



CORPORATE GOVERNANCE AND UBUNTU: A SOUTH AFRICAN AND NAMIBIAN  
PERSPECTIVE

by

AISHA-DEVA HARRIS

SUBMITTED TO THE UNIVERSITY OF CAPE TOWN

In partial fulfilment of the requirement for the Degree of:

MASTERS IN LAW

Specialisation in Commercial Law

Supervisor: Professor Jacqueline Yeats

**March 2021**

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

## DECLARATION OF ORIGINALITY

1. I know that plagiarism is wrong. Plagiarism is to use another's work and pretend that it is one's own.
2. I have used the *SALJ* convention for citation and referencing. Each contribution to, and quotation in, this **dissertation** 'CORPORATE GOVERNANCE AND UBUNTU: A SOUTH AFRICAN AND NAMIBIAN PERSPECTIVE' from the work(s) of other people has been attributed, and has been cited and referenced. Any section taken from an internet source has been referenced to that source.
3. This **dissertation** 'CORPORATE GOVERNANCE AND UBUNTU: A SOUTH AFRICAN AND NAMIBIAN PERSPECTIVE' is my own work, and is in my own words (except where I have attributed it to others).
4. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.
5. I acknowledge that copying someone else's assignment or essay, or part of it, is wrong, and declare that this is my own work.
6. I, **Aisha-Deva Harris** hereby declare that the work on which this thesis is based is my original work (except where acknowledgements indicate otherwise) and that neither the whole work nor any part of it has been, is being, or is to be submitted for another degree in this or any other university. I authorise the University to reproduce for the purpose of research either the whole or any portion of the contents in any manner whatsoever.

Signature

Signed by candidate

Date: 08/03/2021

## ABBREVIATIONS

ADB	African Development Bank
BBBEE	Broad Based Economic Empowerment
BGP	Bank Group Policy
BOD	Board of Directors
CEO	Chief Executive Officer
ECA	Economic Commission for Africa
FISCHOR	National Fishing Corporation of Namibia
FRC	Financial Reporting Council
GIPF	Government Institution Pension Fund
ICGN	International Corporate Governance Network
IoDSA	Institute of Directors in South Africa
JSE	Johannesburg Stock Exchange
MTC	Mobile Telecommunications Company (Namibia)
NAM-CODE	Corporate Governance Code For Namibia
NAMCOR	National Petroleum Corporation of Namibia
NBL	Namibian Breweries Limited
NSX	Namibian Stock Exchange
OECD	The Organization for Economic Co-operation and Development
PWC	Price Waterhouse Coopers
SAICA	Southern African Institute of Chartered Accountants
SDGs	Sustainable Development Goals
SME	Small and Medium Enterprises Bank
SOEG	State Owned Enterprises Governance
SOEs	State Owned Enterprises
SVN	Social Venture Network
TRC	Truth and Reconciliation Commission
UNGC	United Nations Global Compact
USSEC	United States Securities and Exchange Commission

## ABSTRACT

Over the past two decades the emphasis on corporate governance practice has increased globally. The corporate governance models which guide corporate ethics, currently employed in African countries, are extensively driven by Western elements. Corporate governance practice in relation to the African philosophy of *Ubuntu* is under analysed. While *Ubuntu* has been studied comprehensively in a number of legal disciplines, it has not enjoyed comparable attention in its application, relevance, and potential to enhance corporate governance practices in Africa. Limited academic research exists on the integration of the *Ubuntu* philosophy into corporate governance and the ethical perspectives introduced. Therefore, this dissertation aims to bridge this gap by exploring the current guiding frameworks of selected corporate governance practice in relation to the principle of the African philosophy of *Ubuntu*. Here, corporate governance practice is examined in South Africa and Namibia. Business ethics, ethical perspectives, corporate social responsibility, and the African notion of *Ubuntu*, in relation to the role that it plays in ethical leaderships, is evaluated. Links between *Ubuntu* and established Western ethical perspectives and theories support its use and significance for enhancing current corporate governance frameworks in these countries. The findings of this dissertation strengthen the need to analyse *Ubuntu*, particularly in relation to its link with social responsibility and ethical perspectives, in order to augment current corporate governance practices in Africa. It is submitted that corporate governance practices in Africa should reflect the notions of *Ubuntu* more clearly and coherently which will serve as a progressive model to enhance effective corporate governance.

Keywords: corporate governance; ethical leadership; ethical perspectives; relationality; business ethics; corporate social responsibility; *Ubuntu*.

## TABLE OF CONTENTS

DECLARATION OF ORIGINALITY .....	ii
ABBREVIATIONS .....	iii
ABSTRACT .....	iv

### CHAPTER 1

#### INTRODUCTION, BACKGROUND AND OUTLINE

I	INTRODUCTION .....	1
II	BACKGROUND .....	2
III	PROBLEM STATEMENT .....	3
IV	RESEARCH QUESTIONS .....	4
V	OBJECTIVES OF DISSERTATION .....	4
VI	RESEARCH METHOD AND METHODOLOGY .....	4
VII	ORGANISATION OF DISSERTATION .....	5

### CHAPTER 2

#### OVERVIEW OF CORPORATE GOVERNANCE

I	INTRODUCTION .....	6
II	DEFINITION OF CORPORATE GOVERNANCE .....	6
	(a) <i>General definition</i> .....	6
	(b) <i>Cadbury report</i> .....	7
	(c) <i>Organization for Economic Co-operation and Development Principles</i> .....	8
	(d) <i>King Reports</i> .....	8
III	INTERNATIONAL CORPORATE GOVERNANCE FRAMEWORKS .....	9
	(a) <i>International corporate governance network</i> .....	9
	(b) <i>OECD</i> .....	9
	(c) <i>United Nations Global Compact</i> .....	9
IV	THE SIGNIFICANCE OF CORPORATE GOVERNANCE .....	10
	(a) <i>Why corporate governance?</i> .....	10
	(b) <i>Good corporate governance</i> .....	11
	(c) <i>Corporate citizenship</i> .....	11
V	TRADITIONAL ASSUMPTIONS OF CORPORATE GOVERNANCE .....	12

	(a)	<i>Fictional assumption</i>	12
	(b)	<i>Real assumption</i>	13
VI		THEORIES OF CORPORATE GOVERNANCE	13
	(a)	<i>Agency theory</i>	14
	(b)	<i>Stewardship theory</i>	14
	(c)	<i>Stakeholder theory</i>	14
	(d)	<i>Shareholder primacy model</i>	15
VII		PRINCIPLES OF RESPONSIBLE COMPANIES	17
VIII		CONCLUSION	17

### CHAPTER 3

#### ETHICAL CODES OF CORPORATE GOVERNANCE AND CORPORATE SOCIAL RESPONSIBILITY

I		INTRODUCTION	18
II		DEFINING BUSINESS ETHICS AND THE SIGNIFICANCE THEREOF	18
III		ETHICAL PERSPECTIVES	19
	(a)	<i>Deontological/duty-based ethics</i>	19
	(b)	<i>Teleological/utilitarianism</i>	20
	(c)	<i>Virtue theory</i>	21
III		CORPORATE SOCIAL RESPONSIBILITY	22
	(a)	<i>What is corporate social responsibility?</i>	22
	(b)	<i>The categorical imperative and corporate social responsibility</i>	23
	(c)	<i>Corporate social responsibility frameworks</i>	24
	(i)	<i>The BBBEE Act</i>	24
	(d)	<i>Corporate social responsibility challenges</i>	25
IV		CONCLUSION	26

### CHAPTER 4

#### UBUNTU FOR CORPORATE GOVERNANCE

I		INTRODUCTION	27
II		CONCEPTUALISING THE NOTION OF UBUNTU	27
	(a)	<i>Defining Ubuntu</i>	27
	(b)	<i>Principles of Ubuntu</i>	29

	(i)	<i>Survival</i> .....	29
	(ii)	<i>Solidarity</i> .....	30
	(iii)	<i>Compassion</i> .....	30
	(iv)	<i>Dignity and respect</i> .....	30
	(c)	<i>Ubuntu and human dignity</i> .....	30
III		UBUNTU, CORPORATE GOVERNANCE AND BUSINESS ETHICS.....	31
	(a)	<i>A deontological approach to defining Ubuntu for business ethics</i> .....	31
	(b)	<i>Stakeholder theory and Ubuntu</i> .....	32
	(c)	<i>Ethical leadership, Ubuntu and relational theory</i> .....	34
	(d)	<i>Practical findings of Ubuntu in the corporate governance climate in Africa</i> .....	35
IV		PROMOTING CORPORATE GOVERNANCE THROUGH UBUNTU.....	36
III		CONCLUSION.....	37

## CHAPTER 5

### CORPORATE GOVERNANCE IN AFRICA

I		INTRODUCTION.....	38
II		AFRICAN CAPITAL MARKETS FORUM.....	38
III		SOUTH AFRICA.....	39
	(a)	<i>King reports</i> .....	39
	(b)	<i>The Companies Act</i> .....	43
	(i)	<i>General</i> .....	43
	(ii)	<i>Board structure</i> .....	44
	(iii)	<i>Corporate governance and directors duties: 'In the best interests of the company'</i> .....	45
	(iv)	<i>Social and ethics committee</i> .....	46
	(c)	<i>Steinhoff scandal as a failure of corporate governance practice</i> .....	47
IV		NAMIBIA.....	49
	(a)	<i>The Nam-code</i> .....	49
	(b)	<i>SOE Governance Act 2 of 2006</i> .....	52
	(c)	<i>Government Institution Pension Fund</i> .....	52
	(d)	<i>Corporate scandals that illustrate disregard for corporate governance practice</i> .....	53

	(i)	<i>The Fishrot scandal</i> .....	53
	(ii)	<i>The SME Bank case</i> .....	54
	(iii)	<i>Air Namibia (Pty) Limited</i> .....	55
V		CORPORATE SOCIAL RESPONSIBILITY EXAMPLES IN SOUTH AFRICAN AND NAMIBIAN COMPANIES.....	56
	(a)	<i>South Africa</i> .....	56
		(i) <i>Woolworths</i> .....	56
		(ii) <i>Engen</i> .....	56
		(iii) <i>Old Mutual Life Assurance</i> .....	57
	(b)	<i>Namibia</i> .....	57
		(i) <i>NBL</i> .....	57
		(ii) <i>NAMCOR</i> .....	57
		(iii) <i>Mtc</i> .....	58
VI		CONCLUSION.....	59
 CHAPTER 6			
CONCLUSION			
I		OVERVIEW OF STUDY.....	60
II		FINDINGS.....	60
	(a)	<i>Finding 1</i> .....	60
	(b)	<i>Finding 2</i> .....	61
III		SUGGESTIONS FOR FURTHER STUDY.....	61
		BIBLIOGRAPHY.....	63

# CHAPTER 1

## INTRODUCTION, BACKGROUND AND OUTLINE

### I INTRODUCTION

Corporate governance practice has received increasing development and popularity in corporate society, as many legal entities strive to be associated with good corporate governance principles. Businesses have, therefore, steered their attention towards incorporating more ‘morally appropriate’ corporate behaviour, by developing good corporate governance practices and business ethics considerations. The current corporate governance framework in Africa and leadership models in Africa considerably reflect Western leadership frameworks and remain under-analysed in regard to how well the principles underlying the African notion of *Ubuntu* are reflected in these systems.

It is fundamental to acknowledge that the ethical strategy of a company should be informed by a country’s historical background and community. Nurturing a suitable African corporate governance model should be a priority in Africa, in order to assist with developing business growth on the continent and to discourage corporate fraud. The African philosophy of *Ubuntu* serves as a fundamental concept to align global leadership frameworks and African traditions. The *Ubuntu* expression ‘*uMuntu ngumuntu ngabantu*’ which translates into ‘*I am because you are and you are because we are*’ largely captures the very essence of corporate social responsibility, a key driver of corporate governance practice. Acknowledging *Ubuntu* principles as fundamentals of the corporate governance practice is essential in African countries. This holds true especially in neighbouring countries such as South Africa and Namibia who share a strong history and similar legal systems. Limited academic research exists on the concept of *Ubuntu*, as well as its influence on corporate governance and ethical perspectives on corporate governance.

It is, therefore, the objective of this dissertation to investigate the extent to which the principles of *Ubuntu* are reflected in the corporate governance frameworks present in South Africa and Namibia. This chapter provides a brief background of the content that informs the discussion to follow in this dissertation. It elaborates on the research question, background and the main ambitions to be explored and answered throughout this dissertation.

## II BACKGROUND

The Cadbury Report (1992) defines corporate governance as a system which facilitates the manner through which companies are directed and controlled.<sup>1</sup> A collection of policies and procedures implemented by companies ensure the application of corporate governance, guiding companies and their respective stakeholders on how to achieve their corporate goals. Among these policies are those surrounded by ethical leadership and corporate citizenship.

Responsible and effective leadership is founded on ethical responsibility.<sup>2</sup> There has been an extensive global shift recognising that enforcing suitable corporate governance practices provides ample benefits to the corporate community. These include economic growth through investment.<sup>3</sup> This has led to the advance of more stringent ethical practices in the corporate community, growing considerably for the last 25 years.<sup>4</sup> Amidst requiring an organisation to operate in an efficient and economical manner, in order to increase profit and performance, there is a significantly increased insistence placed on ethical performance.

Although corporate governance practices have increasingly gained popularity around the world, a substantial disregard for ethical practices in the corporate society still remains prevalent in some spheres. Corporate governance is a continuously developing practice and its trends are societal dependant. Post-independence Africa has not witnessed the complete termination of the inequalities as the continent had initially hoped for. A large number of injustices still remain present, and some of these very injustices are observed in the corporate community.

One can question whether the remaining injustices are as a result of waves of colonial bias due to dominant Western influences. This influence is particularly apparent in the leadership frameworks in African countries through corporate governance practices. *Ubuntu* is an African philosophy which is largely premised on communality and promotes leadership practice. Although an age-old philosophy in African countries, *Ubuntu* has only recently received widespread acknowledgement in the legal system. The notion of *Ubuntu* houses a number of beneficial principles which can be analysed and applied in a number of disciplines.

---

<sup>1</sup> Report of the Committee on the Financial Aspects of Corporate Governance, London (1 December 1992) ('Cadbury Report') para 2.5.

<sup>2</sup> F H I Cassim, M F Cassim & R Cassim et al *Contemporary Company law* 2 ed (2012) 473.

<sup>3</sup> Ibid.

<sup>4</sup> K E Howell *Corporate Governance in Africa* (2016) 47.

Leadership strategies and models find value and advancement under the application of the *Ubuntu* principles.<sup>5</sup> The same can be assumed under the influence that the *Ubuntu* principles will have on corporate governance practice.

The materiality of the *Ubuntu* principles remains under analysed on a corporate governance forefront. It is proposed in this dissertation that *Ubuntu* can serve as a progressive model to enhance corporate governance practice in Africa.

### III PROBLEM STATEMENT

There exists a need to analyse corporate governance practices in Africa and ethical practices in isolation from the rest of the world by viewing these through a uniquely African lens. A transformative approach towards corporate ethical practices within Africa is required as a lacuna still exists. This is apparent from a number of ethical corporate failures and fraud, in large companies all around the continent. It is significant to recognise that it may be very beneficial for these ethical practices to draw on cultural norms and practices within the continent.

It has been argued that the African philosophy of *Ubuntu* has the potential to achieve progressive ethical transformation in Africa, as it houses a number of beneficial leadership concepts.<sup>6</sup> Corporate governance principles can be aligned and interpreted in terms of the *Ubuntu* culture. Cultural philosophies and beliefs are fundamentals that mould a society, and acknowledging this is essential in the corporate community as well. There has been a move towards the incorporation of proper corporate governance models in Africa, showcased by the number of corporate governance reports that have been published on the continent. Corporate governance principles can be aligned and interpreted in terms of the *Ubuntu* culture. The currently Western-inspired corporate governance models in South Africa and Namibia can arguably find improved application through this approach.

---

<sup>5</sup> See 'Ubuntu and its influence on leadership commerce Essay' *UK Essay* 2018, available at <https://www.ukessays.com/essays/commerce/Ubuntu-and-its-influence-on-leadership-commerce-essay.php>, accessed on 2 April 2020.

<sup>6</sup> See J K Khomba 'Business ethics and corporate governance: An African socio-cultural framework' (2012) 6(9) *African Journal of Business Management* 3510.

## IV RESEARCH QUESTIONS

This dissertation consists of two fundamental questions. First, it explores how ethical perspectives, corporate social responsibility, and *Ubuntu* find application and significance in corporate governance practices. Secondly, it aims to evaluate the current state of corporate governance frameworks in South Africa and Namibia, particularly in relation to the corporate governance shortfalls and corporate social responsibility triumphs present in these two countries. These two questions are advanced through focusing on how ethical performance is tailored through the corporate governance models in South Africa as well as Namibia and ultimately illustrates how the principles of *Ubuntu* can be used to enhance the current corporate governance frameworks.

## V OBJECTIVES OF DISSERTATION

This dissertation primarily endeavours to investigate as well as align the principles of *Ubuntu* with the corporate governance practice in Namibia and South Africa. The aim is to achieve this through investigating the ethical leadership perspectives as well as the concept of corporate social responsibility, and exploring how these can be amalgamated with the principles of *Ubuntu*, in order to enhance the corporate governance practice in South Africa and Namibia.

This dissertation further aims to ascertain the trend of unethical leadership in Africa with a particular focus on South Africa and Namibia. This dissertation ultimately explores the significance that the African notion of *Ubuntu* potentially holds for nurturing corporate governance models in these countries.

## VI RESEARCH METHOD AND METHODOLOGY

This dissertation predominantly consists of desktop research which employs a doctrinal legal research methodology. It utilises secondary research of existing literature pertaining to corporate governance in Africa. This dissertation critically analyses the existing legal positions, mainly in terms of the existing corporate governance models in African countries. It relies on academic literature and case studies in order to strengthen the legal position stemming from the research question. The argument posed throughout this dissertation is premised on a theoretical analysis of literature review.

## VII ORGANISATION OF DISSERTATION

The ensuing chapters unfold as follows: Chapter two seeks to address the different definitions afforded to the corporate governance practice and explores the historical background that informs the present corporate governance models. This chapter essentially seeks to provide a brief overview of what ‘corporate governance practice’ is, in order to place the rest of the dissertation into context.

Chapter three analyses the ethical codes of corporate governance and corporate social responsibility. Corporate social responsibility frameworks are discussed extensively in order to support its significant position under the corporate governance practice and its link to the *Ubuntu* principles.

Chapter four provides a detailed analysis of the African notion of *Ubuntu* and how the principles underlined by this philosophy can be amalgamated with ethical leadership perspectives and corporate social responsibility in order to ultimately create an enhanced corporate governance leadership platform.

Chapter five explores the current corporate governance frameworks in South Africa and Namibia. This chapter then looks at examples of corporate governance failures in these countries and analyses how companies do abide by corporate social responsibility.

Chapter six serves as a concluding chapter. This chapter places the rest of the dissertation into context by explaining the significance that analysing principles of *Ubuntu* hold for enhancing corporate governance practice in South Africa and Namibia.

## CHAPTER 2

### OVERVIEW OF CORPORATE GOVERNANCE

#### I INTRODUCTION

In order to fully comprehend the nexus that exists between ethical corporate culture and corporate governance, it is imperative to explore the foundation on which corporate governance practice rests. An age-old debate exists regarding the theories that inform corporate governance practice, questioning the purpose and interests that corporations ought to serve. This is explored in this chapter by expanding on the development of what corporate governance is, the different models of corporate governance and the significance it holds in the corporate society. This chapter adopts an elementary discussion of every concept in order to provide a superficial framework of the general aspects of corporate governance.

#### II DEFINITION OF CORPORATE GOVERNANCE

##### *(a) General definition*

Although corporate governance has become increasingly important on a global platform, no uniform definition exist regarding its exact boundaries and substance.<sup>7</sup> Generally, academics share the same conventional sentiment pertaining to the definition of ‘corporate governance’. Academics such as Shleifer and Vishny define corporate governance as the manner through which finance suppliers of corporations motivate themselves of investment returns.<sup>8</sup>

Letza and Kirkbridge define corporate governance as a system which concerns itself with the oversight, regulation, performance, and supervision of a corporation. They have gone further to explain that traditionally, it has been assumed that the main aim in corporate practice is to ensure profits and investment returns are met. This translates into a business meeting its social responsibilities.<sup>9</sup> The authors quote Bain and Band<sup>10</sup> by stating that ‘the central concern

---

<sup>7</sup> R Naidoo *Corporate Governance: An Essential Guide for South African Companies* 2 ed (2009) 2.

<sup>8</sup> A Schleifer & R W Vishny ‘A Survey of Corporate Governance’ (1997) 52(2) *The Journal of Finance* 737.

<sup>9</sup> S Letza, J Kirkbridge, X Sun & C Smallman ‘Corporate governance theorising: limits, critics and alternatives’ (2008) 50(1) *International Journal of Law and Management* 18.

<sup>10</sup> See N Bain & D Band *Winning Ways through Corporate Governance* (1996).

of governance is to add value to as many organisational stakeholders as is practicable'. This illustrates the importance of corporate citizenship through adopting more ethical practices in a firm.<sup>11</sup> Corporate governance has been argued to be concerned with engaging necessary structures and operations linked to control, decision making, and management.<sup>12</sup>

Naidoo defines corporate governance as a system which controls direction and authority within the company so as to regulate the achievement of the company's primary purpose. This can be simplified to defining corporate governance as 'the practice by which companies are controlled and managed'.<sup>13</sup>

The corporate governance practice is generally reserved for the board of directors ('BOD') of a particular company but can also be considered as practice which is delegated by the shareholders of the company, typically the owners. Through implementing particular practices and structures which serve to direct the management of a company, it reflects the exercise of authority decision making processes and stakeholder engagement in a company.<sup>14</sup> Corporate governance is a progressive concept which has seen significant evolution since the introduction of the English Cadbury report.<sup>15</sup>

#### *(b) Cadbury report*

A committee analysing the financial facets of corporate governance was created under the Financial Reporting Council ('FRC'), the accountancy profession and the London Stock Exchange. Sir Adrian Cadbury was approached by the chairman of the FRC to chair this committee.<sup>16</sup> The publication of the Cadbury report followed and was successfully established in 1992.

The Cadbury report cites the most commonly referred to definition of corporate governance as the system which navigates the way a company is directed and controlled. This definition explains the duties of the BOD and the shareholders, stating that the board is responsible for the governance and the role of the shareholders under governance pertains to

---

<sup>11</sup> Letza et al op cit note 9.

<sup>12</sup> T Wixley & G Everingham *Corporate governance* 3 ed (2010) 1.

<sup>13</sup> Naidoo op cit note 7 at 3.

<sup>14</sup> Ibid at 3.

<sup>15</sup> Cadbury Report op cit note 1.

<sup>16</sup> I Jones & M Pollitt 'Understanding how issues in corporate governance develop: Cadbury report to Higgs review' (2003) ESRC Centre for Business Research, University of Cambridge Working Paper No 277 at 9.

the appointment of the director and auditors. This ensures that a proper structure of governance is in place.<sup>17</sup>

*(c) Organization for Economic Co-operation and Development Principles*

The Organization for Economic Co-operation and Development ('OECD') principles were first published in 1999 and have been used as a yardstick to help policy makers steer and improve the legal, regulatory, and institutional framework for corporate governance.<sup>18</sup> The preface of the OECD principles highlights the notion that corporate governance has the purpose of fostering an environment which prioritises accountability and transparency, which is necessary for maintaining financial stability and long term investment.<sup>19</sup> It defines corporate governance as involving a set of relationships between the management of a company, the BOD, and respective stakeholders.<sup>20</sup>

*(d) King Reports*

The Institute of Directors in South Africa ('IoDSA') established the King Committee in 1992, undertaking the mandate to establish corporate governance guidelines for South Africa. The first King report received international recognition as a comprehensive publication which embraced an inclusive corporate governance approach when it was first published.<sup>21</sup>

The latest South African King report, (King IV) defines corporate governance as the exercise of ethical and effective leadership. The definition of corporate governance calls for the governing body to aspire towards achieving a culture informed by ethics, control, good performance, and legitimacy.<sup>22</sup>

---

<sup>17</sup> Cadbury Report op cit note 1 para 2.5.

<sup>18</sup> 'G20/OECD Principles of Corporate Governance' OECD 2015, available at [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en), accessed on 2 April 2020 at 3.

<sup>19</sup> Ibid at 7.

<sup>20</sup> Ibid at 9.

<sup>21</sup> IoDSA 'King Report on Corporate Governance in SA' available at <https://www.iodsa.co.za/page/kingIII>, accessed on 2 April 2020.

<sup>22</sup> IoDSA *KING IV Report on Corporate Governance in South Africa* (2016) 11.

### III INTERNATIONAL CORPORATE GOVERNANCE FRAMEWORKS

#### *(a) International corporate governance network*

The International Corporate Governance Network ('ICGN') is an investor led organisation for institutional directors, established in 1995. It generated corporate governance principles that detail the responsibilities of the boards and the shareholders. It seeks to stimulate effective standards of governance in order to assist at advancing efficient markets worldwide.<sup>23</sup> It places emphasis on the shareholder perspective and applies primarily to publicly listed companies. The ICGN plays a significant role in the corporate culture, as its fourth principle advocates for embracing high standards of business ethics and further places a duty on boards to oversee a culture of integrity.<sup>24</sup>

#### *(b) OECD*

The OECD was initially created in 1960. It was developed over a number of years with an updated version being published in 2015.<sup>25</sup> The OECD policy consists of six key principles which essentially provide non-binding standards and practices as well as guidance for implementation.<sup>26</sup> The OECD principles have provided a global platform for a worldwide consensus on the critical nature of good corporate governance. It further delivers guidance for regulators, policy makers, and market participants, pertaining to enriching institutional, legal, and regulatory frameworks of corporate governance.<sup>27</sup>

#### *(c) United Nations Global Compact*

In 2000, the United Nations Global Compact ('UNGC') was launched. It serves as a non-binding global leadership platform. It is every country's prerogative to join the initiative. It

---

<sup>23</sup> International Corporate Governance Network *Global Governance Principles 5ed* (2017) available at [http://icgn.flpbks.com/icgn\\_global\\_governance\\_principles/ICGN\\_Global\\_Governance\\_Principles.pdf](http://icgn.flpbks.com/icgn_global_governance_principles/ICGN_Global_Governance_Principles.pdf), accessed on 6 April 2020.

<sup>24</sup> Ibid at 8.

<sup>25</sup> T Wiese *Corporate Governance in South: With International Comparisons* 2 ed (2014) 199.

<sup>26</sup> 'G20/OECD Principles of Corporate Governance' OECD 2015, available at [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en), accessed on 4 April 2020 at principle 11.

<sup>27</sup> F Jesover & G Kirkpatrick 'The Revised OECD Principle of Corporate Governance and their Relevance to Non-OECD Countries' (2005) 13(2) *Corporate Governance: an International Review* 127.

advocates for developing and implementing continuous and responsible corporate policies and practices.<sup>28</sup> The UNGC prescribes ten principles which is divided into four values. These values include human rights, labour standards, the environment, and anti–corruption.<sup>29</sup> This highlights the emphasis that this initiative places on the stakeholder centric approach, placing the needs and best interests of the community at the forefront of the governance agenda.

#### IV THE SIGNIFICANCE OF CORPORATE GOVERNANCE

##### *(a) Why corporate governance?*

Modern corporations have become the fundamental platform on which everyday business transactions rest. Due to globalisation and the ever growing intricacies of properly managing a corporation within the appropriate confines of the law, increasing reliance on businesses exist. The constitutionality legitimacy, and authority of business practice has come into the spotlight in recent years due to the close link that these business transactions have to society.

Pressure exerted on businesses are to ensure economic growth for both developing and developed countries.<sup>30</sup> Therefore, a properly governed system needs to be maintained. The Hampel Committee report highlighted that corporate governance should further accountability and prosperity of businesses.<sup>31</sup> Implementing and practicing corporate governance practices can have a direct impact on a company’s shareholder structure. Exhibiting a sound corporate governance practice has the tendency to affect whether investors are attracted or repelled.<sup>32</sup>

Furthermore, emerging market economies have demonstrated a correlation between incompatible sustainable financial market development and growth, and weak corporate governance frameworks.<sup>33</sup> The former commissioner of the United States Securities and Exchange Commission (‘USSEC’) stated that corporate governance matter, as sound corporate

---

<sup>28</sup> Wiese op cit note 25 at 207.

<sup>29</sup> See <https://www.unglobalcompact.org/what-is-gc/mission/principles>, accessed on 13 April 2020.

<sup>30</sup> S Mohamad ‘The Importance of effective corporate governance’ (2004) 1 *SSRN Electronic Journal* 3.

<sup>31</sup> K E Howell & M K Sorour *Corporate Governance in Africa: assessing implementation and ethical perspectives* (2016) 49.

<sup>32</sup> See <https://www.worldfinance.com/news/a-case-for-corporate-governance>, accessed on 4 April 2020.

<sup>33</sup> Jones & Pollitt op cit note 16 at 128.

decisions can stem from practicing ‘good’ governance and bad decision making stem from practicing ‘bad’ governance.<sup>34</sup>

*(b) Good corporate governance*

In order to distinguish between a good corporate governance practice and a bad corporate governance practice, business representatives should acknowledge their role as a fiduciary of the particular corporation and should dedicate their obligations and duties to serve the interests of their relevant stakeholders.<sup>35</sup> The Economic Commission for Africa (‘ECA’) drafted guidelines for enhancing good economic and corporate governance in Africa.

Good corporate governance refers to fulfilling the objectives aimed at ensuring the interests of the company and its shareholders. This utilises ensuring efficient monitoring and the capable use of resources. These guidelines, however, highlight that good corporate governance structures are founded on African countries concerning themselves with providing an environment which enable commercial entities to flourish. It further stresses that corporate governance provides a competitive edge as it attracts start–up corporations and the relocation of certain corporations to a particular country.

*(c) Corporate citizenship*

Corporations do not possess a physical existence and can therefore only act through their human agents. These actions have a significant impact on society and can therefore be considered as not only an economic institution but also a corporate citizen.<sup>36</sup> Corporate citizenship can be considered as a metaphorical term used to denote the correlation between corporate action and the impact these actions pose on society.<sup>37</sup>

Over the past few decades, corporations have moved towards embracing corporate citizenship by developing their social responsibility towards society. Corporate citizenship centers on the concept of ‘good citizenship’. This posits that a company employs a moral duty towards society, where such a duty encompasses elements extending beyond the general duty

---

<sup>34</sup> Naidoo op cit note 7 at 9.

<sup>35</sup> Ibid at 11.

<sup>36</sup> Ibid at 241.

<sup>37</sup> Ibid at 241.

that an ordinary citizen owes towards society.<sup>38</sup> It alludes to how companies have started adopting the role of not only serving as economic institutions aimed at making profit, but also perceived as corporate citizens that aim to protect the environment and act in the best interest of the community, in which they operate.<sup>39</sup>

South African analysts define a good corporate citizen as an entity which encourages detailed practices and policies for business practice, facilitating ethical decision making, and the meeting of corporate social responsibility requirements by illustrating a business entity's community, environment, and social considerations.<sup>40</sup>

As one of its objectives, The South African KING IV report has displayed that corporate governance additionally concerns itself with ethical consciousness and conduct.<sup>41</sup>

## V TRADITIONAL ASSUMPTIONS OF CORPORATE GOVERNANCE

Middle 19<sup>th</sup> century corporate Britain saw debates regarding the so called fictional and real assumption of the legal aspect of a corporation. This is where the central shareholder and stakeholder models of corporate governance emerged from.<sup>42</sup>

### *(a) Fictional assumption*

This theory holds that a group of people are fictionally commuted to form a corporation by means of a contract. This advocates for the fact that these groups of people are not genuinely united. Therefore, the primary duty of the BOD is to ensure that the interests of shareholders are protected 'as the corporation comprises the aggregate rights of its stockholders'.<sup>43</sup> This theory advocates for the board adopting the main role of monitoring the functions of the company and not running the company. The board is seen as to evaluate and direct management. Whereas management has to ensure the oversight of the running of the company and has to be accountable to the board.<sup>44</sup>

---

<sup>38</sup> I-M Esser 'Corporate Social Responsibility: A Company Law Perspective' (2011) 23(3) *SA Mercantile Law Journal* 317.

<sup>39</sup> Wiese op cit note 25 at 131.

<sup>40</sup> D Fig 'Manufacturing Amnesia: Corporate Social Responsibility in South Africa' (2005) 81(3) *International Affairs* 601.

<sup>41</sup> IoDSA *KING IV Report on Corporate Governance in South Africa* (2016) 22.

<sup>42</sup> Letza et al op cit note 9 at 21.

<sup>43</sup> Ibid.

<sup>44</sup> E Arthur 'The Ethics of Corporate Governance' (1987) 6 *The Journal of Business Ethics* 61.

The corporate norm of this theory is illustrated by Eugene Arthur who cited the American law institute by providing the following example:

‘Corporate law should provide that the objective of the business corporation is to conduct business with a view to corporate profit and shareholder gain, except even if corporate profit and shareholder gain are not enhanced thereby the corporation in the conduct of its business:

- (a) Is obliged to the same extent as a natural person to act within the boundaries of the law
- (b) May properly take into account ethical principles that are generally recognized as relevant to the conduct of business, and
- (c) May devote resources, within reasonable limit, to public welfare, humanitarian, educational and philanthropic purposes’.<sup>45</sup>

*(b) Real assumption*

Contrasting to the fictional assumption, the realist theory or organic theory holds that a group of persons are united by the group itself within a corporation and, therefore, the corporation has a personality. The corporation is viewed as a real person who has its own rights, duties, and acts within its own capacity.<sup>46</sup> Arthur explains the rationale behind this theory. He makes reference to how different individuals possess different degrees of capacity depending on factors, such as mental incapacity or being a minor.

He explains that the existence of possessing the capacity and the necessary will to act reasonably informs rights and duties. Therefore, these rights and duties should not be limited to human beings.<sup>47</sup> This approach shares similar sentiments to the current stakeholder model.

## VI THEORIES OF CORPORATE GOVERNANCE

Studying the theories of corporate governance is imperative in order for the reader to better comprehend how corporate governance has evolved, what it seeks to achieve, and who it seeks to benefit. Detailing this may reveal how the stakeholder theory finds relevance for the general sentiment shared in this paper of aligning corporate governance to *Ubuntu* principles. This becomes more evident in the following chapters.

---

<sup>45</sup> Ibid.

<sup>46</sup> Letza et al op cit note 9 at 21.

<sup>47</sup> Arthur op cit note 44 at 64.

*(a) Agency theory*

It is posited that corporate governance has its theoretical foundations founded on the agency theory. Under this theory, the relationship between the shareholder and the manager of the company is viewed as one of agency, where the manager of the company acts on behalf of the shareholder to further the best interests of the shareholder. Ownership and control is separated under such a framework which has a number of potential implications, such as misappropriation of the shareholder's interest.<sup>48</sup>

*(b) Stewardship theory*

The stewardship theory differs from the agency theory in that both the interests of the shareholders as well as the company are maintained through the management of the company and that the managers, instead, do not only act as agents, but also have a fiduciary duty towards the shareholders, to act as stewards.<sup>49</sup>

*(c) Stakeholder theory*

The stakeholder theory orbits around the idea of acting in the best interest of all stakeholders. The father of the stakeholder theory, R E Freeman, demonstrates that external and internal stakeholders function in unity in order to further the society and individuals in order to create long term sustainable wealth.<sup>50</sup> Du Plessis et al make reference to the definition of a stakeholder by defining it as Christin Mallin did, as meaning any individual or group who are affected by the activities of a company.<sup>51</sup> This, therefore, includes groups of persons such as customers, suppliers, employees, various types of creditors, and the environment.

The stakeholder theory has been described as a theory concerning ethics and organisational management.<sup>52</sup> Management under the stakeholder approach involves

---

<sup>48</sup> A Ramalho 'Corporate Governance and the call for stakeholder inclusivity: Do stakeholders lose out?' (2009) *The Corporate Report* 18.

<sup>49</sup> Ibid.

<sup>50</sup> E Freeman & J McVea 'A stakeholder approach to strategic management' in Hitt M, Freeman E & Harrison J (eds) *Handbook of Strategic Management* (2001) 10.

<sup>51</sup> J J Du Plessis, J McConvill & M Bagaric Principles of contemporary corporate governance (2005).

<sup>52</sup> R Phillips, E Freeman & A C Wicks 'What stakeholder theory is not' (2003) 13(4) *Business Ethics Quarterly* 480.

prioritising alternative aspects of the cooperation besides solely maximising shareholder wealth.<sup>53</sup>

The stakeholder theory is significantly practiced by firms for a number of reasons. Mainly, because it serves as a practical, efficient, and effective way of running a corporation. It is practical because managing stakeholders have to be practiced by all firms. It is efficient because stakeholders tend to reciprocate good behavior and feedback if they are treated well. This, therefore, allows the business to feed the organisations' goals when stakeholders pledge loyalty, which makes the stakeholder theory effective.<sup>54</sup> Many scholars, however, still favour the shareholder primacy model.<sup>55</sup>

#### *(d) Shareholder primacy model*

In 1970, Milton Friedman published an article titled 'The social responsibility of business is to increase its profits'.<sup>56</sup> This article details what the shareholder approach fundamentally rests on, which is that a corporation exists and operates primarily for profit maximisation of a company. This model observes that there is no moral obligation to act, or consider, the best interests of stakeholders any further than profit maximisation.<sup>57</sup> This complements Friedman's views regarding the social responsibilities of a business. He holds that to advocate that a business has social responsibilities is a loose statement as only people have responsibilities.<sup>58</sup>

The shareholder model holds that there is a responsibility to conduct business in accordance with the desires of the employers which generally is to generate as much profit as possible. Friedman further holds that this should be achieved whilst complying with the rules of law and ethical custom.<sup>59</sup> This model advocates for a corporation operating in the best interest of the owners. West holds that, although a number of variants to the shareholder model

---

<sup>53</sup> Ibid at 481.

<sup>54</sup> J S Harrison, R E Freeman & M C S de Abreu 'Stakeholder theory as an ethical approach to effective management: applying the theory to multiple contexts' (2015) 17(55) *Review of Business Management* 859.

<sup>55</sup> See J Heath 'The uses and abuses of agency theory' (2009) *Business Ethics Quarterly* 528.

<sup>56</sup> M Friedman 'The social responsibility of business is to increase its profits' *The New York Times Magazine* 13 September 1970 available at <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html>, accessed on 13 April 2020.

<sup>58</sup> Ibid at 1

<sup>59</sup> Ibid.

exist,<sup>60</sup> they rely on the same assumption. These include efficiency achieved through market forces and the right to individual private ownership.<sup>61</sup>

Historically, the shareholder primacy laid the foundation for company law. Ensuring corporate profits in the best interest of the shareholders of a corporation was a duty that the directors of a company had to adhere to.<sup>62</sup>

The old South African Companies Act<sup>63</sup> echoed the shareholder–centric model. The old Act did this through omitting to enforce a duty on directors to consider the interests and needs of all stakeholders of a company as significant. *Ramahlo* published an article which iterated that the most popular approach adopted in a number of jurisdictions is the shareholder–centric approach. She posits that one of the key aspects to consider is the weight and significance of the shareholders ownership of a company. This is premised on the fact that the shareholders run the risk of losing the capital that they have invested into the company. In addition to this are the implications that stem from the fact that their interest in the company is not contractually protected.<sup>64</sup> The shareholder-centric approach solely benefit’s shareholders as the interests of other stakeholders only finds relevance and importance in so far as it benefits the shareholders.

The English case of *Hutton* is used by Wiese to illustrate this.<sup>65</sup> This case stressed the idea that there is a tendency for businesses to only concern themselves with charitable dealings in the event that such dealings would be to the company’s advantage. In other words, as long as it operates within the ambit of the best interests of shareholders.<sup>66</sup> This model fails to acknowledge the role that an employee holds within a company. This model does, however, no longer dominate the corporate community, as more corporations have moved towards actively pursuing the interests of not only their shareholders, but their various stakeholders as well.

---

<sup>60</sup> S Letza, X Sun & J Kirkbride ‘Shareholding versus stakeholding: A critical review of corporate governance’ (2004) 12(3) *Corporate Governance An International Review* 242–262.

<sup>61</sup> A West ‘Theorising South Africa’s Corporate Governance’ (2006) 68 *The Journal of Business Ethics* 4.

<sup>62</sup> Wiese op cit note 25 at 130.

<sup>63</sup> Companies Act 61 of 1973 (‘old Act’).

<sup>64</sup> Ramalho op cit note 48 at 19.

<sup>65</sup> *Hutton v West Cork Railway Co* (1883) 23 ChD 654.

<sup>66</sup> Wiese op cit note 25 at 7.

## VII PRINCIPLES OF RESPONSIBLE COMPANIES

The Social Venture Network ('SVN') was initially formed in 2000 as an initiative which promotes public policy interest and sustainable business change.<sup>67</sup> The network introduced nine principles which can be employed by companies, in order to advance their commitment towards corporate social responsibility programmes. These nine principles are ethics, accountability, governance, financial returns, employment practices, business relationships, products and services, and community involvement.<sup>68</sup>

## VIII CONCLUSION

This chapter clearly illustrates that an amalgamation of various definitions and models inform corporate governance practice, displaying its universal nature. Policy makers can implement various corporate governance guidelines within their respective corporations. It is, however, important to recognise that at the heart of any business and commercial practice lies ethical considerations.

Corporate governance is based on business integrity and ethics, but enforcing this properly is a priority issue as corporations need to balance profit motives with other considerations. This chapter particularly reveals the nature and extent of the stakeholder theory and how the principles of the stakeholder theory can find relevance for the discussion to follow in the next chapter, on ethical perspectives of corporate governance and corporate social responsibility in line with the principles of *Ubuntu*, as it is essential. This is addressed in the following chapter.

---

<sup>67</sup> Naidoo op cit note 7 at 244. See also <https://svcimpact.org/about>, accessed on 2 May 2020.

<sup>68</sup> Naidoo op cit note 7 at 244.

## CHAPTER 3

# ETHICAL CODES OF CORPORATE GOVERNANCE AND CORPORATE SOCIAL RESPONSIBILITY

## I INTRODUCTION

Demands to enhance ethical performance in the corporate community is growing. Regulating relationships with internal and external stakeholders have a direct correlation with firm performance and output as a leadership team which observes ethical modes of achieving profit goals, are highly favourable. This chapter briefly explores the fundamental foundation of traditional ethical perspectives which inform corporate governance. The three key ethical perspectives which are observed in this chapter are the teleological approach, virtue theory, and the deontological approach.

Ethical perspectives, namely Immanuel Kant's categorical imperative, foster a direct correlation to corporate social responsibility as it supports moral corporate behaviour and action. Corporate social responsibility enjoys popularity when considering the social functions of corporations which extend beyond sole economic business functions. This is additionally expanded on in this chapter.

## II DEFINING BUSINESS ETHICS AND THE SIGNIFICANCE THEREOF

Business ethics serves as a tool which directs the conduct that ought to be employed by companies. This assists them to simultaneously protect and respect the rights of their stakeholders and obey the law. Business ethics analyses the ethical dimensions which inform organisational economic output. It is imperative to take cognisance hereof as corporate viability rests on the reputation that a business adopts in the eyes of its stakeholders.<sup>69</sup>

The foundational beliefs that inform any form of religious belief system, emphasises the importance of relationships between individuals being founded on honesty, respect, and empathy. These belief systems drive the behaviour which serves as the building block of ethical codes of conduct for businesses. Distinguishing between belief and fact is achieved by

---

<sup>69</sup> D Rossouw et al *Ethics for Accountants and Auditors* (2019) 3.

subscribing to ethical rules which direct human conduct and distinguishing conduct which is wrong from which is right.<sup>70</sup>

However, subscribing to a religious belief system is not what drives ethical behaviour in business practice, it is human nature to observe ethical standards as well as fair and respectful conduct, appreciating the importance of human dignity.<sup>71</sup> Philosophy and science posit perspectives which explain the theories informing human ethical behaviour.

Normative ethical theories explain how people are expected to behave. Scientific evidence of human ethical behaviour is explained through descriptive ethical theories.<sup>72</sup> Ethical theories guide individuals and organisations to understand whether a particular action is ethical or unethical.<sup>73</sup> It is worth expanding on these ethical theories in order to better comprehend the foundation of human ethical behaviour.

### III ETHICAL PERSPECTIVES

#### *(a) Deontological/duty-based ethics*

The deontological approach to ethics studies the actions or the means by which an individual implements business decisions. It holds that certain situations call for the application of certain universal rules, which everyone ought to appreciate and, therefore, are bound to. The question of whether ethical actions are respected depends on the adherence to these universal rules.<sup>74</sup>

German philosopher, Immanuel Kant, published a book in 1781 which expands on a new system for understanding human reality and experience. His ideas focus on the motives which inform the willing behaviour of individuals to act in the best interest of others, even if it means that acting for the good of others runs at the risk of one's own personal loss.

This highlights the idea of doing something for the right reason rather than doing it to pursue a particular favourable outcome.<sup>75</sup> This form of ethics highlights that 'moral guidance' extends beyond practical experience, and it poses that moral guidance can only be justified through rational thinking.<sup>76</sup>

---

<sup>71</sup> S M Byars & K Stanberry *Business ethics* (2018) 9.

<sup>72</sup> Ibid at 11.

<sup>73</sup> Rossouw et al op cit note 69 at 47.

<sup>74</sup> Byars & Stanberry op cit note 71 at 11.

<sup>75</sup> Ibid at 50.

<sup>76</sup> Rossouw et al op cit note 69 at 51.

Kant's concept of the categorical imperative is of particular practical relevance for this discussion on ethics. The categorical imperative concept is driven by Kant's morality principle. He argues that this morality principle rest on a standard of rationality, and ultimately autonomous will.<sup>77</sup> Kant asserts that the dignity that humans possess exist merely through their existence as human beings. This is coupled with their ability to make their own decisions, and through the manner that these individuals choose to utilise such decisions. He asserts that the inherent dignity of an individual should be respected and that such respect is a moral requirement.<sup>78</sup>

The categorical imperative concept consists of two super-positions. The first super-position holds that individuals must act based on goodwill instead of acting on mere self-interest, pursuing an outcome that will only benefit ourselves at the expense of others. The second super-position holds that individuals should not act or treat other individuals as a means toward ends in pursuit of benefiting themselves without consideration of the ends of other individuals.

Through observing the notions that inform the categorical imperative, it would directly lead to ethical conduct on the part of all individuals.<sup>79</sup> The principles which drive actions finds moral relevance rather than the results of pursuing such action.<sup>80</sup> Thus, the Kantian perspective holds that ethical acts are driven by the notion to adhere to duties.<sup>81</sup> This is indirect contrast to the notion of utilitarianism.

#### *(b) Teleological/utilitarianism*

Jeremy Bentham was a British philosopher who developed the foundation informing the notion of utilitarianism. He developed an ethical system called 'utilitarianism' based on the basic instinct of a search for leading a good life, which fundamentally consisted of avoiding pain and seeking pleasure. This system was later extended to include human rights.<sup>82</sup> Utilitarianism was

---

<sup>77</sup> R Johnson & A Cureton 'Kant's Moral Philosophy' (2004) *The Stanford Encyclopedia of Philosophy Archive*, Spring 2019 ed, last revised 7 July 2016 available at <https://plato.stanford.edu/archives/spr2019/entries/kant-moral>, accessed on 14 October 2020.

<sup>78</sup> R S Dillon 'Respect' (2003) *The Stanford Encyclopedia of Philosophy*, 2018 Spring ed, available at <https://plato.stanford.edu/archives/spr2018/entries/respect>, accessed on 14 October 2020.

<sup>79</sup> Byars & Stanberry op cit note 71 at 51.

<sup>80</sup> K Tapek 'Corporate social responsibility in the light of Kant's categorical imperative' (2018) 21(7) *Annales Ethics in Economic Life* 87.

<sup>81</sup> Byars & Stanberry op cit note 71 at 52.

<sup>82</sup> Ibid at 44.

later modified my John Stuart Mill.<sup>83</sup> The underlying idea of utilitarianism is premised on the greatest happiness of majority of human beings, and how this happiness is achieved through specific actions. It motivates the idea that legislation, as well as social morals, need to direct their motives towards achieving this happiness.

Utilitarianism is rational, universal, and objective, in that it does not derive its principals from theology or metaphysics, it applies to all human behaviour and it extends beyond the perspective, thoughts, and desires of an individual.<sup>84</sup> Teleological ethical theories orbit around the idea that a decision that informs certain behaviour or conduct has to be based on an assessment of a respective outcome.<sup>85</sup>

Utilitarianism is a theory which consists of consequentialism where actions are judged based on the consequences that follow. It disregards the motivation behind the action itself. It is only the consequence itself which is evaluated in order to ascertain whether the action was right or wrong.<sup>86</sup> The potential of producing favourable outcomes is that which is focused on throughout this theory, rather than focusing on an individual's moral judgement.<sup>87</sup> This theory finds application in contemporary business where critical decisions need to be implemented and risk management needs to be practiced.<sup>88</sup> Importantly, utilitarianism acknowledges that individuals prosper through receiving support and motivation from external sources.<sup>89</sup>

### *(c) Virtue theory*

Aristotle's virtue ethics theory assumes morality is the cornerstone of the human existence. Living with human dignity is viewed as analogous to possessing well-developed morals.<sup>90</sup> Virtue ethics is distinguishable from the deontological approach and the utilitarian approach in that it places emphasis on an individual's moral character. Whereas from a deontological approach, one has a duty to act for the good of others, and the utilitarian approach looks at the consequences which flow from acting for the good of others. The virtue ethics theory merely

---

<sup>83</sup> See Rossouw et al op cit note 69 at 55–56.

<sup>84</sup> Byars & Stanberry op cit note 71 at 45.

<sup>85</sup> I Baumann-Vitolina, I Cals & E Sumilo 'Is ethics rational? Theological, deontological and virtue ethics theories reconciled in the context of traditional economic decision making' (2016) 39 *Procedia Economics and Finance* 108–114.

<sup>86</sup> Byars & Stanberry op cit note 71 at 46.

<sup>87</sup> Ibid at 47.

<sup>88</sup> Ibid at 48.

<sup>89</sup> Rossouw et al op cit note 69 at 56.

<sup>90</sup> Ibid at 48.

observes the idea that acting for the good of others should be done as it is benevolent and charitable.<sup>91</sup> Virtue ethics zooms in on one's virtue, which is inherently moral, or 'good' personality traits possessed by individuals.<sup>92</sup>

It is focused on an 'agent centred' model, which departs from the 'act centred' approach and is premised on what an individual will do, or how they will act, based on their virtues.<sup>93</sup>

### III CORPORATE SOCIAL RESPONSIBILITY

#### (a) *What is corporate social responsibility?*

Corporate social responsibility primarily refers to the collective obligations of a business towards society at large. The responsibilities that a business assumes towards society can consist of ethical, economic, legal, and voluntary responsibilities.<sup>94</sup> A company is generally said to act in a socially responsible manner when it 'voluntarily expends its resources to do something not required by law and without immediate economic benefits'.<sup>95</sup>

It is said that the activities of a company should reflect that due consideration is employed when acting in order to consider the impact that company activities have on third parties.<sup>96</sup> As the term corporate social responsibility fluctuates according to the society that it operates in, attempting to provide a uniform definition for it should be avoided. In South Africa businesses opt to adopt the term corporate social investment as the notion of 'responsibility' under corporate social responsibility carries great weight and responsibility.<sup>97</sup>

Kloppers asserts that the term 'corporate social responsibility' should be employed as an 'umbrella term' which is rather used to denote the responsibility that businesses ought to have towards advancing the community in which they operate.<sup>98</sup>

---

<sup>91</sup> R Hursthouse *On virtue ethics* (1999) 1.

<sup>92</sup> Ibid at 13.

<sup>93</sup> Ibid.

<sup>94</sup> See T S Bateman & S A Snell *Management: Building Competitive Advantage* 4 ed (1999) 164.

<sup>95</sup> I-M Esser 'The dynamics of corporate governance in South Africa: Broad based black economic empowerments and the enhancement of good corporate governance principles' (2008) 3(3) *Journal of International Commercial Law and Technology* 158.

<sup>96</sup> Ibid at 158.

<sup>97</sup> H Kloppers 'Driving corporate social responsibility through black economic empowerment' (2014) 18 *Law Democracy and development* 62 available at [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S2077-49072014000100004&en&nrm=iso](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072014000100004&en&nrm=iso), accessed on 2 May 2020.

<sup>98</sup> Ibid at 63.

Corporate social responsibility is significant as it allows businesses to tackle their social, environment as well as their ethical responsibilities. Corporate social responsibility can be divided into altruistic–, strategic–, and ethical corporate social responsibility.<sup>99</sup> Altruistic corporate social responsibility entails sacrificing the profitability of a corporation whilst benefitting the various stakeholders within a society. Through practicing altruistic corporate social responsibility, corporations can use their extensive resources to assist with tackling various difficulties within a society, such as educational or unemployment issues.<sup>100</sup>

Strategic corporate social responsibility involves a corporation fulfilling its fiduciary responsibility towards its stakeholders for the common good, as well as seeing its profit motive being fed.<sup>101</sup> Ethical corporate social responsibility extends beyond a corporations legal and economic commitments. It aims at avoiding social injuries and harm.<sup>102</sup>

Non–profitable companies exemplify the spirit of corporate social responsibility as they provide economic–, as well as social aid to the less fortunate. This serves as a direct correlation of the notions informing the concept of *Ubuntu*, highlighting the significance of African management through boosting the African community. The significant role that the ideology of *Ubuntu* plays in corporate Africa is discussed in chapter four.

Corporate social responsibility is, however, not a legal requirement and corporations can always opt to not contribute to corporate social responsibility initiatives and rather invest and distribute their profits through other manners, such as distributing such profits amongst their shareholders.

*(b) The categorical imperative and corporate social responsibility*

Under corporate social responsibility, there is a categorical imperative to prioritise acting for the good of others and contributing to the well–being of other individuals. This needs to be pursued in an authentic manner, absent of any immorality.<sup>103</sup> Furthermore, such actions should not be driven under legislation, nor should it merely be pursued to meet the requirements of a firms’ corporate social responsibility quota.

---

<sup>99</sup> Wiese op cit note 25 at 131.

<sup>100</sup> G P Lantos ‘The ethics of altruistic corporate social responsibility’ (2001) 19(3) *Journal of Consumer Marketing* 206.

<sup>101</sup> Ibid at 207.

<sup>102</sup> Wiese op cit note 25 at 132.

<sup>103</sup> Tapek op cit note 80 at 88.

As corporations technically have a choice to choose whether to abide to corporate social responsibilities, if corporate social responsibility is viewed from the perspective of the categorical imperative, corporate social responsibility actions lead to laxity and moral freedom.<sup>104</sup>

Many commentators therefore favour the approach that corporations should adopt ethical codes. This can reduce shareholders only pursuing corporate social responsibility for altruistic purposes and only as a means to meet a charity goal but also to view it as acting in a willingly noble manner. The categorical perspective reflects the crux of corporate social responsibility.

### *(c) Corporate social responsibility frameworks*

South Africa possesses a number of legislative measures which have been introduced with the purpose of encouraging businesses to increase their corporate social responsibility customs.<sup>105</sup> These are mentioned below.

#### *(i) The BBBEE Act*

The BBBEE Act<sup>106</sup> was introduced by the South African government in an attempt to attain substantive equality through creating social and economic justice for South Africans who have been previously disadvantaged. The BBBEE framework examines and drives the need to economically provide for and develop certain sectors of society who have been severely previously disadvantaged under the apartheid government.<sup>107</sup> This narrative automatically attunes to the main purpose of corporate social responsibility, as well as the fundamentals of *Ubuntu* as self-realisation and advancement of community needs are promoted.

The BBBEE framework houses a corporate social responsibility framework which consists of four elements. These elements are socio-economic development, enterprise development and skills development.<sup>108</sup>

---

<sup>104</sup> Ibid at 89.

<sup>105</sup> M D H Kabir, J Mukuddem-Petersen & M A Petersen 'Corporate Social Responsibility Evolution in South Africa' (2015) 13(4-1) *Problems and Perspectives in Management* 283.

<sup>106</sup> Broad-based Black Economic Empowerment Act 53 of 2003 ('BBBEE Act').

<sup>107</sup> Kloppers op cit note 97 at 59.

<sup>108</sup> Ibid at 67.

Other corporate social responsibility related laws include the Promotion of Access to Information Act,<sup>109</sup> the Employment Equity Act,<sup>110</sup> the Labour Relations Act,<sup>111</sup> and the Occupational health and Safety Act.<sup>112</sup>

*(d) Corporate social responsibility challenges*

Corporate social responsibility is an encouraging manner of stimulating desirable business outcomes and boosting business–perception for important stakeholders, but it should be noted that corporate social responsibility should not be premised on merely adopting a corporate social responsibility initiative. Effective implementation and management of corporate social responsibility initiatives should be properly maintained and should extend beyond a firm’s public appearance. Companies may merely create the image of committing to corporate social responsibility practice, however, a true strategy of implementing and practicing such initiatives are questionable.<sup>113</sup>

Freeman and Mcvea refer to ‘corporate social responsibility literature’ under a study of using the stakeholder approach for strategic management. They posit that corporate social responsibility aims to extend the range of stakeholder–analysis, in order to place emphasis on building and strengthening relationships with groups of society who have been previously alienated. They, however, hold that such stakeholder analysis is carried out in the absence of strategies of an individual firm and is only carried out at a generic level.<sup>114</sup>

The increase of high–profile corporate fraud cases has seen the previous findings being incorporated in business strategies resulting in stakeholder relationships being characterised as a limitation. This results in separating the more business orientated stakeholder relationship from environmental, and societal stakeholder relationships, which ultimately result in classifying corporate social responsibility initiatives as a ‘luxury’, which is employed by those corporations who can ultimately afford to employ such initiatives.<sup>115</sup>

The moral notions of *Ubuntu* should underpin the corporate social responsibility initiatives of businesses as this will hold extensive prominence for the success and prolongation

---

<sup>109</sup> 20 of 2000.

<sup>110</sup> 55 of 1998.

<sup>111</sup> 66 of 1995.

<sup>112</sup> 85 of 1003. See also Kabir et al op cit note 105 at 284.

<sup>113</sup> Freeman & Mcvea op cit note 50 at 10.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

of such initiatives. This is especially important to consider and maintain in African countries as the communities in Africa can benefit extensively from businesses who employ corporate social responsibility initiatives under the auspices of the *Ubuntu* principles, and not for mere capital influx.

#### IV CONCLUSION

This chapter traces the ethical codes of corporate governance and examines the framework of corporate social responsibility. This chapter illustrates that corporate social responsibility plays a significant role in company operations and therefore in corporate governance practice. A number of legislation in South Africa cater for this and help to promote corporate social responsibility actions.

This chapter, however, posits that complying with the corporate social responsibility narrative is merely followed by businesses to enhance their ‘public good’ image and reputation, and should therefore be underpinned by the moral philosophies and principles of the notion of *Ubuntu* in order to discourage the ‘tick box’ approach to compliance.

## CHAPTER 4

### UBUNTU FOR CORPORATE GOVERNANCE

#### I INTRODUCTION

This chapter seeks to delineate the notion of *Ubuntu* by demonstrating how *Ubuntu* finds application through, and can be included in, ethical perspectives on governance, corporate social responsibility, and leadership frameworks. By analysing the foundational aspects on which the notion of the principles *Ubuntu* rest, this chapter aims to provide the reader with a better background of how these very principles can find relevance in corporate governance practice in African countries.

#### II CONCEPTUALISING THE NOTION OF UBUNTU

##### *(a) Defining Ubuntu*

The concept of *Ubuntu* proves challenging to define. West holds that developing a single conception of *Ubuntu* is nearly impossible as a number of different interpretations of the concept exist.<sup>116</sup> *Ubuntu* has been described as an African philosophy of life, underpinning humanness and morality.<sup>117</sup> African culture is inherently diverse in nature but commonalities are found amongst different African cultures which illustrates the African worldview of the notion of *Ubuntu*.<sup>118</sup>

*Ubuntu* has been adopted as a way of life which has served to sustain African communities, particularly in Sub-Saharan Africa.<sup>119</sup> In Nguni, *Ubuntu* is expressed through the saying ‘*umuntu ngumuntu ngabantu*’ which means ‘a person is a person through other

---

<sup>116</sup> A West ‘Ubuntu and business ethics: problems, perspectives and prospects’ (2014) 121(1) *Journal of Business Ethics* 57.

<sup>117</sup> G Brack, M B Hill, D Edwards, N Grootboom & P S Lassister ‘Adler and Ubuntu: Using Adlerian principles in the new South Africa’ (2003) 59(3) *Journal of Individual Psychology* 316–326.

<sup>118</sup> T I Nzimakwa ‘Practicing Ubuntu and leadership for good governance’ (2014) 7 *African Journal of Public Affairs* 31.

<sup>119</sup> M B Ramose ‘The death of democracy and the resurrection of timocracy’ (2010) 39(3) *Journal of Moral Education* 300; M Mnyaka & M Motlhabi ‘The African concept of Ubuntu/Boto and its socio-moral significance’ (2015) 3(2) *Black Theology: An International Journal* 215.

persons'.<sup>120</sup> The notion of *Ubuntu* is, however, used in various forms all over Africa. Examples of this can be seen: In Namibia the Herero people use the word '*avandu*'; the Sukuma tribe in Tanzania use the word '*bantu*'; and the words '*edubantu*', '*kUbuntu*' and '*ngumtu*' are used in central African countries.<sup>121</sup>

During the proceedings of the Truth and Reconciliation Commission ('TRC') in 1994, Desmond Tutu formally evoked the concept of *Ubuntu*. In an attempt to heal South Africa from the extreme conditions imposed over the nation during the Apartheid era, Tutu sought a language that encompass the basis of common identity and humanity which simultaneously embraces common contingent differences. The main concept of *Ubuntu* is premised on an individual's existence stemming and growing from the human connections fostered with other individuals. This ultimately sees the idea of a mutual dependency.<sup>122</sup>

Barbara Nussbaum describes *Ubuntu* as encompassing the capacity of an individual to express humanity, harmony, dignity, and reciprocity.<sup>123</sup> She makes reference to the work of a South African psychologist, Nhlanhla Mkhize, who emphasises that a person is defined with reference to the community. This flows from the idea that self-determination finds little significance in determining 'personhood', as it is the community which is rather viewed as a pertinent aspect of 'personhood'.<sup>124</sup> Nussbaum refers to her work with Roonie Lessem, as they were the first researchers to expand on the potential that the notions of *Ubuntu* can foster in the workplace.

She refers to the way in which storytelling and community-building activities can strengthen a group dynamic. Maintaining harmony and seeking consensus is part of the African culture. She uses a typical Shona greeting from Zimbabwe to illustrate the essence of reciprocity in *Ubuntu*. A typical morning greeting may commence as follows: '*Mangwani, marara sei?*' ('good morning, did you sleep well?'), which welcomes the common response: '*Ndarara, kana mararawo*' ('I slept well, if you slept well').<sup>125</sup>

---

<sup>120</sup> F Mangena 'African Ethics through Ubuntu: A Postmodern Exposition' (2016) 9(2) *Africology: The Journal of Pan African Studies* 67.

<sup>121</sup> F Douglas & P Taylor 'Defining Ubuntu for business ethics – a deontological approach' (2014) 33(3) *South African Journal of Philosophy* 331.

<sup>122</sup> J Ogude *Ubuntu and the Reconstitution of community* (2019) 1.

<sup>123</sup> B Nussbaum 'Ubuntu: reflections of a South African on our common humanity' (2003) 4(4) *Reflections: The SOL Journal* 21.

<sup>124</sup> Ibid at 22.

<sup>125</sup> Ibid.

This clearly depicts this idea of interconnectedness between individuals. Correspondingly, Mangena uses the Shona greeting: ‘*Makadini?*’ to depict a similar idea. He explains that the ‘*maka*’ prefix is in plural to illustrate the value placed on a group rather than an individual. ‘*Dini*’, which is the suffix, alludes to the state of wellness or health of the group. The well-being of the individual is inquired through the state of wellness of the group, so it refers to when a member of a group is unwell, an individual cannot be in a state of good health.<sup>126</sup> This clearly depicts the collectivist nature of *Ubuntu* where an individual’s existence is premised on both their environment as well their community.

*Ubuntu* has been described as a concept that explains human inter-connectedness, responsibility to one another as a result of this inter-connectedness, and common humanity amongst Africans.<sup>127</sup> *Ubuntu* places emphasis on prioritising the needs of a human being prior to other considerations such as political and financials factors.<sup>128</sup> *Ubuntu* has also been explained as a concept which facilitates communication between individuals who have been split through a testing past, aiming to decipher what fundamentally connects humans.<sup>129</sup>

This is an important idea to extensively acknowledge in the context of corporate governance models and practice, as underlying human relationships primarily drive commercial practice. *Ubuntu* seeks to induce the rational capacity of a human being able to act as a reasonable person would and embracing rationality and reason, respecting the humanity of others in doing so.<sup>130</sup>

## *(b) Principles of Ubuntu*

### *(i) Survival*

African communities draw on their historical learned experience of relying on each other as a community in order to pool resources and to survive. Self-reliance did not contribute towards surviving and therefore this element of survival as a community is the essence of *Ubuntu*.<sup>131</sup>

---

<sup>126</sup> Mangena op cit note 120 at 69.

<sup>127</sup> Nzimakwa op cit note 118 at 31.

<sup>128</sup> W Fox *A guide to public ethics* (2010) 123–124.

<sup>129</sup> Ogude op cit note 122 at 3.

<sup>130</sup> Ibid.

<sup>131</sup> Nzimakwa op cit note 118 at 33.

*(ii) Solidarity*

Solidarity flows from the principle of survival as efforts of individuals are always combined into a group effort under the premises of *Ubuntu*. Spiritual values drive the biological–, non–biological–, and interpersonal bonds, which foster collective achievement of goals and tasks.<sup>132</sup>

*(iii) Compassion*

Aligning with the *Ubuntu* notion of humanness, compassion is driven by the understanding, emphasising and reaching out to individuals in one’s community, recognising that everyone is inter–connected and can only thrive through assisting one another.<sup>133</sup>

*(iv) Dignity and Respect*

Africans are traditionally carved to respect those members of the community which adopt a more authoritative position, such as elders and kings of a community. One’s dignity relates to possessing a quality which warrants the respect you ought to receive.<sup>134</sup>

*(c) Ubuntu and human dignity*

Constitutional adjudication in South Africa as well as Namibia is informed by the fundamental right of human dignity. This is enshrined in art 8 of the Namibian Constitution<sup>135</sup> and s 10 of the South African Constitution.<sup>136</sup> These constitutional provisions highlight that the inherent dignity possessed by every individual ought to be respected, as one of the principles on which *Ubuntu* rest is dignity. Acknowledging and appreciating *Ubuntu* practices automatically enhances the protection of the human dignity of individuals.

---

<sup>132</sup> Ibid at 34.

<sup>133</sup> Ibid at 34.

<sup>134</sup> Ibid.

<sup>135</sup> The Constitution of the Republic of Namibia Act 1 of 1990.

<sup>136</sup> Constitution of the Republic of South Africa, 1996.

### III UBUNTU, CORPORATE GOVERNANCE AND BUSINESS ETHICS

#### *(a) A deontological approach to defining Ubuntu for business ethics*

*Ubuntu* has been used to illustrate the mechanics behind relationships between individuals from a philosophical– as well as an ethical perspective. Taylor has expanded on how a deontological approach can be adopted in order to find a rules–based theory regarding how acting in a correct manner through what can be termed as, ‘*Ubuntu*–like’ behaviour can be defined.<sup>137</sup> Taylor calls for the development of a ‘principle of right action’ which is based on *Ubuntu* as a foundation of a set of rules which is required and which can be used to establish and regulate ethical business behaviour.

He notes that although a vast number of authors have written on *Ubuntu*, few have observed it as a ‘principle of right action’ and, therefore, applying the principles of *Ubuntu* can be frustrated by the vast number of differing interpretations.<sup>138</sup> Taylor defines the ‘principle of right action’ as:

‘An action is right insofar as it promotes cohesions and reciprocal value amongst people.

An action is wrong insofar as it damages relationships and devalues any individual or group’.<sup>139</sup>

Taylor notes that he avoided using the term ‘community’ in his definition as he fears that by using this terminology, *Ubuntu* will be restricted in the sense that it would then only apply to groups of people. Rather, he used the word ‘cohesion’ in his definition in order to introduce the community element, holding that cohesion is the bringing together of people. He notes further that his use of the word ‘reciprocal’ is used to illustrate the two–way relationship that *Ubuntu* promotes. The word ‘value’, similar to the dignity of a person, illustrates that individuals have value simply by virtue of being human.

Taylor refers to the works of Ramose<sup>140</sup> who has alluded to the fact that it is both inappropriate and impossible to cultivate an *Ubuntu* right action principle. He refers to Ramose’s opinion that comparing African philosophy with Western notions should be

---

<sup>137</sup> Douglas & Taylor op cit note 121 at 331.

<sup>138</sup> Ibid at 332.

<sup>139</sup> Ibid at 338.

<sup>140</sup> See M B Ramose ‘But Hans Kelsen was not born in Africa: a reply to Thaddeus Metz’ (2007) 26(4) *South African Journal of Philosophy* 348–355.

approached with caution, as a threat of reducing African realities to a uniform perspective exists.<sup>141</sup>

Taylor, however, disagrees with Ramose's argument and states that if *Ubuntu* remains void of a steadfast principle which can be developed, then *Ubuntu* will remain an empty noun informed by a vague guideline.<sup>142</sup> Taylor proposes developing a business ethical model which is informed by the notions of *Ubuntu* and which serves as an appropriate, clear-cut, and structured guideline for ethical decision making in business transactions.<sup>143</sup>

When faced with a business transaction which requires ethical decision making, Taylor proposes that one weighs that situation against his definition of right action. He suggests that the first step entails analysing the situation. This means that a complete comprehension of the interactions and transactions involved are required. Through this, one can better understand the second step, which entails understanding which stakeholders are affected by the transactions and what their respective claims are in the transaction.

The third step holds that each action or transaction must be weighed against the components of *Ubuntu*, which are promoting cohesion, acknowledging reciprocal value, and avoid devaluing and damaging relationships. Taylor further emphasises that any action which acts contrary to the components of *Ubuntu* is morally wrong.<sup>144</sup>

#### *(b) Stakeholder theory and Ubuntu*

Woermann and Engelbrecht explored the prospect of *Ubuntu* by providing an alternative for the stakeholder theory for determining a firm's responsibilities towards stakeholders.<sup>145</sup> The stakeholder theory fundamentally observes managing stakeholder relations as key to maintaining and achieving a firm's objective. Managers, therefore, have to ascertain what the purpose of the firm is and what key responsibilities that firm has towards its stakeholders.

Through this approach, a pragmatic aspect of the stakeholder theory is presented which observes value creation through the practicality of ideas resting on their purpose and practiced in a specific community.<sup>146</sup> The pragmatist approach concerns itself with living a more fulfilled

---

<sup>141</sup> Douglas & Taylor op cit note 121 339.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid at 340.

<sup>144</sup> Ibid.

<sup>145</sup> M Woerman & S Engelbrecht 'The Ubuntu challenge to business: From stakeholders to relationholders' (2019) 157 *Journal of Business Ethics* 27–44.

<sup>146</sup> Ibid at 28.

life which is fundamentally fulfilled by value creation, and joint decision-making, instead of departing from an established and pre-determined objective of the purpose of an organisation.

The stakeholder theory is often framed through a contractual language which fails to accommodate the stakeholders of a business that offer a business little value and, therefore, the needs of the disenfranchised are easily dismissed.<sup>147</sup> As an *Ubuntu* perspective has the potential to consider a wider range of stakeholder interests and needs, Woermann and Engelbrecht call for an *Ubuntu*-stakeholder perspective as an alternative to the traditional stakeholder perspective.<sup>148</sup>

There is an established relationship between leadership and ethics as a leader in a business community plays a significant role in implementing ethical actions.<sup>149</sup> Woermann and Engelbrecht hold that a firm should prioritise harmonious relationships which can effectively and efficiently address the legitimate interests of all parties who have a stake in an organisation and therefore instilling value creation.

The *Ubuntu* perspective emphasises that a firm has a moral responsibility to ensure that humanity is enhanced in the business community, whilst similarly enhancing core values such as care, compassion, and responsiveness. The libertarian perspective of the stakeholder theory shares a similar sentiment as authors, such as Freeman, have highlighted that a firm should not solely aim to generate profits from the company, but should instead ensure to create value for a range of the party who have an interest in the company.

The key difference between the traditional libertarian stakeholder theory and an *Ubuntu* perspective is that *Ubuntu* does not necessitate equating moral considerations of a stakeholder to the degree of stake that the party has in the company. Instead, a stakeholder is considered to have a significant moral status in a company merely due to having some sort of relationship with the firm.<sup>150</sup>

The unique angle that this employs highlights the importance of relationships and disregards the idea of affording a party better treatment or status due to what they offer the company. If countries in Africa can adopt such a policy through corporate governance practice

---

<sup>147</sup> Ibid at 29.

<sup>148</sup> Ibid at 29.

<sup>149</sup> M Pérezts, J-A Russon & M Painter 'This time from Africa: Developing a relational approach to values-driven leadership' (2020) 161 *Journal of Business Ethics* 734.

<sup>150</sup> Woerman & Engelbrecht op cit note 145 at 31.

then, essentially, the concept of a stakeholder can be replaced with a more fluid concept such as relation–holder and this will ultimately effect a significant change in business relations.

*(c) Ethical leadership, Ubuntu and relational theory*

Relational theories consist of a group of theories which focus on interrelations between the business environment and corporate internal dynamics, and is seen as a theory which unwraps utilitarianism. Relational theories are typically divided into four groups, namely: business and society; stakeholder approach; corporate citizenship; and the theory of social contract.<sup>151</sup> Corporate citizenship and the stakeholder theory are discussed in the previous chapters.

*Ubuntu* cannot be categorised as being country or region specific, but is rather described as ‘an African worldview’.<sup>152</sup> *Ubuntu* addresses the responsibility that humans owe to one another and human inter–connectedness. Instead of addressing issues from a Westernised ‘I’–platform, *Ubuntu* uses a ‘we’ relationship and, therefore, proposes a relational approach to ethics and morality.

In an attempt to depart from Westernised leadership philosophy that globally dominate corporate environments, *Ubuntu* is bathed with the aspiration of reconciling inconsistent and uncertain situations. This demonstrates an additional illustration of the way in which *Ubuntu* is in line with the relational approach.<sup>153</sup> The traditional approaches to ethics and corporate governance is persuaded by Western– and colonialist notions, and sundry influences which are principally symbolised by a binary alternative, something *Ubuntu* refuses to conform with.<sup>154</sup>

This section examines the key findings of an empirical study conducted by Perezts, Russon and Painter, who sought to establish a framework based on ethical leadership rooted in African traditions.<sup>155</sup> An Africanised ethical relational leadership framework presented by these authors is premised on a proposed pedagogical model which serves to assist as a tool to implement this Africanised model of leadership into practice.

---

<sup>151</sup> D Secchi ‘Utilitarian, managerial and relational theories of corporate social responsibility’ (2007) 9(4) *International Journal of Management Reviews* 360.

<sup>152</sup> Pérezts, Russon & Painter op cit note 149 at 735.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid at 737.

<sup>155</sup> Ibid at 154.

Their study views the significance of the values driven leadership into action ‘*Vdla*’–course which took place in African countries such as Kenya and South Africa from 2016 to 2018.<sup>156</sup>

These authors hold that there are four principles that from an African perspective, symbolise ethical relational leadership. These principles are: interdependence; communality; relational normativity; and unethical leadership as a failure to relate.<sup>157</sup> Interdependence is premised on self-fulfilment with due regard to the well-being of other individuals. This is analogous to the *Ubuntu* notion of ‘I am because we are’, illustrating that the ethical value of leadership finds significance through relationships between individuals.

Communality highlights the importance of social ties between individuals and places value on prioritising the needs of the community. Relational normativity stresses the normative element of a relational theory. Such a normative element acknowledges the need for appreciating restoration and ‘humanness’, and escaping material inequality.

Lastly, ‘unethical behaviour as a failure to relate’ looks at ethical blindness and essentially closing one’s self ‘off’, as the negative element of ethical leadership.<sup>158</sup> These authors set out a model which assists in showing how a model emphasising *Ubuntu* fosters a new perspective for philosophical perspectives which were previously premised on Western ideals. This ultimately demonstrates how *Ubuntu* principles along with relational theories can assist at enhancing current corporate governance models.

*(d) Practical findings of Ubuntu in the corporate governance climate in Africa*

Khomba et al<sup>159</sup> conducted a study on the current ethics and corporate governance structures of companies in Africa which as premised on *Ubuntu*. The findings of this study rests on a series of questionnaires and interviews conducted with large companies in Malawi in order to ascertain the general climate of corporate governance affairs in Southern African countries.<sup>160</sup>

The study concluded that, generally speaking, African companies follow a more stakeholder-centered approach in business affairs as opposed to the shareholder-centered

---

<sup>156</sup> Pérezts, Russon & Painter op cit note 149 at 731.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid at 738.

<sup>159</sup> J K Khomba, R C Bakuwa & E C Kangaude-Ulaya ‘Shaping business ethics and corporate governance: An inclusive African *Ubuntu* philosophy’ (2013) 13(5–A) *Global Journal of Management and Business* 31.

<sup>160</sup> Ibid at 36.

approach. This approach resonates with the African notion of *Ubuntu* and recognises the needs of all primary stakeholders of a business, which includes the needs and interests of shareholders. This published study calls on all African companies to employ such an approach.<sup>161</sup>

#### IV PROMOTING CORPORATE GOVERNANCE THROUGH UBUNTU

*Ubuntu* can be used to legitimise leadership by committing and conforming to values promoted under the notions of *Ubuntu*, such as respect, dignity, compassion, honesty, and sincerity. The aspects of sharing challenges, responsibilities, opportunities and being open to participatory decision making can serve as a tool at assessing corporate governance practice and leadership. As *Ubuntu* underlies a moral/ethical way of behaving and forming relationships with others, this link to self and the community will foster values that ought to be introduced in the business community. This will result in instilling a culture of transparency and accountability in business practice and therefore promote corporate governance.<sup>162</sup>

Rwelamila, Talukhaba & Ngowi,<sup>163</sup> refer to four fundamental principles that are essentially derived from communities in Africa which are underlined by the principles of *Ubuntu*. These are the principle of morality, the principle of interdependence, the principle of the spirit of the man and the principle of totality. The principle of morality fundamentally emphasises organisations need to touch its moral base in order to reach its highest potential. The principle of interdependence highlights that collective stakeholder participation is essential for achieving project success.<sup>164</sup> The principle of the spirit of man focuses on the unconditional dignity and respect of every individual irrespective of their position in society and the principle of totality underscores collective participation of a group in order to attain profit as a successful project requires the collective assistance from all individuals involved in such a project.<sup>165</sup>

---

<sup>161</sup> Ibid at 41.

<sup>162</sup> Nzimakwa op cit note 118 at 36.

<sup>163</sup> P D Rwelamila, A A Talukhaba & A B Ngowi 'Tracing the African project failure syndrome: The significance of Ubuntu' (1999) 6(4) *Engineering, Construction and Architectural Management* 335–346 available at [https://ubrisa.ub.bw/bitstream/handle/10311/612/Rwelamila\\_ECAM\\_1999.PDF?sequence=1&isAllowed=y](https://ubrisa.ub.bw/bitstream/handle/10311/612/Rwelamila_ECAM_1999.PDF?sequence=1&isAllowed=y), accessed on 10 January 2021.

<sup>164</sup> Ibid at 337.

<sup>165</sup> Ibid at 338.

Understanding these four principles and applying them in a public and private sphere can see the potential enhancement of corporate governance practice.

## V CONCLUSION

In this chapter, the notions of *Ubuntu* are extensively expanded upon in order to illustrate the potential significance that they hold for ethical business practice and corporate governance practice. Taylor's deontological model, informed by notions of *Ubuntu*, is a clear example of an Afro-centric approach, which could effectively be incorporated in corporate governance practices and codes.

By embracing the role of *Ubuntu* and acknowledging an African model, the Western colonialist influence will be ameliorated and this may possibly assist at improving Africa's corporate governance structures, thereby promoting more uniformity and ethical business behaviour. It is submitted that the principle of *Ubuntu* as well as its potential for forming a deontological leadership model has the ability to enhance current corporate governance practice in Africa.

## CHAPTER 5

### CORPORATE GOVERNANCE IN AFRICA

#### I INTRODUCTION

The corporate governance guidelines in many African countries follow a United Kingdom-based approach. This chapter aims to outline the basic corporate governance structures in Sub-Saharan African countries. The countries whose corporate governance models are examined in this chapter are those of South Africa and Namibia. As corporations are continuously faced with challenges that are driven by corruption and stem from unethical business practice, this chapter additionally examines relevant corporate scandals which highlight the lack of proper governance structures in these countries, particularly the general lack of acknowledgement of sound ethical principles.

Furthermore, this chapter examines the frameworks of corporate governance practices developed in South Africa and demonstrate how this compares to the lack of corporate governance frameworks that exist in Namibia. Corporate governance frameworks are mainly tailored for public enterprises in Namibia and the Nam-code draws largely from South African King Codes of corporate governance. The corporate governance frameworks and practice will be looked at in regard to their adherence to the principle of *Ubuntu* and corporate social responsibility is additionally examined in this chapter.

#### II AFRICAN CAPITAL MARKETS FORUM

As a starting point, it is worthwhile to observe the general developments of increased corporate governance awareness in Africa. In 1999 The African Development Bank ('ADB') formulated a Bank Group Policy ('BGP') on good governance. These were accompanied by the operational guidelines adopted in 2001. These policies and guidelines aimed to lay the foundation for enhancing the governance stance of African countries by providing a framework which utilises a flexible approach to mainstream governance practices into bank operations. This was done as entities started recognising the importance and the significant correlation between good corporate governance practice and future development in Africa. The governance principles

which are significant to note, that the BGP highlight are transparency, accountability, combatting corruption, participation and legal and judicial framework.<sup>166</sup>

### III SOUTH AFRICA

#### *(a) King reports*

The oppressive political environment that was nurtured in South Africa during the Apartheid era saw South Africa being imposed with economic– and trade sanctions, and ultimately excluded from the global economy. The corporate landscape at the time was dominated by the corporate product of an Apartheid government. The dawn of democracy has seen a necessary and significant corporate governance reform in South Africa, as it was vital for South Africa to reintegrate itself within the global economy.

As a result, the King committee was established under the auspices of the Institute of Directors in Southern Africa ('IoDSA'),<sup>167</sup> headed by Mervyn King. The formation of the King committee drew assistance from the Johannesburg Stock Exchange ('JSE'), the South African Institute of Chartered Accountants ('SAICA'), the South African Chamber of Business, the South African Institute of Business Ethics, and the South African Institute of Chartered Secretaries.<sup>168</sup>

Mervyn King is a former high court judge. He has played an imperative international role in corporate governance, chairing the Global Reporting Initiative and the International Integrated Reporting Council.<sup>169</sup> The King I report was published in 1994. The King I report primarily sought to establish a code of corporate governance which primarily sought to attain the maximisation of profits of shareholders. It drew extensively from the United Kingdom's Cadbury report, however, Armstrong observes that it extended beyond the Cadbury report by structuring it to suit the South African business environment.<sup>170</sup>

---

<sup>166</sup> African Development Bank *Bank Group Policy on Good Corporate Governance* (1999) available at <https://www.afdb.org/en/documents/document/bank-group-policy-on-good-governance-27134>, accessed on 7 August 2020 at 5.

<sup>167</sup> P Armstrong 'The King Report on Corporate Governance' (1995) 3 *Juta's Business Law* 65.

<sup>168</sup> *Ibid* at 65.

<sup>169</sup> P Natesan 'The evolution and significance of the "apply and explain" regime in King IV' (2020) *Journal of Global Responsibility* 1.

<sup>170</sup> Armstrong *op cit* note 167 at 65.

He explains that the King committee at the time had subscribed to the fundamental principle of not entertaining a corporate governance system that frustrated entrepreneurial enterprise.<sup>171</sup> The King I report was encouraged by the principles underlined by the agency theory which placed emphasis on the maintenance of the financial interest of shareholders through a system of checks and balances mitigating shareholder risk.<sup>172</sup>

The King I report surveyed the idea that directors had a responsibility that extended to the wider society which was termed the ‘dynamic participation approach’.<sup>173</sup> It additionally recommended that a code of ethics should be adopted in all business enterprises.<sup>174</sup>

Legislative and economic development necessitated updating the King I report and, therefore, in 2002 the King II report was developed and released. At the 2002 Earth Summit, Mervyn King argued the need for the King report to address a number of issues including issues which extended beyond financial issues. The King II report was mainly set on moving from the ‘single bottom line approach’, which mainly aimed at achieving profits for shareholders, to the ‘triple bottom line approach’, which sought an inclusive approach, considering environmental-, social-, and economic aspects.<sup>175</sup> The King II report significantly noted that the company remains constant while shareholders of the company will change from time to time.

Therefore, directors should always act in the best interest of the company.<sup>176</sup> Part 3 of the King II report makes reference to the ‘organisation integrity’ or code of ethics. It consists of a few lines which describes the proposition that an ethical code should be adhered to. It emphasises integrity with new appointees and promotions. It also prescribes exercising care when delegating duties, communication, and training regarding: standards; compliance; and values, which inform an enterprise and the monitoring and reporting of unethical or risky behaviour.<sup>177</sup>

---

<sup>171</sup> Ibid.

<sup>172</sup> Ibid at 65.

<sup>173</sup> Ibid at 68.

<sup>174</sup> Ibid at 69.

<sup>175</sup> IoDSA *King Report on Corporate Governance for South Africa* (2002) 2.

<sup>176</sup> J F Olson ‘South Africa moves to a global model of corporate governance but with important national variations’ (2010) 1 *Acta Juridica* 222; IoDSA *King Report on Corporate Governance for South Africa* (2002) 17.3.

<sup>177</sup> IoDSA *King Report on Corporate Governance for South Africa* (2002) 4.

The birth of the King II report was a significant move forward for South African corporate governance practice as it paved the way towards reimagining traditional models of corporate governance practice and realising a more stakeholder–inclusive model.

Integrating strategy, sustainability, and governance, were some of the key innovation’s employed by the King III.<sup>178</sup> This report placed emphasis on the importance of the management of company of its relationship with stakeholders.<sup>179</sup> It is recommended that an integrated report should be created by company’s which would follow a pattern of assessing the value of the company by stakeholders more easily and in a more informed fashion.<sup>180</sup>

The King III report was released in September 2009, taking effect in 2010. The implementation of the King III report was a significant development as it was prompted by the new publication of the Companies Act 71 of 2008. The major amendment the King III report implemented was the moving to an ‘apply or explain approach’ instead of a ‘comply or explain’ approach.<sup>181</sup> The ‘comply or explain’ approach was initially put forward by the Cadbury report.

In terms of this approach, companies can either comply with the code or they can opt to not comply, and should provide reasons for why they choose to not comply, and as a result, legitimately deviate from the code.<sup>182</sup> The ‘apply or explain’ approach introduces greater flexibility for companies, as companies have the option of explaining why they opted not to comply with certain practices and principles which they deemed to not be appropriate to their company.<sup>183</sup>

The King III report did not make any new substantive additions to the ethics provisions, but generally views corporate governance as a product of ethical and effective leadership. The King III report implemented a ‘recommends’ attitude instead of mandating. Therefore, entities are free to choose and apply practices and principles. This allowed corporate entities with wider freedom by permitting them to select their own corporate governance practices.

---

<sup>178</sup> Natesan op cit note 169 at 2.

<sup>179</sup> IoDSA *King Report on Corporate Governance for South Africa* (2009) 8.1.1.

<sup>180</sup> Natesan op cit note 169 at 2.

<sup>181</sup> D Walker & I Meiring ‘King Code and developments in corporate governance’ 2010 available at [http://www.uct.ac.za/usr/companylaw/downloads/legislation/WLB\\_2010-09\\_King\\_Code\\_and\\_Corporate\\_Governance.pdf](http://www.uct.ac.za/usr/companylaw/downloads/legislation/WLB_2010-09_King_Code_and_Corporate_Governance.pdf), accessed on 8 November 2020.

<sup>182</sup> D Seidl, P Sanderson & J Roberts ‘Applying the “comply–or–explain” principle: discursive legitimacy tactics with regard to codes of corporate governance’ (2013) 17 *J Manag Gov* 791 available at <https://doi.org/10.1007/s10997-011-9209-y>, accessed on 30 April 2020.

<sup>183</sup> Natesan op cit note 169 at 3.

In the same vein a greater sense of responsibility is afforded to corporations as an integrated report needs to be produced. A strong corporate governance framework aims to achieve greater levels of transparency as well as accountability. The ‘apply or explain’ approach added to achieving that aim.<sup>184</sup> This illustrates the major development employed by the King III report in that it stresses the strong link between profitability and the long-term viability of a company, and good corporate governance practice. The King III also differed largely from the King II report pertaining to the structure of the audit committees, requiring at least three members.<sup>185</sup> It also highlights integrated sustainability reporting,<sup>186</sup> and requires that meetings be conducted at least twice a year,<sup>187</sup> elements which the King II has failed to address.

Building on the King III report and updating the report with international standards and practice, The King IV report was released in 2016.<sup>188</sup> As stated by Natesan, a member of IoDSA, one of the key considerations when developing the King IV report was introducing a report which is compressed and could be better comprehended by organisations.<sup>189</sup>

The King IV report implemented three key foundations. These are: ethical leadership; corporate citizenship; and organisation in society.<sup>190</sup> The King IV report made a radical move from ‘apply or explain’ to ‘apply and explain’, driving boards to not only focus on compliance but rather outcomes. Through the ‘apply and explain’ approach, stakeholders receive wider discretion to examine whether the four governance outcomes are achieved.

Ultimately, corporate governance principles should assist with helping corporations to appreciate that providing results for the advancement of the company and the stakeholders as a whole in its corporate governance practices as something that operates in the best interests of the company, and not be approached simply as an act of compliance.

---

<sup>184</sup> A Roman ‘King III Report: How South Africa Revolutionised Corporate Governance’ 2014 available at <https://www.azeusconvene.com/articles/south-africa-revolutionize-corporate-governance>, accessed on 2 May 2020.

<sup>185</sup> IoDSA *King Report on Corporate Governance for South Africa* (2009) 57.

<sup>186</sup> Ibid at 108–1111.

<sup>187</sup> Ibid at 56.

<sup>188</sup> King IV Summary Guide available at <https://home.kpmg/za/en/home/insights/2016/10/king-iv-summary-guide.html>, accessed on 2 May 2020.

<sup>189</sup> Natesan op cit note 169 at 4.

<sup>190</sup> IoDSA *King IV Report on Corporate Governance in South Africa* (2016) 4.

(b) *The Companies Act*

(i) *General*

It is important to consider the impact and the role of legislation in corporate governance practice as legislation has the potential to compel companies to act in a socially responsible manner.<sup>191</sup> The recommended principles and practices advocated in the King codes infiltrated the legislation in South Africa. Corporate governance has developed extensively in South Africa which is complemented through the development of the Companies Acts,<sup>192</sup> which advocates for higher standards of corporate governance.

English common law and precedent underpins the old Act<sup>193</sup> which prioritised the needs and interest of the shareholders of a business above the needs of other stakeholders of a firm. The new Act has incorporated a number of new provisions and has therefore codified the common law in certain respects, which proves significant for the evolution of corporate governance in South Africa.

Part F of the new Act deals with the governance of companies. Under the new Act, s 66(1) holds that the BOD of the firm is responsible for managing the affairs of a company. Following good corporate governance in a company fundamentally rests on the directors of a company in the fulfilment of their duties and roles of the directors of a company.

The old Act did not codify the duty of the director to act in the best interests of a company and these were found under the common law. Under the new Act,<sup>194</sup> according s 77, a director has a specific duty of acting in good faith with the particular diligence, care and skill expected of such a director. This concept is also introduced in the King III report which introduced the remuneration of directors as well as independency of directors.<sup>195</sup>

---

<sup>191</sup> I-M Esser & A Dekker 'The dynamics of corporate governance in South Africa: Broad based black economic empowerment and the enhancement of good corporate governance principles' (2008) 3 *Journal of International Commercial Law and Technology* 158.

<sup>192</sup> Companies Act 61 of 1973 ('old Act'); Companies Act 71 of 2008 ('new Act').

<sup>193</sup> Companies Act 61 of 1973.

<sup>194</sup> Companies Act 71 of 2008.

<sup>195</sup> D Walker & I Meiring 'King Code and developments in corporate governance' September 2010, available at [http://www.uct.ac.za/usr/companylaw/downloads/legislation/WLB\\_2010-09\\_King\\_Code\\_and\\_Corporate\\_Governance.pdf](http://www.uct.ac.za/usr/companylaw/downloads/legislation/WLB_2010-09_King_Code_and_Corporate_Governance.pdf), accessed on 8 November 2020.

The old Act does, however not fully codify common law duties of a director, which means that such common-law duties are not fully replaced by the duties held in the new Act.<sup>196</sup> Other sections of the new Act are also significant for corporate governance. These include s 94, which necessitates the establishment of an audit committee for public companies, this is also a requirement of a private company, should the private company meet the thresholds. Section 72(4) of the new Act necessitates the establishment of a social and ethics committee which should consist of three directors or prescribed officers. The functions of the social and ethics committee are discussed below.

*(ii) Board structure*

Understanding how company boards are structured and how ownership and control are separated in South African companies is essential in order to appreciate the ethical governance issue that arises with regard to the role of directors in a company. South African companies have a ‘unitary board’ structure.<sup>197</sup>

Although such a structure is not specifically referred to or defined in the new Act, the absence of such a reference suggests that a unitary system continues to apply.<sup>198</sup> A ‘unitary board’ means that a combination of the managerial and the supervisory role of the BOD are present.<sup>199</sup> Therefore, act of management as well as agency are adopted by boards.

The BOD is appointed by the shareholders.<sup>200</sup> The management obligations of the BOD is expressly conferred in s 66(1) of the new Act. Wiese holds that the phrase employed by this section, which states that the affairs and the business of a company should be managed by the board, additionally suggest the implication of a ‘unitary board’ system adopted in South African company law.<sup>201</sup>

The ownership and control structure of a company is best illustrated in the case of *John Shaw and Sons (Salford) Ltd v Shaw*,<sup>202</sup> which states that the directors of a company are vested

---

<sup>196</sup> L Muswaka ‘Corporate Governance under the South African Companies Act: A critique’ Proceedings of World Business and Economics Research Conference 5 December 2012 4.

<sup>197</sup> I-M Esser & M K Havenga ‘Shareholder Participation in Corporate Governance’ (2008) 1 *Speculum Juris* 76.

<sup>198</sup> Wiese op cit note 25 at 29.

<sup>199</sup> Ibid at 28.

<sup>200</sup> Companies Act 71 of 2008 s 68.

<sup>201</sup> Wiese op cit note 25 at 29.

<sup>202</sup> *John Shaw & Sons (Salford) Ltd v Shaw* (1935) 2 KB 113 (CA).

with the powers of management which they alone can exercise.<sup>203</sup> However, ownership of the company ultimately rests with the shareholders of the company. This separation of ownership and management control leads to various issues regarding the directors who fail to act in the best interest of company, in their capacity of managing the company.<sup>204</sup>

*(iii) Corporate governance and directors duties: 'In the best interests of the company'*

South African company law divides a director's duty into a number of subcategories, namely, that a director ought to act: within good faith;<sup>205</sup> in the best interests of the company;<sup>206</sup> and with the necessary skill and diligence expected of such a director.<sup>207</sup> The second statutory duty of a director (that such a director should act within the best interests of the company) is considered here. This is mainly due to the fact that there is uncertainty regarding the true governance position that ought to be adopted by South African companies.

Academics<sup>208</sup> have raised concerns regarding the true meaning of 'in the best interests of the company' is, as phrased in s 76(3)(b) of the new Act. Questions surface regarding whether a company should act solely in its own best interest, as a separate legal entity, or whether the needs and interests of relevant stakeholders should be considered.<sup>209</sup>

Case law such as *Re Smith & Fawcett Ltd*<sup>210</sup> has clarified that 'acting in the best interest' of company is dependent on what such a director believes to be *bona fide* actions, and it is not for the courts to decide what constitutes *bona fides* action in this context.<sup>211</sup>

Although the new Act is ambiguous regarding this phrase, adopted by s 76(3)(b) of the new Act, case law such as *South African Fabrics v Millman*<sup>212</sup> posit that such a view of the best interests of the company is premised on a company acting in the best interests of itself, as well as the interests of its shareholders.

---

<sup>203</sup> Cassim et al op cit note 2.

<sup>204</sup> Esser & Havenga op cit note 197 at 76.

<sup>205</sup> Companies Act s 76(3)(a).

<sup>206</sup> Companies Act 71 of 2008, s 76(3)(b).

<sup>207</sup> Companies Act 71 of 2008, s 76(3)(c).

<sup>208</sup> See Muswaka op cit note 196; I-M Esser & J J Du Plessis 'The stakeholder debate and the directors' fiduciary duties' (2007) 26 *South African Mercantile Law Journal* 346.

<sup>209</sup> Muswaka op cit note 196 at 4.

<sup>210</sup> *Re Smith & Fawcett Ltd* (1942) Ch 304.

<sup>211</sup> Cassim et al op cit note 2 at 524.

<sup>212</sup> *South African Fabrics Ltd v Millman N.O & Another* 1972 (4) SA 592 (A).

I suggest that both definitions are outdated as it is now widely accepted that shareholders are no longer the only stakeholders deserving of protection. Any stakeholder whom has any interest of investment in the company should be considered as the bearer of risk, possibly being disadvantaged, should the company perform unfavourably.

Directors ought to be aware of protecting the rights of other stakeholders and how this can advance the success of the company itself.<sup>213</sup> This will assist companies to stabilise their business and promote sustainability.<sup>214</sup>

South African companies are left to follow the direction of the common law through interpretation of English case law. This can be seen in *Da Silva v CH Chemicals (Pty) Ltd* 2008 (6) SA 620 SCA, according to paragraph 98, directors have a duty to act in the best interests of the company.

As the new Act is silent on a precise meaning of what is ‘in the best interest of the company’ and current South African case law provides limited assistance in deciphering such a meaning for the modern company, it suffices that South African corporate governance broadly recognises the interest of a wider spectrum of stakeholders. No clear position for corporate governance exists and the shareholder value is preferred over any other school of thought. Other sections of the companies act such as section 218(2), section 144 and section 145 lean towards embracing the concept of protecting the interests of the stakeholders. This, therefore, also illustrates the preference of the stakeholder approach. Protecting the interests of stakeholders and preferring the shareholder approach creates immense uncertainty which legislation ought to eliminate.<sup>215</sup>

#### *(iv) Social and ethics committee*

State owned companies and listed companies are obliged to establish a social and ethics committee as per regulation 43 and s 72 of the new Act. Regulation 43 of the new Act should be read with s 72, as regulation 43 highlights the direct attention which boards ought to provide regarding certain duties and responsibilities.<sup>216</sup> These duties include responsibilities which

---

<sup>213</sup> M Ramnath & V Nmehielle ‘Interpreting directors’ fiduciary duty to act in the company’s best interests through the prism of the Bill of Rights: Taking other stakeholders into consideration’ (2013) 2 *Speculum Juris* 99.

<sup>214</sup> Ibid at 144.

<sup>215</sup> Muswaka op cit note 196 at 7.

<sup>216</sup> T Wixley, G Everingham & K Louw *Corporate Governance: The directors guide* 5 ed (2019) 135.

would usually fall under the scope of a director's obligation but would infrequently receive the necessary required attention.<sup>217</sup> The duties are specifically listed as pertaining to social– and economic development,<sup>218</sup> good corporate citizenship,<sup>219</sup> the environment, health and public safety,<sup>220</sup> consumer relationships,<sup>221</sup> and labour and employment.<sup>222</sup> The King IV report expands on the duties which regulation 43 addresses, and it holds that the social and ethics committee of a company should oversee and report on issues of stakeholder relationships, sustainable development, responsible corporate citizenship, and organisational ethics.

*(c) Steinhoff scandal as a failure of corporate governance practice*

Steinhoff International is a global retail business initially founded by Bruno Steinhoff in Germany. The birth of Steinhoff Africa, which has its headquarters in South Africa, followed pursuant to a partnership between Steinhoff and a South African manufacturing company, Gomma Gomma Holdings.<sup>223</sup> In 2015, reports surfaced regarding tax investigations which pertained to subsidiaries and their respective ownership.<sup>224</sup> Former Chief Executive of Steinhoff, Markus Jooste, announced his immediate resignation in December 2017. Following this, Pricewaterhouse Coopers ('PWC') conducted an investigation into the alleged accounting irregularities.

This, along with a number of additional investigations and legal actions (which were instituted against the company) ultimately resulted in a fall of Steinhoff's share price by 85 per cent.<sup>225</sup> The report conducted by PWC concluded that over a period of a number of years, a group of executives of Steinhoff had inflated the profit and asset values of the Company. The Steinhoff saga can be classified as one of South Africa's largest corporate fraud cases.

---

<sup>217</sup> Ibid at 135.

<sup>218</sup> Companies Regulations 2011 reg 5(a)(i).

<sup>219</sup> Regulation 5(a)(ii).

<sup>220</sup> Regulation 5(a)(iii).

<sup>221</sup> Regulation 5(a)(iv).

<sup>222</sup> Regulation 5(a)(v).

<sup>223</sup> J Rossouw & J Styan 'Steinhoff collapse: a failure of corporate governance' (2019) 33(1) *International Review of Applied Economics* 164.

<sup>224</sup> Ibid at 163.

<sup>225</sup> 'Inside the Steinhoff saga, one of the biggest cases of corporate fraud in South African business history' *CNB Africa* 2018, available at <https://www.cnbcfrica.com/insights/steinhoff/2018/06/28/steinhoff-rise-fall/>, accessed on 1 June 2020.

A case study done on the Steinhoff saga noted that Steinhoff International Holdings N. V. has been referred to as the ‘IKEA of Africa’ due to the fact that at its conception it initially aimed and has continued to supply everyday products at an affordable price.<sup>226</sup>

Prior to the Steinhoff scandal, Steinhoff International Holdings was considered as a prime example of an African company which stringently followed the recommendations in the King reports. This included the identification of risks, such as the management of environmental-, ethical-, health-, and safety risks. The 2015 Steinhoff editorial highlighted that a steering committee managed the company’s corporate responsibilities.<sup>227</sup> Rossouw and Stayan hold that the governance structure of Steinhoff was unusual, as it consisted of a two-tiered board structure which possibly made it easier to conceal any irregularities. This type of structure is typically followed by companies in European countries.

Rossouw and Stayan explain that the board is a single board which is made up a management board and a supervisory board. This type of board model requires that the management board accounts to the supervisory board but bears the risk of the management board neglecting to report to the supervisory board leading to the possibility of the company being misled, and essentially hi-jacked by the management board.<sup>228</sup>

A special report issued in 2018, dealing with business perspectives on the Steinhoff saga, looked at a number of governance issues, particularly the issues pertaining to transparency. This report holds that the reports that were produced at Steinhoff were of a high standard and quality, as per ‘best practice’.

This report highlights that the primary issue dealing with the transparency of the reporting rested on the intention to produce a report that creates the impression that everything is ‘in order’.<sup>229</sup> It is highlighted that achieving genuine transparency in terms of business documents and audit statements is a global issue. International reporting standards prove to be beneficial and problematic as they provide indicators but also drive companies to follow a ‘tick

---

<sup>226</sup> J Cronje ‘Five thing to know about the court case against former Steinhoff CEO Markus Jooste’ *News 24* 2019 available at <https://www.news24.com/fin24/companies/retail/five-things-to-know-about-the-court-case-against-former-steinhoff-ceo-markus-jooste-20190807-2>, accessed on 1 June 2020.

<sup>227</sup> J Johannes *Corporate Social Responsibility in South Africa: How Corporate Partnerships can advance the Sustainability Agenda* (unpublished master’s thesis, University of Western Cape, 2016) 41.

<sup>228</sup> Rossouw & Styan op cit note 223 at 165.

<sup>229</sup> P Naudé, B Hamilton, M Ungerer, D Malan & M de Klerk *Business perspective on the Steinhoff Saga* (2018) 21.

box' approach when it comes to reporting. Of particular relevance to this dissertation is the importance of adopting ethical standards which informs reporting practices.

This report additionally indicates that adopting a sound ethical foundation can pose more questions rather than being used as an element that produces answers, and legislating ethical practices could possibly create a further compliance burden. The reality remains that ethical and moral obligations are challenging elements to monitor.<sup>230</sup>

Steyn and Rossouw further highlight that the Steinhoff scandal illustrates a complete disregard of corporate governance practices by Steinhoff's supervisory board, as accurate financial statements were overlooked and the activities of the management board were not properly monitored.<sup>231</sup> The importance of companies having a board that demands practicing good corporate governance throughout all tiers of the company is stressed, despite the presence of a dominating chief executive of a company.<sup>232</sup>

## IV NAMIBIA

### *(a) The Nam-code*

Namibia has a strong developmental agenda aiming to guarantee economic and social liberation.<sup>233</sup> With many challenges such as corruption and poor performance of state-owned entities ('SOEs') still looming, the significance of effective corporate governance practice in both private and public sectors has grown. One of the primary setbacks which still hugely negatively impact Namibia is the high levels of corruption (as Namibia scored 53 points on the Corruption Perception Index by 2018).<sup>234</sup>

Although other factors do contribute towards the commercial and governance setbacks that Namibia is experiencing, it has become increasingly evident that the lack of a detailed corporate governance structure is a major part of the problem.

Corporate governance in Namibia is founded on the Corporate Governance Code for Namibia ('Nam-code'), which was introduced in Namibia in 2014. It was initially

---

<sup>230</sup> Ibid.

<sup>231</sup> Rossouw & Styen op cit note 223 at 166.

<sup>232</sup> Ibid at 169.

<sup>233</sup> 'Namibia's 30 years Developmental Journey' available at [https://www.npc.gov.na/?wpfb\\_dl=373](https://www.npc.gov.na/?wpfb_dl=373), accessed on 3 June 2020.

<sup>234</sup> Ibid.

introduced to primarily address the need for developing a specific code which caters for international corporate governance best practices within Namibia, this was initiated in response to the release of the King III code and due to the New Companies Act in South Africa.<sup>235</sup>

The Nam-code does not impose a statutory duty on companies to comply with its provisions, but it does impose a duty on companies to adopt an ‘apply or explain’ approach. It is also recommended that the Nam-code applies to all Namibian entities, whether in the public-, private- or non-profit sectors.<sup>236</sup> The Nam-code highlights that the directors of a company are under a legal duty to act in the best interests of the company. The BOD, is, however vested with the authority to choose to follow the practice recommendation in a different manner, or not at all, if the BOD is convinced that such application will not be in the best interest of the company. The BOD also has this discretion, if it is of the opinion that acting in a different manner, as well as taking the overarching principles of corporate governance into consideration (such as transparency, accountability, fairness, and responsibility) will still yield results in line with the aim of the specific principle.<sup>237</sup>

The Nam-code highlights that the criteria of good governance practice, legislation, as well as compliance with governance codes and guidelines, assist in ascertaining whether directors of companies follow an appropriate standard of conduct. Corporate governance helps set the bar of what is considered as the ‘appropriate conduct’ of directors of a company. This additionally helps the courts to distinguish between ‘standard’ and ‘appropriate’ company conduct.

Therefore, it is important for corporate governance practices to evolve and become more established.<sup>238</sup> The key aspects that the Nam-code deal with are the following: matters dealing with the BOD; internal audit matters; risk management; stakeholder relationships; and information technology (‘IT’) governance and compliance.

Chapter 1 of the Nam-code deals with ethical leadership and corporate citizenship. It is divided into three principles. These are: (1) The board providing effective leadership based

---

<sup>235</sup> ‘Deloitte. Corporate Governance Survey 3rd Edition for Namibia’ *Deloitte* 2016 available at <https://www2.deloitte.com/content/dam/Deloitte/na/Documents/risk/na-Deloitte-Namibia-Governance-Survey-2016.pdf>, 8 July 2020 at 5.

<sup>236</sup> ‘Deloitte. The Namcode – The Corporate Governance Code for Namibia’ *Deloitte* (first published July 2014 last revised February 2016) available at [https://www2.deloitte.com/content/dam/Deloitte/na/Documents/risk/za\\_Deloitte\\_NamCode\\_Brochure.pdf](https://www2.deloitte.com/content/dam/Deloitte/na/Documents/risk/za_Deloitte_NamCode_Brochure.pdf), accessed on 8 July 2020 at 16.

<sup>237</sup> *Ibid* at 3.

<sup>238</sup> *Ibid* at 4.

on an ethical foundation (principle C1–1); (2) The board ensuring that the company is regarded as a responsible corporate citizen (principle C1–2); and (3) The board ensuring that the company’s ethics are managed effectively (principle C1–3).

Chapter 2 of the Nam–code deals with the duties and obligations of the BOD. The management of audit committees is regulated under Chapter 3 of the Nam–code. Under Chapter 4 of the Nam–code, the governance of risk is expanded on. IT is facilitated under Chapter 5, whereas compliance and internal auditing is expanded on in Chapter 6, and Chapter 7 of the Nam–code. Chapter 8 of the Nam–code signifies the significant role that stakeholders play in a business as Chapter 8 regulates the interests and management of stakeholder relationships. The last chapter of the Nam–code, chapter 9, ensures maintaining the integrity of the company through proper integrated reporting and disclosure practices.

The Nam–code also highlights the importance of an inclusive stakeholder approach to be followed. It advances that the interests and expectations of stakeholders should be properly managed and maintained and that the successes of a business is redefined by ensuring and pursuing the business’s should provide a lasting benefit for the stakeholders of the company.<sup>239</sup>

The Nam–code highlights that the Nam–code philosophy centres on corporate citizenship and leadership with the ultimate aim of achieving sustainability. The Nam–code then sets out a number of key aspects that are to be considered in order to understand the Nam–code philosophy. It firstly states that effective leadership signifies good governance and that good leadership rests on ethical values of transparency, fairness, accountability, and responsibility which are primarily based on the duties signified under the *Ubuntu* philosophy.<sup>240</sup>

The King IV code mention *Ubuntu* briefly when it mentions the importance of interdependency between organisations.<sup>241</sup> The principle of *Ubuntu* is more extensively included and expressed in King III. The Nam–code is a fairly advanced and detailed framework which covers an ample amount of pertinent aspects of corporate governance practice.

---

<sup>239</sup> Ibid at 10

<sup>240</sup> Ibid at 6.

<sup>241</sup> King IV Report, op cit note 190 at 24.

*(b) SOE Governance Act 2 of 2006*

In Namibia, effective corporate governance practice plays a significant role in the public sector. SOEs in Namibia have been subjected to an extensive amount of criticism due to its poor governance structure and poor performance.<sup>242</sup> The operation of SOEs pose large risks to the government as sole shareholders in SOEs. Therefore, the State-Owned Enterprises Governance Act 2 of 2006 was adopted ('SOEG Act').

This Act primarily provides for the appointment and composition of the BOD of SOEs, remuneration practices, and the publishing of annual reports. The SOEG Act makes provision for the establishment of a SOEs governance council ('SOEGC').<sup>243</sup> The SOEGC is primarily responsible for regulating the governance of SOEs and ensuring disclosure and transparency is practiced in order to reduce risks.

*(c) Government Institution Pension Fund*

The Government Institution Pension Fund ('GIPF') is an institutional investor and the largest pension fund in Namibia's economy. The GIPF was established under the Pension Fund Act,<sup>244</sup> and can be used as an example of an initiative which largely advances corporate governance.

GIPF makes provision for pension benefits of the civil servants in government offices, agencies, and ministries, through retirement benefits and post-employment income.<sup>245</sup> The Nam-code makes reference to the fact that the GIPF is the largest investor on the Namibian Stock Exchange ('NSX'). It highlights that the GIPF is essential for employment and wealth advancement in Namibia.<sup>246</sup>

The GIPF's latest available annual report for the year, which ended on 31 March 2019, highlights its corporate governance triumphs.<sup>247</sup> This report highlights that the long-term sustainability of the fund rests on building, as well as maintaining, relationships which rest on ethical leadership, values the staff members lives, as well as mutual trust.<sup>248</sup> It further highlights

---

<sup>242</sup> See S S K Shifidi 'Evaluation of corporate governance in state-owned enterprises in Namibia' (unpublished master's thesis, University of Stellenbosch, 2014).

<sup>243</sup> SOEG Act Part II.

<sup>244</sup> 24 of 1956.

<sup>245</sup> Shifidi op cit note 242 at 31.

<sup>246</sup> 'Deloitte. The Namcode' op cit note 229 at 5.

<sup>247</sup> GIPF 'Integrated Annual Report 2019' available at [https://www.gipf.com.na/web/reports/annual/4070\\_GIPF\\_IAR\\_online.pdf](https://www.gipf.com.na/web/reports/annual/4070_GIPF_IAR_online.pdf), accessed on 18 November 2020.

<sup>248</sup> Ibid at 18.

that the fund lives by six governance standards which are responsibility, accountability, responsibility, fairness, transparency, integrity, and competency. It additionally highlights the importance of conforming to ethical leadership strategies which are in line with the Nam-code and the King IV report.<sup>249</sup>

*(d) Corporate scandals that illustrate disregard for corporate governance practice*

Corporate governance practice in Namibia is under-analysed and such practice is largely seen in the public sector of Namibia as the Namibian government play a significant role in many corporate operations. This section explores a few examples of the failure of institutions, under the influence of the government whose failure can be attributed to poor and undefined corporate governance practice.

*(i) The Fishrot scandal*

The events leading up to the ‘Fishrot scandal’ can be used to illustrate the lack of a governance structure in Namibia on a public platform, a sector which is largely motivated by corruption and fraud, where the misappropriation of public funds and investments occur all too often. This illustrates the blatant disregard of the essence of ethical conduct, as promoted through corporate governance.

The Fishrot scandal is premised on the following facts. An international fishing company, Samherji, paid the Namibian government (cabinet ministers and businessmen) bribes which amounted to millions of dollars, in order to receive a fishing quota for horse mackerel, which would allow them fishing access to this lucrative natural resource. This was done by using a particular public official to bypass fishing laws to obtain a fishing quota at a significantly lower price.

Fishing quotas are usually allocated by the Namibian government based on merit and the practice that foreign investors ought to operate in unison with a Namibian company in order to ensure that profits remain in the country. In addition to this prerequisite, only those companies owned by a majority of Namibians would be eligible to receive a fishing quota.<sup>250</sup>

---

<sup>249</sup> Ibid at 38.

<sup>250</sup> See <https://www.undercurrentnews.com/2020/01/06/namibias-fishrot-scandal-from-start-to-present/>, accessed on 6 June 2020.

The former Minister of Fisheries in Namibia, Bernhardt Esau, handed the fishing rights of private companies to one of the companies implicated in this scandal, the National Fishing Corporation of Namibia ('FISHCOR'). This company was used as a front in order to hand the fishing rights to Samherji.<sup>251</sup>

Since FISHCOR was used as a vehicle in this scandal, the former board chairperson and the Chief Executive Officer ('CEO') have been arrested due to its relation to being directly involved in the Fishrot scandal. The BOD of this company have pleaded ignorance in regard to the actions of their former board chairperson and CEO. The conduct of FISHCOR is currently under investigation as the public has been questioning how such unethical conduct could occur without the BOD of this company being aware thereof.

This scandal is a clear example of the extent of political influence in Namibia and how this infiltrates the corporate sphere. This demonstrates how easily it is for corporations in Namibia to fall prey to unethical conduct due to a lack of proper corporate governance structures.

*(ii) The SME Bank case*

The Small and Medium Enterprise Bank Limited ('SME Bank') was founded by the Namibian government which aims to provide service to the projects undertaken by small and medium size enterprises.<sup>252</sup> The SME Bank reached a state of insolvency in 2017 and was unable to conduct banking business, as contemplated under s 1 read in conjunction with s 58 of the Banking Institutions Act.<sup>253</sup>

The SME Bank effected certain investments into an investment company in South Africa, Mamepe Capital.<sup>254</sup> Upon such revelation, under s 56 of the Banking Institutions Act, the Bank of Namibia assumed control over the SME Bank. Upon further investigation it was revealed that amounts totalling in N\$ 32.7 million was paid into the accounts of Mamepe Capital and other beneficiaries received amounts totalling in N\$ 167 million.<sup>255</sup>

---

<sup>251</sup> 'We didn't know the Fishcor board members' *The Namibian Sun* 2020 available at <https://www.namibiansun.com/news/we-didnt-know-fishcor-board-members2020-02-19>, accessed on 12 June 2020.

<sup>252</sup> *Bank of Namibia v Small and Medium Enterprises Bank Ltd and 6 Others* (2017) NAHCMD 350 ('*Bank of Namibia*').

<sup>253</sup> Banking Institutions Act 2 of 1998 ('Banking Institutions Act').

<sup>254</sup> *Bank of Namibia* supra note 252 para 5.

<sup>255</sup> *Ibid* para 8.

A Lebanese fertiliser company was additionally funded by the SME Bank.<sup>256</sup> The Namibian High Court ruled that it was just and equitable to wind-up the Bank. The activities leading up to its winding-up was however a clear illustration of mismanagement – a failure of corporate governance practice.<sup>257</sup>

*(iii) Air Namibia (Pty) Limited*

Air Namibia (Pty) Limited is the national airline of Namibia and with the shareholder of the airline being the government of Namibia, governed by a board of trustees. The airline is operated under the SOEG Act. Over a number of years, the efficiency and effectiveness of Air Namibia has been questioned as the poor performance of Air Namibia has seen the airline constantly calling for monetary assistance from the government.<sup>258</sup>

The Namibian national budget is used to bail out enterprises, such as Air Namibia, which fail to remain in a financially sustainable position. Air Namibia has had continuous liquidity issues which is a strong indicator of poor corporate governance structures.<sup>259</sup> A study conducted by Anna Tangi Ishekwa in 2019 examines whether the corporate governance structure adopted by Air Namibia and the poor performance are linked.

The findings of this research held that 50.3 per cent of performance of Air Namibia is accounted for corporate governance practice which strongly impacts on the operations employed under the airline.<sup>260</sup> In 2021, Air Namibia halted all operations, as its debts amount to N\$ 8 billion. The board of Air Namibia resigned following accusations of poor corporate governance by the government.<sup>261</sup>

---

<sup>256</sup> Ibid para 10.

<sup>257</sup> *Metropolitan Bank of Zimbabwe LTD and Another v Bank of Namibia SA* (2018) NASC 407 ('*Metropolitan Bank*') para 37.

<sup>258</sup> A T Ishekwa *The impact of corporate governance on the performance of Air Namibia* (unpublished master's thesis, University of Namibia, 2019).

<sup>259</sup> T Chata *An Evaluation of the relationship between corporate governance and corporate performance of public enterprises in Namibia: A case study of Telecom Namibia & Air Namibia* (unpublished master's thesis, University of Namibia, 2010).

<sup>260</sup> Ishekwa op cit note 258 at 77.

<sup>261</sup> See <https://www.observer24.com/na/air-namibia-board-resigns-accuses-shareholder-of-governance-violations/>, accessed on 6 February 2021.

## V CORPORATE SOCIAL RESPONSIBILITY EXAMPLES IN SOUTH AFRICAN AND NAMIBIAN COMPANIES

### (a) South Africa

#### (i) Woolworths

Woolworths Holdings is listed under the latest JSE's Responsible Investment Index, which promotes transparent and sustainable business practices and to promote good corporate citizenship.<sup>262</sup> Woolworths received such status after drawing up a 'supplier code of business principles', which deals with aspects such as health and safety issues, animal welfare, and child labour.<sup>263</sup> Together with setting the guidelines for sustainability practices, Woolworths has the 'My School', 'My Village' and 'My Planet' programmes which are fundraising initiatives that use allocated rewards to various client-designated initiatives, such as specific schools or charities when Woolworths' registered clients purchase goods.<sup>264</sup>

#### (ii) Engen

Engen has employed a number of corporate social responsibility initiatives. One of the major community involvement that Engen has contributed towards is educational development. Engen employs an initiative which assists groups of children who are either orphaned, or who have working parents, and empower educators through a professional development programme to develop the skill and abilities of such educators and in return to take care of these children for disadvantaged circumstances.<sup>265</sup> Engen also initiated the 'Engen maths and science programme' which allows students coming from previously disadvantage backgrounds to pursue tertiary education.<sup>266</sup>

---

<sup>262</sup> See <https://www.jse.co.za/services/indices/fisejse-responsible-investment-index-series>, accessed on 7 November 2020.

<sup>263</sup> Johannes op cit note 227 at 53.

<sup>264</sup> See [https://www.woolworths.co.za/content/article/good-business-journey/education-initiatives/\\_/A-cmp-205956\\_2](https://www.woolworths.co.za/content/article/good-business-journey/education-initiatives/_/A-cmp-205956_2), accessed on 7 November 2020.

<sup>265</sup> Johannes op cit note 227 at 62.

<sup>266</sup> C Botha 'Engen: CSR Campaign' available at <https://www.candicebothacreative.com/engen-csr-campaign>, accessed on 10 December 2020; V Tyolwana 'Engen school programme contributes to the transformation of the STEM field' 2020 available at <https://social-tv.co.za/engen-school-programme-contributes-to-the-transformation-of-the-stem-field/>, accessed on 10 December 2020.

*(iii) Old Mutual Life Assurance*

Old Mutual Life Assurance South Africa states that their corporate social investment programme seeks to address issues in underdeveloped communities and aim to make a difference in the lives of their beneficiaries. One of the initiatives introduced by Old Mutual's Social investment programme is an initiative called 'Ubuntu pathways'. This is non-profit organisation which integrates social support, health, and education throughout townships in Port Elizabeth.

This initiative prescribes to specific guiding principles, namely: impacting through depth; building to last; for the community by the community; and cradle to career. The work has had extensive impact such assisting at facilitating the safe births of HIV-free babies of HIV positive mothers.<sup>267</sup>

*(b) Namibia*

*(i) NBL*

Namibian Breweries Limited ('NBL') employs a 'corporate social investment support' principle which aims to enrich their relationship with major stakeholders. NBL is involved in a number of projects such as the 'blow the horn on rhino poaching' initiative, which has partnered with the Namibian police, the Ministry of Environment and Tourism, and the Intelligence agency to curb rhino poaching in Namibia (due to Namibia harbouring one of the largest populations of the Black Rhino).<sup>268</sup>

*(ii) NAMCOR*

The National Petroleum Corporation of Namibia ('NAMCOR') employs a 'corporate social responsibility policy'. This corporate social responsibility policy focuses on three key areas, namely: education; environment; and community upliftment. These areas directly and indirectly support the: National Development Plan 3; Harambee Prosperity Plan; and the

---

<sup>267</sup> 'Corporate and Social Responsibility' available at <https://www.oldmutual.co.za/about/old-mutual-insure/corporate-and-social-responsibility>, accessed on 10 December 2020.

<sup>268</sup> NBL 'Corporate Social investment' available at [http://www.nambrew.com/ir\\_2016/strategic-partnership/corporate-social-investment-support/](http://www.nambrew.com/ir_2016/strategic-partnership/corporate-social-investment-support/), accessed on 10 December 2020.

Sustainable Development Goals ('SDGs') of the UN. This stresses the importance of eradicating poverty and improving lives.

The African Union Agenda 2063 is also supported through this initiative. The African Union Agenda seeks to improve Africa's levels of prosperity. These are incorporated in the National Development Plans of Namibia.

NAMCOR's corporate social responsibility is additionally exemplified through a number of social initiatives that it employs around Namibia. NAMCOR concentrates its social causes towards three areas by prioritising the Erongo and Otjozondjupa regions of Namibia. The company has a 600 000 litre fuel depot situated at the Otjiwarongo town. This fuel depot distributes fuel to mines as well as NAMCOR's northern-based customers. The NAMCOR Otjiwarongo Cleanup Campaign was implemented following NAMCOR'S approach to the Municipality of Otjiwarongo. This program encourages members of the town as well as the municipal leadership which includes the mayor as well as the employees of the municipal leadership to make a concerted effort to clean various sections of the town.<sup>269</sup>

### *(iii) Mtc*

Mobile Telecommunications Company ('MTC') Namibia is a mobile telecommunications company in Namibia. MTC aims to strengthen their relationships with their stakeholders and take pride in their custodian role of illustrating the socially responsible position that MTC adopts in their community which aims to improve business stimulation, corporate social responsibility, and national development objectives.

Social investment has become a central initiative of MTC by continuously enhancing their stakeholder engagement, internal communication, and sponsorships. MTC has achieved major corporate social investment successes such a spending N\$ 17.5 million on various sporting events such as rugby, football, and cricket.

MTC has also assisted with direct and indirect employment creation through wages for coaches, players, and administrators. MTC has also sponsored an amount of N\$1.6 million to the Namibia Rugby Union ('NRU'). This sponsorship was a significant initiative as it enabled

---

<sup>269</sup> 'Corporate Social Responsibility' available at <https://www.namcor.com.na/corporate-social-responsibility/>, accessed on 10 December 2020.

the national rugby team to participate in the 2011 World Cup in New Zealand. Failing which, Namibia would have been denied representation at the 2011 Rugby World Cup.<sup>270</sup>

## VI CONCLUSION

This chapter illustrates the current corporate governance models in South Africa and Namibia. The stark contrast between the corporate governance framework in South Africa and that in Namibia is very evident. This chapter also examines corporate scandals in Namibia and South Africa which exhibit the current trend of companies who engage in unethical conduct and therefore, generally, disregard the very principles that corporate governance practice is premised on.

It is clear that although corporate governance reform is receiving increasing attention, high-profile corporate scandals still occur far too frequently on the continent. These corporate scandals are premised, at least in part, on ethical issues, illustrating the extent to which ethical codes have been neglected or ignored.

---

<sup>270</sup> See [https://www.mtc.com.na/sites/annual-reports/2011/corporate\\_social\\_investment.html](https://www.mtc.com.na/sites/annual-reports/2011/corporate_social_investment.html), accessed on 12 January 2021.

## CHAPTER 6

### CONCLUSION

#### I OVERVIEW OF STUDY

The objective of this dissertation is to align the principles of *Ubuntu* with corporate governance practices in Namibia and South Africa. The study extends beyond limiting the discussion to *Ubuntu* principles in isolation, but expands on ethical perspectives as well as corporate social responsibility in relation to the principles of *Ubuntu*, and how these are applied and can be used to further enhance corporate governance in these countries.

The first research question is modelled to how ethical perspectives, corporate social responsibility, and *Ubuntu* find application and significance for corporate governance practices. The second research question is aimed at examining the current state of corporate governance frameworks in South Africa and Namibia.

In order to answer the research question and meet the objective of this study, this paper commences by discussing corporate governance frameworks and theories in general. It then investigates ethical perspectives of corporate governance, corporate social responsibility, and the African notion of *Ubuntu*. These are extensively probed in regard to their individual applicability to corporate governance as well as well as how these three concepts are interlinked with one another.

Corporate governance practices in South Africa and Namibia are then explored further, namely the existing current corporate governance frameworks, case studies illustrating failures of corporate governance practice in companies, and examples of how corporate social responsibility is successfully practiced in companies in South Africa and Namibia.

#### II FINDINGS

It is respectfully submitted that this research paper has revealed the following:

##### *(a) Finding 1*

The principles of *Ubuntu* find application among a number of traditional corporate governance models, theories, and ethical leadership perspectives. Corporate governance models in South Africa and Namibia limit their direct application of the notion of *Ubuntu*. The principles of

*Ubuntu* are significant and it is important to extensively acknowledge and appreciate them in the African governance context.

*Ubuntu* can be used to enhance the principle of right of action under the deontological ethical perspective. *Ubuntu* principles along with relational theories can also assist with enhancing the current corporate governance models. It is hoped that this will ultimately alter the very nature of business transactions by aligning these with the *Ubuntu* principles, thereby enhancing and developing effective corporate governance practices.

*(b) Finding 2*

Corporate governance practices and models have evolved extensively in South Africa over the last two decades. Corporate governance practices in Namibia draws largely from the South African King Codes on Corporate Governance. A number of corporate governance failures persist in these countries as corporate fraud and unethical behaviour in corporations continue to occur.

Although corporations have the tendency to largely comply (at least technically) with corporate social responsibility principles, academics have questioned the motive behind the extent of such compliance and whether it is employed as a mere ‘tick box’ approach, rather than a substantive and genuine intention to benefit society and stakeholders. This concern strengthens the need to align corporate social responsibility with the underlying principles of *Ubuntu*, which hopefully can ultimately advance corporate governance practice in this area and a genuine corporate commitment thereto.

### III SUGGESTIONS FOR FURTHER STUDY

As this study delineates, the societies in Africa draw largely from African history and find structure under serving the community under the principles of the *Ubuntu* philosophy. The traditional Westernised perception of a ‘corporation’, premised on furthering the interests of the shareholders, is inconsistent with the African values and perception.

The community plays a central role in African relations and this ought to drive corporate structure and decision making. Although African countries such as South Africa and Namibia have a similar corporate and legal landscape, this does differs from other African countries. Adopting an Afro–centric corporate governance model, premised on building African communities, and founded by the fundamental principles informing the notion of *Ubuntu*, can be used as a guideline for African corporations, being beneficial for promoting

transparency, unity, and combatting corruption on the continent, moving away for the Western way of economic control.

## BIBLIOGRAPHY

### PRIMARY SOURCES

#### BOOKS

- Bain N & Band D *Winning Ways through Corporate Governance* (1996) Macmillan: London
- Bateman T S & Snell S A *Management: Building Competitive Advantage* 4 ed (1999) McGraw–Hill College
- Byars S M & Stanberry K *Business ethics* (2018) 12th Media Services: Georgia
- Cassim M F, Cassim R, Jooste R, Shev J, Yeats J L & Cassim F H I (ed) *Contemporary Company law* 2 ed (2012) Juta & Co Ltd: Claremont
- Du Plessis J J, McConvill J & Bagaric M (2005) *Principles of contemporary corporate governance*, Cambridge University Press: New York, N.Y
- Fox W *A guide to public ethics* 1 ed (2010) Juta & Co Ltd: Claremont
- Howell K E & Sorour M K *Corporate Governance in Africa: Assessing Implementation and Ethical Perspectives* (2016) Springer: London
- Hursthouse R *On virtue ethics* (1999) Oxford University Press: Oxford
- International Corporate Governance Network *ICGN Global Governance Principles* 5 ed (2017) ICGN available at [http://icgn.flpbks.com/icgn\\_global\\_governance\\_principles/ICGN\\_Global\\_Governance\\_Principles.pdf](http://icgn.flpbks.com/icgn_global_governance_principles/ICGN_Global_Governance_Principles.pdf), accessed on 3 March 2021
- Naidoo R *Corporate Governance: An Essential Guide for South African Companies* 2 ed (2009) LexisNexis: South Africa
- Naudé P, Hamilton B, Ungerer M, Malan D & de Klerk M *Business perspective on the Steinhoff saga* (2018) University of Stellenbosch Business School
- OECD *G20/OECD Principles of Corporate Governance* (2015) OECD Publishing: Paris
- Ogude J (ed) *Ubuntu and the Reconstitution of community* (2019) Indiana University Press: Indiana
- Rossouw D (ed), Kretzschmar L, Prinsloo F, Sander K, Siebrits J, Vuuren L & Vorster P *Ethics for Accountants and Auditors* 4 ed (2019) Oxford University Press: South Africa
- Wiese T *Corporate Governance in South: With International Comparisons* 2 ed (2014) Juta & Co Ltd: Cape Town
- Wixley T & Everingham G *Corporate governance* 3 ed (2010) Siber Ink: South Africa

Wixley T, Everingham G & Louw K *Corporate Governance: The directors guide* 5 ed (2019)  
Siber Ink: Cape Town

## CHAPTERS IN BOOKS

Freeman E & McVea J 'A stakeholder approach to strategic management' in Hitt M, Freeman E & Harrison J (eds) *Handbook of Strategic Management* (2001) Blackwell Publishing: Oxford

## LEGISLATION

Banking Institutions Act 2 of 1998

Broad-based Black Economic Empowerment Act 53 of 2003 Companies Act 61 of 1973

Companies Act 71 of 2008

Employment Equity Act 55 of 1998

Labour Relations Act 66 of 1995

Occupational health and Safety Act 85 of 1003

Promotion of Access to Information Act Act 20 of 2000

State-Owned Enterprises Governance Act 2 of 2006

The Constitution of the Republic of South Africa, 1996

The Constitution of the Republic of Namibia Act 1 of 1990

## REGULATIONS

Companies Regulations 2011

## REPORTS AND PAPERS

IDoSA *King II Report on Corporate Governance for South Africa* (2002)

IDoSA *King III Report on Corporate Governance for South Africa* (2009) available at  
[https://cdn.ymaws.com/www.iodsa.co.za/resource/resmgr/king\\_iii/King\\_Report\\_on\\_Governance\\_fo.pdf](https://cdn.ymaws.com/www.iodsa.co.za/resource/resmgr/king_iii/King_Report_on_Governance_fo.pdf), 2 April 2020

IDoSA *King IV Report on Corporate Governance in South Africa* (2016) available at [https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA\\_King\\_IV\\_Report\\_-\\_WebVersion.pdf](https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA_King_IV_Report_-_WebVersion.pdf), 2 April 2020

Jones I & Pollitt M 'Understanding how issues in corporate governance develop: Cadbury report to higgs review' (2003) ESRC Centre for Business Research, University of Cambridge Working Paper No 277

Linda Muswaka 'Corporate Governance under the South African Companies Act: A critique' Proceedings of World Business and Economics Research Conference 5 December 2012  
4

Report of the Committee on the Financial Aspects of Corporate Governance, London (1 December 1992) ('Cadbury Report')

## SOUTH AFRICAN CASE LAW

*South African Fabrics Ltd v Millman N.O & Another* 1972 (4) SA 592 (A)

## INTERNATIONAL CASE LAW

*Bank of Namibia v Small and Medium Enterprises Bank Ltd and 6 Others* (2017) NAHCMD 350

*Hutton v West Cork Railway Co* (1883) 23 ChD 654

*John Shaw & Sons (Salford) Ltd v Shaw* (1935) 2 KB 113 (CA)

*Metropolitan Bank of Zimbabwe Ltd and Another v Bank of Namibia* (2018) NASC 407

*Re Smith & Fawcett Ltd* (1942) Ch 304

## SECONDARY SOURCES

### JOURNAL ARTICLES

- Armstrong P 'The King Report on Corporate Governance' (1995) 3 *Juta's Business Law* 65–70
- Arthur E 'The Ethics of Corporate Governance' (1987) 6 *The Journal of Business Ethics* 59–70
- Baumane-Vitolina I, Cals I & Sumilo E 'Is ethics rational? Theological, deontological and virtue ethics theories reconciled in the context of traditional economic decision making' (2016) 39 *Procedia Economics and Finance* 108–114
- Brack G, Hill M B, Edwards D, Grootboom N & Lassister P S 'Adler and Ubuntu: Using Adlerian principles in the new South Africa' (2003) 59(3) *Journal of Individual Psychology* 316–326
- Douglas F & Taylor P 'Defining Ubuntu for business ethics – a deontological approach' (2014) 33(3) *South African Journal of Philosophy* 331–345
- Esser I-M & Du Plessis J J 'The Stakeholder Debate and Directors' Fiduciary Duties (2007) 19 *South African Mercantile Law Journal* 346–363
- Esser I-M & Havenga M K 'Shareholder Participation in Corporate Governance' (2008) 1 *Speculum Juris* 74–94
- Esser I-M 'Corporate Social Responsibility: A Company Law Perspective' (2011) 23(3) *SA Mercantile Law Journal* 317–335
- Esser I-M & Dekker A 'The dynamics of corporate governance in South Africa: Broad based black economic empowerments and the enhancement of good corporate governance principles' (2008) 3(3) *Journal of International Commercial Law and Technology* 157–169
- Fig D 'Manufacturing Amnesia: Corporate Social Responsibility in South Africa' (2005) 81(3) *International Affairs* 599–617
- Harrison J S, Freeman R E & de Abreu M C S 'Stakeholder theory as an ethical approach to effective management: applying the theory to multiple contexts' (2015) 17(55) *Review of Business Management* 858–869
- Heath J 'The uses and abuses of agency theory' (2009) *Business Ethics Quarterly*

- Jesover F & Kirkpatrick G ‘The Revised OECD Principle of Corporate Governance and their relevance to non-OECD countries’ (2005) 13(2) *Corporate Governance: an International Review* 127–136
- Kabir M D H, Mukuddem-Petersen J & Petersen M A ‘Corporate Social Responsibility Evolution in South Africa’ (2015) 13(4–1) *Problems and Perspectives in Management* 281–289
- Khomba J K ‘Business ethics and corporate governance: An African socio-cultural framework’ (2012) 6(9) *African Journal of Business Management* 3510–3518
- Khomba J K, Bakuwa R C & Kangaude-Ulaya E C ‘Shaping business ethics and corporate governance: An inclusive African *Ubuntu* philosophy’ (2013) 13(5–A) *Global Journal of Management and Business* 31–42
- Kloppers H ‘Driving corporate social responsibility through black economic empowerment’ (2014) 18 *Law Democracy and development* 58–79
- Lantos G P ‘The ethics of altruistic corporate social responsibility’ (2001) 19(3) *Journal of Consumer Marketing* 1–39
- Letza S, Kirkbridge J, Sun X & Smallman C ‘Corporate governance theorising: limits, critics and alternatives’ (2008) 50(1) *International Journal of Law and Management* 17–32
- Letza S, Sun X & Kirkbride J ‘Shareholding versus stakeholding: A critical review of corporate governance’ (2004) 12(3) *Corporate Governance An International Review* 242–262
- Mangena F ‘African Ethics through Ubuntu: A Postmodern Exposition’ (2016) 9(2) *Africology: The Journal of Pan African Studies* 66–80
- Mnyaka M & Motlhabi M ‘The African concept of Ubuntu/Boto and its socio-moral significance’ (2015) 3(2) *Black Theology: An International Journal* 215–237
- Mohamad S ‘The Importance of effective corporate governance’ (2004) 1 *SSRN Electronic Journal* 1–10
- Natesan P ‘The Evolution and significance of the “apply and explain” regime in King IV’ (2020) *Journal of Global Responsibility* 155–160
- Nussbaum B ‘Ubuntu: reflections of a South African on Our Common Humanity’ (2003) 4(4) *Reflections: The SOL Journal* 21–26
- Nzimakwa T I ‘Practicing Ubuntu and leadership for good governance’ (2014) 7 *African Journal of Public Affairs* 30–41

- Olson J F ‘South Africa moves to a global model of corporate governance but with important national variations’ (2010) 1 *Acta Juridica* 219–247
- Pérezts M, Russon J-A & Painter M ‘This time from Africa: Developing a relational approach to values-driven leadership’ (2020) 161 *Journal of Business Ethics* 731–748
- Phillips R, Freeman E & Wicks A C ‘What stakeholder theory is not’ (2003) 13(4) *Business Ethics Quarterly* 479–502
- Ramalho A ‘Corporate Governance and the call for stakeholder inclusivity: Do Stakeholders Lose Out?’ (2009) *The Corporate Report* 18–22
- Ramnath M & Nmehielle V ‘Interpreting directors’ fiduciary duty to act in the company’s best interests through the prism of the Bill of Rights: Taking other stakeholders into consideration’ (2013) 2 *Speculum Juris* 98–115
- Ramose M B ‘But Hans Kelsen was not born in Africa: a reply to Thaddeus Metz’ (2007) 26(4) *South African Journal of Philosophy* 347–355
- Ramose M B ‘The death of democracy and the resurrection of timocracy’ (2010) 39(3) *Journal of Moral Education* 291–303
- Rossouw J & Styan J ‘Steinhoff collapse: a failure of corporate governance’ (2019) 33(1) *International Review of Applied Economics* 163–170
- Rwelamila P D, Talukhaba A A & Ngowi A B ‘Tracing the African project failure syndrome: The significance of Ubuntu’ (1999) 6(4) *Engineering, Construction and Architectural Management* 335–346 available at [https://ubrisa.ub.bw/bitstream/handle/10311/612/Rwelamila\\_ECAM\\_1999.PDF?sequence=1&isAllowed=y](https://ubrisa.ub.bw/bitstream/handle/10311/612/Rwelamila_ECAM_1999.PDF?sequence=1&isAllowed=y), accessed on 10 January 2021
- Schleifer A & Vishny R W ‘A Survey of Corporate Governance’ (1997) 52(2) *The Journal of Finance* 737–783
- Secchi D ‘Utilitarian, managerial and relational theories of corporate social responsibility’ (2007) 9(4) *International Journal of Management Reviews* 347–373
- Seidl D, Sanderson P & Roberts J ‘Applying the “comply-or-explain” principle: discursive legitimacy tactics with regard to codes of corporate governance’ (2013) 17 *J Manag Gov* 791–826
- Tappek K ‘Corporate social responsibility in the light of Kant’s categorical imperative’ (2018) 21(7) *Annales Ethics in Economic Life* 86–96
- West A ‘Theorising South Africa’s Corporate Governance’ (2006) 68 *The Journal of Business Ethics* 433–448

- West A ‘Ubuntu and business ethics: problems, perspectives and prospects’ (2014) 121(1) *Journal of Business Ethics* 47–61
- Woerman M & Engelbrecht S ‘The Ubuntu challenge to business: From stakeholders to relationholders’ (2019) 157 *Journal of Business Ethics* 27–44

## THESES AND DISSERTATIONS

- Chata T *An Evaluation of the relationship between corporate governance and corporate performance of public enterprises in Namibia: A case study of Telecom Namibia & Air Namibia* (unpublished master’s thesis, University of Namibia, 2010)
- Ishekwa A T *The impact of corporate governance on the performance of Air Namibia* (unpublished master’s thesis, University of Namibia, 2019)
- Johannes J *Corporate Social Responsibility in South Africa: How Corporate Partnerships can advance the Sustainability Agenda* (unpublished LLM thesis, University of Western Cape, 2016)
- Shifidi S S K ‘Evaluation of Corporate Governance in State–Owned Enterprises in Namibia’ (unpublished master’s thesis, University of Stellenbosch, 2014)

## INTERNET SOURCES

- ‘A case for corporate governance’ World Finance available at <https://www.worldfinance.com/news/a-case-for-corporate-governance>, accessed on 4 April 2020
- ‘About ASBC & SVC’ available at <https://svcimpact.org/about>, accessed on 2 May 2020
- ‘Air Namibia board resigns ... accuses shareholder of governance violations’ *Windhoek Observer* available at <https://www.observer24.com.na/air-namibia-board-resigns-accuses-shareholder-of-governance-violations/>, accessed on 6 February 2021
- ‘Corporate and Social Responsibility’ available at <https://www.oldmutual.co.za/about/old-mutual-insure/corporate-and-social-responsibility>, accessed on 10 December 2020
- ‘Corporate Social Responsibility’ available at <https://www.namcor.com.na/corporate-social-responsibility/>, accessed on 10 December 2020

- ‘Deloitte. Corporate Governance Survey 3rd Edition for Namibia’ *Deloitte* 2016 available at <https://www2.deloitte.com/content/dam/Deloitte/na/Documents/risk/na-Deloitte-Namibia-Governance-Survey-2016.pdf>, accessed on 8 July 2020
- ‘Deloitte. The Namcode – The Corporate Governance Code for Namibia’ *Deloitte* (first published July 2014 last revised February 2016) available at [https://www2.deloitte.com/content/dam/Deloitte/na/Documents/risk/za\\_Deloitte\\_NamCode\\_Brochure.pdf](https://www2.deloitte.com/content/dam/Deloitte/na/Documents/risk/za_Deloitte_NamCode_Brochure.pdf), accessed on 8 July 2020
- ‘FTSE/JSE Responsible Investment index series’ available at <https://www.jse.co.za/services/indices/ftsejse-responsible-investment-index-series>, accessed on 7 November 2020
- ‘G20/OECD Principles of Corporate Governance’ OECD 2015, available at [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en), accessed on 2 April 2020
- ‘Inside the Steinhoff saga, one of the biggest cases of corporate fraud in South African business history’ *CNB Africa* 2018, available at <https://www.cnbc africa.com/insights/steinhoff/2018/06/28/steinhoff-rise-fall/>, accessed on 1 June 2020
- International Corporate Governance Network ‘ICGN Global Governance Principles’ available at [http://icgn.flpbks.com/icgn\\_global\\_governance\\_principles/ICGN\\_Global\\_Governance\\_principles.pdf](http://icgn.flpbks.com/icgn_global_governance_principles/ICGN_Global_Governance_principles.pdf), accessed on 6 April 2020
- ‘Making the difference education programme’ available at [https://www.woolworths.co.za/content/article/good-business-journey/education-initiatives/\\_/A-cmp205956](https://www.woolworths.co.za/content/article/good-business-journey/education-initiatives/_/A-cmp205956), accessed on 7 November 2020
- ‘Namibia’s 30 years Developmental Journey’ available at [https://www.npc.gov.na/?wpfb\\_dl=373](https://www.npc.gov.na/?wpfb_dl=373), accessed on 3 June 2020
- ‘Namibia’s Fishrot scandal from start to present’ *Under Current News* 6 January 2020 available at <https://www.undercurrentnews.com/2020/01/06/namibias-fishrot-scandal-from-start-to-present/>, accessed on 6 June 2020
- ‘The corporate social investment programme’ available at [https://www.mtc.com.na/sites/annual-reports/2011/corporate\\_social\\_investment.html](https://www.mtc.com.na/sites/annual-reports/2011/corporate_social_investment.html), accessed on 12 January 2021
- ‘The Ten Principles of the UN Global Compact’ available at <https://www.unglobalcompact.org/what-is-gc/mission/principles>, accessed on 13 April 2020

‘Ubuntu and its influence on leadership commerce Essay’ *UK Essay* 2018, available at <https://www.ukessays.com/essays/commerce/Ubuntu-and-its-influence-on-leadership-commerce-essay.php>, accessed on 2 April 2020

‘We didn’t know the Fishcor board members’ *The Namibian Sun* 2020 available at <https://www.namibiansun.com/news/we-didnt-know-fishcor-board-members2020-02-19>, accessed on 12 June 2020

African Development Bank *Bank Group Policy on Good Corporate Governance* (1999) available at <https://www.afdb.org/en/documents/document/bank-group-policy-on-good-governance-27134>, accessed on 7 August 2020.

Alexandrea Roman ‘King III Report: How South Africa Revolutionised Corporate Governance’ 2014 available at <https://www.azeusconvene.com/articles/south-africa-revolutionize-corporate-governance>, accessed on 2 May 2020

Botha C ‘Engen: CSR Campaign’ available at [https://www.candicebothacreative.com/engen-csr-campaign\\_2](https://www.candicebothacreative.com/engen-csr-campaign_2), accessed on 10 December 2020

Cronje J ‘Five thing to know about the court case against former Steinhoff CEO Markus Jooste’ *News 24* 2019 available at <https://www.news24.com/fin24/companies/retail/five-things-to-know-about-the-court-case-against-former-steinhoff-ceo-markus-jooste-20190807-2>, accessed on 1 June 2020

Dillon R S ‘Respect’ (2003) *The Stanford Encyclopedia of Philosophy*, Spring 2018 ed, available at <https://plato.stanford.edu/archives/spr2018/entries/respect>, accessed on 14 October 2020

GIPF ‘Integrated Annual Report 2019’ available at [https://www.gipf.com.na/web/reports/annual/4070\\_GIPF\\_IAR\\_online.pdf](https://www.gipf.com.na/web/reports/annual/4070_GIPF_IAR_online.pdf), accessed on 18 November 2020

IoDSA ‘King Report on Corporate Governance in SA’ available at <https://www.iodsa.co.za/page/kingIII>, accessed on 2 April 2020

Johnson R & Cureton A ‘Kant’s Moral Philosophy’ (2004) *The Stanford Encyclopedia of Philosophy Archive*, Spring 2019 ed, last revised 7 July 2016 available at <https://plato.stanford.edu/archives/spr2019/entries/kant-moral>, accessed on 14 October 2020

‘King IV Summary Guide’ available at <https://home.kpmg/za/en/home/insights/2016/10/king-iv-summary-guide.html>, accessed on 2 May 2020

Friedman, M ‘The social responsibility of business is to increase its profits’ *The New York Times Magazine* 13 September 1970 available at <https://www.nytimes.com/1970>

*/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html*,  
accessed on 13 April 2020

Namiban Breweries Limited 'Corporate Social investment' available at  
*http://www.nambrew.com/ir\_2016/strategic-partnership/corporate-social-investment-support/*, accessed on 10 December 2020

Tyolwana V 'Engen school programme contributes to the transformation of the STEM field'  
2020 available at *https://social-tv.co.za/engen-school-programme-contributes-to-the-transformation-of-the-stem-field/*, accessed on 10 December 2020

Roman A 'King III Report: How South Africa Revolutionised Corporate Governance' 2014  
available at *https://www.azeucovene.com/articles/south-africa-revolutionize-corporate-governance*, accessed on 2 May 2020

Walker D & Meiring I 'King Code and developments in corporate governance' 2010 available  
at *http://www.uct.ac.za/usr/companylaw/downloads/legislation/WLB\_2010-09\_King\_Code\_and\_Corporate\_Governance.pdf*, accessed on 8 November 2020