-guilty-20150625> (accessed on 13<sup>th</sup> October 2018).

Flipping W 'Ubuntu: Applying African Philosophy in Building Community' available at [https://www.huffingtonpost.com/reverend-william-e-flippin-jr/ubuntu-applying-african-p\\_b\\_1243904.html](https://www.huffingtonpost.com/reverend-william-e-flippin-jr/ubuntu-applying-african-p_b_1243904.html) (accessed on 20<sup>th</sup> July 2018).

FTSE 'FTSE Russell-About Us' available at <http://www.ftserussell.com/about-us> (accessed on 29<sup>th</sup> July 2018).

Ganapathy S 'Education As a Cornerstone for CSR: A Collaborative Pathway to Development and Growth' available at <http://www.businessworld.in/article/Education-As-A-Cornerstone-Of-CSR-A-Collaborative-Pathway-To-Development-And-Growth/12-11-2017-131129/> (accessed on 24<sup>th</sup> August 2018).

Garcia M 'What Are the Functions of Corporate Social Responsibility' available at <https://bizfluent.com/info-8459857-functions-corporate-social-responsibility.html> (accessed on 28<sup>th</sup> November 2018).

Goenka H 'Why Is It a Good Idea To Mandate Corporate Social Responsibility' available at <https://economictimes.indiatimes.com/opinion/et-commentary/why-it-is-a-good-idea-to-mandate-corporate-social-responsibility/articleshow/16101647.cms> (accessed on 2<sup>nd</sup> August 2018).

Grayson D & Hodges A 'Europe: CSR Campaign Update' available at <https://ccbriefing.corporate-citizenship.com/2002/12/01/europe-csr-campaign-update/> (accessed on 14<sup>th</sup> August 2018).

Hall L 'Tying together social media and corporate social responsibility' available at <http://www.convinceandconvert.com/guest-posts/tying-together-social-media-and-corporate-social-responsibility/> (accessed on 5<sup>th</sup> May 2018).

Hanks J 'Defining sustainable development, CSR, CSI and LED' available at <https://incitesustainability.wordpress.com/2009/02/16/defining-sustainable-development-csr-csi-and-led/> (accessed on 12<sup>th</sup> May 2018).

IISD 'The European Union Green Paper on CSR' available at [https://www.iisd.org/business/issues/eu\\_green\\_paper.aspx](https://www.iisd.org/business/issues/eu_green_paper.aspx) (accessed on 2nd August 2018).

ILO 'International Instruments and Corporate Social Responsibility. A Booklet to Accompany Training on the Labor Dimension of CSR: from Principles to Practice' available at [http://www.ilo.org/empent/Publications/WCMS\\_101247/lang--en/index.htm](http://www.ilo.org/empent/Publications/WCMS_101247/lang--en/index.htm) (accessed on 28th November 2018).

Institute of Race Relations 'Life in South Africa: Reasons for Hope' available at <https://irr.org.za/reports/occasional-reports/files/life-in-south-africa-reasons-for-hope.pdf> (accessed on 5th October 2018).

IODSA 'King III' available at <http://admin.sun.ac.za/admin/Finance/new/docs/king%20III.pdf> (accessed on 26<sup>th</sup> July 2018).

IODSA 'King Committee on Corporate Governance' available at <http://www.ecseonline.com/PDF/King%20Committee%20on%20Corporate%20Governance%20-%20Executive%20Summary%20of%20the%20King%20Report%202002.pdf> (accessed on 24<sup>th</sup> July 2018).

Jana Foundation 'Evolution of CSR in India' available at [https://www.janafoundation.org/wp-content/uploads/2015/10/evolution\\_of\\_csr\\_in\\_india.pdf](https://www.janafoundation.org/wp-content/uploads/2015/10/evolution_of_csr_in_india.pdf) (accessed on 29th August 2018).

Joseph C 'South Africa's Crime Statistics: Denial at its Worst' available at <https://www.news24.com/MyNews24/south-africas-crime-statistics-denial-at-its-worst-20180917> (accessed on 29th September 2018).

JSE 'SRI Index encourages companies to improve transparency' available at <https://www.jse.co.za/news/sri-index-encourages-companies-to-improve-transparency> (accessed on 28th October 2018).

JSE 'JSE and Sustainability' available at <https://www.jse.co.za/about/sustainability> (accessed on 4th June 2018).

JSE 'JSE Remains Amongst Top Regulated Exchanges' available at <https://www.jse.co.za/articles/jse-among-top-regulated-exchanges> (accessed 29th July 2018).

JSE 'JSE and IoDSA Collaborate on Corporate Governance Guidelines' available at <https://www.jse.co.za/news/jse-and-iodsa-collaborate-on-corporate-governance-guidelines> (accessed on 29th July 2018).

Kashyap G 'Mandatory CSR spending – a blessing or a burden?' available at [https://www.peoplematters.in/article/c-suite/mandatory-csr-spending-a-blessing-or-a-burden-2657?utm\\_source=peoplematters&utm\\_medium=interstitial&utm\\_campaign=learnings-of-the-day](https://www.peoplematters.in/article/c-suite/mandatory-csr-spending-a-blessing-or-a-burden-2657?utm_source=peoplematters&utm_medium=interstitial&utm_campaign=learnings-of-the-day) (accessed on 26<sup>th</sup> May 2018).

Keys T & Malnight T 'Making the Most of Corporate Social Responsibility' available at <https://www.mckinsey.com/featured-insights/leadership/making-the-most-of-corporate-social-responsibility> (accessed on 11th May 2018).

Khandelwal A 'National Voluntary Guidelines for India Inc: From CSR to Responsible Business' available at <http://india.carbon-outlook.com/content/national-voluntary-guidelines-india-inc-csr-responsible-business> (accessed on 27th August 2018).

Kharas H 'The Start of a New Poverty Narrative' available at <https://www.brookings.edu/blog/future-development/2018/06/19/the-start-of-a-new-poverty-narrative/> (accessed on 25<sup>th</sup> October 2018).

Kings S 'Mining Boss Found Liable For Company's Environment Damage' available at <https://mg.co.za/article/2014-02-04-director-found-liable-for-companys-environment-damage> (accessed on 19th October 2018).

Knight R 'South Africa: Economic Policy and Development' available at <http://richardknight.homestead.com/files/sisaeconomy.htm> (accessed on 18th July 2018).

Knopjes B 'Changes in King IV: The Impact on Companies' Approach to Risk' available at <https://www.isometrix.com/changes-in-king-iv-the-impact-on-companies-approach-to-risk> (accessed on 22nd October 2018).

Kokemuller N 'Sustainable Development and Corporate Social Responsibility' available at <http://work.chron.com/sustainable-development-corporate-social-responsibility-5749.html> (accessed on 11th May 2018).

Kolver L 'SA Only Ranks Third in Africa As an Attractive Outsourcing Destination' available at [http://www.engineeringnews.co.za/article/south-africa-is-the-third-most-attractive-outsourcing-country-2009-04-03/rep\\_id:4136](http://www.engineeringnews.co.za/article/south-africa-is-the-third-most-attractive-outsourcing-country-2009-04-03/rep_id:4136) (accessed on 12th May 2018).

Konadu V & Japhet K 'Debate on Mandatory Corporate Social Responsibility' available at [https://www.researchgate.net/publication/301542245\\_DEBATE\\_ON\\_MANDATORY\\_CORPORATE\\_SOCIAL\\_RESPONSIBILITY](https://www.researchgate.net/publication/301542245_DEBATE_ON_MANDATORY_CORPORATE_SOCIAL_RESPONSIBILITY) (accessed on 28th October 2018).

Lal N 'Mandatory CSR in India: Help or Hindrance?' available at <https://www.eco-business.com/news/mandatory-csr-india-help-hindrance/> (accessed on 27<sup>th</sup> August 2018).

Legal G 'What is the New B-BBEE Scorecard and How Does it Work?' available at <https://www.golegal.co.za/new-b-bbee-scorecard-how-work/> (accessed on 22<sup>nd</sup> July 2018).

Le Roux C 'The Johannesburg Stock Exchange Socially Responsible Index' available at <http://www.gaaaccounting.com/the-johannesburg-stock-exchange-socially-responsible-investment-index/> (accessed on 29<sup>th</sup> July 2018).



Lumb G 'Director's Fiduciary Duties' available at <https://www.cliffedekkerhofmeyr.com/en/news/press-releases/2010/directors-fiduciary-duties.html> (accessed on 12th September 2018).

Maharaj A & Combrink J 'King IV- The Why, The What and The What Now?' available at <https://www.mazars.co.za/Home/News/Articles/KING-IV-THE-WHY-THE-WHAT-AND-THE-WHAT-NOW> (accessed on 29th July 2018).

Mariri T 'Corporate social responsibility as a tool for sustainable development in Africa: How Important is Context?' available at <http://www.polity.org.za/article/corporate-social-responsibility-as-a-tool-for-sustainable-development-in-africa-how-important-is-context-2012-09-25> (accessed on 11th May 2018).

Metz T 'What Tutu's Ubuntu Credo Teaches the World About Justice and Harmony' available at <https://www.news24.com/Analysis/what-tutus-ubuntu-credo-teaches-the-world-about-justice-and-harmony-20171005> (accessed on 20th July 2018).

Midtown B 'Is Corporate Social Responsibility Enough?' available at <http://www.midtown-bie.com/news/corporate-social-responsibility-enough/> (accessed on 6<sup>th</sup> June 2018).

Mokgalapa S 'Quality of RDP Housing Remains Poor' available at <http://www.politicsweb.co.za/news-and-analysis/quality-of-rdp-housing-remains-poor--stevens-mokqa> (accessed on 19th July 2018).

Msomi N & Sihalo W 'Racism is Still a Threat to South Africa's Democracy' available at <http://www.csvr.org.za/media-articles/latest-csvr-in-the-media/2262-racism-still-a-threat-to-south-africas-democracy> (accessed on 17th June 2018).

Myburg F 'The Key Differences Between King III and King IV' available at <http://www.polity.org.za/article/the-key-differences-between-king-iii-and-king-iv-2017-01-11> (accessed on 29th July 2018).

National Treasury 'Corporate Governance- King II Report on Corporate Governance' available at <http://www.treasury.gov.za/legislation/pfma/public%20entities/Protocol%20on%20Corporate%20Governance%20in%20the%20public%20sector.pdf> (accessed on 24<sup>th</sup> July 2018).

Nienabar R 'King IV Report on Corporate Governance in South Africa' available at <http://www.sara.co.za/sara/1%20King%20IV%20%20Report%20reward%20implications%2006062017.pdf> (accessed on 26<sup>th</sup> July 2018).

Nkosi V 'How Mine Dumps in South Africa Affect the Health of Communities Living Nearby' available at <https://theconversation.com/how-mine-dumps-in-south-africa-affect-the-health-of-communities-living-nearby-77113> (accessed on 20th October 2018).

Odell A 'Working for the Earth: Green Companies and Green Jobs Attract Employees' available at <https://www.greenbiz.com/news/2007/10/16/working-earth-green-companies-and-green-jobs-attract-employees> (accessed on 12th May 2018).

Ogude J 'The Meaning and Value of Ubuntu in Human and Social Development in Africa' available at <https://www.templetonworldcharity.org/projects/meaning-and-value-of-ubuntu-human-and-social-development-africa> (accessed on 20th July 2018).

Ottavini J 'The Difference Between Surface Mining and Underground Mining' available at <http://usize-africa.com/project-africa/difference-between-surface-mining-and-underground-mining> (accessed on 14th October 2018).

Peretz M 'Want to Engage Millennials? Try Corporate Social Responsibility' available at <https://www.forbes.com/sites/marissaperetz/2017/09/27/want-to-engage-millennials-try-corporate-social-responsibility/#e8504046e4e4> (accessed on 12<sup>th</sup> May 2018).

Pierce V 'King III What Does it All Mean?' available at <http://www.polity.org.za/article/king-iii-what-does-it-all-mean-2009-12-01> (accessed on 25th July 2018).

Pillay C 'Brush Up On Your BEE Knowledge' available at <https://www.smesouthafrica.co.za/Brush-up-on-your-BEE-knowledge/> (accessed on 22<sup>nd</sup> July 2018).

Prosser D 'How Social Impact Investment Deliver Superior Returns' available at <https://www.forbes.com/sites/davidprosser/2017/02/09/how-social-impact-investment-delivers-superior-returns/#319870ed7a52> (accessed on 11<sup>th</sup> May 2018).

Pule A 'SA's Democratic Story an Inspiration' available at <https://www.vukuzenzele.gov.za/sa's-democratic-story-inspiration> (accessed on 13th July 2018).

PWC 'King IV- Steering Point' available at <https://www.pwc.co.za/en/publications/king4.html> (accessed on 29th July 2018).

PWC 'Local Government and King III' available at [https://salqa.org.za/Documents/Municipalities/Municipal%20Focus/Municipal%20Public%20Accounts%20Committee%20MPAC/10-08285 IOD-Discussion-Paper-on-LG-KingIII 04.pdf](https://salqa.org.za/Documents/Municipalities/Municipal%20Focus/Municipal%20Public%20Accounts%20Committee%20MPAC/10-08285%20IOD-Discussion-Paper-on-LG-KingIII%2004.pdf) (accessed on 27th July 2018).

Rall K 'South Africa: How Mining Damages Communities and the Environment' available at <https://www.hrw.org/news/2018/08/27/south-africa-how-mining-damages-communities-and-environment> (accessed on 21st June 2018).

Riley J 'Carrolls CSR Pyramid' available at <https://www.tutor2u.net/business/reference/carrolls-csr-pyramid> (accessed on 12th June 2018).

Roth M 'Sullivan Principles' available at <http://philadelphiaencyclopedia.org/archive/sullivan-principles/> (accessed on 11<sup>th</sup> July 2018).

SAHO 'South Africa's Key Economic Policies Changes' available at <https://www.sahistory.org.za/article/south-africa's-key-economic-policies-changes-1994-2013> (accessed on 22nd June 2018).

SAHO 'The Collapse of Apartheid in South Africa: Coming Together of Internal and External Pressures' available at <https://www.sahistory.org.za/article/collapse-apartheid-grade-12> (accessed on 19th June 2018).

SAHO 'A History of Apartheid in South Africa' available at <https://www.sahistory.org.za/article/history-apartheid-south-africa> (accessed on 17th June 2018).

SAHO 'South Africa's Key Economic Policies Changes(1994-2013)' available at <https://www.sahistory.org.za/article/south-africa's-key-economic-policies-changes-1994-2013> (accessed on 13th July 2018).

Sander P 'South Africa: The Rise and Fall of the ANC' available at <https://www.dw.com/en/south-africa-the-rise-and-fall-of-the-anc/a-42603926> (accessed on 17th June 2018).

Shira D 'Corporate Social Responsibility in India' available at <https://www.india-briefing.com/news/corporate-social-responsibility-india-5511.html/> (accessed on 22<sup>nd</sup> October 2018).

Sicetsha A 'Crime stats South Africa 2018: the murder rate increased by 6.9%' available at <https://www.thesouthafrican.com/crime-stats-south-africa-murder-rate-2018/> (accessed on 29<sup>th</sup> September 2018).

Singh A 'CSR + Transparency: Can Voluntary Disclosure Increase Shareholder Value?' available at <https://www.forbes.com/sites/csr/2012/02/14/csr-transparency-can-voluntary-disclosure-increase-shareholder-value/#2bc5c96728e9> (accessed on 13<sup>th</sup> August 2018).

Soul Ace 'Evolution of CSR in India' available at <http://www.soulace.in/blog/evolution-of-csr-in-india/> (accessed on 24<sup>th</sup> August 2018).

Sullivan R 'The Sullivan Principles and the Change in South Africa' available at <http://digitalcollections.library.cmu.edu/awweb/awarchive?type=file&item=494984> (accessed on 25<sup>th</sup> June 2018).

The Indian Express '2% CSR Spend on Cards for India Inc' available at <http://archive.indianexpress.com/news/2--csr-spend-on-cards-for-india-inc/747860/> (accessed on 22<sup>nd</sup> October 2018).

Thuy B 'CSR brings success to investors' available at <http://www.vir.com.vn/csr-brings-success-to-investors-55877.html> (accessed on 17th June 2018).

Dialogue 'Beyond Compliance: Social and Ethics Committee Under King IV' available at <http://dialogue.co.za/beyond-compliance-social-ethics-committees-king-iv/> (accessed on 29<sup>th</sup> July 2018).

Dialogue 'Defining CSR' available at <http://dialogue.co.za/csi-definition-and-regulation/> (accessed on 12<sup>th</sup> May 2018).

Dialogue 'King III and Integrated Reporting' available at <http://dialogue.co.za/king-iii-and-integrated-reporting/> (accessed on 22<sup>nd</sup> October 2018).

Dialogue 'What is Corporate Social Investment (CSI)?' available at <http://dialogueknowledgehub.co.za/index.php/csi-resources/what-is-csi> (accessed on 28<sup>th</sup> November 2018).

Tyson J 'Sullivan Principles: Camouflage or Catalyst?' available at <https://www.thecrimson.com/article/1980/2/8/sullivans-principles-camouflage-or-catalyst-pthe/> (accessed on 3<sup>rd</sup> July 2018).

ValashiyaA 'Advantages of Being BBBEE Compliant' available at <http://sabera.co.za/blog/2018/06/06/advantages-bbbee-compliant/> (accessed on 24<sup>th</sup> July 2018).

Vandana K 'What are the National Voluntary Guidelines & Why They Matter' available at <http://responsiblebiz.org/national-voluntary-guidelines/> (accessed on 26<sup>th</sup> August 2018).

Villamayor J 'Voluntary Corporate Social Responsibility: The Power of Convictions' available at <https://juanvillamayor.wordpress.com/2010/09/29/csr-mandatory-or-voluntary/> (accessed on 2<sup>nd</sup> August 2018).

Walker D 'King Code and Developments in Corporate Governance' available at <http://www.mondaq.com/southafrica/x/113790/Corporate+Governance/King+Code+And+Developments+In+Corporate+Governance> (accessed on 24<sup>th</sup> July 2018).

Waller M 'Much Corporate Responsibility is box-ticking' available at <https://www.thetimes.co.uk/article/much-corporate-responsibility-is-box-ticking-9drlzfk37vl> (accessed on 28<sup>th</sup> November 2018).

Watson S 'Practical Implications of King IV' available at <http://www.polity.org.za/article/practical-implications-of-king-iv-2016-05-10> (accessed on 27th July 2018).

Webber Wentzel 'Launch of the new FTSE/JSE Responsible Investment Index Series' available at <http://www.polity.org.za/article/launch-of-the-new-ftsejse-responsible-investment-index-series-2015-10-15> (accessed on 29th July 2018).

Weldon T 'SA Becoming Increasingly Attractive as Outsourcing Destination' available at <https://www.itweb.co.za/content/okYbe9MXRxdvAWpG> (accessed on 14th May 2018).

## Journal Articles

Aßländer M 'Honourableness or Beneficalness? Cicero on Natural Law, Virtues, Glory and (Corporate Reputation)' (2013) 116 *Journal of Business Ethics* 751-767.

Alexy R 'Legal Certainty and Correctness' (2014) 12 *International Journal of Constitutional Law* 511-524.

Antsova M & Csikosova A 'Influence of European Union Policy to Corporate Social Responsibility' (2015) 23 *Procedia Economics and Finance* 734.

Asemah E 'Business Advantages of Corporate Social Responsibility Practice: A Critical Review' (2013) 18 *International Knowledge Sharing Platform* 45-52.

Beger-Walliser G 'Redefining Corporate Social Responsibility in an Era of Globalization and Regulatory Hardening' (2018) 55 *American Business Law Journal* 167-218.

Bohnic R 'Corporate Social Responsibility: (A European Legal Perspective)' (2014) 20 *Canterbury Law Review* 21-37.

Bongardt A & Torres F 'The Competitiveness Rationale, Sustainable Growth, and the Need For Enhanced Economic Coordination' (2010) 45 *Review of European Economic Policy* 136-170.

Carroll B 'Carroll's Pyramid of CSR: Taking Another Look' (2016) *International Journal of Corporate Social Responsibility* 1-8.

Chen C 'The Major Components of Corporate Social Responsibility' (2011) 2 *Journal of Global Responsibility* 85-99.

Clarkson M 'A Stakeholder Framework for Analyzing and Evaluating Corporate Social Performance' (1995) 20 *Academy of Management Review* 92-117.

Corder C 'The Reconstruction and Development Program: Success or Failure?' (1997) 41 *Social Indicators Research* 182-203.

Davis J 'General Motors in South Africa: Secret Contingency Plans in the Event of Civil Unrest' (1978) *South African Perspectives* 1-3.

Dedman E 'The Cadbury Committee recommendations on corporate governance – a review of compliance and performance impacts' (2002) 4 *International Journal on Management* 335- 352.

Gayo S 'Mandatory and Voluntary Corporate Social Responsibility Policy Debates in Indonesia' (2012) *ICIRD* 1-5.

Ghanghas A 'Various Phases of Corporate Social Responsibility in India' (2018) 3 *International Journal of Academic Research and Development* 861-863.

Goyal M 'Insights of Corporate Social Responsibility: Leadership Personified' (2013) 15 *Journal of Business and Management* 16-19.

Fabig H &Boele R 'The Changing Nature of NGO Activity in a Globalizing World: Pushing the Corporate Social Responsibility Agenda' (2009) *IDS Bulletin* 58-68.

Fung B 'The Demand and Need for Transparency and Disclosure in Corporate Governance' (2014) 2 *Universal Journal of Management* 72-80.

Gladyssek O &Chipeta C 'The Impact of the Socially Responsible Investment Index Constituent Announcements on Firm Price: Evidence from the JSE' (2012) 15 *South African Journal of Economic and Management Sciences* 429- 439.

Hack L & Kenyon A 'A Critical Corporate Social Responsibility (CSR) Timeline: How Should it be Understood Now?' (2006) *International Journal of Management Cases* 46-52.

Harribey L 'Corporate Social Responsibility as a New Paradigm in European Policy: How CSR Comes to Legitimate the European Regulation Process (2006) 6 *Corporate Governance International Journal of Business in Society* 358-368.

Kakabadse A & Korac-Kakabadse N 'Corporate Governance in South Africa: Evaluation of the King II Report (Draft)' (2010) 2 *Journal of Change Management* 305-316.

Kapoor GK & Dhamija S 'Mandatory CSR Spending- Indian Experience' (2017) 3 *Emerging Economy Studies* 98-112.

Kloppers H 'Driving corporate social responsibility through black economic empowerment' (2014) 18 *Law Democracy and Development* 58 – 79.

Kinderman D 'CSR in the EU 1993-2013: Institutional Ambiguity, Economic Crises, Business Legitimacy and Bureaucratic Policies' (2013) 51 *Journal of Common Market Studies* 701-720.

Laha K 'Corporate Social Responsibility in Ancient Indian Wisdom: An Analysis' (2016) 2 *International Journal of Legal Developments and Allied Issues* 17-22.

Lashgari MK & Gant D 'Social Investing: The Sullivan Principles' (2006) 47 *Review of Social Economy* 74-83.

Loew T 'The Results of the European Multistakeholder Forum on CSR in the view of Business, NGO and Science' (2005) *Institute 4 Sustainability* 1-52.

MacLeod S 'Corporate Social Responsibility within the European Union Framework' (2005) 23 *Wisconsin International Law Journal* 541-552.

McCarthy T 'The Impact of Acid Mine Drainage in South Africa' (2011) 107 *South Africa Journal of Science* 1-7.

Mangaliso M 'South Africa: Corporate Social Responsibility and the Sullivan Principles' (1997) 28 *Journal of Black Studies* 219-238.



Martinez J & Fernandez M 'Corporate Social Responsibility: Evolution Through Institutional and Stakeholder Perspectives' (2015) *European Journal of Management and Business Economics* 9.

Moon J 'The Contribution of Corporate Social Responsibility to Sustainable Development' (2007) 15 *Sustainable Development* 296 – 306.

Moura-Leite R 'Historical Background of Corporate Social Responsibility' (2001) 7 *Social Responsibility Journal* 528 - 539.

Murray A 'Corporate Social Responsibility in the EU' (2003) *Centre For European Reform* 1-59.

Nagwan S 'Evolution of Corporate Social Responsibility in India' (2014) 3 *International Journal of Latest Technology in Engineering, Management & Applied Science* 164-167.

Perrini F 'The Practitioners Perspective to Non-Financial Reporting' (2006) 48 *California Management Review* 73-103.

Ramlall S 'Corporate social responsibility in post-apartheid South Africa' (2012) 8 *Social Responsibility Journal* 270- 288.

Rexhepi G & Kurtishi S 'Corporate Social Responsibility (CSR) and Innovation – The Drivers of Business Growth' (2013) 75 *Procedia Social and Behavioral Sciences* 532-541.

Roussouw J & Van Der Watt 'A Corporate governance in South Africa' (2002) 37 *Journal of Business Ethics* 289- 302.

Scholtz B & Calitz A 'Voluntary and Mandatory Company Sustainability Reporting: A Comparison of Approaches' (2014) *Enviroinfo Conference* 1-8.

Sood A & Arora B 'The Political Economy of Corporate Responsibility in India' (2006) 18 *The United Nations Research Institute for Social Development* 1-61.

Streak JC 'The GEAR Legacy: Did GEAR Fail or Move South Africa Forward in Development' (2004) 21 *Development Southern Africa* 271-288.

Tencati A & Perrini F 'New Tools To Foster Corporate Social Responsibility Behavior' (2004) 53 *Journal of Business Ethics* 173-190.

Tschopp D 'Corporate Social Responsibility: A Comparison Between United States and the European Union) (2005) 12 *Corporate Social Responsibility and Environmental Management* 55-59.

Wessels D 'South Africa's Reconstruction and Development Programme: A Better Life For All' (1999) 3 *Journal of Social Sciences* 235-243.

Zabin I 'An Investigation of Practicing Carrolls Pyramid of Corporate Social Responsibility in Developing Countries: an Example of Bangladesh Ready-made Garments' (2013) 12 *IOSR Journal of Business and Management* 75-81.



## **Legislation**

The Companies Act 71 of 2008.

The Broad- Based Black Economic Empowerment Act 53 of 2003.

The Mine Health and Safety Act 29 of 1996.

The Mineral and Petroleum Resources Development Act, 28 of 2002.

The Employment Equity Act 55 of 1998.

The National Empowerment Fund Act 105 of 1998.

The National Environmental Management Act 107 of 1998.

The National Water Act 36 of 1998.

The Skills Development Act 97 of 1998.

## **Reports**

Statistics South Africa *General Household Survey* (2017) Statistics South Africa: Pretoria.

### **Thesis**

Esken B *Corporate Social Responsibility in the European Union – A Concept in Need of a Hybrid Multi-Level Governance Solution* (Bachelor Thesis, University of Twente, 2010) 2.

Johannes J *Corporate Social Responsibility in South Africa: How Corporate Partnerships Can Advance the Sustainability Agenda* (LLM thesis, University of the Western Cape, 2016).

Marx Z *CSR Reporting in the EU Under Directive 2014/95/EU: A Case Study on Danish Influence on EU CSR Policy* (LLM Thesis, University of Eastern Finland, 2017) 25.

### **Treaties and conventions**

EU Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community (2007) 306/01.

