

**THE DISPARITY IN COMPLIANCE WITH SUSTAINABILITY
POLICIES: THE MINING INDUSTRY AND THE FINANCIAL
INDUSTRY IN SOUTH AFRICA**

BY

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'But the proclamation, as law, either is valid, or is not valid. If it is not valid, it needs no retraction. If it is valid, it cannot be retracted, any more than the dead can be brought to life.'

Abraham Lincoln



DECLARATION

I, **Ada Ama-Njoku** declare that ‘**The Disparity in Compliance with Sustainability Policies: The Mining Industry and the Financial Industry in South Africa**’ is my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

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ACKNOWLEDGEMENT

‘Greater is he that is in you than he that is in the world’ 1 John 4:4. This scripture has been the source of my strength throughout this research process. I personalized it by replacing ‘world’ with the word ‘masters degree’ and this became my confession on a daily basis. God has been faithful, the Holy Spirit my best friend, encourager and comforter never abandoned me at any stage. Therefore all thanks, glory, honour and adoration goes to my Lord and personal savior Jesus Christ. No vocabulary in the dictionary can describe how grateful I am to you.

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‘WITH GOD ALL THINGS ARE POSSIBLE.’ TO GOD, BE THE GLORY.

ABBREVIATION

BEE	Black Economic Empowerment
CA	Corporate Accountability
CC	Corporate Citizenship
CE	Corporate Ethics
CSI	Corporate Social Investment
CSR	Corporate Social Responsibility
JSE-SRI	Johannesburg Stock Exchange –Social Responsibility Investment
SEC	Social Ethics Committee



KEYWORDS

Corporate Accountability

Corporate Citizenship

Corporate Social Responsibility (CSR)

Social Ethics Committee

Social Responsibility Index (SRI)

Social Responsible Investment

Sustainability

Sustainable Development



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CHAPTER ONE

OVERVIEW OF THE RESEARCH

1.1 INTRODUCTION AND BACKGROUND TO THE RESEARCH

Natural resources must be preserved as society depends on the resources of the earth to meet basic and vital needs. If these are diminished or deteriorate, society's needs and those of their descendants are placed at risk. One way of preserving these natural resources is through sustainable development. Sustainable development encompasses not only the preservation of natural resources but also the development of the economy, environment and the community.¹

The World Commission on Environment and Development explained that: 'Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their needs.'² In other words, when developing the country (economically, socially or otherwise) with the aim of improving the lifestyle of the society at large, care must be taken not to damage or diminish the resources available so that the future generations can also enjoy it.

'Sustainable development' as a concept is linked to 'corporate social responsibility', 'business ethics', 'corporate citizenship' and 'corporate accountability'. Corporate citizenship, business ethics, corporate accountability and corporate social responsibility are connected in that they are all concerned with companies' role and their responsibilities to the society in which they operate.

For example, Corporate Social Responsibility (CSR) is a form of corporate self-regulation integrated into a business model.³ This means that most companies would have self-regulating mechanism whereby that company would monitor and ensure that its activities comply with the spirit of the law, ethical standards, and international norms. The goal of CSR is to embrace responsibility for the company's actions and encourage a positive impact through its activities on the environment, consumers, employees, communities, stakeholders and all other members of the public sphere who may also be considered as stakeholders.⁴

¹ Banerjee SB *Corporate social responsibility: The good, the bad and the ugly* (2007) 65.

² The World Commission on Environment and Development 1987 'From one earth to one world: An overview' available at <http://public.wsu.edu/~susdev/WCED87.html> (accessed 11 December 2012).

³ Crowther D *Global Perspective on corporate governance and CSR* (2009) 56.

⁴ Crowther D (2009) 17.

Companies are urged to act responsibly and employ transparent approaches in all their dealings because this helps build a brand, reputation and strengthens the community.⁵

Corporate citizenship, on the other hand, encompasses the legal status of a corporation in the jurisdiction in which it was incorporated.⁶ Although it is generally accepted that corporations are not citizens in the same way that 'real' citizens are (for example, they cannot hold passports or vote in elections), it has been recognized that they do share in some of the same or similar practices, such as, paying taxes, engaging in free speech, and expecting certain protections from the state.⁷ Hence the reason why companies are expected to act in a lawful and ethical manner in all its business activities complying with all the laws of the country or community in which it operates.

Corporate accountability is almost similar to corporate citizenship as it refers to the moral or legal obligations of companies to be accountable to the shareholders and the stakeholders (employees, suppliers, customers and the local community).⁸ In brief, companies must be careful in all their dealings as they have an obligation to society to act morally and to comply with the laws of the jurisdiction in which it operates in.

Finally, business ethics (also known as corporate ethics) is concerned with moral (good or bad) and the ethical (acceptable or unacceptable) issues in the company.⁹ The moral aspect may be the way the company treats its staff or customers, while the ethical aspect could be the effect of the activities of the company to the environment or community in which it operates.

All these concepts, be it corporate accountability, corporate social responsibility, corporate citizenship or business ethics, describe corporate activities beyond profit-making.¹⁰ These terms describe the role of business in society and the broad commitment by companies to social welfare, the common good and the policies that support them.¹¹ These involve not just the products that a company manufactures but also being a good corporate citizen in terms of

⁵ Voiculescu A & McBarnet DJ *The new corporate accountability: Corporate social responsibility and the law* (2007) 88.

⁶ Horrigan B *Corporate social responsibility in the 21st century: Debates, models and practices across government, law and business* (2010) 65.

⁷ Horrigan B (2010) 76.

⁸ Voiculescu A & McBarnet DJ (2007) 95.

⁹ Horrigan B (2010) 65.

¹⁰ Banerjee SB (2007) 65.

¹¹ Banerjee SB (2007) 65.

the employees that it hires and the way it looks after them,¹² protecting the environment, and getting involved in the local community and the wider culture in which the company engages in business.¹³

The link between sustainable development and all the other concepts is illustrated by the diagram below.

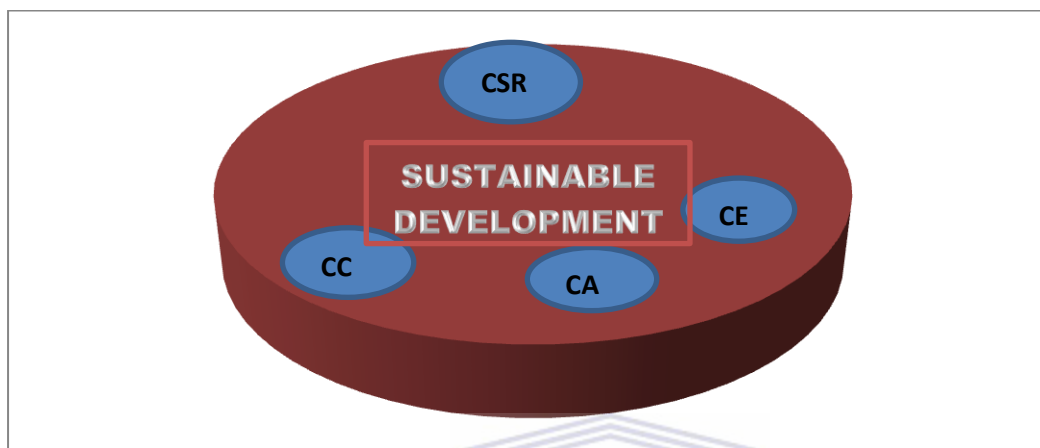


Figure 1: Relationship between Sustainable development, CSR, corporate accountability, corporate ethics and corporate citizenship.

The huge circle represents the concept of sustainable development which encapsulates the preservation of the resources of the earth for future generations. To accomplish this, the government, government bodies, organisations and companies both private and public have a major role to play. It is ascertained that there are three role players in achieving the broad objectives of sustainable development. These are:

- Government;
- Society (people); and
- Companies.

Sustainable development thus involves corporate effort from the above mentioned role players. In the diagram above the smaller circles represent corporate social responsibility (CSR), corporate accountability (CA), corporate ethics (CE) and corporate citizenship (CC) which all fall within the ambit of sustainable development but zooms into companies', one of the role players to achieving the objective of sustainable development.

¹² McBarnet DJ & Voiculescu A *The new corporate accountability: corporate social responsibility and the law* (2007) 107.

¹³ Horrigan B (2010) 65.

Therefore sustainable development, corporate accountability, corporate ethics, corporate citizenship and CSR can be said to be intertwined as the concepts all aim to achieve one goal by placing obligations on companies as the sole players in this case. They all deal with the performance and role of the company as companies must act ethically in accordance with good morals; be accountable, not neglecting their obligation and responsibility to society and stakeholders and be a good citizen complying with all laws and developing their communities.

Broadly speaking, sustainable development, corporate accountability, CSR and business ethics have three key components:¹⁴

- a) The basic values, ethics, policies, and practices of a company's business;
- b) The voluntary contributions made by a company to community development;
- c) The management of environmental and social issues within the value chain by the company and its business partners—from the acquisition and production of raw materials, through to the welfare of staff, and product sale, use, and disposal.

Sustainable development became a common issue because most businesses disregarded the interests of the society in which they operate in their quest to make profits.¹⁵

As a result of increased media attention, pressure from non-governmental organizations (NGO's), demand from civil society, consumers and governments, corporations had to conduct sustainable business practices across the world.¹⁶

On an International plane, there have been several developments on CSR. These include but are not limited to regulations such as:¹⁷

- a) The UN Global Compact and the Principles for Responsible Investment;
- b) The EU Green Paper for Corporate Social Responsibility (CSR);
- c) The Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises.

¹⁴ McBarnet DJ & Voiculescu A (2007) 107.

¹⁵ Anhvu A 'Corporate social responsibility' available at <http://www.issues.tigweb.org/csr?.gdi d> (accessed 2 October 2011).

¹⁶ Anhvu A 'Corporate social responsibility' (2011).

¹⁷ Tully S *International documents on corporate responsibility* (2005) 1.

The UN Global Compact is derived from leading intergovernmental instruments and therefore enjoys universal consensus. Each principle in the Compact is accompanied by a useful explanatory commentary which suggests practical implementation measures. Companies commit in writing to publicly promoting the Compact and completing a 'communication on progress' which describes how the principles are reflected in commercial operations.¹⁸

The EU Green paper provides guidelines on how the European Union could promote corporate social responsibility at both the European and international level, in particular on how to make the most of existing experiences, to encourage the development of innovative practices, to bring greater transparency and to increase the reliability of evaluation and validation.¹⁹ It promotes an approach based on the deepening of partnerships in which all actors have an active role to play.²⁰

The OECD is a forum where the governments of 30 democracies work together to address the economic, social and environmental challenges of globalisation. It helps governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population.²¹ It provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies. The Guidelines contain a general policy chapter which provides specific recommendations to enterprises.²² It obligates companies to obey domestic laws. They are not a substitute for nor should they be considered to override local law and regulation. They represent supplementary principles and standards of behaviour of a non-legal character, particularly concerning the international operations of these enterprises.²³

These international instruments have the same objective which is to promote sustainable development internationally.

¹⁸ Tully S (2005) 3.

¹⁹ Commission of the European Communities 'Green paper: Promoting a European framework for Corporate Social Responsibility' available at http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0366en01.pdf (accessed 1 June 2012).

²⁰ Commission of the European Communities 'Green paper: Promoting a European framework for Corporate Social Responsibility' (2012).

²¹ OECD 'Guidelines for Multinational Enterprises' available at <http://www.oecd.org/dataoecd/56/36/1922428.pdf> (accessed 31 May 2012)

²² OECD 'Guidelines for Multinational Enterprises' (2012).

²³ OECD 'Guidelines for Multinational Enterprises' (2012).

In the UK the CSR relevant part of the Companies Act came into operation in October 2007.²⁴ It requires that directors consider in their decision-making, the impacts of the company's operations on the community and the environment.²⁵

The Act codifies directors' duties of companies that are publicly listed in the UK. The Companies Act provides a mandatory list of six factors for directors to take into account in their decision-making which is designed to promote the success of the company for the benefit of its members as a whole.²⁶ Among these six factors are the interests of the company's employees; the need to foster the company's business relationships with suppliers, customers and others; the impact of the company's operations on the community and the environment; the desirability of the company maintaining a reputation for high standards of business conduct; and the need to act fairly as between members of the company.²⁷

In December 2008, the Danish parliament passed a law on CSR reporting for its companies. It placed an obligation on companies to disclose their CSR activities or give reasons for not having any, following the principle of 'comply or explain'.²⁸ Denmark encourages the use of accepted tools such as, the Global Reporting Initiative (GRI G3 guidelines) and the UN Global Compact Communication on progress.²⁹ GRI G3 are guidelines that provides guidance on how to report and on what should be reported, in the form of disclosures on management approach and performance indicators.³⁰ These guidelines are organized into categories of economic, environmental and social. The social category is broken down further into labour, human rights, society and product responsibility subcategories.³¹

From an international plane into South Africa, demand has been imposed on all corporate institutions as a result of the political, economic, social and environmental problems experienced during the apartheid era. These demands were made by placing obligations on

²⁴ Draai E, Thorn R & Berkowitz S 'The Corporate social Responsibility Trend: Redefining the business landscape and creating new corporate duties' available at http://www.lw.com/upload/pubContent/pdf/pub2362_1.pdf (accessed 5 March 2012).

²⁵ Draai E, Thorn R & Berkowitz S (2012).

²⁶ The UK Companies Act of 2006.

²⁷ Section 172 (1) of the UK Companies Act 2006.

²⁸ UN Global Compact 'Denmark introduces mandatory CSR reporting for large companies' available at http://www.unglobalcompact.org/newsandevents/news_archives/2008_12_17.html (accessed 5 March 2012).

²⁹ Dumay J, Guthie, J & Faenetti F 'GRI Sustainability reporting guideline for public and third section organization' (2010) *Routledge Journals* 534.

³⁰ Global Reporting Initiative 'G3 Guidelines' available at <https://www.globalreporting.org/reporting/latest-guidelines/g3-guidelines/Pages/default.aspx> (accessed 7 October 2011).

³¹ Global Reporting Initiative 'G3 Guidelines' (2011).

corporations in South Africa through the incorporation of CSR policies into the laws of the country.

The Constitution Act No 108 of 1996 provides for the right of all citizens to a well sustained country (section 24). The Companies Act 71 of 2008 is the primary regulator of all aspects related to companies. Section 72(4) of the Companies Act 71 of 2008 and s 43(5) of the Companies Regulation 2011 provide for sustainability.

These sections provide for company compliance with the United Nations Global Compact; the Organisation for Economic Cooperation and Development (OECD) recommendations regarding corruption which can be found in the OECD recommendation on Principles for Transparency and Integrity in Lobbying (2010); and s 42 of the Employment Equity Act 55 of 1998 and s 9 of Broad-Based Black Economic Empowerment Act 53 of 2003.

This is supported by the King Reports on Corporate Governance. These Reports are codes of governance in South Africa and are issued by the King Committee on corporate governance. There are three Reports: King I which was issued in 1994, King II issued in 2002 and King III issued in 2009. The King II and King III Reports explicitly address the need and relevance for corporations to acknowledge all stakeholders and to adopt a 'triple-bottom line' approach.³² Paragraph 6.1 of King III also places responsibilities on the board of a company to ensure sustainability. In particular, the King Reports constitute accepted guides of best practices in corporate governance in South Africa, focusing on social, environmental and economic concerns. The King Reports' clauses are not mandatory, but they take a comply and explain or apply and explain approach that places obligations on companies to apply CSR programs or to justify why they have not adopted them.³³ These two approaches will be discussed in greater detail in the chapter that follows.

Application of these Reports may however be mandated by a regulation such as the Johannesburg Stock Exchange Limited Listings Requirements.³⁴ The Johannesburg Stock Exchange Social Responsibility Index (JSE SRI) 2004 informs investors and market agents about corporate sustainability policies and practices of listed companies, encouraging

³² Dekker A & Esser I 'The Dynamics of Corporate Governance in South Africa: Broad Based Black Economic Empowerment and the Enhancement of Good Corporate Governance Principles' (2008) 3 *Journal of International Commercial Law and Technology* 3 available at <http://www.jict.com> (accessed 20 October 2011).

³³ Sustainability South Africa 'King II Report on Governance in South Africa and King III report' available at <http://www.sustainabilitysa.org> (accessed 20 October 2011).

³⁴ The King Committee 'The King Code of Governance Principles – 2009 (the Code)' available at <https://www.saica.co.za/Portals/0/documents/PWC%20SteeringPoint%20KingIII.pdf> (accessed 23 October 2011).

investors to support friendly companies, and pushing corporations to reinforce their environmental, social and governance initiatives.³⁵

Regardless of the existence of these CSR instruments, companies in South Africa seem not to achieve the key objectives to sustainability.³⁶ For example the Mining Industry in South Africa which is famous for its abundance of mineral resources, accounting for a significant proportion of world production and reserves and where South African mining companies are key players in the global industry.³⁷

Mining contributes to the development of the country both economically and otherwise.³⁸ It can be said that Mining is the foundation of the South African economy as it is upon the mining industry that the economy of South Africa was and is built.³⁹ Mining attracts investment into the economy; it leads the way in empowerment, development and transformation; and it injects over R40 billion into the economy via wages.⁴⁰

The industry also accounts for roughly one-third of the market capitalisation of the JSE, and continues to act as a magnet for foreign investment in the country.⁴¹ It makes significant contributions to job creation and foreign exchange earnings.⁴² For example, in 2009, South Africa's mining industry was the largest contributor by value to black economic empowerment (BEE) in the economy, in terms of the value of BEE transactions completed.⁴³

Yet after 100 years of mining in South Africa especially on the West Coast, communities have little to show in terms of community development, infrastructure or an existence much above that of subsistence level.⁴⁴ There are extreme social problems, and the perception of communities is that they do not benefit from mining corporate social responsibility

³⁵ Araoz MF 'Corporate Social Responsibility in South Africa: More than a nice intention' available at <http://www.consultancyafrica.com> (accessed 20 October 2011).

³⁶ The Bench mark Foundation report on 'Corporate Social Responsibility in the Mining Industry of South Africa' (2009) available at <http://www.bench-marks.org.za> (accessed 20 October 2011).

³⁷ Reitz R 'Mining and minerals in South Africa' (2011).

³⁸ The Chamber of Mines in South Africa 'Annual Report of 2008' available at <http://www.bullion.org.za> (accessed 21 November 2011).

³⁹ The Chamber of Mines in South Africa (2011).

⁴⁰ Annual Report of 2008 'Working Together Sustainable Future since 1889' available at <http://www.bullion.org.za> (accessed 15 November 2012).

⁴¹ Reitz R 'Mining and minerals in South Africa' (2011).

⁴² Media Club South Africa 'Key Sectors' available at <http://www.medioclubsouthafrica.com> (accessed 20 November 2011).

⁴³ Paul T 'Mining and Minerals in South Africa' available at <http://www.projectsia.co.za> (accessed 10 November 2011).

⁴⁴ The Bench mark Foundation report on 'Corporate Social Responsibility in the Mining Industry South Africa' (2009) available at <http://www.bench-marks.org.za> (accessed 20 October 2011).

programmes.⁴⁵ Most of the diamond mining towns on the West Coast suffer from high unemployment, substance abuse, mental disorders, suicide and domestic violence. There is little evidence of local economic development.⁴⁶

Another example is the Financial Industry. This industry encompasses a broad range of organisations that deal with the management of money. Among these organisations are credit unions, banks, credit card companies, insurance companies, consumer finance companies, stock brokerages, investment funds and some government sponsored enterprises. South Africa has a sophisticated Financial Industry and can be compared to those of industrialised countries.⁴⁷ With the country's re-integration into the global sphere in 1994, corporate governance rules, disclosure, transparency and accountability have become an integral part of doing business in South Africa.⁴⁸ Foreign banks are well represented and electronic banking facilities are extensive, with a nationwide network of automatic teller machines (ATMs).⁴⁹ The South African banking system is well developed and effectively regulated, comprising a central bank, a few large, financially strong banks and investment institutions, and a number of smaller banks.⁵⁰

Investment and merchant banking remains the most competitive front in the industry, while the country's big four banks - Absa, Standard Bank, Nedbank and First National Bank - continue to consolidate their grip on the retail market.⁵¹ The Financial services sector touches the life of each and every South African. It enables economic growth, job creation, the building of vital infrastructure and sustainable development for South Africa and its people. Many South Africans complain that they do not have access to financial services.⁵² Not only does this inhibit economic growth, it also keeps people trapped in poverty.⁵³

It is, therefore, crucial that these industries are well-regulated to achieve good conduct of sustainable development as they are major role players in the development of South Africa.

⁴⁵ The Bench mark Foundation report (2009).

⁴⁶ The Bench mark Foundation report (2009).

⁴⁷ Moorcroft J & Raath R *Banking law and practice* (2009) 43.

⁴⁸ Millan T 'South African Economy: Key Sectors' available at <http://www.mediaclubsouthafrica.com> (accessed 22 November 2011).

⁴⁹ Van Zyl C & Engelbrecht A *Understanding South African financial markets* (2009) 68.

⁵⁰ Millan T 'South African Economy: Key Sectors' (2010).

⁵¹ Brink P *The CSI handbook: the authoritative guide to corporate social investment in South Africa* (2011) 34.

⁵² National Treasury Policy Report 'A safer financial sector to serve South Africa better' available at <http://www.treasury.gov.za> (accessed 20 October 2011).

⁵³ National Treasury Policy Report 'A safer financial sector to serve South Africa better' (2011).

This paper will be based on a comparative study of different ways in a company in the Financial Industry (A bank) and one in the Mining Industry (A company that deals with energy minerals, precious metals and minerals) comply with and apply sustainability policies.

1.2 Objective And Research Question

This paper seeks to answer the following question:

The difference in the way the Mining Industry and the Financial Industry apply and comply with CSR obligations placed upon them by regulation and legislation (e.g. the Companies Act, King II and King III Report) of CSR.

There are several instruments on CSR in South Africa as mentioned above, which place obligations on companies in South Africa to uphold the well-being of the community, environment and society at large, but yet the purpose which these instruments seek to achieve is not attained. This paper proposes that the reason could be the methods which these corporations apply the sustainability obligations placed on them that lead to different results.

Specific objective of this paper is:

- a) To establish the difference between policy and corporate practice of CSR by the Mining Industry and Financial Industry: the way in which each industry complies with and applies CSR policies; the values, ethics and practices of these industries.

For these companies to meet all the obligations placed on them, and contribute to the sustainable development of the country, it is important that they act in one accord directing their resources equally at all aspects of the triple bottom line (economic, social and environment) despite the nature of their activities.

1.3 Methodology

This research will be based on a comparative analysis of the mining industry and the Financial Industry. One company will be selected from each industry. These will be large companies that contribute substantially to the economy. The reason for this comparison is to contrast the economic (Financial industry) and environmental (Mining industry) aspects of CSR and ultimately to establish the disparity in their mechanisms to attain sustainable development. Relevant primary and secondary resources will be consulted. Primary sources

include: Legislation, journal articles and the Constitution. Secondary sources include: books, the internet, encyclopedias etc.

1.4 Overview of Remaining chapters

CHAPTER TWO

This chapter will discuss the concept of sustainability/corporate social responsibility and the three most important components of sustainable development (the triple bottom line).

CHAPTER THREE

The position of CSR in South Africa with reference to all CSR instruments will be discussed. Its application to companies, the community etc. will also be highlighted. Reference will be made to International sustainable development policies which are applicable to South African companies and the essence and role of the JSE social responsibility Investment Index will also be highlighted.

CHAPTER FOUR

This chapter will be based on a comparative analysis of one company in the Mining Industry and one company in the Financial Industry revealing the extent to which these companies contribute to sustainable development in their areas in which they operate.

CHAPTER FIVE

This chapter will consist of the conclusion and recommendations.



CHAPTER TWO

SUSTAINABLE DEVELOPMENT AND CORPORATE SOCIAL RESPONSIBILITY

2.1 THE CONCEPT OF SUSTAINABLE DEVELOPMENT

Sustainable development has been well defined by the Brundtland Report released by the United Nations⁵⁴ as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.

Sustainable Development contains within it two key concepts:⁵⁵

- a) The concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given.
- b) The idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

The International Council for Local Environmental Initiatives (ICLEI) emphasises environmental, social and economic concerns as three distinct, but interrelated, components of sustainable development. The ICLEI defines sustainable development as:

'A programme to change the process of economic development so that it ensures a basic quality of life for all people, and protects the ecosystems and community systems that make life possible and worthwhile.'⁵⁶

From the Brundtland Report and the ICLEI definitions of sustainable development it can be gathered that there are three interrelated components of sustainable development-social, economic, and environment with the core objective of optimising human welfare (economic development). Welfare includes income and material consumption, along with education, health, equality of opportunity, and human rights.⁵⁷ The second objective is that all physical and economic activity should be compatible with the surrounding environment (environmental development).⁵⁸ This element focuses on non-renewable resources, and

⁵⁴ The World Commission on Environment and Development. 1987 'From One Earth to One World: An Overview' available at <http://public.wsu.edu/~susdev/WCED87.html> (accessed 11 December 2012).

⁵⁵ Robinson NA *Strategies toward sustainable development :Implementing Agenda 21* (2004) 45.

⁵⁶ ICLEI 'Local government for Sustainability' available at www.iclei.org (accessed 3 June 2012).

⁵⁷ DeSimone LD *Eco-efficiency : The business link to sustainable developments* (1997) 30.

⁵⁸ Rexa B 'Definitions - Sustainable development' available at http://www.3mfuture.com/sustainability/definition_sustainable_development.htm (accessed 14 April 2012).

emphasises that these resources should not be used at a rate that exceeds the rate at which they can be substituted by sustainable renewable resources.⁵⁹

The third objective is the improvements of human well-being, both today and tomorrow (social development).⁶⁰ Sustainability, in this context, implies both ‘intergenerational equity and intragenerational equity’.⁶¹ In other words, the human betterment on the part of any group should not come at the expense of other groups today or generations in the future.⁶²

2.2 THE TRIPLE BOTTOM LINE

Sustainable development means always thinking of three things – human welfare (economic) community development (social) and preservation of natural resources (environment).⁶³ These three elements of sustainable development together are known as the ‘triple bottom line’.

2.2.1 Economic

This aspect of the triple bottom line requires an economically sustainable system to be able to produce goods and services on a continuing basis, to maintain manageable levels of government and external debt, and to avoid extreme sectorial imbalances which damage agricultural or industrial production.⁶⁴

The economic aspect of sustainable development is the allocation of resources efficiently which in turn would preserve it for future use.⁶⁵

⁵⁹ Rogers PP *An introduction to sustainable development* (2008) 33.

⁶⁰ Singh NC & Titi V *Empowerment for sustainable development : toward operational strategies* (1995) 67.

⁶¹ Djeflat A ‘Sustainable knowledge for sustainable development: challenges and opportunities for African development’ (2010) 7 *World Journal of science, technology and sustainable development* 88.

⁶² Beckenstein AR, Long FJ & Arnold MB *Stakeholder negotiations: Exercises in sustainable development* (1996) 10.

⁶³ Jordan A *The international organisational machinery for sustainable development: Rio and the road Beyond* (2009) 87.

⁶⁴ Radu M ‘Global Corporate Social Responsibility Human Rights and Law: An Interactive Regulatory Perspective on the Voluntary-Mandatory Dichotomy’ (2010) 1 *Transnational Legal Theory* 225.

⁶⁵ Freeman R *The Stakeholder theory: the state of the art* (2010) 39.

2.2.2 Environment

An environmentally sustainable system must conserve resources. This means that it must avoid over-exploitation of renewable resource systems and depleting non-renewable resources. Investment must be made to replenish any resource that is depleted or over-exploited so that future generations may also benefit from them.⁶⁶ This includes maintenance of biodiversity, atmospheric stability, and other ecosystem functions not ordinarily classed as economic resources.⁶⁷

2.2.3 Social

A socially sustainable system must achieve distributional equity, adequate provision of social services including health and education, gender equity, and political accountability and participation.⁶⁸ This aspect of sustainable development raises the issue of whether present life-styles are acceptable and whether there is any reason to pass them on to the next generation.

2.3 The Intertwined Nature of the Economic, Social and Environmental aspects of Sustainable Development

It can be implied that the above aspects of sustainable development consist of several aspect posing the issue of how to balance objectives and how to judge success or failure. For example, what if provision of adequate food and water supplies appears to require changes in land use which will decrease biodiversity? What if non-polluting energy sources are more expensive, thus increasing the burden on the poor, for whom they represent a larger proportion of daily expenditure? Which goal will take precedence? Hence the reason why they are dependent on each other.⁶⁹ The economic, social and environment are dependent on each other to operate. The diagrams below illustrates their interdependent nature.

⁶⁶ Jordan A (2009) 129.

⁶⁷ Jonathan M. Harris 'Basic Principles of Sustainable Development' available at <http://www.ase.tufts.edu/gdae> (accessed 5 November 2011).

⁶⁸ Jordan A (2009) 129.

⁶⁹ Jordan A (2009) 129.

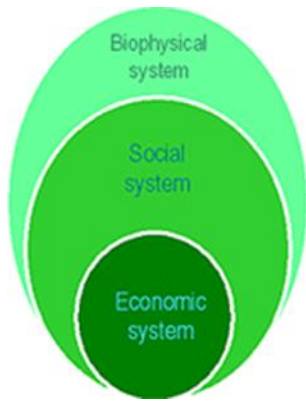


Figure 1: The interdependence model.⁷⁰

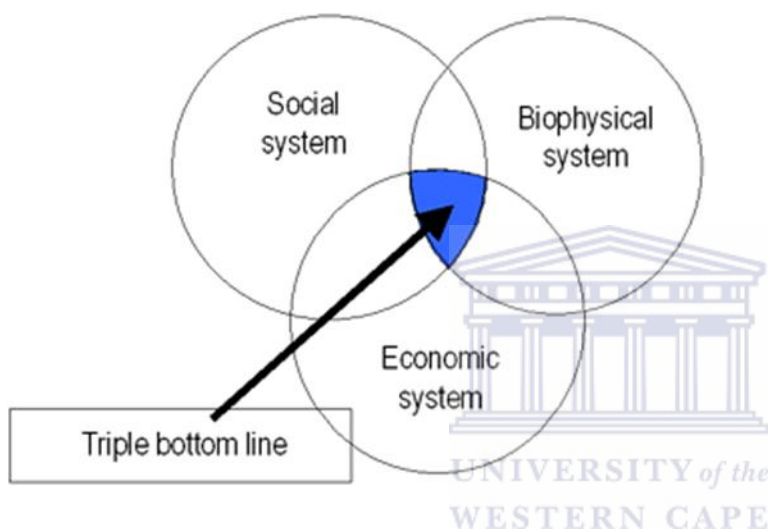


Figure 2: The spheres of sustainable development

This interdependence is illustrated by figure 1. The economy exists entirely within society, because all parts of the human economy require interaction among people.⁷¹ Society, in turn, exists entirely within the biophysical system (environment). Although human activity is reshaping the environment at an ever-increasing rate, society and its economic systems can never exist independently of the biophysical environment.⁷²

The most common way of illustrating sustainable development is the ‘three spheres/pillars’ diagram (figure 2). True sustainable development is then development that meets the ‘triple bottom line’ where all three systems interact on an equal basis. This model can be useful in

⁷⁰ Sustainable Settlement in Southern Africa ‘Issues: The principles of sustainable development’ available at <http://www.sustainablesettlement.eco.za/issues/susdev.html> (accessed 18 April 2012).

⁷¹ Sustainable Settlement in Southern Africa (2012).

⁷² Sustainable Settlement in Southern Africa (2012).

showing where the interrelationships exist; for example, the interrelated activities that lie within the environment and socio-economic domains.⁷³

To achieve a harmonious relationship between these spheres of development certain principles have to be followed within each sphere. A set of universal principles has been identified through international consensus.⁷⁴ These principles can be found in international documents that regulate CSR, such as: the UN Global Compact and the Principles for Responsible Investment; The EU Green Paper for Corporate Social Responsibility (CSR); and the OECD Guidelines for Multinational Companies, etc.

It is highly unlikely that all of these principles can be upheld at all times, as they may have conflicting requirements. Most of the time, decision-makers will have to make trade-offs and otherwise try to balance the different requirements to find a solution that is the optimum one for the greater good.⁷⁵ These decisions need to be flexible and should be regularly reviewed against agreed-upon indicators, to keep the three systems in dynamic balance and ensure that the one sphere is not developed at the expense of the others.

To balance the three systems, companies must act ethically to achieve the desired results.

2.4 Conclusion

In conclusion, sustainable development addresses reform in affluent economies, and the protection of the environment and the society. These three aspects (economy, social and environment) must interact on an equal basis and when companies aspire to fulfill their CSR obligations, they must address each aspect of the triple bottom line equally- not disregarding the other despite the nature of its activities. For example the amount of resources invested into achieving a socially sustainable development must be equivalent to the same amount of resources invested to sustainably develop the economy and the environment. This is the only way in which sustainable development can be completely achieved.

⁷³ Slaper TF & Hall TJ 'The triple bottom line: What is It and how does it work'? available at <http://www.ibrc.indiana.edu/ibr/2011/spring/article2.html> (accessed 10 April 2012).

⁷⁴ Sustainable Settlement in Southern Africa (2012).

⁷⁵ Sustainable Settlement in Southern Africa (2012).

CHAPTER THREE

CSR IN SOUTH AFRICA

3.1 INTRODUCTION

The Sullivan principle contributed to the rise of CSR programs in South Africa and multinational companies had to adhere to these principles.⁷⁶ These principles are the norms of corporates codes of conduct developed by the African-American preacher Rev. Leon Sullivan. They were developed to apply economic pressure on South Africa to protest against its system of apartheid by persuading US companies with investments in South Africa to treat their employees the same as their American counterparts.⁷⁷

Before independence in 1994, there was little or no regulation on CSR as companies and directors were only after satisfying their own interests (profit making) and not those of the community in which they operated.⁷⁸

There was an emergence of regulatory and legislative pressure after 1994 in the CSR arena. The interests considered by companies were widened to those of the public and the environment.⁷⁹ These regulations and legislation on CSR included:⁸⁰

- a) The Constitution Act No 108 of 1996;
- b) The Companies Act 71 of 2008;
- c) The King I, King II and King III Reports;
- d) The Broad Based Black Economic Empowerment Act 53 of 2003; and
- e) The Johannesburg Stock Exchange (JSE) Social Responsibility Investment Index (SRI).

These instruments are discussed below.

⁷⁶ Ramlall S 'Corporate social responsibility in post-apartheid South Africa' (2012) 8 *Social Responsibility Journal*, 280 (hereafter referred to as CSR in post-apartheid South Africa).

⁷⁷ These principles were re-launched in 1999. At the launch, UN Secretary General Kofi Anan declared that: 'Enlightened business leaders across the world recognize their reputations and even their bottom lines are intimately tied to good corporate citizenship.'

⁷⁸ Beuthin RC *Basic Company law* 2ed (1996) 1.

⁷⁹ Araoz MF 'Corporate social responsibility in South Africa: More than a nice intention consumers, the general public and the environment' available at

http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=835:corporate-social-responsibility-in-south-africa-more-than-a-nice-intention&catid=82:african-industry-a-business&Itemid=266 (accessed 20 February 2012).

⁸⁰ Dekker A & Esser I 'The dynamics of corporate governance in South Africa: Broad based black economic empowerment and the enhancement of good corporate governance principles' (2008) 3 *Journal of International Commercial Law and Technology*. 43 available at <http://www.jiclt.com> (accessed 25 January 2012).

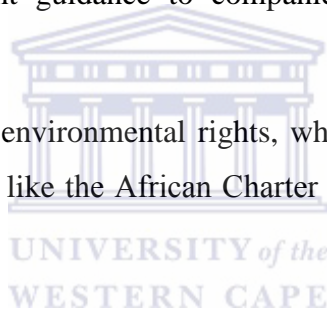
3.2 CSR INSTRUMENTS

3.2.1 The Constitution

Chapter 2 of the South African Constitution Act 108 of 1996 contains the Bill of Rights. This chapter protects the civil, political, socio-economic and cultural rights of all the people in South Africa. The Bill of Rights brought about a significant shift in the society's moral perception of companies. The notion of creating a structure that can pursue profit at the expense of human rights is legally untenable in South Africa.

Companies are social beings with both rights and responsibilities, and as such, the Bill of Rights applies to them in a manner that goes beyond mere financial considerations. The responsibilities outlined in the Bill of Rights provide the framework within which companies must legally operate. The foundational values of dignity freedom and equality should guide the company in its interaction with every shareholder. The specific rights contained in the Bill of Rights provide important guidance to companies for the sustainability of their strategies and operations.

Section 24 sets out a number of environmental rights, which are similar to those set out in several human rights instruments like the African Charter on Human & Peoples' Rights and the Stockholm Declaration.⁸¹



The section reads as follows:

‘Everyone has the right to an environment that is not harmful to their health or well-being and to have the environment protected, for the benefit of present and future generations, through legislative and other measures that prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.’

⁸¹ Principle 1 of the Stockholm 1972-Declaration of the United Nations Conference on the Human Environment reads ‘*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.*’ Principle 2 states that: ‘*the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.*’ Article 24 of the African (Banjul) Charter on Human and Peoples' Rights 1982, (entered into force 21 October 1986) states that ‘all peoples shall have the right to a general satisfactory environment favorable to their development’.

This section recognises the rights of the future generations in the context of sustainable development.

Therefore, the Constitution, being the supreme law of the land and providing for sustainable development in s 24, directly binds all juristic persons (companies) to comply with the Constitution and all laws on sustainable development.

3.2.2 Companies Act 71 of 2008 & Companies Regulations

The companies Act, the primary regulator of all companies in South Africa, also makes provision for the application of CSR to companies.

Section 72 of the Companies Act states that the Minister may prescribe social and ethics committees (SEC) for companies if it is in the public interest having regard to its annual turnover, workforce size, or the nature and extent of the activities of such companies.

The SEC must consist of at least three directors or prescribed officers of whom at least one must be a director who is not involved in the day-to-day management of the company's business and must not have been so involved within the previous three financial years. The reason for this is so that transparency can be provided.

Every listed public company, state owned company and any other company that was scored above 500 points in any of the two previous five years in terms of Regulation 26(2) must have an ethics committee as per Regulation 43.

The only exemptions from having an ethics committee are provided for in Regulation 42(2). A company is exempted if it is a subsidiary of another company that has a social ethics committee which will perform the functions required of it in terms of this Regulation or if it has been exempted in accordance with ss 72(5) and (6).

The SEC monitors the company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice such as:

- a) the 10 principles set out in the United Nations Global Compact Principles;
- b) the OECD recommendations regarding corruption;
- c) the Employment Equity Act; and
- d) the Broad-Based Black Economic Empowerment Act;

- e) good corporate citizenship.

The SEC must also ensure that the company promotes equality, treats employees equally and contributes to the development of the communities in which its activities are predominantly conducted. Further s 72(8) stipulates that a SEC may require from a director or prescribed officer or any employee of the company any information or explanation necessary for the performance of its functions. Therefore it can be said that the establishment of a SEC provides for a regulatory framework to help directors and public companies reach high standards of corporate governance and ethical conduct.

3.2.3 The UN Global Compact

In terms of Section 72 of the Companies Act, this is one of the International documents with which the SEC must make sure that companies comply.

This UN compact requires companies to embrace, support and enact within their sphere of influence a set of core values in the area of human rights, labour standards, the environment and anti-corruption.⁸²

Companies should determine which policies and practices might infringe human rights and adjust those actions to prevent the infringement from occurring.⁸³ This can be done by examining the production process; products or services the company provides and the labour and employment practices of the company.

Principle 8 stipulates that ‘companies must undertake initiatives to promote greater environmental responsibility’ ensuring that no harm is caused to the environment of their neighbours by redefining company vision in line with the triple bottom line.⁸⁴

A SEC should therefore ensure that these ten principles are complied with by companies in South Africa through company policies and their day-to-day dealings.

3.2.4 The King Reports

⁸² Tully S (2005)3.

⁸³ Principle 1 of the UN Global compact.

⁸⁴ UN Global Compact ‘The Ten Principles’ available at <http://www.unglobalcompact.org/abouttheGC/thetenprinciples/index.html> (accessed 2 June 2012).

South Africa's corporate governance guidelines and standards are contained and institutionalized in the well-known King Reports. Although they do not constitute official legal documents; they are regarded as state-of-the-art guidelines regarding good corporate governance and their adoption in the country's business sphere is highly recommended.⁸⁵

In particular, the King Reports constitute accepted guides of best practices in corporate governance in South Africa, focusing on social, environmental and economic concerns. The King Reports' clauses are not mandatory, but they take approaches that somewhat forces corporations to apply CSR programs or justify why they have not adopted them.

For example King II follows a 'comply and explain' approach. This means that the companies have to comply with the Report or otherwise have to explain the topics of non-compliance.⁸⁶ While King III follows an 'apply or explain' approach. This means that where entities have applied the best practice recommendations in the Report, a positive statement to this effect should be made to stakeholders.⁸⁷ But in situations where the board of directors or those charged with governance decides not to apply a specific principle or recommendation, this should be explained fully to the entity's stakeholders.⁸⁸

The King III approach is a more recent one followed by companies. These Reports were developed at different times, had several goals which they wanted to achieve.

The first was King I Report issued in 1994 by the King Committee on Corporate Governance. King I was aimed at promoting corporate governance and adequate standards for boards of directors of listed companies, financial institutions and some public enterprises.⁸⁹ While encouraging good governance practices, the report also emphasized the need for corporations to be socially responsible in the areas and communities in which they operate.

In 2002, the King II Report on Corporate Governance was published. More or less at the same time, the Johannesburg Stock Exchange requested listed companies to comply with the King Report or otherwise justify why they were not adhering to the norm. King II established and explained the seven good corporate governance elements that any corporation adopting

⁸⁵ SAICA 'The King Report on Corporate Governance' available at <https://www.saica.co.za/TechnicalInformation/LegalandGovernance/King/tabid/626/language/en-ZA/Default.aspx> (accessed 20 February 2012).

⁸⁶ Naidoo R *Corporate Governance-An essential guide for South African Companies* 2ed (2009) 280.

⁸⁷ SAICA 'King III Report' available at <https://www.saica.co.za/Portals/0/documents/PWC%20SteeringPoint%20KingIII.pdf> (accessed 7 April 2012).

⁸⁸ SAICA 'King III Report' (2012).

⁸⁹ SAICA 'The King Report on Corporate Governance' (2012).

the Report should pay attention: discipline, transparency, fairness, social responsibility, independence, accountability and responsibility.

King III was a revised version of King II and was issued in 2009. The new Report focuses on sustainability and risk issues, while continuing to highlight the importance for companies to respond to all stakeholders.

King III became necessary because of the new Companies Act 71 of 2008 and changes in international governance trends. This Report emphasises the importance of conducting business reporting annually in an integrated manner. For example, putting the financial results in perspective by also reporting on:

- a) How the company has both positively and negatively impacted on the economic life of the community in which it operated during the year under review; and
- b) How the company intends to enhance the positive aspects and eradicate or ameliorate the negative aspects in the year ahead.

Principle 1.2 of King III places responsibility on the Board of a company to ensure that the company is and is seen to be a responsible corporate citizen. This means that the board should ensure that the company performs within the triple context (economic, social and environment) in which it operates.

The board then has to issue an integrated report on this. A board should approve long and short-term strategies for the business of the company and monitor their implementation by management.⁹⁰ Before approving the strategy, the board should ensure that the strategy is aligned with the purpose of the company, the value drivers of company's business and the legitimate interests and expectations of the company stakeholders.⁹¹

Sustainable business practices require that the needs of the present are met without compromising the ability of future generations to meet their needs. This approach recognizes that a business cannot operate in an economically viable manner over a prolonged period without due regard for long-term sustainability. As such the above CSR instruments are set out to ensure that companies act as responsible corporate citizen.⁹²

⁹⁰ Principle 2.2 of King III Report.

⁹¹ SAICA 'The King Report on Corporate Governance' (2012).

⁹² Principle 2.4 of King III.

3.3 CSR AND SOUTH AFRICAN COMPANIES AND COMMUNITIES

With all the regulations on sustainability in South Africa, corporations have come to realize that they cannot operate in isolation to the community and that good governance and social involvement go beyond the work performed in their own offices.⁹³ Their vision is shifting from one where shareholder value and owner satisfaction were almost the exclusive corporate goals to more sensible one that considers and protects not only shareholders, but also all stakeholders; including employees, customers, suppliers, the environment and the community.⁹⁴

In aspiring to develop the communities in which these companies operate in, they comply with the Broad Black Economic Empowerment (BEE) Act 53 of 2003.⁹⁵ The BEE Act forces South African-based companies to consider all stakeholders when performing their internal and external operations in an effort to eradicate social and economic inequalities inherited from the apartheid days and to help previously discriminated against groups to actively participate in the country's economy.⁹⁶

Also evident is s 42 of the Employment Equity Act of 1998 which provides for the representation of different designated groups within each occupational category. This section further provides that the Director-General or any person or body applying the Act must ensure that all reasonable efforts are made by a designated employer to implement its employment equity plan.

The BEE Act is not only a way of ensuring black participation (ownership, management and development) in the national economy, it is also a mechanism to empower rural and local individuals/communities and to support protected groups as part of the company's CSR

⁹³ SAICA 'The King Report on Corporate Governance' available at <https://www.saica.co.za/TechnicalInformation/LegalandGovernance/King/tabid/626/language/en-ZA/Default.aspx> (accessed 20 February 2012).

⁹⁴ Araoz MF 'Corporate social responsibility in South Africa: More than a nice intention consumers, the general public and the environment' available at http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=835:corporate-social-responsibility-in-south-africa-more-than-a-nice-intention&catid=82:african-industry-a-business&Itemid=266 (accessed 20 February 2012).

⁹⁵ Media Club South Africa available at <http://www.southafrica.info/business/trends/empowerment/bee.htm> (accessed 4 April 2012).

⁹⁶ Aidex 'Black Economic Empowerment' available at http://www.axidex.com/black_economic_empowerment.html (accessed 20 April 2012).

programs and business related activities.⁹⁷ At the end, BEE is not exclusively intended to address racial imbalances; it also tries to strengthen the socio-economic spectrum of the country on the basis of equality and fairness.

Although, generally, large multinational corporations are the ones that are more dynamic in the area of CSR, more and more companies from a variety of sectors and of different sizes are starting to show interest in social responsible policies not only because of global growing trends and external pressures, but also because it can result in efficiency gains.⁹⁸

Communities, on the other hand, comprises of investors and the general public. The population at large benefits from enactments on CSR. For example:

- a) Human rights benefits: in the sense that their human rights as guaranteed by the South African Constitution are not violated by companies.
- b) Environmental benefits: a clean and safe environment.
- c) Employment benefits: as a result of the Employment Equity Act and the Broad Based Black Economic Empowerment Act, they have a higher chance of getting a job.

All these benefits are enshrined in each of the CSR regulations discussed above. These days most companies are not only determined to satisfy local customers but their long-term goal is often to attract foreign investments into the company so that the company can grow. Hence the essence of the JSE SRI where most investors investigate into the affairs of the company before they discharge their investments.

3.4 THE JOHANNESBURG STOCK EXCHANGE (JSE) SOCIAL RESPONSIBILITY INVESTMENT INDEX (SRI)

Globally there is an increasing awareness of, and need to measure CSR. As an emerging market, South African companies are doing much already and deserve to be recognized for their efforts. The JSE launched the SRI Index in South Africa in 2004, as a means of identifying companies that integrate the 'triple bottom line' into their business activities, and

⁹⁷ South African Ministry of Finance 'South Africa's Economic Transformation: A Strategy for Broad-Based Black Economic Empowerment' available at <http://www.info.gov.za/view/DownloadFileAction?id=70187> (accessed 23 April 2012).

⁹⁸ Melo T & Garrido-Morgado A 'Corporate Reputation: A Combination of Social Responsibility and Industry' (2012) 19 *Corporate Social Responsibility and Environment Management* 16.

to facilitate investment in such companies.⁹⁹ The SRI Index provides the investor with a unique tool to assess and value company performance.¹⁰⁰

3.5 CONCLUSION

In summary, the pre-dominance of CSR as a national concept emerged in South Africa after 1994 through the South African Constitution Act 108 of 1996, Companies Act 71 of 2008, King II (2002) and the King III (2009) Reports.

The Constitution provides for the right to a healthy environment which is the foundational objective of sustainable development. The Companies Act 71 of 2008 binds companies to sustainable development by placing an obligation on companies to have a SEC. The role of the SEC is to ensure that a corporation acts ethically in all its activities, protecting and preserving the rights of the members of the community. Finally, the King Reports then provided guides of best practices to corporate governance in South Africa, focusing on social, environmental and economic concerns. King III is more specific and direct on the CSR of South African companies.

As such, CSR is well regulated and the sustainable development of the economic, social and environmental aspects of the country cannot be a far-fetched dream to attain.

The ultimate question is the extent to which companies in South Africa can be said to be complying with these regulations? What are their compliance mechanisms? If indeed they are complying with them, what are the differences in their compliance mechanisms?

The next chapter seeks to answer some of these questions by comparing the compliance mechanisms of Anglo Platinum and Standard Bank.

⁹⁹ Giannarakis G, Litinos M & Sariannidis N 'Evaluation of Corporate Social Performance Standards' (2011) 5 *African Journal of Business Management* 73670.

¹⁰⁰JSE 'What is the Socially Responsible Investment Index' available at <http://www.jse.co.za/Investor-Relations/Sustainability/Socially-Responsible-Investment-Index.aspx> (accessed 23 April 2012).

CHAPTER FOUR

4. COMPARATIVE ANALYSIS: SOUTH AFRICAN MINING INDUSTRY AND THE FINANCIAL INDUSTRY

4.1 INTRODUCTION

The nature of the activities of mining companies and financial companies (banks) differ to a great extent. For example banks act as financial intermediaries that accept deposits and channel those deposits into lending activities, either directly or through capital markets.¹⁰¹

A bank connects customers that have capital deficits to customers with capital surpluses and needs a lot of people to put money in it for it to continue operating.¹⁰² It attracts customers by offering interest on their savings (extra money) and services.¹⁰³

The banking system touches virtually all aspects of one's daily life, as credit cards, cheques and internet banking are used to make purchases easily and more speedily on a daily basis.¹⁰⁴

Some negative attributes of banks would be the extraneous and hidden charges in transactions which most customers often cannot account for.¹⁰⁵

Mining companies on the other hand, deal with the removal of minerals and metals from the earth.¹⁰⁶ The removal process is harmful to the environment and causes deforestation as trees and vegetation are cleared and burnt.¹⁰⁷ Tantalum, cassiterite, manganese, copper, tin, nickel, bauxite (aluminium ore), iron ore, gold, silver, and diamonds are examples of some of what is mined.¹⁰⁸ The mining process has negative effects on all living organisms because chemicals are emitted during the process and these chemicals flow into river streams or oceans.¹⁰⁹

¹⁰¹ Moorcroft J & Raath LR *Banking law and practice* (2009) 65.

¹⁰² Central Bank of Swaziland 'What does the Bank do?' available at http://www.centralbank.org.sz/index.php?option=com_content&view=article&id=53&Itemid=74 (accessed 26 April 2012).

¹⁰³ Anani AA *Attracting and retaining customers in South Africa* (unpublished MBA thesis, Nelson Mandela University, 2010) 48.

¹⁰⁴ Phillip T & Woolfolk D 'The impact of banking on society is awesome' available at <http://www.black-collegian.com/career/industry-reports/impact2001-1st.shtml> (accessed 4 May 2012).

¹⁰⁵ Moorcroft J & Raath LR (2009) 65.

¹⁰⁶ Kemp D, Gotzmann N & Bond CJ 'Just Relations and Company-Community Conflict in Mining' (2011) 101 *Journal of Business Ethics* 98.

¹⁰⁷ Peterson GD & Heemskerk M 'Deforestation and forest regeneration following small-scale gold mining in the Amazon: The case of suriname' (2001) 28 *Environmental Conservation* 123.

¹⁰⁸ Coronado G & Fallon W 'Giving with one hand: On the mining sector's treatment of indigenous stakeholders in the name of CSR' (2010) 30 *International Journal of Sociology and Social Policy* 98.

¹⁰⁹ Hanks J 'Can Mining companies do sustainability?' available at <http://www.incite.co.za/2011/08/12/mining-and-sustainability-oxymoron> (accessed 26 April 2012).

As a result of this impact the people who are exposed to the sources where these chemicals are flow into become sick and develop different kinds of diseases which range from rashes, vomitting etc.¹¹⁰ Those who live in the village often cannot afford to see a doctor and are not treated for that illness.¹¹¹

Cultural degradation also occurs in mining villages as mining destroys sacred sites and cemetaries.¹¹² For example in Guyana, a special fishing event called 'haiari fishing' unfortunately could not take place because the river had been dredged for gold in 2008.¹¹³

Due to these vast differences in the nature of the activities and the impacts that mining corporations and banks have on the environment, society and economy, it is likely that their mechanisms of attaining sustainable development in the areas in which they operate will differ.

Thus far this paper has discussed several CSR instruments that are applicable to all companies in South Africa. From the Constitution which makes general provision on sustainable development to King III which spells out the codes of good practices for all companies, none of these instruments except the JSE SRI provides a tool for assessing company policy and practices against global and local CSR standards. As a result most company's CSR practices are bound to differ substantially from each other. Furthermore, it can be implied that the the King Reports, Companies Act, Constitution etc. all advocate for one-size- fits all application of sustainable development to all companies regardless of the industry within which it falls, its activities or the nature of services rendered by that company.

When one looks at the nature and scope of operation of mining companies, it can be ascertained that their focus where sustainable development is concerned is centred on the environmental aspect of the tripple bottom line though emphasis are also placed on the social and economic aspects. While with financial companies (banks) central focus is on the social and economic aspects of 'triple bottom line'. This is not to say that companies in the financial industry do not enforce the environmental aspect of the 'triple bottom line'. But due to the nature of the activities performed by the financial companies which will become

¹¹⁰ Dashwood HS 'CSR norms and organizational learning in the mining sector' (2012) 12 *Corporate Governance* 91.

¹¹¹ Dashwood HS (2012) 93.

¹¹² Melpruit T *Mining effects in South Africa* 3ed (2009) 89.

¹¹³ Melpruit T (2009) 89.

evident in this chapter, financial companies cannot have the same mechanism towards sustainable development as mining companies.

This chapter will therefore outline the difference in the mechanisms employed by a company in the Mining Industry (Anglo Platinum Limited) and one in the Financial Industry (Standard Bank) to achieve economic, social and environmental development in the areas in which they operate. This chapter will further discuss whether these mechanisms are aligned with the objectives of the Constitution, the King Reports, Companies Act 71 of 2008, and the UN Global Compact. If they do, do they achieve the sole objectives of these instruments?

4.2 THE MINING INDUSTRY

The South African Mining sector is made up of five major mineral categories namely precious metals and minerals, energy minerals, non-ferrous metals and mineral, ferrous minerals and industrial minerals.¹¹⁴ This includes gold, diamonds, base metals and coal.¹¹⁵

Mining contributes highly to the South African economy. It plays a major role for the development of the energy, water services, engineering services, specialist seismic, geological and metallurgical service industry.¹¹⁶ For example, 98% of the country's cement and more than 90% of the country's steel is fabricated locally from locally produced minerals.¹¹⁷

The industry contributes significantly to South Africa's GDP, black economic empowerment (BEE), foreign exchange earning and employment rate.¹¹⁸ Statistically the mining industry creates 1 million jobs (500 000 direct & 500 000 indirect), accounting for about 18% of GDP (8% direct, 10% indirect & induced); accounts for 18% of investment (9% direct); attracts significant foreign savings (more than 30% of value of JSE), 18.5% of corporate tax receipts (In 2010 it was R14 billion) & R5 billion in royalties; 50% of volume of transnet's rail and ports and 93% of electricity generation via coal power plants.¹¹⁹

¹¹⁴ Pogue TE *An overview of producer services in the mining industry in South Africa* (2000) 32.

¹¹⁵ Pogue TE (2000) 32.

¹¹⁶ Killan JM 'Addressing the social impact of mining activities on communities for sustainability' available at http://www.johnmark.co.za/38/9/2/social_impact_of_mining/activities (accessed 2 May 2012).

¹¹⁷ Taully P *South African Mining Sectors* (2010) 67.

¹¹⁸ Taully P *South African Mining Sectors* (2010) 67.

¹¹⁹ Pogue TE (2000) 32.

Despite all these positive economic contributions made by the mining Industry , there are still several negative effects caused by the Mining Industry in South African. These are discussed below.

4.3.1 Corporate Social Responsibility Policies in the Mining Industry

The government and the communities have put pressure on mining organisations in South Africa to start behaving like a corporate citizen, taking social responsibility for their actions and working towards sustainable development in the areas in which they operate.¹²⁰

To ensure that companies are accountable for their CSR, the South African government has instituted regulatory instruments through the Broad-based socio-economic charter (the Mining Charter 2002) and the Mineral and Petroleum Resources Development Act (MPRDA) of 2006 for mining companies.

The starting point is the Constitution of the Republic of South Africa, Act 108 of 1996. Section 24 of the Constitution provides that everyone has the right to an environment that is not harmful to their health or well-being and to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that:

‘Prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.’

Secondly, the MPRDA¹²¹, is the principal legislation governing mineral rights in South Africa. It contains certain transitional measures with regard to mineral rights prospecting permits and mineral authorization.

This Act provides that unless a mining operation has considered the social impact of its activities and documented it, the Department of Minerals & Energy (DME) will not issue a mining right to the applicant.¹²² Mining companies also have to compile and implement a

¹²⁰ Cronje F & Chenger C ‘Sustainable Development in South African Mining Sector’ available at <http://www.engagingcommunities2005.org/abstracts/Cronje-freek-find.pdf> (accessed 10 March 2012).

¹²¹ Replaced the MPRDA Act of 2004.

¹²² Killan JM (2009) 2.

social and labour plan (SLP) to promote socio-economic development in their affected communities and to prevent or lessen negative social impacts.¹²³

For the development of the communities in which the mine operates, regulation 46 (c)(iii) of the MPRDA specifically requires mines to support infrastructure and poverty eradication projects in line with the integrated development plans (IDPs) of the area in which the mine operates and of major labour-sending areas. This means that the mining company should contribute towards the development of the area. Their goals and objectives should be in line with that of the community in the area in which they operate. For example, if the infrastructure is poor or the people in that area are living in poverty, the Mining company should assist in the improvement of the lives of the people in that area.

Thirdly, the Mining Charter, another instrument that regulates mining operations in South Africa aims to create a Mining Industry that will proudly reflect the promise of a non-racial South Africa and where companies can shape their sustainable development programmes.¹²⁴

The Mining Charter requires that mining companies should achieve 40 per cent historically disadvantaged South African's (HDSAs) participation in management and 10 per cent women participation in mining within five years.¹²⁵ This is in line with section 9 of the BEE Act which seeks to ensure that all citizens are given equal opportunity despite the race or disability.

One of the essential elements of sustainable development, is the emancipation of members of the community and as such, the government requires that each mine prepare a comprehensive integrated development and implementation plan for communities where mining takes place and for major sending areas.¹²⁶ These policies have now become a prerequisite for mining license renewal. This is in harmony with the requirement of integrated reporting in King III Report.¹²⁷

In conclusion, the MPRDA, Mining Charter and the Constitution all require that the mining companies play a role in the sustainable development of the area in which they operate. This

¹²³ Killan JM (2009) 2.

¹²⁴ Anglo Platinum *The South African Mining Charter Annual Report* (2003) 34.

¹²⁵ Esser IM & Dekker A 'The dynamics of corporate governance in South Africa: Broad based black economic empowerment and the enhancement of good Corporate Governance Principles' (2008) 3 *Journal of International Commercial Law and Technology* 153.

¹²⁶ Esser IM & Dekker A (2008) 153.

¹²⁷ Fig D *Staking their claims: Corporate social and environmental responsibility in South Africa* (2007) 17.

development ranges from social, environmental to economic aspect of sustainable development. The fundamental question therefore, is whether mining companies do comply and apply the principles laid down in these instruments and if so how do they apply it and what mechanisms have they put in place for it. An analysis into the practices of Anglo Platinum will be used as an example to answer these questions.

4.3 ANGLO PLATINUM LIMITED

As the world's leading producer of platinum totalling about 40 percent of the world's annual production, Anglo Platinum Limited (also known as Amplat) a company based in Johannesburg plays a major role in the South African economy.¹²⁸

Bathopele, Dishaba, Khomanani, Khuseleka, Mogalakwena, Siphumelele, Thembelani and Tumela mines are some of Amplat's mining operations which lie to the northeast of Johannesburg.¹²⁹ Palladium, rhodium, ruthenium, and iridium are some of the group metals produced, whereas nickel, copper, gold and other base metals are produced as by-products.¹³⁰

4.3.1 Corporate Social Responsibility in Amplat

Safety is one of the major challenges of Amplat.¹³¹ In 2011, twelve (12) employees lost their lives during the year as a result of work-related incidents.¹³²

As a result of the people lost at Amplat, the 'zero harm in action' programme was commenced. The programme was designed to create a safer way of working at Amplat; to incorporate safety into the way the company conducts their business; and to build on all the good work that has already been done in terms of company safety over a number of years.¹³³

The company further engrained sustainable development in its business, in order to achieve excellence and innovation in its practices.¹³⁴

¹²⁸Finger Tips 'South African Mining Companies' available at <http://www.fingertips8195.com/mining%20companies.html> (accessed 3 February 2012).

¹²⁹Anglo American Platinum 'Sustainable Development Report 2011' available at http://www.angloplatinum.investoreports.com/angloplatinum_iar_2011/downloads/angloplatinum_sdr_2011_pdf (accessed 10 April 2012).012).

¹³⁰ Anglo American Platinum 'Sustainable Development Report '(2012).

¹³¹ Pietrui G *Mining Companies in South Africa* (2011) 87.

¹³² Pietrui G (2011) 89.

¹³³ Pietrui G (2011) 95.

¹³⁴ Anglo American Platinum 'Sustainable Development Report '(2012).

Amplat's sustainable development objective is to improve the wellness and safety of the employees,¹³⁵ community stakeholders and to sustain the resources the company depends on - such as water and electricity.¹³⁶

To achieve this, Amplat has health programmes that focus on occupational, public and environmental health.¹³⁷ It treats HIV/AIDS as a material issue because statistics show that 20% of the company employees are infected with this pandemic.¹³⁸ It also offers comprehensive health services for AIDS care and HIV prevention to all employees.¹³⁹

Amplat complies with King III and JSE SRI requirement on reporting by way of communication with other stakeholders (public, investors etc.) in accordance with the GRI G3 Initiative.¹⁴⁰ Information is made available to stakeholders through community engagement forums and the chief executive officer's bi-annual stakeholder engagement forums held around the mining communities and across the country on how the company is addressing issues on the many social and environmental aspects associated with the business as the stakeholders are often interested in others aspects of the company's business other than the financial element.¹⁴¹

The board of directors' safety and sustainable development committee act as the social ethics committee provided for in section 74 of the Companies Act 71 of 2008. They monitor the company's safety, health, environmental and social performance. The Risk and assurance management committee of the board, among other things, sets direction for sustainable development issues based on the organisation's risk profile.¹⁴²

It is thus apparent that sustainable development is fully integrated into the business approach, and the company goes the extra mile by establishing groups that specifically deal with Amplat's sustainable development programme.¹⁴³

These groups include but are not limited to:¹⁴⁴

¹³⁵ Anglo American Platinum 'Sustainable Development Report' (2012).

¹³⁶ Anglo American Platinum 'Sustainable Development Report' (2012).

¹³⁷ Riet H 'Corporate Governance and Anglo Platinum' available at <http://www.anglo/corporate/governance/67%pdf> (accessed 15 April 2012) (hereafter Corporate Governance).

¹³⁸ Riet H 'Corporate Governance' (2012).

¹³⁹ For example voluntary testing is made available for all employees at all company medical facilities.

¹⁴⁰ Johannesburg Stock Exchange 'JSE: SRI Index' available at http://www.jse.co.za%2FLibraries%2FSRI-Criteria_Documents%2FOI_BackgroundonCriteria2011.sflb.ashx&ei (accessed 2 May 2012).

¹⁴¹ Johannesburg Stock Exchange 'JSE: SRI Index' (2011).

¹⁴² Farried T *Summary of Anglo American Platinum Sustainable Development Report* (2011)19 (hereafter Summary of Anglo Platinum SDR).

¹⁴³ Anglo American Platinum 'Sustainable Development Report' (2012).

- a) The group finance department. This department is responsible for ensuring that the company enlarges the economic benefits its operations have in local communities.
- c) The human resource department. This department deals with the employment, labour and management relations, training and education, diversity and equal opportunity.
- d) The safety and health department. It addresses issues related to the safety and welfare of the workforce and are certified against the management system occupational health and safety assessment series (OHSAS 18001).

Despite the fact that Amplat has all of the above mentioned sustainability structures or activities in place to fulfill its CSR in the area it operates, there are some positive and negative economic, social and environmental effects that Amplat's activities have on the community it operates in.

4.3.2 The social effect of its activities

Amplat is a listed company on the JSE and for it to be listed, it must have shown evidentiary proof that it was complying with all local and international CSR standards. This means that as a listed company, Amplat is a good corporate citizen emancipating and protecting its employees, ensuring that its activities are not harmful to the environment and contributing to the economy of the country. This leaves a lot to be questioned because Amplat's activities have been criticised intensely.

For example, in August 2009, the magistrate dismissed charges laid against women from the Maholo community who were accused of stoning a mine security vehicle owned by Anglo platinum as the company tried to blast near their homes.¹⁴⁵ The magistrate's ratio decidendi was that the women acted in defence of their lives and property because no notice had been issued to the members of the community about the blasting and despite protest against previous blasting which had damaged window panes and led to the structural damage of buildings Amplat had not compensated the affected parties but instead proceeded with more blasting.¹⁴⁶

¹⁴⁴ Anglo American Platinum 'Sustainable Development Report' (2012).

¹⁴⁵ Spoor R 'Women win SA court case brought by Anglo Platinum' available at <http://www.minesandcommunities.org/article.php?a=9386> (accessed 3 May 2012) (hereafter Women win court case).

¹⁴⁶ Spoor R 'Women win court case' (2012).

Despite the complaints made by these women to the Department of Mines and Energy (DME) on the blasting activities of Amplat in their area, the DME had done nothing about it. DME just told them that the shock wave from the blasting was within the prescribed limits.¹⁴⁷ It was further argued that what was considered prescribed limit in a commercial area could not be considered prescribed limit in a residential area.

Another incident in the Maholo community was where 15 000 residents were forced to relocate and at least 10 000 more lost most or all of their farming land.¹⁴⁸ The relocated villages have been said to be unsustainable and are plagued by chronic water shortages and failing services.¹⁴⁹

Amplat promised the members of the community jobs, services and business opportunities but as of 2009 this had not materialised¹⁵⁰ and without agricultural land to sustain them, those residents continue to live in poverty, hunger and hardship.

Blasting (the noise created by it) has remained of major concern to residents residing next to the mines owned by Amplat or Amplat itself. In a recent 2011 article published by Reuters,¹⁵¹ Esther Moloto a resident in the Sekhukhune community vowed to keep fighting the Twickenham mine owned by Amplat for the negative impacts it has had on the community and on her living space in particular. She claimed that the blasting has driven cobras into her yard thus endangering her life. She further stated that the noise caused by Amplat's activities was unbearable.¹⁵² Amplat has also been criticised for trespassing on land belonging to the black African farming communities at Maandagshoek, in the bushveldt region of South Africa and in the Mokopane community.¹⁵³

This has been considered by residents as a violation of human rights. Amplat violated the community's human rights by encroaching on the indigenous peoples' land without their consent and if the members of the communities refused to relocate, the platinum miners cut off their services to these areas.¹⁵⁴ The areas which these residents were moved to after their

¹⁴⁷ Spoor R 'Women win court case' (2012).

¹⁴⁸ Mahon P *Mining and the Community - A Synthesis* (2010) 295.

¹⁴⁹ Mahon P (2010) 296.

¹⁵⁰ Mahon P (2010) 296.

¹⁵¹ Reuters 'South Africa: between a rock and hard places?' available at <http://www.minesandcommunities.org/articles.php?a=10703> (accessed 2 May 2012).

¹⁵² Reuters 'South Africa: between a rock and hard places' (2011).

¹⁵³ Mines and Communities 'Black Friday at Monday's Corner' available at <http://www.minesandcommunities.org/article.php?a=17> (accessed 5 May 2012).

¹⁵⁴ Meral T 'Anglo Platinum accused of community violations in South Africa' available at <http://www.miningweekly.co.za> (accessed 2 May 2012).

land was forcefully acquired were often in worse living conditions than where they were previously resident.¹⁵⁵ It is believed that Amplat is using the police and some government departments as muscle to throw people off their ancestral land so that they can mine there.¹⁵⁶

Further, in 2007 four workers had died in accidents at the Rustenburg Amplat branch prompting the national union of mineworkers (NUM) to condemn the lack of training and failure to follow safety procedures at Anglo Platinum.¹⁵⁷

Recently in April 2012 a miner in Amplat claimed he contracted tuberculosis as a result of digging gold on behalf of Amplat and demanded compensation.¹⁵⁸ The miners claimed that Amplat was responsible for them developing silicosis, an incurable lung disease that often leads to tuberculosis.¹⁵⁹ The condition, which is similar to asbestosis contracted by asbestos workers, has often been described as a 'river of disease flowing out of the South African gold mines.'¹⁶⁰ The threat of silicosis, particularly from gold mining, has been known for centuries and miners are the victims of the industry's flagrant disregard for the health of its black workers.¹⁶¹

Peter Bailey from South Africa's NUM claimed Anglo has 'done absolutely nothing to help the miners: It's time to stop the talking about its moral values, and do something', he said.¹⁶²

4.3.3 The economic effect of its activities

Despite the numerous negative social effect that Amplat has on mining communities, Amplat has been praised for its CSI contribution to the country. For example, in 2011, a total of R187 million was directed at education, health and infrastructural development.¹⁶³

Project Alchemy was implemented to increase the company's commitment to community welfare in 2011.¹⁶⁴ This was a BEE community equity-ownership transaction worth R3.5

¹⁵⁵ Kemp D, Owen JR & Gotzmann R et.al 'Just Relations and Company: Community Conflict in Mining' (2011) 10 *Journal of Business Ethics* 105.

¹⁵⁶ Kemp D, Owen JR & Gotzmann R (2010).

¹⁵⁷ Mines and Communities 'Black Friday at Monday's Corner' (2012).

¹⁵⁸ Neat R 'Anglo American workers and shareholders demand silicosis compensation' available at <http://www.mailandguardian.com/articles.php?a=11659> (accessed 3 May 2012) (hereafter Workers demand compensation).

¹⁵⁹ Neat R 'Workers demand compensation' (2012).

¹⁶⁰ Calvano L 'Multinational Corporations and Local Communities: A Critical Analysis of Conflict' (2008) 82 *Journal of Business Ethics* 799.

¹⁶¹ Calvano L (2008) 799.

¹⁶² Neat R 'Workers demand compensation' (2012).

¹⁶³ Shried T 'How South African Companies apply CSR' available at <http://www.shried.co.zasouth/african/3%companiesand%CSR%policies.pdf> (accessed 2 May 2012).

billion.¹⁶⁵ The project provides beneficiary communities with shareholder rights by placing shares in community-led structures to ensure the social development and sustainability of communities by positioning them as partners in the delivery of sustainable solutions; and by providing them with the skills they need to become and remain self-reliant.¹⁶⁶ The extent to which this project has achieved its objectives can only be ascertained in the near future, but at least Amplat has a project in place to achieve its corporate social economic responsibility.

4.3.4 The environmental effect of its activities

The environmental effects of Amplat's activities include numerous spills and accidental discharges at Amplat's operational areas in South Africa.¹⁶⁷

Moetse, a mining area in the country has witnessed worsening social and environmental conditions as a result of the mining activities of Anglo Platinum.¹⁶⁸ Industrial waste and open raw sewerage from Amplat's compound flows freely into one of the large rivers in the area.¹⁶⁹ The river provides drinking water to both people and livestock.¹⁷⁰ This has caused significant increase in health problems, including coughing and breathing problems among community members in Moetse and in the area of Driekop under Tshwakomhlala municipality. These effects are directly attributed to the large tailing dams in the area and general mining operations.¹⁷¹ Mining explosives are poorly guarded and this has led to the use of these explosives to rob ATMs.¹⁷²

Mining leaves the land barren and unsuitable for farming.¹⁷³ On land vacated by the mines, dangerous hazards such as open holes in the ground and waste materials are still present.¹⁷⁴ It

¹⁶⁴ Shried T 'How South African companies apply CSR' (2012).

¹⁶⁵ Anglo American Platinum 'Sustainable Development Report '(2011) 37 Anglo American Platinum 'Sustainable Development Report '(2011) 55.

¹⁶⁶ Anglo American Platinum 'Sustainable Development Report '(2011).

¹⁶⁷ Liet P 'Giant Mining Firm's Social Responsibility Claims: Rhetoric or Reality?' available at http://www.American_Anglo_American_Plc.org (accessed 6 May 2012) (hereafter Giant Mining firms CSR claims).

¹⁶⁸ Liet P 'Giant Mining Firms Claims' (2012).

¹⁶⁹ Hamann R & Kapelus P 'Corporate Social Responsibility in Mining in South Africa: Fair Accountability or Just Greenwash?' (2009) *Development Journal* 92.

¹⁷⁰ Hamann R & Kapelus P (2009) 94.

¹⁷¹ Kapelus P 'Mining, Corporate Social Responsibility and the Community' (2008) 39 *Journal of Business Ethics* 275.

¹⁷² Kemp D 'Community Relations in the Global Mining Industry: Exploring the Internal Dimensions of Externally Oriented Work' (2010) *Corporate Social Responsibility and Environmental Management* 12.

¹⁷³ Franks D 'Avoiding Mine-Community Conflict: From Dialogue to Shared Futures' (2009) *Proceedings of the First International Seminar on Environmental Issues in the Mining Industry* 60.

¹⁷⁴ Franks D (2009) 58.

is sad to note that it is usually children who fall victim to these toxic substances and who suffer injuries from falling into old shafts and wells.¹⁷⁵

Some of the environmental effect of its activities also include the excessive use of energy and water.¹⁷⁶ In addressing this issue, Amplat has set targets for reducing energy inputs and water use at their operations and compliance with all applicable legal and other requirements (environmental management systems certified by ISO 14001:2004 standard) which the environmental department of the company has set out to achieve.¹⁷⁷

Reducing sound pressure levels of noise-emitting equipment above 110 dB (A)¹⁷⁸ has been the company's main risk mitigation strategy and great strides have been made in this regard.¹⁷⁹ For example over 98% of the equipment identified at the start of 2007 has been silenced over the past 5 years.¹⁸⁰

Of the 2,063 pieces that required silencing the remaining pieces are either fans that are located in remote areas where no one is exposed to the noise, or specialised drills that are in the process of being replaced.¹⁸¹ The intention is to focus on mitigating the risk posed by exposure to noise emitted by this equipment.¹⁸²

4.3.5 Conclusion

From the above discussion, it is clear that Amplat's focus is more on the social and environmental aspect of sustainable development. For example, their zero harm in action programme, project alchemy, the company's environmental management systems and their numerous health programmes directed at protecting the health of employees supports this view.

On face value, Amplats mechanisms to sustainable development is aligned with the objectives of King II and King III Reports, MPRDA, Mining Charter, UN Global Compact, JSE-SRI and the Companies Act 71 of 2008. For example, Amplat has a safety & sustainable

¹⁷⁵ Jenkins H 'Corporate Social Responsibility and the Mining Industry: Conflicts and Constructs' (2010) *Corporate*

Social Responsibility and Environmental Management 30.

¹⁷⁶ Farried T *Summary of Anglo Platinum SDR* (2011) 55.

¹⁷⁷ Anglo American Platinum 'Sustainable Development Report' (2010) 98.

¹⁷⁸ Farried T *Summary of Anglo Platinum SDR* (2011) 55.

¹⁷⁹ Rohan D 'CSR and Mining Effects in South Africa' (2008) 6 *Management Journal* 45.

¹⁸⁰ Anglo American Platinum 'Sustainable Development Report' (2010) 86.

¹⁸¹ Anglo American Platinum 'Sustainable Development Report' (2010) 120.

¹⁸² Rohan D (2008) 50.

development committee which monitors the company's safety, health, environmental and social performance as per the SEC requirement in the Companies Act 71 of 2008 discussed in chapter three of this paper.

Secondly, it reports on its affairs in accordance with the criteria stipulated in the JSE-SRI because it is a listed company. Thirdly, project alchemy which aims to increase the company's commitment to community welfare through BEE (procurement and investment), human capital and development (number of staff, progress towards equity targets) training opportunities for women and previously disadvantaged, is in line with the objectives of the Mining Charter 2002 (Broad Based socio economic Charter) and MPRDA 2006. Finally its zero harm in action programme complies with the objectives of the UN Global Compact with regard to the protection of the health of employees and environment of the area in which it operates.

Despite all these, one must bear in mind that practice and policy are different. Amplat's activities have been criticised by the members of the communities in which they operate. The question is if their policies are in line with the local and international policies on sustainable development then why is it that they are unable to apply what they have on paper into practice?

It can be inferred that the South African government is on the side of the corporation, because they are looking at the revenues they are getting. If the government was not blind folded by the monetary contributions made by this company, it would see that in order for it to achieve its sustainable development objectives for the nation of South Africa, it would have to tighten its measures on mining companies.

Anglo has accumulated massive profits if they are really good corporate citizens as they claim they should put in more resources to develop their miners and members of the community where they mine.

4.4. THE FINANCIAL INDUSTRY

The financial industry includes a wide range of companies and institutions involved with money, including businesses providing money management, lending (banks), investing (investment companies), insuring and securities issuance (insurance companies).¹⁸³

Surprisingly, financial institutions are believed to be the most socially responsible among 12 sectors in South Africa in that they act as mediators that facilitate the flow of savings.¹⁸⁴

In this section focus shall be on one financial institution (Standard Bank). Banks are very important because without it, trade and commerce across the world would be halted if there was no means to fund, pay and protect transactions; hence the need for governments to support the financial services industry.¹⁸⁵

In their pursuit to support the industry, the government tries to ensure that the activities of the financial industry comply with sustainable development policies.

Banks have adopted the description of the concept and practice of CSR globally and are dispensing millions into specific kinds of CSR programmes endeavouring to strengthen their reputation and improve relationships with stakeholders.¹⁸⁶

4.4.1 CSR Policies in the Financial Industry

There are several Influential standards, codes and regulation that apply to all institutions in the financial sector in South Africa:¹⁸⁷

- a) The Financial Sector Charter (FSC).
- b) The King Reports (King II and King III).
- c) The Global Reporting Initiative (GRI) including the Financial Services Sector Supplement (FSSS)
- d) JSE SRI Index – Sets social performance criteria for companies seeking listing.

¹⁸³ Robert P 'Financial Services' available at <http://www.global.globalreporting.org/reporting/sector-guidance/financial-services/pages/default.aspx> (accessed 3 May 2012).

¹⁸⁴ The Economy Watch 'Financial Industry, Financial Sector and Financial Services Industry' available at <http://www.economywatch.com/world-industries/financial-services.html> (accessed 20 March 2012).

¹⁸⁵ The Economy Watch 'Financial Industry, Financial Sector and Financial Services Industry' (2012).

¹⁸⁶ Sweeney ME, Armstrong A & O Donovan 'Australian Banks As Corporate Citizens: Are They Toeing The Bottom Line?' available at http://findarticles.com/p/articles/mi_hb3252/is_3_115/ai_n28844350/. (accessed 22 March 2012).

¹⁸⁷ Robert P 'Financial Services' (2012).

The GRI regulates all reporting by companies in the financial services sector. The purpose is to empower them to gauge and report their sustainability performance ensuring transparency in their activities and dealings.¹⁸⁸ A personalised version of the GRI's sustainability reporting guidelines is provided by the FSSS which includes reporting principles, disclosures on management approach and performance Indicators for economic, environmental and social issues.¹⁸⁹

The use of the FSSS for all companies in the financial industry regardless of their size, location, and activities is encouraged by the GRI because it ensures that reports from the sector are relevant, meaningful and comparable.¹⁹⁰

The FSC is applicable to all companies in the financial sector. It requires each company in the financial sector to spend an amount totalling 0.5% of its net profit after tax per annum on CSI. As an incentive to encourage companies to comply with this, it awards three credits upon compliance by the company.¹⁹¹

The SRI provides guidelines on what companies must do to attract investors, as investors are constantly in search of companies that have good practices in relation to the triple bottom line: Economic, environment and social sustainability.¹⁹² These guidelines make available a tool for assessing company policies and practices against global and local CSR standards.

Criteria's that companies must meet to show that they have integrated the triple bottom line practices spans across environment, society, governance and related sustainability concerns (ESG) includes:¹⁹³

- a) Environment: Requires companies to show that they are working towards environmental sustainability.
- b) Society: Companies must encourage training and development, employee relations, health and safety, equal opportunities, community relations and BEE.

¹⁸⁸ Global Reporting Initiative 'Financial Services' available at <http://www.globalreporting.org/reporting/sector-guidance/financial-services/pages/default.aspx> (accessed 3 May 2012).

¹⁸⁹ Global Reporting Initiative 'Financial Services' (2012).

¹⁹⁰ Europa 'Sustainability Reporting Guidelines & Financial Services Sector Supplement' available at <http://www.globalreporting.org/resource/library/FSSS-Complete.pdf> (accessed 4 May 2012) (hereafter the *Financial Service Sector*).

¹⁹¹ Johannesburg Stock Exchange (JSE) 'Introduction to SRI Index' available at http://www.jse.co.za/About-US/SRI/Introduction_to_SRI_Index.aspx (accessed 3 May 2012).

¹⁹² Johannesburg Stock Exchange 'Introduction to SRI Index' (2012).

¹⁹³ Johannesburg Stock Exchange 'JSE: SRI Index' (2011).

- c) Governance and related concerns: Companies must encourage board practice, ethics, indirect impacts, business value and risk management and broader economic issues.

With all the regulation on sustainable development in the financial sector, this section will discuss how Standard Bank complies and applies them.

4.5 STANDARD BANK

Unlike Amplat whose sustainable development activities are directed at the environment and social aspects of the triple bottom line, Standard Bank's sustainable development programmes are directed more at the social and economic aspect of the triple bottom line. This does not mean that their policies are not directed at the environmental aspect but their concentration on the social and economic aspects is because of the nature of their activities.

4.5.1 Corporate Social Responsibility in Standard Bank

Standard bank's sustainability is influenced by pressure on a local and international plane and their need to grow.¹⁹⁴ The bank's contributes to sustainable development by supporting growing economic activity.

Standard bank group's asset management unit (STANLIB) signed up to the United Nations principles for responsible investment in 2008 and included a section addressing environmental, social and governance issues in its governance questionnaire used to assess potential companies it invests in.¹⁹⁵

King III requires a company to integrate financial and non-financial reporting as one.¹⁹⁶ This means that the annual report to stakeholders must reflect how economic, social and environmental issues impact on the company's business strategy and, in turn, how these are considered when making business decisions.¹⁹⁷

¹⁹⁴ Standard Bank 'Our approach: Ensuring our sustainability' (2010) Standard Bank 'Accountability' available at <https://sustainability.standardbank.com/our-approach/accountability/> (accessed 9 April 2012).

¹⁹⁵ Standard Bank 'Our approach: Ensuring our sustainability' (2010).

¹⁹⁶ Standard Bank 'Our approach: Ensuring our sustainability' (2010).

¹⁹⁷ Dosskin L 'Incompetent clueless lying call centre staff: Standard Bank' available at <http://www.complaintsboard.com/complaints/standard-bank-c377642.htm> (accessed 5 May 2012).

Standard Bank group (SBG) is at the forefront of developments in integrated reporting.¹⁹⁸ The bank's sustainability reporting involves well-developed data and information management processes, which presents a balanced analysis of the group's sustainability performance strategy in relation to issues that are relevant and material to the group and to the stakeholders.¹⁹⁹

With all these CSR programmes and policies in place at Standard Bank, its activities have both negative and positive effects in the areas in which it operates.

4.5.2 The economic effect of its activities

Standard Bank has made some tremendous CSI contributions into the country. The bank's CSI spending was a total of R67.4 million in 2008; R69.6 million in 2009, R99.5 million in 2010 and R102.5 million in 2011²⁰⁰ directed at education, health and wellness, arts and culture development, bursaries, employee donation matching, humanitarian relief fund and sport development.²⁰¹ The chart below reflects how the CSI was apportioned.

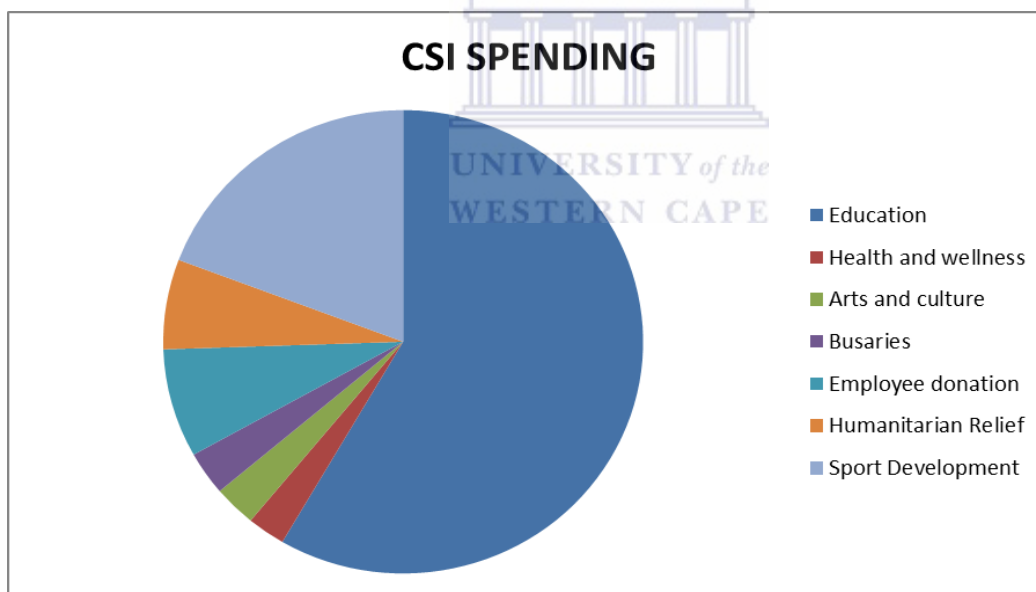


Figure 4

¹⁹⁸ Dosskin L (2011).

¹⁹⁹ Ilmerane B (2010).

²⁰⁰ Standard Bank 'Our approach: Ensuring our sustainability' available at <https://sustainability.standardbank.com/our-approach/> (accessed 4 April 2012).

²⁰¹ Standard Bank 'Sustainability in Standard Bank' available at <http://www.standardbank.com/Overview.aspx> (accessed 10 April 2012).

The group's annual social investment expenditure is funded by not less than 1 percent of prior year after-tax income from its South African operations.²⁰² The breakdown in South Africa indicates that 36.4 percent went to education programs and 35.5 percent to enterprise development, which reflects the bank's focus on empowering individuals and creating economic wealth, among other relevant socio-economic goals.

The SBG sustainability management programme addresses environmental impacts including materials, energy, water, waste and transport.²⁰³ The bank has a system that enables effective risk and opportunity identification, and the management of performance improvement.²⁰⁴

Internally the group also has a robust risk management and governance structure, with oversight from the group risk and capital management committee and audit committee, to ensure adherence to all legislation and regulation.²⁰⁵ Through the group's CSI initiatives, long-term social value is created for the communities operated in. A banking unit was launched for the purpose of delivering affordable banking products to the South African low-income market.²⁰⁶

Regular engagement with stakeholders in the social, political, economic, environmental, legal and regulatory factors takes place as part of its stakeholder relations management approach. Compliance with all regulation and legislation is monitored through the compliance function within the group and through the group audit committee.²⁰⁷ Risk to the health and safety of customers is specifically addressed in the occupational health and safety programme.²⁰⁸

The global chief information security officer has overall responsibility for overseeing the execution of information policies and standards.²⁰⁹ On-going awareness campaigns are conducted to ensure all employees, contractors and third party users are aware of information risks.²¹⁰

²⁰² Standard Bank 'Our approach: Ensuring our sustainability' available at <https://www.sustainability.standardbank.com/our-approach/> (accessed 4 April 2012).

²⁰³ Standard Bank (2012).

²⁰⁴ Standard Bank (2012).

²⁰⁵ Standard Bank (2012).

²⁰⁶ Elkington J *Cannibals with Forks. The Triple Bottom Line of the 21st Century* (1998) 87.

²⁰⁷ Elkington J (1998) 87.

²⁰⁸ Standard Bank 'Accountability' available at <https://www.sustainability.standardbank.com/our-approach/accountability/> (accessed 9 April 2012).

²⁰⁹ Standard Bank 'Environmental & social risk management'(2010).

²¹⁰ Standard Bank 'Environmental & social risk management'(2010).

Ultimate accountability and responsibility for sustainable development rests with the SBG's board of directors²¹¹ which is then delegated to appropriate board and management committees.²¹² Responsibility for implementing group strategy reviews and providing guidance on all pertinent sustainability issues rests on the SBG executive committee.²¹³

4.5.3 The social effect of its activities

The bank recognises and observes the human rights principle embedded in the Constitution where its employees, customers and the community in which it operates are concerned. This includes amongst others: equality, human dignity, freedom of association and expression, labour relations, the environment and education.²¹⁴ Employees of the bank are obliged, under the code of ethics, to report any disreputable behaviour.²¹⁵

The bank's impact on society is through the provision of financial services.²¹⁶ Services rendered by Standard Bank to members of the society have often been criticised. The criticisms can be categorised into the following categories:

- a) Incompetent staff members;
- b) Home loan complaints;
- c) Poor customer service; and
- d) Unfair labour practices.



i) Incompetent staff members

In 2003 a customer at Standard Bank closed a credit card account but kept receiving messages on his cell phone from the bank that he had outstanding amounts which he had to pay. After several efforts were made to rectify the error with the bank, the bank did not rectify it. A month later he received another message that a judgement had been granted against him.²¹⁷ The customer claimed that Standard Bank had ignored his complaint and is in

²¹¹ Standard Bank 'Accountability' (2012).

²¹² Standard Bank 'Accountability' available at <https://www.sustainability.standardbank.com/our-approach/accountability/> (accessed 9 April 2012).

²¹³ Titus G *Standard Bank and its Social Accountability* (2010) 98.

²¹⁴ Goosen W, Pampallis A & Mdluli L *Banking in the New Millennium* 1ed (1999) 67.

²¹⁵ Goosen W, Pampallis A & Mdluli L (2006) 68.

²¹⁶ Titus G (2010) 88.

²¹⁷ Titus G (2010) 76.

breach of consumer right. He further asserted that the employees of the bank are incompetent and cannot carry out tasks diligently.²¹⁸

The employees at the Standard Bank call centre division have also received their fair share of criticisms for failure to give adequate and impromptu assistance.²¹⁹ Llmerane in November 2011 complained of Standard Bank's poor services as certain actions carried out by the bank could not be accounted for.²²⁰ After reporting her credit card as stolen, she was issued with a new credit card but was later asked to reapply for a new card after two weeks. Lllmerane could not understand the reason she was asked to reapply for a new credit card after being issued with one. According to her, the communication mechanisms are poor in Standard Bank and as such it seems as though there are loopholes in the communication process at the bank.

Morrison another client of the Bank bought a canopy through Standard Bank's vehicle finance in December 2011. This was not delivered as of 23 April 2012. Once again Standard Bank's services were questioned.²²¹

On 12 May 2012 a customer at Standard Bank paid R31 000.00 into her mortgage bond account at Standard Bank, the staff at the bank failed to trace the money, after several efforts on the part of the customer to ensure that the bank rectifies this error, the bank was unable to locate the money.²²² The customer had documentary prove that indeed that amount was paid into the account. The customer accused Standard Bank of being inefficient in executing their tasks. The customer insists that the bank should find the money and pay it into her bond account with Standard Bank.

ii) Home loan

The bank has a home loan plan and customers that take home loan insurance benefit from repair services of their houses. On 29 May 2012, a customer under this insurance called the bank twice to report that he had a leaky pipe in the bathroom and was not assisted. The

²¹⁸ Peter H 'Standard Bank complaints' available at <http://www.hellopeter.com/standard-bank/complaints/standard-bank-150-years-of-moving-you-backward-811898> (accessed 30 May 2012).

²¹⁹ Dosskin L (2011).

²²⁰ Llmerane B (2010).

²²¹ Dosskin L (2011).

²²² Peter H 'Standard Bank complaints' (2012).

customer complained that Standard Bank repeatedly spends huge amounts on advertising and little on actual service. The customer sought other alternatives to repair the pipe.²²³

On the same home loan issue, a couple met with their personal banker at Standard Bank to submit all the documents required for home loan application on 28 April 2012. The couple are prestige bankers with two current accounts, two current home loans and a car loan with Standard Bank. The couple were told that the processing time was 7 to 10 working days. The Bank did not contact them till 14 days later when they were told by their banker that their application was awaiting grant for the past two weeks.²²⁴ The couple made efforts to notify the bank of the urgency in the matter, but they received no response to emails or logged requests to return their call. The 21st of May 2012 marked 21 working days since they applied.²²⁵ The couple complained that the treatment they were receiving in proportion to all their investments with the bank was a 'joke'. As a result they decided to move all their accounts to another bank.

A customer at the bank's main branch made the following comment on Standard Bank's home loan programme:²²⁶

'Standard Bank home loan is a problem, when you experience financial hardships. Their debt review section's service is not consumer friendly. Frankly I believe they will go all out to frustrate the process, which is meant to protect the consumer and even lie that they never received notification letters, even when you send them proof. They will set debt collectors on you and add the costs to your account without notifying you and are more likely to challenge the debt restructuring in court.'

iii) Customer service

Standard Bank's customer service has been considered poor by a customer of the bank's head office who mistakenly transferred money from his Standard Bank account into a wrong Nedbank account. When he called to enquire about this, one of the employees at the Bank responded rudely to him. According to him, 'Standard Bank should have been able to trace

²²³ Peter H 'Standard Bank complaints: Home loan division' available at <http://www.hellopeter.com/standard-bank/complaints/moving-forward-no-moving-away-805282> (accessed 29 May 2012).

²²⁴ Peter H 'Standard Bank complaints: Home loan division' (2012).

²²⁵ Peter H 'Standard Bank complaints: Home loan division' (2012).

²²⁶ Think Money 'Standard Bank: Home loan advance' available at <http://www.thinkmoney.co.za/loans-credit/home-loan-advance/home-loan-reviews/product/standardbank-home-loan> (accessed 28 May 2012).

the money instantly and the employee should not have treated him with so much disrespect'.²²⁷

Peter Mulder, a customer in the bank's Durban branch was summoned to court and accused of owing the bank an amount of R1.7 million which he was not even aware of and after clearing his name in court was left with a bill of R80 000 for legal services. He complained that the bank did not apologise for the inconvenience and the bill they caused him after such false accusations.²²⁸ Peter has been a client for over 20 years at Standard Bank and despite maintaining a good credit record with the bank; he was treated as though he was not a valuable customer to the bank.

Part of the bank's social responsibility is to ensure that the needs of their customers are taken care of but in November 2011, a couple had approached the Bank after the death of one of the spouse's mother to assist them with the funeral expense. The Manager told them to come back after 7 days. Any reasonable man would know that when someone dies, time is not wasted burying the individual. But clearly the Manager could not be concerned any less about this despite the fact that the couple had begged him.²²⁹

Standard Bank does massive advertisements on card cloning but the way they treat their customers who are victims of card cloning or fraud is unbearable. A customer after laying complaints about money that went missing from his account, held unto the bank's promise to rectify the error and open a file for him after seven days on a case of fraud.²³⁰ It had been over three months and Standard Bank had not opened a file for the customer or even tried to deposit the money that was missing from the customer's account.²³¹ The customer considered this as poor customer services. His impression when he opened the account was that the Bank's clients were very important to the Bank and that the Bank would treat them with high regard. But after that experience, his respect for the bank diminished.

Furthermore, several customers have asked the following question: 'Since when do banks charge customers for closing their account?' This question was raised after a customer at the

²²⁷ Peter H 'Standard Bank complaint: Money transferred into the wrong account' available at <http://www.hellopeter.com/standard-bank/complaints/monies-transferred-into-wrong-account-and-no-help-805142> (accessed 30 May 2012).

²²⁸ Peter H 'Standard Bank complaint: Money transferred into the wrong account' (2012).

²²⁹ Peter H 'Standard Bank complaint: Money transferred into the wrong account' (2012).

²³⁰ Peter H 'Card Cloning' available at [http://www.myjozi.co.za/card-cloning-and-continued-bad-customer-care-from-standard-bank/Card Cloning and continued bad customer care from Standard Bank Post to Delicious 08/06/2011](http://www.myjozi.co.za/card-cloning-and-continued-bad-customer-care-from-standard-bank/Card%20Cloning%20and%20continued%20bad%20customer%20care%20from%20Standard%20Bank%20Post%20to%20Delicious%2008/06/2011) (accessed 1 June 2012).

²³¹ Peter H 'Card Cloning' (2012).

main branch of the Bank had been trying to close his account since January 2012 at the Cycad Centre in Polokwane. He was told that his account was in overdraft of R540.00 and he would have to pay this before he could close the account. After paying this amount he was further asked to pay a charge fee of R20.00 before he could close the account. He paid the R20 with one of the tellers but was thereafter referred to another accountant who showed little or no interest in his issue and further asked him to pay another R102.00.²³² The accountant gave him such a bad attitude before she assisted him and told him that she is not promising that the account will be closed.

iv) Unfair labour practices

Standard Bank was accused of unfair labour practices in the *Standard Bank of South Africa v Commission for Conciliation, Mediation and Arbitration and others* case.²³³ Such an accusation, amounts to a violation of the human rights provision in the UN Global Compact.

In this case, the second respondent (Commissioner Myhill N.O) alleged that Standard Bank dismissed the third respondent ('Deirde Ferreira' hereafter referred to as Ferreira) unfairly and awarded her compensation of R 49 936.00 being equivalent of six months' pay. Ferreira had worked at the Bank for 15 years before she sustained injuries in a motor accident. The injuries left her paralysed in certain areas of her body and as such she could not do her job as effectively as she used to.

The Manager demoted her to a lower position to accommodate her due to her injuries. She was appointed as an assistant to the employees and subsequently demoted to a position of shredding papers and running errands. Ferreira was not happy about the position she was demoted to and felt like she was not an asset to the company. To prove to the managers that she was still capable of doing her job, she pushed herself beyond her limit to prove to her Manager that she was still an asset to the company. After several efforts were made by the Manager (Cochaine) to accommodate her, she was dismissed and the contract terminated.

The issue was whether such dismissal amounted to unfair dismissal taking into consideration the physical injuries sustained by Ferreira. In addressing this issue, the court considered several factors:

²³² Peter H 'Standard Bank: Lack of knowledge of bank's procedure and bad attitude' available at <http://www.hellopeter.com/standard-bank/complaints/lack-of-knowledge-of-banks-procedures-and-bad-atti-811426> (accessed 31 May 2012).

²³³ *Standard Bank of South Africa v Commission for Conciliation, Mediation and Arbitration and Others* 2007 ZALC 98.

a) Ferreira's disability condition and medical report obtained from the doctor.

On this aspect, the judge, Pillay DJ held that Ferreira tried to stay in her employment despite her disability. But she had been absent from work for a total of 249 days since the accident in 2002 and this was a loss to a profit making company. Court held that despite her obvious disability and medical reports received from the doctor stating that she was not fit for work, the Bank evaluated Ferreira's as if she were a person of full capacity. It assessed her performance as poor, even though it did not know her to be a poor performer.

b) Ferreira's comfort

For Ferreira's comfort, she asked the Bank to provide her with a headset, a specific kind of chair and to be allowed to work half day. This was all to make sure that Ferreira continued to be productive at the company. But none of these were made available. After several pleas made by Ferreira to the Bank, it refused to get her a comfortable chair and refused her request for half day job though the Manager allowed her to go home whenever she was not feeling well.

Pillay DJ held that the Bank failed to apply item 10 and 11 of schedule 8 Code of good Practice Dismissal under the Labour Relations Act 66 of 1995 (The LRA Code), the Code of Good Practice on Employment of People with Disabilities under the Employment Equity Act No 55 of 1998 (The EEA Code), the Department of Labour's Code of Good Practice: Key Aspects on Employment of people with Disabilities (2002) (The DOL Code) and its own Incapacity Management Guidelines (The Bank's Guidelines).

These instruments give effect to the Constitution of the Republic of South Africa No 108 of 1996, the Labour Relations Act (The LRA), the Employment Equity Act (The EEA), international and foreign law and best practice. As such the constitutional value and best practices must be considered when interpreting these instruments.

Furthermore the court defined disability to include 'imputed and perceived impairment and held that Ferreira indeed was disabled. But the Bank had to prove her incapacity to justify dismissing her.

Pillay J stated that 'the Bank had a legal obligation to accommodate Ferreira to ensure she could continue to work. It also bore a reverse onus of ensuring that it did not compel Ferreira or encourage her to terminate her employment'. As such the court held that it seems as

though the Bank encouraged her to leave considering the fact that they did not provide her with the chair she requested or approve her plea to work half day.

On the issue of half day work, the Pillay DJ held that the Bank was preoccupied with its own needs rather than investigating how Ferreira could be accommodated. Further the Bank should not have rationally measured Ferreira's performance on the same standards as other employees. The court found that the Bank discriminated against Ferreira because they did not consider her right to reasonable accommodation and the protection of an employee. Though the court maintained the award was reasonable, it held that the dismissal was unfair.

All these complaints and criticisms against Standard Bank leave a lot to be questioned about Standard Bank's staff, its procedures and the transparent nature of their activities.

4.5.4 The environmental effect

The Safety, Health and Environmental Risk Oversight Committee (SHEROC) meets quarterly to discuss safety, health and environmental challenges that require concerted action or the development of standards and guidelines to address key risks.²³⁴ The committee reports to various board and management committees and makes recommendations as appropriate.²³⁵

Research is continually conducted on strategic issues in order to provide high-level guidance and decision-making on managing stakeholder relations.²³⁶ A meeting is then held with internal stakeholders to inform them of the research findings thus helping them develop and coordinate the group's position.

Business units are subsequently tasked with formulating practical ways in which SBG can respond to the challenges and opportunities identified, reinforcing the bank's sustainability and that of the countries and communities where Standard Bank is based.²³⁷

To support this, the company has placed particular emphasis on enhancing systems and developing procedures to ensure the integrity of customer data.²³⁸

²³⁴ Standard Bank 'Environmental & social risk management' available at <https://sustainability.standardbank.com/environment/environmental-social-risk-management/> (accessed 8 April 2012).

²³⁵ Standard Bank 'Environmental & social risk management' (2010).

²³⁶ Standard Bank 'Stakeholder relations' available at <https://sustainability.standardbank.com/stakeholders-relations/> (accessed 4 April 2012).

²³⁷ Standard Bank 'Stakeholder relations' (2010).

²³⁸ Standard Bank 'Our approach: Ensuring our sustainability' (2010).

4.5.5 Conclusion

The nature of Standard Bank's activities is such that it continuously renders services to customers. These services are categorised in the social category of the 'triple bottom line'. It has a department that deals with sustainability of the environment, economy and has programmes in place that were specifically created to deliver affordable banking products to the South African low income market. The bank also complies with the Financial Intelligence Centre Act, 2001 (FICA) which requires all customer details to be verified according to the 'know your customer' provision of the Act. In addition, the Act requires that any suspicious or unusual activity that could relate to a crime be reported to the financial intelligence centre.

Hence there is no doubt that sustainable development in the company is well regulated just like Amplat. Thus the question: why are there still so many complaints laid against the company when it has policies and programmes in place on sustainable development.



CHAPTER FIVE

5. RECOMMENDATION

Sustainable development is a well-founded concept internationally and locally. It encompasses the development of the environment, economy, social aspects of a country and the world as a whole. For this development to be achieved, it demands the corporate effort of the government, society and companies across a nation. It has been incorporated into the local laws of countries. For example in South Africa, the Companies Act 71 of 2008, the Constitution Act No 108 of 1996 and the Broad Based Black Economic Empowerment Act 53 of 2003 provide for sustainable development. Other regulatory policies on sustainable development that are applicable to South African companies include the King Report (King I, King II and King III) and the UN Global Compact.

These instruments on sustainable developments obligate companies to act ethically in the interest of the economy, environment and the society in which they operate. Their role is to ensure that the resources of the earth are well managed and preserved. When sustainable development is achieved, the future generations are able to enjoy economic, environmental and social benefits.

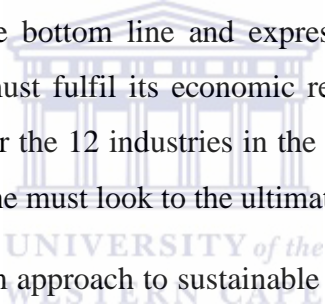
Companies in the Mining Industry and the Financial Industry fulfil their CSR differently due to the nature of their activities. Each industry has laws or policies on sustainable development which they must adhere to. For example, companies in the Mining Industry, have their CSR responsibilities enshrined in the Mining Charter 2002 and the MPRDA of 2006. These provide guidelines on how the company should conduct itself. The Financial Sector Charter, the Global Reporting Initiative (GRI) including the Financial Services Sector Supplement (FSSS) are some of the instruments which provide guidelines for companies in the Financial Industry on how to fulfil their CSR in the community in which they operate.

The JSE-SRI applies to all companies in South Africa that are listed. For these companies to be listed, they must have adhered to all local and international standards on CSR. The essence of the JSE is to provide information for investors seeking for companies to invest in. Most investors often desire to invest in companies that comply with sustainable development laws and policies.

Amplat and Standard Bank are some of the companies listed in the JSE. This means that these two companies comply with the local and the international standards on sustainable

development. Despite their high level of compliance, the activities of these companies have been criticised to a large extent. For example, Amplat has been criticised for its negative effect on the environment and on the members of the community while Standard Bank has been criticised for its poor customer services. Yet sustainable development in these companies' are well regulated. One then ponders on how these companies' can be said to have complied with local and international standards on sustainable development for them to be listed in the JSE.

Clearly there is a difference between regulating one's intentions and implementing those intentions- a difference between policy and practice. Perhaps regulations such as the King reports, UN Global Compact, Companies Act etc. are too general and companies in the Mining Industry and the Financial Industry need something more specific that will directly address aspects of the 'triple bottom line' that mostly affects the industry (i.e. environment and social aspects). For example, in these regulations, there can be a section that addresses the economic aspect of the triple bottom line and expressly states how a certain kind of company in a defined industry must fulfil its economic responsibility to the community in which it operates. It must cater for the 12 industries in the country directly. These may seem like a cumbersome process, but one must look to the ultimate goal which will be achieved.

Secondly, there must be a uniform approach to sustainable development despite the industry. By uniform approach it is meant that there must be consistency in the way companies fulfil their CSR in the economic, social and environmental aspect of the triple bottom line: 'what company in the Financial Industry does for one area (economic), must be same as what the Mining Industry does for that same area (economic)'.


For example, the nature of the activities of Standard Bank is completely different from that of Amplat. One is money related and the other is mineral related. Standard Bank renders services while Amplat generates resources which can be used to make products. Definitely, what Standard Bank considers important will most certainly differ from what Amplat considers important. Hence the reason why their resources will be directed in the area in which each company considers a priority. For Standard Bank, their most important concern would be to improve and maintain their relationship with their customers while with Amplat it would be how to ensure the safety of their employees and the community in which they operate as well as the protection of the environment.

In that case, it is most likely that standard bank will direct its resources into CSI projects, staff- customer projects and devising better means of easy and faster banking systems for their customers. As a result, what becomes evident is that despite what the regulatory instruments say, these companies will direct their resources in the area in which they consider important for the growth of their company. With uniform approach is one where there is the existence of strict mechanisms in place to ensure that equal distribution of resources is made by these companies towards all the three aspects of the 'triple bottom line'. This means that Standard Bank and Amplat must direct the same amount of money and effort towards the economic, social and environmental aspects of the triple bottom line.

Thirdly, companies need to change their mentality around social responsibility to combat some of the basic social problems of poverty, unemployment, crime, skills shortages, strikes and HIV infection. Companies need to think beyond profit making and start thinking about the future. The future of the environment, the society and the economy must be the central objective of every company in South Africa.

Companies should be 'empowerment minded'. Their goal should be to empower members of the communities' to be part of their own economic growth. Companies should launch more CSR initiatives in the area of entrepreneurial development, education, health care (HIV/AIDS) and encourage community members to participate such that if the company is not in operation anymore, the members of the community will not be affected as they have been fully engaged in these activities.

Fourthly, companies could even opt to form partnerships with non-profit organizations (NGO's) or with governmental agencies in an effort to expand the reach of its CSR actions and to serve local communities in a more efficient and impactful way.

Finally, sustainability is very important locally and internationally. It provides opportunities for companies' (attracts investors through the JSE) and helps the company manage its risks. The economy, environment and the society are intertwined and decision makers must understand their interconnected nature. One cannot operate without the other. The economy needs the members of the society to make it grow and the environment must be protected so that it is safe for community members to inhabit. As such companies and directors must change the way in which they operate and make decision so as not to omit an aspect of the triple bottom line.

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