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"THE MANDELA LEGACY AND SOCIO-ECONOMIC RESPONSIBILITIES OF CORPORATIONS"

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The occasion of the celebration of Nelson Mandela's birth a hundred years ago on 18 July should also be a time for reflection by all concerned. This applies to corporations, civil society, political parties and individuals. In this regard, it is necessary to examine the role of corporations and the contributions they can make to greater social and economic justice in South Africa.

The state is not the only threat to human rights. Corporations in the form of juristic persons can also constitute a threat to human rights. Unfortunately, this has happened in the past. Companies in the form of juristic persons control the well-being of millions of people and create employment. They, however, have the potential to make an important contribution to social and economic justice in South Africa.

In the previous Companies Act, before the extant one Act 71 of 2008, human rights and the values in the Constitution were virtually ignored. This has changed fundamentally with the new Companies Act of 2008. Section 7 (a) of the Companies Act of 2008 gives express recognition to the constitutional imperative of bringing company law within the constitutional framework as explained by M Gwanyana in a detailed article in the Potchefstroom Electronic Journal of 2015.

In this regard, sections 7 and 8(2) of the Constitution do not only apply to the state only but individuals and juristic persons. This is clear from these two provisions of the Constitution read together. Section 8(2) states that the Bill of Rights applies to 'a natural or a juristic person if 'taking into account the nature of the right'.

Section 7(a) of the Companies Act, referred to above, is a very bold step and means that the Bill of Rights and constitutional values should become an important matter of policy for corporations.

This means that in the process of interpreting the Companies Act and related legislation section 7 of the Companies Act, which states that one of the purposes of the Act is to 'promote compliance with the Bill of Rights as provided in the Constitution, in the application of company law'. Furthermore, section 158 of this Act supports the idea of a liberal method and theory of interpretation stating, inter alia, that in interpreting 'a court must develop the common law and [...] must promote the spirit, purpose and objects of this Act' and corresponds to that found in section 39 of the Constitution which deals with interpretation.

In this regard, the directors of the company play crucial roles in the operation of their companies and must promote the 'best interests' of their shareholders. As a result of the explanation above, it is submitted that law must be interpreted and indeed developed not just to promote shareholders in a narrow sense but to promote human rights set out in the Constitution as required by section 7 of the Companies Act.

According to section 165 read with regulation 43, private legal interests in the company of shareholders can be protected if the court is approached in this regard. This section has the potential to prevent human rights abuses. In this regard, persons can approach the courts if necessary. For instance, where a construction company wishes to develop a piece of land and that development could violate fundamental human rights of persons

living in the area, the affected persons are able to approach the court to attempt to get relief.

SOCIAL AND ETHICS COMMITTEES

An important aspect of the Companies Act in respect of human rights is the establishment of a social and ethics committee referred to in section 72. Although this is regulated by regulation 43, only specified companies are required to establish such a committee, such as state-owned companies, public companies and other specified ones.

The function of such a committee is to monitor the company's activities in regard to any relevant legislation, relating to social and economic development. Regulation 43, referred to above, covers issues of equality, prevention of corruption and unfair discrimination. This is a very important initiative on the part legislature in the realisation of human rights, although limited to certain types of companies only.

THE PRACTICAL EFFECTS

The Companies Act is still relatively new and the impact of human rights on actual operation remains to be seen, bearing in mind that the 'share-holders interests' remains dominant to maximise profits and that there may be a conflict between the different stakeholders. There is, however, a need for the courts to change from a conservative to a more activist approach by means of purposive or liberal interpretation and developing the common law in a manner that promotes human rights in the operation of companies.

This has indeed occurred in the international sphere where there has been a challenge to the narrow understanding of the responsibilities of companies as profit making entities.

So for instance, in the famous *Pharmaceuticals Manufacturing* case the Constitutional Court reaffirmed that the Constitution is the supreme law and that all law, including the common law regulating companies, derives its force from the Constitution and is therefore subject to constitutional control. Companies are thus required by law to respect and protect human rights to the extent that these are applicable to them. They must realize that they can't compromise existing human rights in the pursuit of profits. A collaboration in this regard is required between the State and companies in general. In general, the courts ought to be more liberal in approach as applies in other branches of the law where values of dignity, equality and freedom are recognised and will thereby give corporations and their operations a constitutional legitimacy.

CONCLUSION

The Companies Act, as indicated above, must be interpreted purposely and value-based to give expression to the human rights set out in the Constitution. It is conceded that besides human rights there are other objectives such as entrepreneurship and efficiency. A clash may occur between these objectives. In this regard, courts must give guidance.

Profitability which is absolutely necessary for a successful company, may clash with social responsibility. The courts should be guided by section 7(d) which makes clear that companies are also 'a means of achieving social benefits'.

Companies have both rights and responsibilities. A new era is required of 'just business' rather than 'profits at all costs'. This is a great challenge to the business world and all those involved. Virtually all large public corporations are involved in socio-economic outreach through their social and ethics committee. Perhaps what would be beneficial would be the setting up by the world of business of an umbrella organisation to co-ordinate such activities, as was created in 1977 with the creation of the Urban Foundation involving, inter alia, Harry Oppenheimer, Anton Rupert, Clive Menell and

Judge Jan Steyn. This would be a fitting tribute in honour of beloved Madiba, Nelson Mandela, in the year we commemorate the 100 anniversary of his birth.

There are many very enlightened and very competent persons in the world of business in South Africa, who can take a leading role and infuse the values of the Constitution into operation of their corporate ventures. This will not only contribute to social justice but also to a climate of social and political stability, in which business can flourish and make a contribution to economic and social justice in South Africa.

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