

Special Issue on Confronting the Effects
of the COVID-19 Pandemic on
Corporate Governance,
Corporate Insolvency and
Financial Education Measures in Practice

Guest Editor
Prof Howard Chitimira

Vol 36 No 2 (2022)
Published 30 December 2022

ISSN 2523-2177



Cite as: Thambi "Addressing Social
Inequality through The Lens of
Corporate Social Responsibility in
South Africa" 2022 (36) Spec Juris
256–273



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Addressing Social Inequality through The Lens of Corporate Social Responsibility in South Africa

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Abstract

Social recompense is the State's domain; however, companies have inadvertently become contributors thereto. A position paper by the Sustainable Development Forum (SDF) of the Institute of Directors of South Africa (IoDSA), suggested the inclusion of social inequality on the agenda of companies, as a strategic business risk that requires a more business-like approach¹ as opposed to Corporate Social Investment (CSI).² Revisiting the SDF's paper amidst COVID-19 deepening structural and spatial inequalities,³ legacy inequalities, and governments' failed interventions in South Africa is judicious.⁴ This article briefly surveys the current background and governance landscape of CSR in South Africa, something that the SDF should have embarked on before arriving at its suggestion. The article highlights

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1 Sustainable Development Forum "Addressing Social Inequality in Business" Institute of Directors of Southern Africa (2017) 6 https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/4B905E82-99EB-48B1-BCDA-F63F37069065/Addressing_social_inequality_in_business.pdf (accessed 02-12-2019).

2 *Ibid* 2–9.

3 Institute of Risk Management South Africa *IRMSA Risk Report South Africa Risks* 6 ed (2020) https://www.irmsa.org.za/page/2020_Risk_Report (accessed 02-12-2019); Sachs *Common Wealth: Economics for a Crowded Planet* (2008) 17–53; Seekings and Nattrass *Class, Race, and Inequality in South Africa* (2008) 346–352.

4 Institute of Risk Management South Africa *IRMSA Risk Report*.

that the CSR agenda is devoid of social inequality, and there are no single indicators for social inequality.⁵ Most CSR policies do not address the dynamics of dysfunctional distributional issues. Therefore, the article argues for an overhaul of the CSR landscape, and clarity of CSR's definition, objectives, and outcomes within a regulatory model linked to specific developmental plans.⁶ Lastly, the article calls for clarity on the role of the private sector in addressing social inequality, supported by non-trade-related CSR expenditure linked to developmental plans.⁷

Keywords: Social inequality; sustainable development forum; corporate social responsibility; CSR expenditure

1 INTRODUCTION

Global progress has led to complacency, despite the effects of past pandemics on poverty and social inequality and vice versa.⁸ However, the world is now experiencing simultaneous transformation(s), around perceptions of sustained economic growth, sustainable development crises, social inequality, and poverty. Despite the experienced excess of simultaneous vicissitudes,⁹ the United Nations Sustainable Development Goals (SDG), the Africa 2063 Agenda, and the South African National Development Plan 2030 (NDP) are unanimous in addressing and minimising inequalities through systematic and determined approaches.¹⁰ One example in particular, concerning the internationally agreed development goals, is SDG 10, which highlights tangible measures to arrive at improved equality — for example, social protection policies.¹¹ The COVID-19 pandemic has deepened the fissure of global inequalities, as countries face severe risks because of structural inequalities.¹² According to the World Bank, South Africa remains a dual economy, and the most economically unequal country.¹³ According to one of the first Inequality Trends Report (Inequality Report) for South Africa,¹⁴ the multifaceted nature of inequality in South Africa needs varied approaches to assess it, but collating the narrative of inequality into a single indicator is challenging.¹⁵

The primary role of government is to protect the vulnerable, rebuke lawbreakers, provide infrastructure and services, fund businesses, and taxing the latter in order to fund revenue.¹⁶ However, amidst a relatively developed infrastructure, high unemployment, housing shortages,

5 Muruviwa, Nekhwevha and Akpan “Corporate Social Responsibility as a Drive to Community Development and Poverty Reduction: A Stakeholder Approach to Development in Zimbabwe” 2018 *The Journal for Transdisciplinary Research in Southern Africa* 2; also see Jenkins “Globalization, Corporate Social Responsibility and Poverty” 2005 *International Affairs* 525–540.

6 Institute of Risk Management South Africa *IRMSA Risk Report*.

7 Muruviwa *et al.* 2018 *JTRSA* 3.

8 World Economic Forum *The Global Risks Report* 14 ed (2019) https://www3.weforum.org/docs/WEF_Global_Risks_Report_2019.pdf (accessed 10-12-2019); Sachs *Crowded Planet* 17–53.

9 Sachs *Crowded Planet* 17–53.

10 Sustainable Development Forum “Addressing Social Inequality in Business” 7–9.

11 United Nations Department of Economic and Social Affairs “World Social Report 2020: Inequality in a Rapidly Changing World” 21 1–216 <https://www.un.org/development/desa/dspd/world-social-report/2020-2.html> (accessed 02-12-2020).

12 Finn and Kobayashi “Structural Inequality in the Time of COVID-19: Urbanization, Segregation, Pandemic Control in Sub-Saharan Africa” 2020 *Dialogues in Human Geography* 1.

13 Institute of Risk Management South Africa *IRMSA Risk Report*

14 Maluleke “Inequality Trends in South Africa: A Multidimensional Diagnostic of Inequality” <https://www.statssa.gov.za/publications/Report-03-10-19/Report-03-10-192017.pdf> accessed 25-01-2020).

15 Maluleke “Inequality Trends in South Africa”.

16 Institute of Risk Management South Africa *IRMSA Risk Report*.

environmental degradation, crime, low skills, and the Human Immunodeficiency Virus (HIV)/Acquired Immunodeficiency Syndrome (AIDS) epidemic, the South African government has failed in its role.¹⁷ Its social policies are not cogent in adequately addressing issues such as poverty,¹⁸ nor does it reflect on the redistributive aspect of government spending.¹⁹ Its response to COVID-19 in following best practice such of the World Health Organization (WHO), did not place South Africa on par with its counterparts; who have robust tax bases, universal access to infrastructure, and strong government.²⁰ Since transformation has become a benefactor for factional and individual gain, at the expense of the unequal,²¹ the SDF should have corroborated the State's role insofar as its development policy, regulatory functions, and social inequality are concerned. Nevertheless, CSR initiatives continue to create opportunities for public-sector agencies in developing countries to promote their development policy goals.²² The SDG, Millennium Development Goals (MDG) and National Development Plans (NDP), as well as Local Economic Development (LED), are instruments for government to address social inequality.²³ As such, the role of government in CSR could be direct or indirect, to include conflict resolution, encouraging alliances and partnerships geared toward the developmental goals.²⁴ Equally, there are many sectors in South Africa, which have the potential to consolidate LED initiatives, however, politics is often the obstacle. Given these challenges, it is incumbent on government to clarify the context for its CSR agenda, with a sound CSR policy, regulation and enforcement,²⁵ and linkages between this agenda to developmental goals. Since studies indicate that economic growth does not significantly influence poverty, unemployment and inequality,²⁶ CSR policies should be clear regarding plans to target poverty (not growth) in order to curb it.²⁷ At the same time, it must also provide clarity as to the expected role of stakeholders like companies toward this CSR agenda,²⁸ and necessary incentives to support business in its respective role namely accelerated approvals for projects with a CSR strategy.²⁹

Companies have a stake in South Africa's economic stability, democracy and improved infrastructure;³⁰ it is part of an intricate, interrelated web of role-players and contributors

17 Seekings and Nattrass *Class, Race, and Inequality in South Africa* (2008) 44–48.

18 *Ibid.*

19 Webster “Confronting Inequality: The South African Crisis, Michael Nassen Smith (Ed)” 2018 *New Agenda: South African Journal of Social and Economic Policy* 48.

20 De Groot and Lemanski “COVID-19 Responses: Infrastructure Inequality and Privileged Capacity to Transform Everyday Life in South Africa” 2020 *International Institute for Environment and Development* 14.

21 Bernstein “Business and Development Thinker” 2020 <https://www.cde.org.za/wp-content/uploads/2021/06/Lant-Pritchett-in-conversation-with-Ann-Bernstein.pdf> (accessed 02-09-2020); also see further Bernstein “South Africa Must Choose Wisely from a Plethora of Economic Recovery Plans” 2020 <https://www.dailymaverick.co.za/article/2020-08-18-south-africa-must-choose-wisely-from-a-plethora-of-economic-recovery-plans/> (accessed 02-09-2020).

22 Sagebien and Lindsay *Governance Ecosystems CSR in the Latin American Mining Sector* (2011) 66.

23 Mlambo, Ndebele and Zubane “Local Economic Development as a Catalyst in Poverty Reduction in South Africa: A Systemic Review of Literature” 2019 *Journal of Public Administration* 693.

24 Sagebien and Lindsay *Mining Sector* 82–83.

25 Sagebien and Lindsay *Mining Sector* 69.

26 Zhanje and Tala “Is Economic Growth Instrumental in Addressing Socio-Economic Challenges in the Post-Apartheid South Africa?” 2016 *Journal of Public Administration* 278.

27 Zhanje and Tala 2016 *JPA* 289.

28 Sagebien and Lindsay *Mining Sector* 67.

29 Sagebien and Lindsay *Mining Sector* 69.

30 Bernstein “Business and Development Thinker” 2020; also see further Bernstein “South Africa Must Choose Wisely” 2020.

promoting growth and sustainability.³¹ South African company law has evolved, beyond return on investments to shaping corporate behaviour, as well as dealing with issues of corporate governance, corporate citizenship, and sustainable development. In support of good corporate governance and social responsibility, the Companies Act 71 of 2008 (the Companies Act) introduced significant changes to the duties of directors,³² ensuring responsible business decisions reflect organisational strategic objectives. It also introduced a regulatory framework based on social responsibility through long-term sustainability and value creation.³³ Aside from a company being a means to achieve economic and social benefit,³⁴ the social and ethics committee was established³⁵ and stakeholder protection was entrenched.³⁶ The King Code, though not law, also requires companies to consider all factors, which affect their ability to create value, while remaining socially responsible and implementing CSR principles — namely “good citizenship”.³⁷ Volkert argues that corporations/companies are development agents that implement CSR strategies, to derive poverty reduction in the Global South.³⁸

Most companies are conscious of their business activities, societal responsibilities, and benefits of stakeholder engagement. Their reporting on performance in relation to environmental, social, and governance (ESG) issues provides assurance to stakeholders, whilst remaining accountable to their social responsibilities in operating. Kloppers states that the relationship between the company and society seems to be entrenched in the concept of CSR,³⁹ because of the positive effect that a good reputation will have on the company’s bottom line.⁴⁰ International trends and developments suggest that the adoption of CSR rests on hopes of the private sector’s strategic role in achieving developmental goals of poverty alleviation.⁴¹ Yet, the South African government fails to regulate company contributions to NDP goals,⁴² enforce binding rules, and protect effective operations or corporate reputation, but pressurises companies to attain a licence to operate via CSI/CSR, Black Economic Empowerment (BEE), and sectoral agreements. Companies, particularly mining companies, having recognised this failure began framing their CSR policies as sustainable development.⁴³ In this regard, many mining companies in Africa have exceeded expectations and gained favourable operating environments.⁴⁴ To them, CSR has become a gateway, spanning the gaps between the “formal legal system” with its strengths and

- 31 Sagebien and Lindsay *Mining Sector* 260; also see Hamann, Sonnenberg, MacKenzie and Hollesen “Local Governance as a Complex System: Lessons from Mining Sector in South Africa, Mali and Zambia” 2005 *Journal of Corporate Citizenship* 61–73.
- 32 Esser and Delpont “The Protection of Stakeholders: The South African Social and Ethics Committee and the United Kingdom’s Enlightened Shareholder Value Approach: Part 1” 2017 *De Jure* 103.
- 33 Esser and Delpont 2017 *De Jure* 107.
- 34 Section 7(d) of the Companies Act 71 of 2008; also see Jennings “Are Shareholders Exclusive Beneficiaries of Fiduciary Duties in South Africa? The Role of Fiduciary Obligations in the 21st Century” 2015 *The Journal of Corporate and Commercial Law & Practice* 54–81.
- 35 Section 72(4) of the Companies Act 71 of 2008.
- 36 Section 76(3)(b) of the Companies Act 71 of 2008.
- 37 Section 72(4) of the Companies Act 71 of 2008.
- 38 Muruviwa *et al.* 2018 *JTRSA* 2; also see Volkert *Companies as Agents of Overcoming Poverty and Development. Their Contribution out the View of Ordoliberalism and Capability Approach I* (2002) 393.
- 39 Muruviwa *et al.* 2018 *JTRSA* 1; also see Idemudia 2014 “Corporate Social Responsibility and Development in Africa: Issues and Possibilities” *Geography Compass* 421–435.
- 40 Kloppers 2014 “Introducing CSR – The Missing Ingredient in the Land Reform Recipe” *PELJ* 714.
- 41 Newell and Frynas “Beyond CSR? Business, Poverty and Social Justice: An Introduction” 2007 *Third World Quarterly* 669–681.
- 42 Fig “Manufacturing Amnesia: Corporate Social Responsibility in South Africa” 2005 *International Affairs (Royal Institute of International Affairs)* 599–617.
- 43 Sagebien and Lindsay *Mining Sector* 275.
- 44 *Ibid.*; also see Boerzel and Risse “Governance Without a State: Can it Work?” 2010 *Regulation & Governance* 113–134.

deficiencies, and the “real world” with its complex, conflicting sets of demands and interests.⁴⁵ Whilst measuring profits is achievable, it is nearly impossible to reconcile divergent social demands⁴⁶ given the limited number of companies to address them. For these reasons, some argue that it is unrealistic to expect businesses in a globalised capitalist economy to operate as if the consequences of inequality, poverty, or social inequality were their main business risks and strategic objective — especially not without affecting their financial bottom line.⁴⁷

2 BACKGROUND

The proposal by the SDF is positive; however, I am of the view that it should have considered factors addressed in this article, namely legislative and other frameworks related to CSR. The SDF suggests that directors consider the socio-political context of social inequality when strategizing and providing assurance to redress social inequality.⁴⁸ Directors should integrate considerations of socio-economic conditions in their strategic planning.⁴⁹ The proposal goes on to state that most companies run CSI or philanthropic programmes, which are associated in cost terms; however, the scale of social inequality requires a more business-like approach with effective monitoring and measurement.⁵⁰ Thus, when embarking on risk management strategies, business risks should include risks related to the impact of social inequality on their organisations.⁵¹ For example, how unequal education affects the available workforce and productivity.⁵² The SDF argues that there are two kinds of social inequalities affecting business sustainability, that are within its activities and control, and which it can influence.⁵³ However, whilst the SDF argues that addressing social inequality is not about poverty but the consequences of inequality,⁵⁴ placing this responsibility on companies could be an overstated social norm with an understated cost to business.⁵⁵ Especially since there are no single indicators for social inequality.⁵⁶

Sustainability-related challenges will always affect companies. However, it is incumbent on directors to address the most critical risks related to their operating environments at any given point. This could explain why ESG disclosure scores do not always reflect the true ESG practices of companies.⁵⁷ It is essentially a balancing act. Conflicting ideals of CSR create a discourse between companies declaring their duty of care to stakeholders, while legitimising their self-interest with profit.⁵⁸ In considering the SDF position paper, one cannot ignore concerns around

45 Sagebien and Lindsay *Mining Sector* 62.

46 Bernstein “Business and Development Thinker” 2020; also see further Bernstein “South Africa Must Choose Wisely”

47 Newell and Frynas 2007 *Third World Quarterly* 669–681.

48 Sustainable Development Forum “Addressing Social Inequality in Business” 2.

49 *Ibid.* 9.

50 *Ibid.* 3.

51 *Ibid.*

52 *Ibid.*

53 Sustainable Development Forum “Addressing Social Inequality in Business” 5.

54 *Ibid.*

55 Blowfield “Corporate Social Responsibility: Reinventing the Meaning of Development?” 2005 *International Affairs (Royal Institute of International Affairs 1944)* 515–524.

56 Muruviwa *et al.* 2018 *JTRSA* 2; also see Jenkins 2005 *International Affairs* 525–540.

57 Johnson, Kemp and Erasmus “Assessing the Business Case for Environmental, Social and Corporate Governance Practices in South Africa” 2019 *South African Journal of Economic and Management Sciences* 11.

58 Crowther and Seifi *Redefining Corporate Social Responsibility: Developments in Corporate Governance and Responsibility: Developments in Corporate Governance and Responsibility* (2018) 27–41.

CSR initiatives appropriating governments' role in providing social welfare,⁵⁹ especially those initiatives disguised as marketing tools.⁶⁰ Perhaps the SDF should have considered the inclusion of the concept of the Human Development and Capability Approach in the CSR agenda and policies to alleviate social inequality and poverty.⁶¹ This could ensure that contributions made to CSR are measured via commodity bundles, namely the measurement of key dimensions of inequality by investment in rural education, employment creation in local communities, and empowerment of women and youth.⁶²

Globally, social inequality has plagued administrations, societies, and corporations with poverty, unemployment, and corruption — with disparities in access to health, education, and housing.⁶³ It is a domestic security threat compromising the stability of any country, and if unchecked could result in unrest.⁶⁴ Many assume that growing inequality is an unescapable, associated cost of the development process, however, this is not the case.⁶⁵ Systemic inequality permeates economic and social structures, whilst poverty and inequality are based on corruption (maladministration) which erodes trust in public administration and private enterprise. In South Africa, inequality is a critical policy challenge.⁶⁶ Its unemployment with over 56 million people is estimated at 29 per cent, the lack of basic services is a pandemic itself, and half of South Africans live in households with a per capita income of R1,149 or less per month.⁶⁷ According to Statistics SA in 2019, South Africa had an unemployment rate of 29.1 per cent, therefore, central to the SDFs' proposal is the need to scrutinise inequality beyond just economic measures.⁶⁸

Poverty and inequality are complex and require definitive identification in concept and measure.⁶⁹ Poverty is the lack of adequate means or needs necessary to live comfortably.⁷⁰ Whereas, inequality is differing standards of living across a population, implying levels of absolute and relative poverty.⁷¹ Both, a lack of human development that encompasses “multiple forms of deprivation and social exclusion”.⁷² This is an inadvertent derivative of globalisation and technological advancement, whilst economic inequality is the result of measured economic and political policies.⁷³ Economic inequality, frequency of protests, and trust in the government are some of the drivers of South Africa's rising social instability. According to the Centre for

59 Crowther and Seifi *Corporate Governance and Responsibility* 31.

60 Crowther and Seifi *Corporate Governance and Responsibility* 33.

61 Muruviwa, Nekhwevha and Akpan 2018 *JTRSA* 3, also see further Sen *Poverty and Famines: An Essay on Entitlements and Deprivation* (2001) 1–12.

62 Muruviwa *et al.* 2018 *JTRSA* 3, also see further Sen *Poverty and Famines: An Essay on Entitlements and Deprivation* (2001) 1–12.

63 Blowfield 2005 *International Affairs* 515–524.

64 Ntsikelelo “The Effect of Macro-Economic Policies on Sustainable Development in South Africa: 1994–2014” 2015 *Journal of Public Administration* 770–771.

65 United Nations Department of Economic and Social Affairs “World Social Report 2020” 32.

66 Posel, Casale and Grapsa “Household Variation and Inequality: The Implications of Equivalence Scales in South Africa” 2020 *African Review of Economics and Finance* 105.

67 Anna “Post-apartheid South Africa is World's Most Unequal Country” <https://apnews.com/article/nelson-mandela-elections-south-africa-international-news-johannesburg.html> (accessed 01-08-2020).

68 Webster “Why South Africa is the World's Most Unequal Society” <https://mg.co.za/article/2019-11-19-why-sa-is-the-world-s-most-unequal-society> 3 (accessed 01-08-2020).

69 Govender, Kambaran, Patchett *et al.* “Poverty and Inequality in South Africa and the World” 2007 *South African Actuarial Journal* 153.

70 *Ibid.* 118.

71 Govender *et al.* 2007 *SAAJ* 121.

72 Muruviwa *et al.* 2018 *JTRSA* 3; see also Volkert *Companies as Agents of Overcoming Poverty* (2002) 393.

73 The Oxfam International Report “Even it Up: Time to End Extreme Inequality Oxfam Report” (2014) 53 https://www-cdn.oxfam.org/s3fs-public/file_attachments/cr-even-it-up-extreme-inequality-291014-en.pdf (accessed 01-08-2020).

Development and Enterprise, the inequality ratio of the top and bottom 10 per cent of South Africans was 55:1 — compared to Brazil with 42:1.⁷⁴ However, there appears to be no correlation between the key elements of inequality — poverty and economic or income inequality — for example in Mexico, despite declining income inequality at national level; income growth has been slower for indigenous populations and poverty has increased.⁷⁵ This supports the view that despite some governments' conscious efforts to promote social inclusion, overall income inequality could remain unaffected or even grow — and vice versa.⁷⁶

The idea of the market being a critical vehicle for dealing with poverty and equality has been emphasized in several reports.⁷⁷ Per the SDF, social inequality should be included and addressed in the strategic objectives of companies as a CSR initiative — as opposed to CSI programmes.⁷⁸ They state that “information shows why social inequality should be regarded as a strategic leadership issue”, however, it would have been useful had the SDF expanded on this.⁷⁹ The debate between CSI and CSR as a mode of executing the mandate of social inequality is superfluous,⁸⁰ especially since South African businesses deliberately avoid the notion of CSR — in favour of CSI and “corporate citizenship”.⁸¹ Furthermore, the CSI definition sees business and development as entirely separate activities, development or “upliftment” being external to business.⁸² This bifurcation exposes corporate perception of production systems as non-developmental, requiring businesses to execute separate interventions to address development.⁸³ Hence, CSI and CSR seem to be terms that are used interchangeably.⁸⁴ The real issue is the relationship between business (for example the mining industry) and social development, and the hindrances to business practice (social and development plans in mining) in the name of the referred poor or disadvantaged.

Fundamentally, CSI contains a direct or indirect financial investment benefit in socially responsible activities, acting according to societal responsibilities.⁸⁵ In 2002, R2,2 billion was spent on CSI, and the spending of South Africa's 100 largest companies in 2003 was a reported total spend of over 1,5 per cent of the government's expenditure on education, health, and social services in that financial year.⁸⁶ CSR, on the other hand, is the societal responsibility of a business, which incorporates the economic, legal, ethical, and discretionary philanthropic expectations of society.⁸⁷ CSR is also a bundle of constructed and communicated policies

74 Bernstein “The Growth Agenda: Priorities for Mass Employment and Inclusion (Insights and Key Recommendations)” date? <https://www.cde.org.za/wp-content/uploads/2018/01/The-Growth-Agenda-Insights-and-Key-Recommendations.pdf> (accessed 02-09-2020).

75 The United Nations Department of Economic and Social Affairs “World Social Report 2020” 37.

76 *Ibid.*

77 Newell and Frynas 2007 *Third World Quarterly* 669–681.

78 Sustainable Development Forum “Addressing Social Inequality in Business” 3.

79 Newell and Frynas 2007 *Third World Quarterly* 669–681.

80 Trialogue Business in Society Handbook “The Good Corporate Citizen: Pursuing Sustainable Business in South Africa” (2017) <https://trialogue.co.za/wp-content/uploads/2017/12/BISHandbook2017.pdf> (accessed 11-11-2019).

81 Fig 2005 *International Affairs* 599–617.

82 *Ibid.*

83 *Ibid.*

84 Jacobs *The Tax Deductibility of Corporate Social Responsibility Expenditure* (LLM-dissertation, NWU, 2015) 17.

85 *Ibid.*

86 Trialogue Business in Society Handbook “The Good Corporate Citizen: Pursuing Sustainable Business in South Africa” 2017 <https://trialogue.co.za/wp-content/uploads/2017/12/BISHandbook2017.pdf> (accessed 11-11-2019).

87 Johnson *et al.* 2019 *SAJEMS* 3.

or programmes, which reflect the company's responsibility for the good of society,⁸⁸ and is the foundation for corporate social performance.⁸⁹ Further to CSR is corporate philanthropy, a potential tool for sustainability, which derives organisational economic value from good practices.⁹⁰ Inopportunately, however, studies in Europe have found that many companies see CSR as a means to improve compliance with non-voluntary regulation.⁹¹ However, the literature suggests that until recently, the focus of both CSI and CSR has always been poverty reduction and not social inequality. Nevertheless, most corporations are capable of making a sustainable contribution to poverty alleviation.⁹² The objectives of responsible leadership and value creation require synergy with strategic and well-designed CSR initiatives,⁹³ given their accountability for social and environmental harms.⁹⁴ Moreover, with little incentive to cooperate and without sanctions for non-compliance, there is no way to ensure compliance with integrated CSR provisions.⁹⁵ Therefore, whilst CSR is currently reliant on nuances for companies to operate,⁹⁶ there is scope for redefining CSR conceptually.⁹⁷

Despite the SDF's arguments, studies indicate that most South African companies prefer the use of CSI, whilst subsidiaries of foreign-owned companies advocate CSR and sustainable development.⁹⁸ In fact, companies express a sanguine view of CSR and/or CSI, which is evident through their understanding, practices, and definitions thereof (as seen below):

- Manufacturing Company definition: CSI is part of the broader sustainability approach of the company primarily looking into social performance;
- Mining Company definition: Sustainable development is the internalization of environmental and social responsibilities into the core business strategy;
- State-Owned Enterprise definition: Social Investment is good Corporate Citizenship based on the philosophy that companies have a prime accountability for the social and environmental impacts on surrounding communities; and
- Financial Service Company definition: Sustainability means ... ensuring financial prosperity, stability for investors and staff, integrating social and environmental responsibility.⁹⁹

Esser has postulated the following definition of CSR in the context of South African company law, namely: "Conduct by company directors, voluntary or in terms of direct or indirect legislation to consider social, environmental and economic issues when managing a company."¹⁰⁰ However,

88 *Ibid.*

89 *Ibid.* 2.

90 Ouma "Corporate Philanthropy and Firm Value in Africa: A Case Study of Selected Forms in South Africa" 2020 *International Review of Philanthropy and Social Investment Journal* 45.

91 Sagebien and Lindsay *Mining Sector* 69.

92 Muruviwa *at al.* 2018 *JTRSA* 3, see also Fig 2005 *International Affairs* 599–617.

93 Holtzhausen "Creating Shared Value through a Corporate Social Responsibility Initiative Focusing on Leadership Development" 2017 *Journal of Contemporary Management* 759–787.

94 Howard "Half-Hearted Regulation: Corporate Social Responsibility in the Mining Industry" 2014 *SAJL* 11.

95 *Ibid.* 11.

96 Schlipfenbacher *The Contribution of Corporate Social Responsibility (CSR) Initiatives of Multinational Corporations (MNCs) to Social Development in a Developing Context: A Case of Rio de Janeiro, Brazil* (PhD-thesis, University of Manchester 2020) 27.

97 Patel and Mushonga "Corporate Social Responsibility: A Study of Stakeholder Perspectives of Listed South African Companies" 2014 *Africanus: Journal of Developmental Studies* 61.

98 Patel and Mushonga 2014 *AJDS* 56.

99 Patel and Mushonga 2014 *AJDS* 56.

100 Esser "Corporate Social Responsibility: A Company Law Perspective" 2011 *SA Merc LJ* 335.

CSR continues to have definitional limitations and a lack of governance regulation. Moreover, company contributions to CSR may become transitory, unless there is a fundamental shift in the perspective of CSR.¹⁰¹ Given the calls for the development and/or investigation of the impact of CSR on poverty reduction, hope remains.¹⁰²

3 LEGISLATIVE, CORPORATE GOVERNANCE, AND OTHER FRAMEWORKS RELATED TO SOCIAL RESPONSIBILITY

Central to corporate performance are actions associated with a stakeholder-centric model, with indicators based on socially constructed value systems.¹⁰³ The South African legislative and governance framework is sound concerning social and economic development, stakeholder protection, and company standing. However, its success hinges on its efficiency and effectiveness in the implementation of its regulatory landscapes.

3.1 Companies Act 71 of 2008, Social and Ethics Committee, King Code on Corporate Governance, JSE Listing Requirements, and International Standards

Companies have a separate legal personality¹⁰⁴ and rely on their directors to provide leadership in relation to strategic objectives. Section 7(d) of the Companies Act reaffirms the management of a company by its directors to promote economic and social benefits.¹⁰⁵ However, Esser argues that whilst directors must be attentive to the interests of stakeholders, the latter do not have direct rights.¹⁰⁶ The board of directors is a fiduciary that manages the company and monitors the affairs of a company.¹⁰⁷ It is incumbent on directors¹⁰⁸ to exemplify the utmost good faith to the company and its stakeholders,¹⁰⁹ remain informed of company activities, affairs, policies,¹¹⁰ and act in the best interest of the company.¹¹¹ Based on this, and through the establishment of a Social and Ethics Committee (SEC),¹¹² it is evident that stakeholder protection has permeated the Companies Act. The SEC monitors stakeholder interests in South Africa. However, the United Kingdom has legislatively included the interests of stakeholders in its best interest duty of directors, and India has extended its fiduciary duties to include stakeholder interests; however.¹¹³ The establishment of the SEC is a positive step in the right direction, despite the current lack of a formal CSR policy in South Africa. The SEC's task is to monitor the company's standing in terms of social and economic development (among others), to report to the shareholders, and to highlight matters within its mandate to the board.¹¹⁴ However, there are only certain categories

101 Schlipfenbacher (PhD-thesis, University of Manchester, 2020) 30; Frynas "Corporate Social Responsibility and International Development: Critical Assessment" 2008 *Corporate Governance: An International Review* 274–281.

102 Schlipfenbacher (PhD-thesis, University of Manchester, 2020) 31.

103 Dube and Maroun "Corporate Social Responsibility Reporting by South African Mining Companies: Evidence of Legitimacy Theory" 2017 *South African Journal of Business Management* 24.

104 Cassim *et al. Contemporary Company Law* 2 ed (2016) 29–31.

105 Esser 2011 *SA Merc LJ* 322; s 7(d) of the Companies Act 71 of 2008.

106 Esser 2011 *SA Merc LJ* 322; s 7(d) of the Companies Act 71 of 2008.

107 Section 66(1) of the Companies Act 71 of 2008.

108 Section 76(3)(a) and (b) of the Companies Act 71 of 2008.

109 Esser and Delport 2017 *De Jure* 107–108, see further s 76(3)(a) and (b) of the Companies Act 71 of 2008.

110 Section 76(3) (c) of the Companies Act 71 of 2008.

111 Esser and Delport 2017 *De Jure* 107; s 76(3)(a) and (b) of the Companies Act 71 of 2008.

112 Esser 2011 *SA Merc LJ* 324.

113 Esser and Delport 2017 *De Jure* 100; s72(4) of the Companies Act 71 of 2008; also see Afsharipour "Redefining Corporate Purpose: An International Perspective" 2016 *Seattle University Law Review* 485.

114 Section 72(4) and Regulation 43(1) of the Companies Act 71 of 2008.

of companies required to appoint an SEC.

A drawback of the SEC is that it relies on the UN Global Compact and the Organisation for Economic Co-operation and Development (OECD), without guidance from the Guidance on Social Responsibility or the King Report for support.¹¹⁵ Still, although the Companies Regulations do not define social and economic development, it supports the SEC on matters for consideration¹¹⁶ and refers to community development, company records of sponsorship, donations, and charitable giving.¹¹⁷ Sound governance demands that directors engage all aspects of ESG,¹¹⁸ surveyed by its investors and/or stakeholders.¹¹⁹ Directors are required to allocate financial resources when engaging with ESG risks.¹²⁰ In engaging and providing for ESG, business risks are identified, assessed and inadvertently form part of the risk management and strategic objectives of the organisation. However, the SEC does not play a supervisory role in other matters namely strategy; its functions are restricted to those contained in the Regulations.¹²¹ Though it seems appropriate for the SEC to “house” CSR, companies cannot provide risk mitigation and assurance for a risk namely social inequality, which cannot be adequately rationalised or tangibly quantified as part of its risk mitigation strategy. Since the SEC does not play a role in strategy, it is argued that the SEC may be a “troublesome organ” of the company due to the uncertainty surrounding the relationship between the board and the SEC.¹²²

The King IV code advocates the stakeholder approach, and recommends that governing boards ensure an organisation is a responsible corporate citizen — by setting direction, overseeing, monitoring compliance, disclosure, and addressing consequences of outputs in relation to value creation.¹²³ It recommends business activities and outputs are achieved against measures and targets agreed upon by management in the areas of workplace, economy, society and environment.¹²⁴ Therefore, although not mandatory, the King Report does provide for wider corporate governance principles and recommendations that offer guidance concerning director functions or duties. However, it is silent regarding social inequality, which one could argue marks an antithesis to the stakeholder approach.

The Johannesburg Stock Exchange (JSE) listing requirements impose a duty on listed companies to report on social, health, environmental, and ethical performance, the efficiency of risk management, internal control, and the degree of compliance with the King Report.¹²⁵ It also launched a Socially Responsible Investment Index (SRI Index), now replaced by the Financial Times Stock Exchange (FTSE) ESG50 Ratings, a criterion used to measure the triple

115 Klopers “Driving Corporate Social Responsibility (CSR) Through the Companies Act: An Overview of the Role of the Social and Ethics Committee” 2013 *PELJ* 173.

116 Klopers 2013 *PELJ* 172.

117 Regulation 43(5)(a)(ii)(cc) and Regulation 43(5)(a)(ii)(bb) of the Companies Act 71 of 2008; see also Klopers 2013 *PELJ* 176.

118 Johnson *et al.* 2019 *SAJEMS* 2.

119 *Ibid.*

120 Johnson *et al.* 2019 *SAJEMS* 2.

121 Esser 2011 *SA Merc LJ* 326.

122 Botha “Evaluating the Social and Ethics Committee: Is Labour the Missing Link (1)” 2016 *THRHR* 590.

123 The King IV Report on Corporate Governance for South Africa 2016, Principle 3; see <https://www.iodsa.co.za/page/king-iv> (accessed 15-01-2019).

124 *Ibid.*

125 The JSE Listings Requirement 3.84 dealing with corporate governance requirements 55–57 <https://www.jse.co.za/sites/default/files/media/documents/2019-04/JSE%20Listings%20Requirements.pdf> (accessed 02-12-2020).

bottom line performance.¹²⁶ Insofar as reporting practices are concerned, studies indicate the 100 largest JSE-listed companies reporting on policies relating to the environment, community, promotion of BEE, employee relations, and human rights were significantly higher than companies in leading economies.¹²⁷ Furthermore, JSE-listed firms with greater corporate responsibility reporting had high share prices, demonstrating positive links between CSR assurances and enhancing CSR reporting¹²⁸ and the relationship between CSR and earnings per share in South Africa.¹²⁹ Yet, some JSE-listed companies still perceive environmental and social issues, B-BBEE, poverty, and HIV and AIDS policies, as less important than corporate governance,¹³⁰ focusing instead on corporate behaviour stemming from corporate scandals. In the end, ESG disclosures do not always reflect the true ESG practices of firms, since they are based on corporate reporting.¹³¹ Hence, some argue that the traditional triple bottom line could prove insufficient to cover the gamut of sustainability, with emphasis on facets of the environment, technology, and operations.¹³²

International Standard ISO 26000 is not legally binding on South Africa. It contains guidelines in respect of the tenets and framework of CSR-appropriate practice,¹³³ detailed guidance on voluntary initiatives for social responsibility, and considerations for participation.¹³⁴ The objective of ISO 26000 is to ensure that government manages the relationship between business and society with legislative intervention,¹³⁵ whilst the OECD Guidelines for Multinational Enterprises, ISO 26000 and the UN Global Compact, aim to stimulate responsible business practices.¹³⁶ Standards and guidelines like these could prove useful in informing government CSR policies; encourage appropriate CSR practices and initiatives to meet developmental needs whilst managing relationships between government, business, and societal development.

3 2 Taxation in South Africa and CSR: Income Tax Act 58 of 1962 and Value-Added Tax Act 89 of 1991

Global economic, social and environmental issues shape inequality, and so do national policies and institutions.¹³⁷ Even, governments' failure to coordinate fiscal, monetary and distributional policies influences inequality. Tax reform, after democracy in South Africa, appears to have failed to be markedly pro-poor, which is clear from trends in the incidence of income taxation.¹³⁸ Meanwhile, there seems to have been considerable redistribution in its budgets, which account

126 The JSE Listings Requirement 3.84 dealing with corporate governance requirements 55–57 <https://www.jse.co.za/sites/default/files/media/documents/2019-04/JSE%20Listings%20Requirements.pdf> (accessed 02-12-2020).

127 The Trialogue Business in Society Handbook “The Good Corporate Citizen: Pursuing Sustainable Business in South Africa” (2017) <https://trialogue.co.za/wp-content/uploads/2017/12/BISHandbook2017.pdf> (accessed 11-11-2019).

128 Johnson *et al.* 2019 *SAJEMS* 5.

129 Johnson *et al.* 2019 *SAJEMS* 8.

130 *Ibid.*

131 Johnson *et al.* 2019 *SAJEMS* 11.

132 Tseng, Chang, Lin *et al.* “Future Trends and Guidance for the Triple Bottom Line and Sustainability: A Data Driven Bibliometric Analysis” 2020 *Environmental Science and Pollution Research* 33561.

133 Essop “CSR Becomes a Part of the Company’s Strategic Plan” 2016 *Commonwealth Youth and Development* 78–87.

134 Theuws and Van Huijstee *Corporate Responsibility Instruments: A Comparison of the OECD Guidelines, ISO 26000 & the UN Global Compact* (2013) 38.

135 Essop 2016 *CYD* 83.

136 Theuws and Van Huijstee *Corporate Responsibility Instruments* (2013) 38.

137 United Nations Department of Economic and Social Affairs “World Social Report 2020” 33.

138 Seekings and Natrass *Class, Race, and Inequality in South Africa* (2008) 366–367.

for education spending, however, the quality of schooling does not meet its spend.¹³⁹ Companies, on the other hand, have a horizontal relationship of responsibility toward the public and an obligation to meet stakeholder needs.¹⁴⁰ Despite being a cost to doing business, most companies listed on the JSE engage in some form of CSR as a licence to operate or “doing the right thing”,¹⁴¹ and contributions to CSR have ranged from 0,5 per cent to 1,5 per cent of net profit before tax for many companies.¹⁴² For this reason, despite recognising the need to define CSR agendas and policies, it is equally crucial to develop measures and guidelines regulating CSR expenditure and its deductibility that could encourage companies to invest more in CSR.¹⁴³

From an Income Tax perspective, whilst the cost and/or expenditure in relation to CSR is not philanthropic the categorisation, quantification, and linkage to the cost of business remain a challenge for most companies. Often there are no direct linkages between the CSR initiative, sales, and expenditure related to the initiative. Most CSR initiatives or programmes include educational programmes, environmental initiatives, community initiatives, sporting initiatives, and cultural initiatives.¹⁴⁴ Moreover, generally, expenditure incurred by a taxpayer in the production of income qualifies as a deduction for tax purposes, if such expenditure relates to the production of income and is not capital in nature.¹⁴⁵ There are four main categories of CSR expenditure, each with its own tax treatment namely marketing/sponsorship spending, donations to qualifying institutions, internal development spending, and non-qualifying CSR.¹⁴⁶ Currently, the approach to CSR expenditure by the South African Revenue Services (SARS) is that unless CSR expenditure falls into the SARS-restricted categories above,¹⁴⁷ it will not qualify for a deduction.¹⁴⁸ However, there are existing sections in the Income Tax Act 58 of 1962 (Income Tax Act) which if utilised effectively, could further address social inequality, namely research and development, employment tax incentives (ETI), and section 18A donations to public benefit organisations (PBO) — and for which businesses could make a “strategic contribution”.¹⁴⁹ Some scholars have argued for further legislative changes to the Income Tax Act to encourage the deduction of CSR expenditure,¹⁵⁰ namely the expansion of the general deduction formula to include all types of CSR expenditure.¹⁵¹ However, expenditure related to addressing social inequality, and CSR programmes linked thereto may not always translate into expenditure “in the production of income”. For this reason, it would seem plausible to create a separate or “once off” provision in the Income Tax Act, linked to a specific distributional CSR initiative.

From a VAT perspective, CSR expenditure assumes the form of making a donation, or the supply of goods or services for no consideration. However, in the case of the latter, there is no actual taxable supply. The issue is whether the CSR expenses incurred are for the purposes of

139 *Ibid.* 367.

140 Jacobs *The Tax Deductibility of Corporate Social Responsibility Expenditure* (LLM-dissertation, NWU, 2015) 4.

141 *Ibid.* 5.

142 *Ibid.* 4.

143 Jacobs (LLM-dissertation, NWU, 2015) 4–5.

144 Jones “Tax Breaks for Socially Responsible Companies” 2020 *Tax Breaks* <https://hdl.handle.net/10520/EJC-1e44935076> (accessed 20-01-2021).

145 Section 11(a) read with s 23 (g) of the Income Tax Act 58 of 1962.

146 Jones 2020 *Tax Breaks*

147 *Ibid.*

148 Section 11(a) read with s 23 (g) of the Income Tax Act 58 of 1962.

149 Preston “Corporate Social Responsibility Expenditure and Its Deductibility for Income Tax Purposes: A South African Perspective” 2018 *International Journal of Social Sciences and Humanity Studies* 160.

150 Preston 2018 *IJSSHS* 151.

151 Jacobs (LLM-dissertation, NWU, 2015) 51.

consumption, use or supply, in the course of making taxable supplies.¹⁵² Interpretation Note 70 confirms the principle that an expense which is incurred “in the production of income” for income tax purposes, will usually also be incurred “in the course or furtherance of an enterprise” for VAT purposes.¹⁵³ This means that companies would need to establish and/prove that incurring a CSR expense is in the course or furtherance of its business operations. Based on these tax related issues, SARS rulings and case law, it is evident that the courts favour the deductibility of CSR expenditure.¹⁵⁴ However, aside from legislative provisions that establish a context for CSR, SARS has only dealt with CSR in Binding Class Ruling (BCR) 2 and Binding Private Ruling (BPR) 113.¹⁵⁵ This indicates that whilst CSR has considerable attention, it has failed to gain stealthy recognition and momentum in our South African law.

4 ANALYSIS AND INTERNATIONAL COMPARISON OF CSR IN MINING: SOUTH AFRICA, ZIMBABWE, AND BRAZIL

Some sectors are more adept at leading social development-orientated CSR initiatives than others, namely the mining and manufacturing sectors.¹⁵⁶ A number of global CSR mining standards have influenced major and mid-tier companies and governments of emerging countries into developing environmental regulatory and monitoring capacity.¹⁵⁷ However, to understand the commitment of a company toward sustainable development, one has to look at its micro level in terms of operational adherence.¹⁵⁸ Recent research suggests that in the context of mining companies, CSR action is selective, and issues of economic impact such as HIV/AIDS tend to gain more priority, whereas those related to black empowerment, the environment, education and training, receive less attention.¹⁵⁹ Therefore, whilst CSR is useful in attaining a company’s social licence to operate, it does not always foster “sustainable” development. This is because the isolated efforts that characterise most CSR policies do not address the dynamics of dysfunctional, risk-ridden, and unequal systems; problems meant for national CSR programmes.¹⁶⁰ As such, industry or organisation-centred CSR may not necessarily achieve long-term, transformative change in social inequality.¹⁶¹ The potential and limitation of CSR as a strategic policy tool for sustainable development will therefore always depend on the capacity to analyse and understand the political-economic context in which companies operate.¹⁶²

In South Africa, CSR initiatives are most prominent in the mining sector, accounting for approximately 35 per cent of CSR initiatives, followed by financial services (18%), retail and wholesale (8%), SOE (11%), manufacturing (10%) and IT (8%).¹⁶³ Companies in partnership with the government have often taken the lead role in addressing critical issues. To date,

152 Badenhorst “Deduction of VAT on Corporate Social Responsibility Expenses” (2018) <https://www.cliffedekkerhofmeyr.com/en/practice-areas/tax.html> (last accessed 20-01-2021).

153 *Ibid.*

154 Jacobs (LLM-dissertation, NWU, 2015) 47.

155 Jacobs (LLM-dissertation, NWU, 2015) 45–45; see also SARS “Binding Private Ruling: BPR 113” <https://www.sars.gov.za/wp-content/uploads/Legal/Rulings/BPR/LAPD-IntR-R-BPR-2012-113-Expenditure-Associated-Broad-Based-Black-Economic-Empowered.pdf> (accessed 06-06-2021).

156 Schlipfenbacher (PhD-thesis, University of Manchester, 2020) 87.

157 Sagebien and Lindsay *Mining Sector* 45.

158 Sagebien and Lindsay *Mining Sector* 45.

159 Miles and Jones “The Prospects for Corporate Governance Operating as a Vehicle for Social Change in South Africa” 2009 *Deakin Law Review* 73–74.

160 *Ibid.*

161 Sagebien and Lindsay *Mining Sector* 2.

162 *Ibid.*

163 Trialogue Sustainability Review: *The Quarterly Review of Sustainability in South African Business* (2012) https://trialogue.co.za/wp-content/uploads/2013/03/3.4.1.1-SR_Issue8_Full.pdf (accessed 10-01-2019).

numerous conglomerates such as De Beers, Anglo American, Impala Platinum, BHP, Eskom, Sasol and ArcelorMittal, have contributed to the rapid growth of South Africa's economy and demonstrated a willingness to assume their responsibility to society through their disclosure practices.¹⁶⁴ At some stage, the State responded poorly to reducing incidents of HIV infections linked to high levels of migration and exacerbated poverty. Companies such as Anglo American PLC SA responded by providing HIV-infected workers with anti-retrovirals, and measures included voluntary counselling and testing, the issuing of free condoms, and the treatment of opportunistic diseases; extended to rural areas through labour migration.¹⁶⁵ Meanwhile, companies that have complied with and engaged in CSR initiatives have been subject to incidents that undermined their efforts,¹⁶⁶ raising fundamental questions about the efficacy of CSR, good governance, and its regulation.¹⁶⁷ A bigger challenge is the difficulty in quantifying a company's social and/or environmental performance to a bottom-line figure, particularly in the absence of an agreed-upon methodology and/or concession by government.¹⁶⁸ This is partly where companies participate in assessment processes in an "aspirational and anecdotal manner" and "in general, rather than [in an] objective and direct manner".¹⁶⁹

South Africa has positive and negative conditions for collaboration between civil society and business.¹⁷⁰ Relations between non-governmental organisations (NGOs) or communities and mining companies are often tense, especially where NGOs lament companies' non-adherence to the environmental and social rights of local communities, especially the poor.¹⁷¹ Hence, NGOs demand quick remedies such as legal recourse, government legislation, and willingness to regulate.¹⁷² Ultimately, there is a tug-of-war between company incentives and government imperatives. At times, the expectations regarding CSR are unrealistic, as it cannot meet all the needs of society, corporate responsibility, the health and safety of employees, the community, and the environment.¹⁷³ This is evident when companies fail to meet their own standards, despite professing to meet the standards of CSR,¹⁷⁴ even after being aware of their responsibility. Hence, the success of CSR initiatives will always require the participation of the State, mobilised civil society, and companies willing to respond to CSR priorities.¹⁷⁵ Furthermore, suggestions like the SDFs should consider that foremost to encouraging the inclusion of social responsibility on the agenda of governing bodies, that government should structure its CSR policies and agenda. Furthermore, cooperation, partnership and voluntary initiatives will require incentives that are complementary to regulatory and developmental needs — a carrot (incentive) and stick (regulation) approach.¹⁷⁶ This will also prevent companies from constructing their own discourses in CSR disguised as "sustainability" or their contribution to socio-economic progress.

In Zimbabwe, generally, companies in the mining sector engage voluntarily in CSR as part of

164 Sachs *Crowded Planet* 609–610.

165 Sachs *Crowded Planet* 609–610.

166 Esser 2011 *SA Merc LJ* 318.

167 *Ibid.*

168 Miles and Jones 2009 *DLR* 67.

169 *Ibid.*

170 Hamman and Acutt "How Should Civil Society (and Government) Respond to 'Corporate Social Responsibility'? A Critique of Business Motivations and the Potential for Partnerships" 2003 *Development Southern Africa* 264, see further Sachs *Crowded Planet* 17–53, Seekings and Nattrass *Class, Race, and Inequality in South Africa* (2008) 340–345.

171 Hamman and Acutt 2003 *DSA* 264–265.

172 *Ibid.*

173 Miles and Jones 2009 *DLR* 75.

174 *Ibid.* 76.

175 *Ibid.*

176 Hamman and Acutt 2003 *DSA* 268.

their cost to do business. Despite hostility toward CSR as a tool for the development of poverty eradication, Zimplats mining company implemented CSR initiatives to meet the developmental needs of its stakeholders.¹⁷⁷ Its key CSR projects demonstrated that distributional CSR projects were established for the local community within which it was located.¹⁷⁸ Zimplats spent US\$209 million on community projects, and CSR has become a driver in the community development and poverty reduction mechanisms.¹⁷⁹ In spite of this feat by Zimplats, the implementation processes of these actions are a mystery.¹⁸⁰ One way to overcome this in developing countries is to engage on the basis of poverty reduction. In the case of Zimplats, the CSR projects were classified in terms of access to *inter alia* education and infrastructure development, which assisted in the development and social improvement of the community.¹⁸¹ The stakeholders had expectations and Zimplats reciprocated through distributional CSR initiatives that addressed their developmental needs.¹⁸² In developing countries, CSR is perceived as a complementary mechanism used by companies to foster community development.¹⁸³ Therefore, it is possible for the establishment of distributional CSR projects or initiatives to meet specific developmental needs of the NDP, namely social inequality and the consequences of inequality.

In Brazil, companies including multinational corporations (MNCs) critically participate as stakeholders in social development through CSR. Evidence indicates that the influence on poverty alleviation is heavily reliant on the context of varying institutions or industries, and different levels of historical and economic development.¹⁸⁴ However, researchers have not concentrated on the influence of context and varying outcomes of CSR activities,¹⁸⁵ instead they examined the relationship between the corporation and its social surroundings in developing countries.¹⁸⁶ Brazil is the largest country in South America, characterised by a developing global economy with a moderately high rate of economic growth,¹⁸⁷ with a private sector heavily involved in CSR activities. Despite this, its society is characterised by persistent marginalisation and social inequality,¹⁸⁸ with 26,5 per cent of the population living below the national poverty line.¹⁸⁹ In addition, according to the OECD in 2014, the unemployment rate among young people in 2012 was 46 per cent.¹⁹⁰ Therefore, poverty and lack of opportunity create vicious cycles of low incomes and low-quality education, leading to low-skilled employment whilst business suffers a shortage of qualified and skilled professionals.¹⁹¹ South Africa has adopted many policies from Latin America, namely progressive taxation and a large-scale programme of social grants. However, it has abnormally high rates of unemployment, especially for those with limited skills

177 Muruviwa *et al.* 2018 *JTRSA* 2.

178 *Ibid.* 4.

179 *Ibid.* 1.

180 *Ibid.* 4.

181 *Ibid.*

182 *Ibid.* 8.

183 *Ibid.*

184 Schlipfenbacher (PhD-thesis, University of Manchester, 2020) 11.

185 *Ibid.*

186 Schlipfenbacher (PhD-thesis, University of Manchester, 2020) 15; see further Visser *Corporate Social Responsibility in Developing Countries* (2008) 473–502.

187 Schlipfenbacher (PhD-thesis, University of Manchester, 2020) 11.

188 *Ibid.* 13.

189 World Bank “World Bank Annual Report 2017” <https://openknowledge.worldbank.org/handle/10986/27986> (accessed 11-10-2020).

190 Schlipfenbacher (PhD-thesis, University of Manchester, 2020) 13; see further also OECD 2014 “Investing in Youth: Brazil OECD Action Plan for Youth” https://www.oecd-ilibrary.org/employment/investing-in-youth_24126357 (accessed 10-06-2021).

191 Schlipfenbacher (PhD-thesis, University of Manchester, 2020) 14.

and poor-quality education.¹⁹² Further, company contributions to poverty reduction are stymied by the analytical limitation of CSR and the lack of government regulation.¹⁹³ Likewise, the CSR contribution to development is unsound due to the conflicting alignment of CSR schemes with corporate goals, lack of involvement of stakeholders, and failure to take account of specific factors of context.¹⁹⁴ Companies are likely to engage in CSR where their financial performance is positive and the economic environment is conducive; however, State intervention remains a necessity.

5 LESSONS FROM PROGRAMMES LINKED TO DEVELOPMENTAL GOALS, TO THE INCORPORATION OF CSR IN THE COMPANIES ACT

In South Africa, Community Work Programmes (CWPs) are established for their potential to reduce poverty, and create jobs, implemented in conjunction with government policy directives addressing poverty and inequality.¹⁹⁵ However, these CWPs have proven unsustainable in achieving an integrated approach to addressing poverty and unemployment challenges; it is administratively dependent, with poor monitoring and accountability.¹⁹⁶ This evidence supports the view that when considering CSR aimed at addressing social inequality initiatives (developmental goals), the objectives of such programmes must be linked to tangible outcomes, effective implementation, strong agency and monitoring, and evaluation ensuring objectives in the short and long term.¹⁹⁷

Scholars in South Africa support the incorporation of CSR in the Companies Act.¹⁹⁸ India specifically mentions CSR in its Companies Act 18 of 2013 and Income Tax Act 56 of 1961.¹⁹⁹ In terms of their Income Tax Act,²⁰⁰ companies are obliged to spend about two per cent of their profit on CSR²⁰¹ whilst CSR activity, and expenditures are disallowed, if they are not incurred for business purposes.²⁰² However, there is insufficient data to support India's quasi-mandatory CSR provision, except to say that it has inadequate disclosure, enforcement, and compliance requirements. Furthermore, despite the availability of the tax deduction, the average CSR expenditure by companies in India was less than one per cent.²⁰³ As a developing country, and leading textile-producing nation, it maintains a high degree of informality in relation to CSR. This suggests that its processes of CSR are ephemeral and orientated toward a company with the capacity to impose its model of self-sufficiency on all stakeholders.²⁰⁴ Therefore, this model of India cannot be a driver in an economy struggling to find the balance of scales of inequality, nor can it be viable given South Africa's extensive corporate governance frameworks. In its stead, the suggested development of a separate CSR provision in South Africa's Income Tax

192 Cornia *Declining Inequality in Latin America – Policy Changes and Lessons* (2014) 370.

193 Schlipfenbacher (PhD-thesis, University of Manchester, 2020) 30; see also Frynas "Corporate Social Responsibility and International Development: Critical Assessment" 2008 *Corporate Governance: An International Review* 274–281.

194 Schlipfenbacher (PhD-thesis, University of Manchester, 2020) 33.

195 Shishonga and Matsiliza "Addressing the Twin Challenges of Poverty and Unemployment through Community Work Programmes in South Africa" 2021 *African Journal of Development Studies* 226.

196 Shishonga and Matsiliza 2021 *AJDS* 227.

197 *Ibid.* 231.

198 The Companies Act 71 of 2008.

199 Preston 2018 *IJSSHS* 162; see also s 135(5) of Companies Act 18 of 2013; Income Tax Act 56 of 1961.

200 Section 13 of the Income Tax Act 56 of 1961.

201 Preston 2018 *IJSSHS* 161–162.

202 *Ibid.* 162.

203 *Ibid.* 167–168.

204 Preston 2018 *IJSSHS* 162; see also s 135(5) of the Companies Act 18 of 2013.

Act or a separate CSR Act altogether are plausible — as opposed to the inclusion of CSR in the Companies Act.

6 CRITICISMS OF CSR

First, CSR policies are rooted in the company's perception of what is key to beneficiaries, and its implementation lacks beneficiary participation.²⁰⁵ The company should be one actor in the hub of the system of social and environmental value and its multiple actors.²⁰⁶ Second, CSR definitions do not consider all implications and social realities, which necessitates a discerned understanding of its contribution to social development and poverty reduction.²⁰⁷ Third, the CSR process emboldens negative approaches, namely greenwashing, and its value-add to poverty reduction has mixed reviews from the research community.²⁰⁸ Lastly, current CSR and social development are monopolised by international development agencies appraised for voluntary compliance and lack of monitoring.²⁰⁹

7 RECOMMENDATIONS AND CONCLUSION

This article highlighted that whilst many companies have adopted CSR, some are more adept at implementing social development-orientated CSR initiatives, with selective CSR actions depending on industry and business operation. Whilst industry or business operation-driven CSR cannot bring long-term sustainable transformation to social inequality, collectively they can contribute to a wider goal. However, CSR as a strategic policy tool for long-term sustainable transformation of social inequality requires definitive CSR policy by the government with integrated, measurable provisions and regulations.

This article recommends a modification to the suggested definition for CSR by Esser, namely “Conduct [and sustainable development] by company directors, [either] voluntary or in terms of legislation that [internalises] social, environmental and economic [responsibilities into the core business strategy] when managing a company”, be considered.²¹⁰ Second, the establishment of a social compact with a clearly defined CSR agenda of development plans to address social inequality, linked to national developmental goals.²¹¹ The compact should encapsulate a robust regulatory framework including terms of references for role-players,²¹² with objectives linked to tangible outcomes, effective implementation, strong agency, accountability, monitoring, and evaluation.²¹³ Third, that the King IV Report clarifies its stance on social inequality in general and/or in its sector supplements, to enable definitive roles for respective industries in alleviating social inequality. Fourth, that the SEC takes guidance from the Guidance on Social Responsibility or the King Report on Governance. In addition, that its mandate, terms of reference, and regulations align with the above-recommended CSR definition and its strategic developmental plan agenda. Finally, inclusion of a specific provision relating to an incentive, dispensation, or deduction in the Income Tax Act 58 of 1962, to cater for non-tradeable CSR

205 Muruviwa *et al.* 2018 *JTRSA* 2, see further Matahwa “Zimbabwe CSR Still Lagging Behind” 2007 *Alliance Magazine* 5–6.

206 Sagebien and Lindsay *Mining Sector* (2011) 27.

207 Schlipfenbacher (PhD-thesis, University of Manchester, 2020) 54.

208 *Ibid.* 28.

209 *Ibid.* 29.

210 Esser 2011 *SA Merc LJ* 335; see also Patel and Mushonga 2014 *AJDS* 56.

211 Hamman and Acutt 2003 *DSA* 268.

212 Sagebien and Lindsay *Mining Sector* 69.

213 Shishonga and Matsiliza 2021 *AJDS* 231.

expenditure incurred to alleviate social inequality.²¹⁴ For example, the deduction of CSR expenditure for an earmarked education initiative directly linked to an aspect of a NDP priority namely social inequality. The design of this provision will be dependent on the specific objectives, outcomes, and compliance and deduction parameters.²¹⁵ It will have to be established that there is a direct financial investment by companies, albeit to its CSR programme (with linkages to the earmarked NDP aforementioned),²¹⁶ and directly to the specific NDP CSR initiative or related. This would encourage company participation, result in easier regulation and control of such CSR programmes or initiatives and CSR expenditure deductions. Ultimately, these recommendations will depend on the synergy between issues of legitimacy, responsibility, accountability, and the manner in which government regulatory frameworks enable addressing NDPs such as social inequality.²¹⁷

In conclusion, there are a number of reasons to dismiss the claim that adopting CSR renders growth more inclusive, and equitable, and reducing consequences of inequality (poverty)²¹⁸ or social inequality. Current CSR initiatives do not include poverty reduction and social inequality as a major objective.²¹⁹ The convergence of governance and economics as a driver for social stability²²⁰ are dependent on suitable policy, without which, inequality hinders progress toward developmental goals.²²¹ Meanwhile, structural inequality translates into structural inefficiency in the use of human capital.²²² Inequality needs to be understood and defined in order to jettison social instability (social inequality).²²³ South Africa has extensive government policies such as tax exemption for companies contributing to the public good, and although their strategic objectives are economically driven, companies are a source of advanced technologies and sophisticated management methods. However, State regulation in areas that shape the development of CSR as a distributional initiative is critical, where the State maintains the lead in collaboration with private sector partners, civil society, and communities.²²⁴ The focus should not be the link between companies and social welfare but instead on establishing a State run by a political party with genuine accountability to the poor, demonstrable through social, gender, racial and environmental consciousness.²²⁵ CSR strategic policies must align with the SDG, NDP and distributional agenda of the government, ensuring that private-sector incentives and societal needs are harmonised.²²⁶

214 Preston 2018 *IJSSHS* 162–163.

215 Jacobs (LLM-dissertation, NWU, 2015) 55.

216 *Ibid.* 17.

217 Sagebien and Lindsay *Mining Sector* (2011) 100.

218 Jenkins “Globalization, Corporate Social Responsibility and Poverty” 2005 *International Affairs* 539–540.

219 *Ibid.*

220 *Ibid.*

221 United Nations Department of Economic and Social Affairs “World Social Report 2020” 53.

222 Madonsela “Confronting Inequality: Thoughts on Public Acceptability and Policy Resonance” 2018 *New Agenda: South African Journal of Social and Economic Policy* 23; see further Seekings and Nattrass *Class, Race, and Inequality in South Africa* (2008) 346–352.

223 Celliers and Aucoin “Economic, Governance and Instability in South Africa” 2016 *Institute for Security Studies* 7.

224 Patel and Mushonga 2014 *AJDS* 53.

225 Miles and Jones 2009 *DLR* 78.

226 Sachs *Crowded Planet* 51–52.