

A Tangled Web

**The Perceived Influence of Broad-Based Black Economic Empowerment Legislation on
Corporate Social Investment in South Africa**

Supported By:

**Halima Mahomed
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Executive Summary

This paper explores the perceived role of the Broad-Based Black Economic Empowerment (B-BBEE) legislation and its *Codes of Good Practice* on the nature, scope, extent and reach of Corporate Social Investment (CSI) in South Africa. Through a mixture of scarcity of data, ambiguity in legislation and laxity in interpretation and application of the B-BBEE codes, the research provides as many questions as it does answers. Key findings, however include:

- Though the B-BBEE codes are not mandatory, they have become a part of the commercial landscape and a necessary consideration for larger corporates doing business in South Africa.
- B-BBEE, though not intended as a CSI driver, has become a key de-facto driver of CSI and is now intractably weaved into the foundations of CSI planning and implementation.
- The codes generally are seen to be limited in influencing the motivations or rates of spend of large corporates, but are perceived to have had a much stronger influence on smaller businesses. Statistical data on this, however, does not exist. When it comes to large businesses governed by Industry Charters, however, the influence appears to be much stronger.
- Larger corporates, however, seem to be accounting more precisely for their CSI spend as a result of the codes, and are increasingly including non-cash giving in the CSI accounting.
- The inclusion of a de-facto CSI incentive in an economic transformation framework is seen to have narrowed CSI to the lens of the codes rather than allowing it to naturally broaden out.
- It is perceived that the codes have shifted focus away from development impact, and instead towards ensuring compliance and a tick-box approach to CSI. This appears to have isolated CSI from broader business practice, rather than aligning it.
- While the codes are not overly prescriptive on types of activities related to corporate giving, the looseness and ambiguity have unintentionally created a set of acceptable activities. The perception is that, as a result, flexibility in funding has been indirectly narrowed, that tangible, measurable outputs have been encouraged and that consideration of long-term impact has been limited. Funding for long-term systemic change is not seen as a norm.
- The ambiguity in the drafting of the codes has created much confusion, but also opportunities for much circumvention. There is little sign that the codes have incentivised companies to support the notion of black economic empowerment *as a matter of conviction*. Compliance with the letter of the codes, rather than their spirit, seems to be the order of the day.
- The ambiguity and complexity has further resulted in interpretation devolving to verification agencies, rather than remaining in the hands of the regulatory authorities.

- Funding for contentious social justice issues, are somewhat restrained by the codes, depending on issue area. It is perceived, however, that such funding would generally be shunned by corporates anyway, irrespective of the influence of the codes.
- The new codes, effective from May 2015, are seen as significantly changing the CSI landscape and having potentially disastrous outcomes for NPOs whose work does not fit within the revised priorities of income generation, enterprise development, skills development, education and training.
- The structure of the codes have meant that a sizable portion of the business sector potentially lies out of the sphere of its influence; opting out, however, is much easier for smaller and medium sized businesses
- The codes are weaker for not aligning with other regulatory and non-regulatory CSI incentives, nor with broader development plans that focus on aspects beyond economic transformation.
- The codes serve as both an incentive and a mandatory requirement, depending on several factors, again, leading to further complication. Investigation needs to be undertaken on appropriate regulatory mechanisms, and comparative analyses on the structure of CSI regulations in Mauritius, Indonesia and India may be instructive in this regard.
- Measurement of the influence of the codes is severely hampered by a lack of systemic longitudinal data on the CSI practices of business in general, and Small and Medium Enterprises in particular. Any further research on the role of the codes will require more intensive and broad ranging primary data as a first step.

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Acronyms

B-BBEE	Broad-Based Black Economic Empowerment
COGP	Codes of good practice (aka the codes)
CSI	Corporate Social Investment
CSO	Civil society organisation
CSR	Corporate Social Responsibility
DTI	Department of Trade and Industry
EMEs	Exempt micro-enterprises
JSE	Johannesburg Stock Exchange
LED	Local economic development
NPO	Non-profit organisation
QSE	Qualifying Small Enterprises
SED	Socio-economic development
SLP	Social & labour plans
NPAT	Net profit after tax

Parameters

- The core of the study focuses on the role of B-BBEE from the time of the Act coming into force in 2004 until the end of April 2015. New codes have been gazetted more recently, which will mean a drastic change, applicable from 1 May 2015. While these new codes will be touched on briefly, their influence is not the focus of the study.
- The study looks primarily at the influence of the B-BBEE codes (i.e. the generic codes), but touches too on the “Industry Charters” which are sector-based charters that have been contextualised and modified for different industries.
- It must be noted that this is not a formal evaluation of the impact of B-BBEE on corporate giving; such a study would require a long-term, in-depth, longitudinal and wide-ranging analysis. Instead, the paper seeks to highlight key issues for further consideration and exploration.
- The focus of the study is on the behaviour of large corporations, and not on the business sector in general. This is partially directed by the availability of information on corporate giving - most research is on giving behaviours of larger corporates, with very little on smaller business. Where

information is available or where conversations have included smaller business, however, this has been touched on.

- The study looks at the *perceived* effect of B-BBEE on corporate giving. Without hard data consistently assessing the multiple factors that influence corporate giving, and given the ambiguousness with which the B-BBEE regulations have been understood, particularly in regard to their corporate giving element, any conclusive determination on the exact role of B-BBEE on CSI is tricky at best.
- The role and impact of corporate giving in South Africa is an important issue and is dealt with by many other studies. This research is thus only focused on the influence of the B-BBEE act on corporate giving, and makes no attempt to determine the effect of corporate giving in South Africa generally.
- Lastly, while this is a small study and, as noted, not intended for generalisation to the business sector as a whole, some key lessons do emerge for general consideration.

Methodology

The research utilises a combination of literature analysis on corporate giving in South Africa and in-depth semi-structured interviews. The literature analysis included review of material on corporate giving behaviour, and legislation and regulations that seeks to incentivise corporate giving. In addition, 21 semi-structured interviews were conducted with professionals representing a range of expertise. These included individuals currently/formerly involved in Corporate Social Investment (CSI) at a senior level; senior leaders at non-profit institutions; corporate giving/philanthropy experts, and individuals in the B-BBEE accreditation sector. The majority of the interviews were conducted with people who had long-term expertise in their respective areas and thus could talk about the history and evolution of corporate giving. The research process also utilised the technical expertise of CAF Southern Africa (CAFSA) to assist in framing of issues before the interview stage and feedback on draft reports.

Several attempts to talk to representatives of the Department of Trade and Industry (DTI), who are responsible for the B-BBEE legislation, and the Treasury yielded no response. While this certainly detracts from the study, the research did include interactions with individuals who have had substantive interactions with DTI and /or were involved in some way in the framing of legislation, as well as a seminar hosted by an individual involved in the drafting of the revised B-BBEE codes.

To enable frank and critical reflection, all interviews were conducted under complete confidentiality and no respondents or organisations are named in the study.

Introduction

The historical legacies of colonialism and apartheid left South Africa a fragmented country - politically, socially and economically - with discrimination, exclusion and dispossession of the majority Black population at the heart of its society. Post-democracy, while political freedom was now attained, major structural fault lines in society still remained. One of these fault lines was lack of economic power. Under apartheid, millions of people were restricted from meaningful participation in the economy, had their assets destroyed and were limited in access to skills or opportunities for self-employment.¹ While democracy brought with it the devolution of political power, it did not automatically translate into the devolution of economic power, and the realities of the country thus demanded a deeper economic transformation.

After 1994, the new dispensation brought into force a raft of legislation on economic transformation aimed at empowerment of previously disadvantaged populations – African, Indian and Coloured. This broad framework of black economic empowerment translated into many different pieces of legislation governing both the business sector as well as the functioning of state institutions and state owned enterprises. The Broad-Based Black Economic Empowerment (B-BBEE) Act of 2003, however, was seen as a key pillar in overhauling the nature, structure and composition of economic access in South Africa.

Twenty one years into democracy, South Africa is a country characterized by polarities. Seen as the business engine of the African continent, the country has a GDP per capita of \$6,700 and hosts the highest number of High Net-Worth Individuals in Africa. While there has been significant progress in some areas of social, political and economic life, it has been nowhere near enough. Limitations in addressing fundamental structural inequities have meant that for many South Africans, life is still extremely hard: for instance, one in four South Africans go hungry², maternal mortality is still extremely high, HIV/AIDS has ravaged South African society and the official unemployment rate exceeds 24%.³

South Africa has also now become the most unequal nation in the world and, despite the gains of a new but small black elite, racial inequality is still a glaring factor. To illustrate this inequality, consider just two facts from an Oxfam 2014 report⁴: (i) The two richest people in South Africa have the same wealth as the bottom half of the population and (ii) In South Africa, a platinum miner would need to work for 93 years just to earn the average CEO's annual bonus.

While the State has been leading the transformation imperative, there is also a responsibility of the business sector in both challenging the inequities embedded within its structures, as well as in supporting the transformation of inequities in broader society. Corporate Social Investment (CSI) has been one potential tool for business to support broader societal changes and in this regard, South African businesses have contributed a significant amount of funds to socio-economic development – though there is much questioning about the limited impact of these funds.

¹ DTI:2003a

² Le Roux:2014

³ New World Wealth: 2014

⁴ Oxfam: 2014

While there is no specific legislation mandating CSI, South Africa's B-BBEE legislation includes an element that incentivises corporate giving. This research paper concentrates on the B-BBEE legislation and analyses it specifically in relation to its perceived role in influencing the nature, scope, growth and extent of CSI in South Africa. The legislation has been in place since 2004, with measurement codes and guidelines released in 2007. While much has been written about the impact and limitations of the B-BBEE legislation on issues of ownership, employment equity, skills development, enterprise development etc., to date, no study on the influence of B-BBEE on CSI has been undertaken. This study attempts to partly address this gap. In addition, as legislative drivers for CSI are increasingly being considered in other countries, the study attempts to draw some lessons on CSI related regulation for broader consideration.

Overview of CSI in South Africa

What is CSR and CSI

Corporate Social Responsibility (CSR) and Corporate Social Investment (CSI), while seen by some as two distinct terms, are often generally conflated⁵. The definition of CSR used by the World Business Council for Sustainable Development is as follows: "CSR is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large".⁶ CSR is thus a company's overall approach to how it functions in relation to society.

CSI, in comparison, is one subset of CSR, and refers specifically to "a company's financial and non-cash contributions – beyond its commercial operations – to disadvantaged communities and individuals for the purpose of social upliftment and welfare".⁷ The focus of this study is CSI – the cash and non-cash contributions that companies give to disadvantaged communities.

CSI is itself quite broad and includes expenditure by CSI departments as well as other company units; donations of goods and services; employee time and professional services; and a significant portion of expenditure mandated by "Industry Charters" and "Licence to Operate" conditions.⁸ These are regulatory instruments affecting corporate behaviour, and will be explained in more detail later in the report. CSI is disbursed through a range of mechanisms – for instance, through non-profit organisations, directly via business activities, via implementing foundations/departments or intermediary trusts.

The context of CSI in South Africa

The CSI landscape in South Africa is seen to have its origins in the legacy of apartheid, where big business played significant roles in both supporting the government of the day and in entrenching

⁵ This distinction is not universal. Many use the broader term CSR, and corporate philanthropy as the sub-component.

⁶ Fasset: 2012

⁷ Mathews: 2013

⁸ *ibid*

Table 1: Timeline of CSI in South Africa⁹

1950-70's	Establishment of Anglo-American Chairman's Fund and ad hoc giving by some mining houses
1976	Companies bonded to form the Urban Foundation, established to improve the quality of life of South Africa's black population
1977	Introduction of Sullivan Principles requiring US companies to justify presence in South Africa by contributing to local communities. This encouraged more formalised giving by private sector in general.
1991	SA's leading companies collaborate with each other and civil society groups to set up the Joint Education Trust, a national program to support existing education initiatives – over next 5 years, 14 companies contribute R560 million ¹⁰
1992	Call to local businesses to support communities that surrounded their operations and from where they drew workers
1993	First BEE deal between Sanlam and Nthato Motlana's consortium
1994	Anglo-American sells stake in Johnnic to the National Empowerment consortium, led by Cyril Ramaphosa and NAIL. The Metropolitan and Johnnic deals lead to a number of other deals – seen as first wave of BEE in the private sector
1994	King I Report launched – this marked the institutionalisation of corporate governance in SA
1994	SAGA (Southern African Grantmakers Association) launched, supported by 60 companies and other international funders. It folded in 2006, but played valuable role in mobilising corporate support and providing guidelines for grantmaking
1996	Constitution of South Africa enacted, including clauses providing for transformation legislation to address historical imbalances
1997	Black economic empowerment commission established to define BEE and set up an implementation framework to accelerate transformation
1998	Employment Equity and Skills Development Acts are enacted. These address human resource development frameworks to fast-track affirmative action – relevant to public and private sectors
1999	145 companies contribute over R1 billion to establish the Business Trust, as a fixed 5 year initiative to focus on human capacity development, job creation via tourism, and crime reduction- In 2004 it was extended for a further 5 years
2000	Preferential Procurement Policy Framework Act gazetted. This governs how public sector procurement will take place
2000	Petroleum and Liquid Fuels Charter signed, which outlines transformation principles and targets for the liquid fuels sector
2000	BEE commission releases report, which becomes the foundation of government's BEE strategy
2000	Taxation Laws Amendment Act introduced the concept of a "public benefit organisation" and provided tax exempt status for many working in the field. The act also provided tax deductibility for corporate donations to PBOs working on specific issues
2002	KING II report released which provides a voluntary code of conduct emphasising the triple bottom line, with social and environmental reporting to be afforded priority equal to financial reporting. KING II is voluntary but the Johannesburg Stock Exchange (JSE) requests all listed companies to comply or explain level of non-compliance
2002	Mining Charter is enacted as part of the Minerals and Petroleum Resources Development Act. It sets out the necessity of submitting Social and Labour Plans as a prerequisite for mining licences
2003	B-BBEE strategy released
2004	B-BBEE Act promulgated
2004	JSE launches a Social Responsibility Index to track listed companies' responsiveness to South Africa's socio-economic and environmental challenges
2005	B-BBEE codes released for public comment
2007	B-BBEE Codes of Good Practice, which are regulations accompanying the B-BBEE Act, are gazetted
2009	King III report released – states that organisations must produce integrated financial and sustainability reports
2009-12	Industry charters released, with varying requirements and scorecards
2011	Review of B-BBEE Act tightens up original Act and provide definitions for fronting and consequences thereof
2011	Establishment of presidential review commission on state-owned enterprises
2012	Revised B-BBEE draft codes released. These widen scope of compliance and set up sub-min targets for three priority elements
2013	G4 sustainability reporting guidelines released
2013	UN Global compact 100 is launched, a stock index of companies committed to the Global Compact's 10 principles
2013	International framework aimed at accelerating the adoption of integrated reporting across the world was published
2013	Proclamation of B-BBEE Amendment Act
2013-15	Amended B-BBEE Codes gazetted

⁹ Corrigan (2014); Trialogue (2013e); Trialogue 2014b; Blizz 2012; Africa empowered: 2012; DTI 2012; 2013c. 2015; Kuljian: 2005

¹⁰ One South African Rand is currently equivalent to approximately 11.75 USD.

unequal labour practices – which in turn had severely detrimental effects on workers’ political, social and economic lives.

While a small number of corporate giving activities had begun earlier - primarily donations from mining companies - broader CSI can be traced back to the Sullivan Principles released in 1977, which required U.S. companies to justify their presence in South Africa by contributing to local communities (Kuljian: 2005). Over the years, businesses in South Africa have felt strongly the pressure and responsibility to contribute toward overcoming the impact of apartheid on the South African population, hence the South African CSR and CSI language is different from that of the rest of the world, with concepts such as equity, transformation, skills development and ownership demanding attention, in addition to business ethics and good corporate governance)¹¹.

Following the Sullivan Principles, CSR generally, and CSI in particular, have had a multitude of additional drivers and shapers. These have ranged from local corporate governance principles encapsulated in the “King Reports”¹² (each successive report bringing in stricter and more consolidated reporting guidelines on social and environmental issues) to international corporate governance guidelines; incentivising indices such as the Social Responsibility Index of the JSE, shareholder demands, consumer perception and public relations principles.

It must be recognised, therefore, that CSR and CSI in South Africa has had a history and trajectory both embedded in and simultaneously independent of the notion of black economic empowerment though over time, the two have become increasingly interwoven with the incentives and requirements of the B-BBEE codes and industry charters.

CSI in South Africa has been slowly evolving, but the evolution has been uneven. While the impression is that there is certainly movement by some - particularly large corporates – towards becoming more professionalised and strategic in their CSI, there is significant cynicism about the CSI sector, in its intention, its implementation and its impact. In terms of numbers, as the economy has grown and business sizes have grown, CSI too appears to have grown, with estimates showing a sustained period of real growth until 2014, where a decline was noted.¹³ The most recent statistics by Trialogue place corporate giving at an estimated 8.2 billion rand in 2013/2014¹⁴, over half of which is used to support NPOs, and over 20% towards government institutions such as hospitals, schools and universities. This is a significant financial contribution.

¹¹ GTZ: 2009

¹² The King I, II, and III Reports are a set of guidelines that progressively required more holistic and integrated reporting on the Triple Bottom Line of companies– that is, financial, social and economic governance. Although report submissions are voluntary, the King report laid the foundation for institutionalising corporate governance in South Africa

¹³ Trialogue: 2014

¹⁴ This figure reflects cash and non-cash contribution (social investments, donated goods, products or volunteer time) as well as expenditure on social causes as a result of license to operate conditions.

What is B-BBEE

According to the Department of Trade and Industry¹⁵ Broad-Based Black Economic Empowerment (B-BBEE) as a concept “seeks to accelerate the de-racialization of the South African economy and to fast track the re-entry of previously marginalised communities into the mainstream economy”. It further endeavours to “transform the South African economy to enable meaningful participation of Black people, women and rural communities in the mainstream of the economy, in a way that has a positive impact on employment”.

Activities related to black economic empowerment were initiated prior to the B-BBEE legislation, with some large voluntary empowerment contracts in the early years of democracy - marking a “first wave” of empowerment deals - and other state legislation related to issues such employment equity, skills development, preferential procurement policies, etc. all entrenching different aspects of BEE as a concept.¹⁶

In terms of the specific B-BBEE legislation, it has been a long road. Following the establishment of a BEE commission in 1997, the Department of Trade and Industry (DTI) finalised the B-BBEE Act in 2003. In 2007, the final B-BBEE Codes of Good Practice were released – these are a set of regulatory guidelines and scorecards for measuring the implementation of B-BBEE. In 2009, the first verification agency (an entity that assesses compliance and provides recognised B-BBEE accreditation) was established.

At the time this report is being written, an Amended B-BBEE Act and new revised codes are coming into force. It must be noted here that, unless specifically stated otherwise, all reference to the Act, codes, charters etc., are to the old regime, that is, those covering the period from 2003 to April 2015.

The codes classify three different types of business, and apply differently to each:

Table 2: DTI classification of types of business¹⁷

Large Entities	Turnover of over R35 million	Generic scorecard applies
Qualifying small enterprises (QSEs)	Turnover between R5 million and R35 million	QSEs need only comply with four out of the seven elements, each of which has a 25% weighting
Exempted Small and Micro enterprises (EMEs)	Turnover of R5 million or less	Automatic accreditation to a specific level

The generic scorecard released in 2007 had seven elements, each weighted differently and calculated according to DTI parameters and formulae. QSEs, in comparison, need only to meet four out of the seven elements. While the scorecard appears to be simple, the implementation of each element, and


¹⁵ DTI:2013a

¹⁶ Thwaites:2012

¹⁷ DTI:2007b

the rules and regulations that accompany them have been the cause of much consternation and confusion, spawning the establishment of an entire industry of consultants and advisers to support compliance with the Act.

Table 3: The B-BBEE Generic Scorecard¹⁸



Element	Weighting	Compliance Targets
Ownership	20 points	25% +1
Management control	10 points	(40% to 50%)
Employment Equity	15 points	(43% to 80%)
Skills Development	15 points	3% of payroll
Preferential Procurement	20 points	70%
Enterprise Development	15 points	3% (NPAT)
Socio-Economic Development	5 points	1% (NPAT)
TOTAL	100 points	

It must be noted that BEE compliance is not mandatory on all businesses, only on those that want to do business with the state; however, the scorecards of a business are in turn dependent on the scorecards of their own suppliers, and hence B-BBEE has had a knock-on effect on many businesses that have no direct engagement with the state, to the extent that, for many larger businesses, B-BBEE has become an added element to the way business is done in South Africa.

Over and above the B-BBEE codes, there are also Transformation Sector Charters, more commonly referred to as “Industry Charters”. These are regulations that set industry-specific codes and targets for different sectors, for example, engineering, agriculture, transport, etc. These targets are meant to be aligned to the generic codes, but anecdotal evidence points to this alignment being limited. Two sector charters were released before the B-BBEE Act, the most significant of which is the Mining Charter, which has targets that are not at all aligned with B-BBEE but which have not as yet changed due to pressures from business.

In the first few years following legislation, with no codes, guidelines or assessment agencies, implementation of the Act was varied, open to wide interpretation, and not seen as very accountable. Given the lack of clarity at the time, the contemporary view is that many mistakes were made in the earlier BEE deals. Even after the release of the guidelines, however, the B-BBEE codes were still seen as open to interpretation and manipulation and the empowerment created largely focused on a small and wealthy economic elite at the expense of broad-based empowerment.

¹⁸ DTI:2013a

The DTI further identified several flaws in the implementation of B-BBEE. Among other things, progress on several targets had only been moderately achieved, much existing legislation was not aligned with the principles of the codes, and a tick-box approach to compliance and circumvention had become prevalent.¹⁹ So, in 2013, the DTI gazetted the amended B-BBEE Act and the revised B-BBEE codes of good practice. The new codes came into effect on 1 May 2015.

Socio-Economic Development²⁰

The section of the scorecard that has become linked to CSI is the one called “Socio-Economic Development” (SED). Essentially, this section of the Codes seeks to encourage the disbursement of corporate funds in such a way that “socio-economic development initiatives should strive to facilitate access to the mainstream economy for black people” through contributions linked to improving the financial circumstances of beneficiaries, via:

- provision of development capital for communities.
- training or mentoring to beneficiary communities which will assist them to increase financial capacity.
- offering preferential terms to beneficiary communities when purchasing their goods/services (e.g. early payment).
- offering preferential loans, guarantees
- provision of professional services and time

The codes of good practice set out a CSI spending target of 1% of Net Profit after Tax (NPAT) on the above (and related costs), which in turn would score a certain number of points for the company.

Table 4: SED requirements on the generic and QSE scorecards

Scorecard Type	Target SED Contributions	Points
Generic Scorecard	1% of Net Profit After Tax	5 points
QSE Scorecard	1% of Net Profit After Tax	25 points

The SED element had a further condition for attaining points. Where the focus of the CSI activities was on black communities or groups, if 75% of the beneficiary group was black, the full value of the contribution was recognised; anything less than 75% resulted in a pro-rata calculation of points.²¹

¹⁹ DTI: 2013a

²⁰ This section is based on the B-BBEE interpretative guidelines released by the DTI in 2007 and the DTI Codes of good Practice, 2007

The scorecard also provided certain process-linked parameters, referred to as a “Benefit-factor matrix”, where each of the following ways of contributing is linked to a certain percentage of points allocation:

- Grants, direct cost contributions and discounts are counted at full value (100%)
- Overhead costs, professional services rendered and the time of employees result in 80% of the value being counted.

All of the above elements and parameters are then calculated according formulae determined by the DTI, resulting in a points score. The above is a simplified description of what is a very involved process, but it gives a good enough picture for the purposes of this report. It should be noted that the wording in the guidelines is seen by the field as ambiguous and thus open to interpretation; what has been deemed acceptable for inclusion was essentially set by the verification agencies. As such, while the focus is on economic participation, this was understood, and implemented very broadly. More will be said about this later.

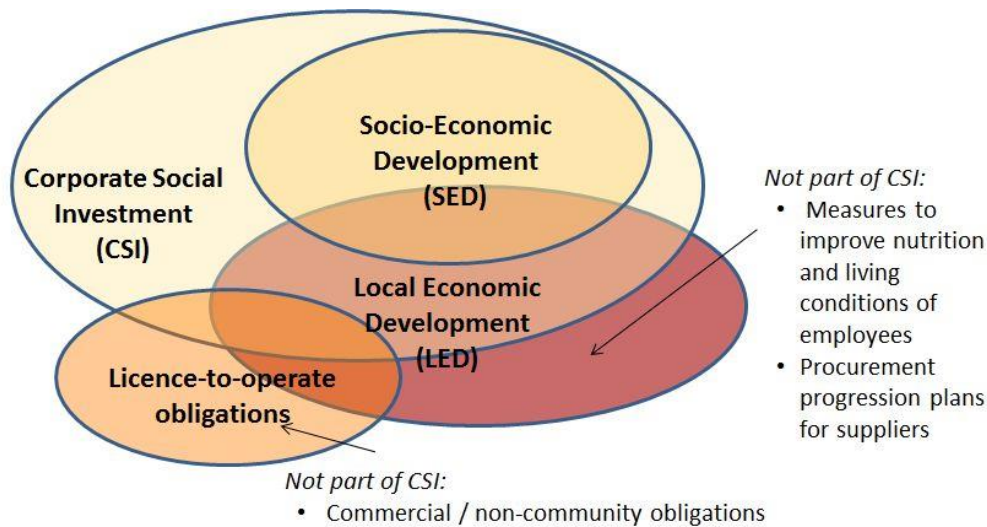
In terms of thematic focus areas, the guidelines provide a list of examples of initiatives that could be supported.²² The list was noted as “non-exhaustive”, however, the research will show later that this list has been used as an informal de facto guide by many. In addition, it has - with some small variation - formed the core of the examples used in most of the industry sector charters, and thus has been instrumental in shaping the thematic areas addressed by CSI under the B-BBEE framework and under most of the charters. In essence, it has been seen and used by many as a set of de facto principles.

Two things should be noted here. First, the SED element comprises only 5 points out of 100, reflecting a very low priority given to the SED element in the overall scheme of B-BBEE. This is a significant challenge, discussed further in the research findings. Second, SED is only a part of CSI. It does not cover all of CSI spend.

Image 1 – components of CSI²³

²² These will be outline further in the study

²³ Mathews:2013



While there is no data on how much of each element is counted as CSI, the above schematic serves to reflect that CSI comprises several overlapping elements. SED is one of these elements, an increasingly significant one. In addition, some of the industry related charters have mandated certain “Licence to Operate” conditions, or the submission of “Local Economic Development” plans, as a condition of operations. Both of these include some elements that fall into CSI and some that do not. Thus, while the SED element of the scorecard is a major element under discussion, it must be remembered that the industry charters have requirements that differ from the generic scorecard and that the Mining Charter (which was developed prior to B-BBEE) has separate incentives that are not aligned to B-BBEE. These all play a role in directing where and how corporate spending on social and economic development activities are directed.

A note on Skills Development and Enterprise Development: Two other elements of the B-BBEE codes that require a brief mention are those related to skills development and enterprise development, each of which contributes 15 points to the scorecard. For the purposes of CSI until now, these two elements have not been important, however, the new codes, as will be shown later, give them significant priority at the expense of SED resulting in some potential threats to the focus of CSI and very significant threats to the non-profit sector. Again, this will be discussed further in the research findings.

It is vital to note upfront that the B-BBEE legislation – and in particular the *Socio Economic Development* element - was not intended as a philanthropy/CSI mechanism or incentive. Instead, it was always intended to be one of a set of tools to aid in bringing about economic transformation and access to the economy for previously disadvantaged groups. In practice, however, CSI has become an activity used by companies to ensure the attainment of SED points – i.e. CSI has been used by the corporate sector as a way to “count” towards their scorecard points. Moreover, despite the intention being different, the SED points in the generic codes and industry charters are now commonly viewed and interpreted as a CSI incentive. As such, the B-BBEE codes have become an embedded factor in CSI.

Key Research Findings

To begin with and as already noted, research on linkages between B-BBEE and CSI is very thin, and this study thus relied primarily on the interview responses. Two studies, however, must be mentioned, one by Trialogue (a consultancy that focuses exclusively on CSI) and the other by Tshikululu Social Investment, which focuses on managing the CSI of several large companies. Both pieces of research include an analysis on the motivations for corporate giving. These studies represent only a slice of the business sector pie, and so while they give us indications on larger corporate giving, generalisations on the business sector as a whole, without disaggregation, would not be possible.

Again, as noted earlier, this is a small research study and the findings are intended to illustrate or draw out key issues, but are not meant for generalisation. In addition, the lack of available longitudinal data, the ambiguous wording in the codes, discretion in application and interpretation of the guidelines and the multiple and sometimes complex sub-structures through which CSI happens, all make for a complicated space to analyse. As a result, there are many contradictory opinions and perceptions about the effect of the BEE codes on CSI.

There are further complicating factors in the relationship between B-BBEE and corporate giving. To understand the effect of B-BBEE on corporate giving, one has to locate it within the myriad of other motivations, among them the presence of increasing local and international corporate governance initiatives (and the pressures associated with them), demand from consumers, value based motivations, directives from boards and shareholders, marketing and public relations and strategic development.

Influence of B-BBEE on motivations for CSI

There are two main questions arising here. First, is regulation the strongest motive for CSI? Second, if it is, is the motive one of principle (because businesses see and approve the need for the codes to improve South African society) or one of mere compliance (they do it because they feel obliged to)? This study and the existing research don't produce a very clear picture. While motives in Tshikululu and Trialogue research appear to be fairly evenly split between those who say they give because regulation requires it and those who give because they feel a moral compulsion, the interviews suggest that most CSI is strictly a compliance exercise with the codes. Again, this is an area in which further study would be needed to determine the precise influence of the codes on corporate giving practices.

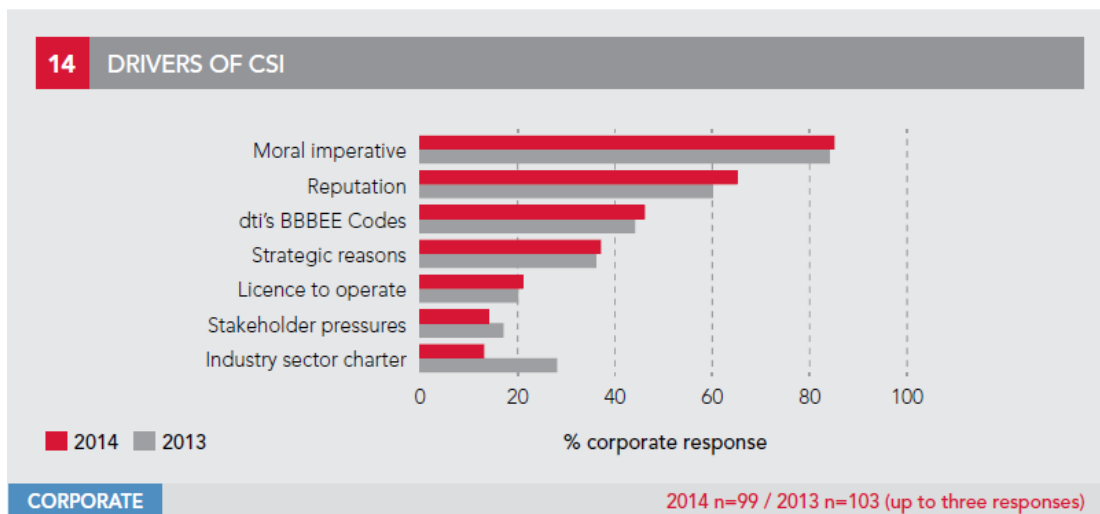
Existing studies

Research by Trialogue for 2008/9 showed the regulatory framework as the key driver of CSI²⁴. A Trialogue article *Defining CSI (date)* states: "One of the most visible impacts of regulation is that the spectrum of giving has broadened, both in terms of the number of companies allocating a percentage of profits to social causes, but also in terms of the expanded nature of giving". Trialogue's 2014 CSI Handbook, however, presents a more nuanced picture. It disaggregates B-BBEE codes from motivation linked to industry charters and licence to operate conditions. Its consideration of 99 companies revealed

²⁴ Trialogue: 2010

moral imperatives as the key driver behind CSI, with B-BBEE codes cited as the third most prevalent driver of giving, and licence to operate and industry charter lower down on the motivations list. It would be easy to overstate this, however. Considered together under the umbrella of regulation, these three elements would still constitute a major total chunk of the motives given (see Graph 1).²⁵ That aside, what is interesting about the latest Trialogue research is that those citing industry charter as a primary reason, gave significantly more than those citing other primary motivators. This might signify that, for some industries, B-BBEE related regulation exerts a relatively stronger influence than other motivating factors.

Graph 1 – Trialogue 2014 research: Drivers of CSI²⁶



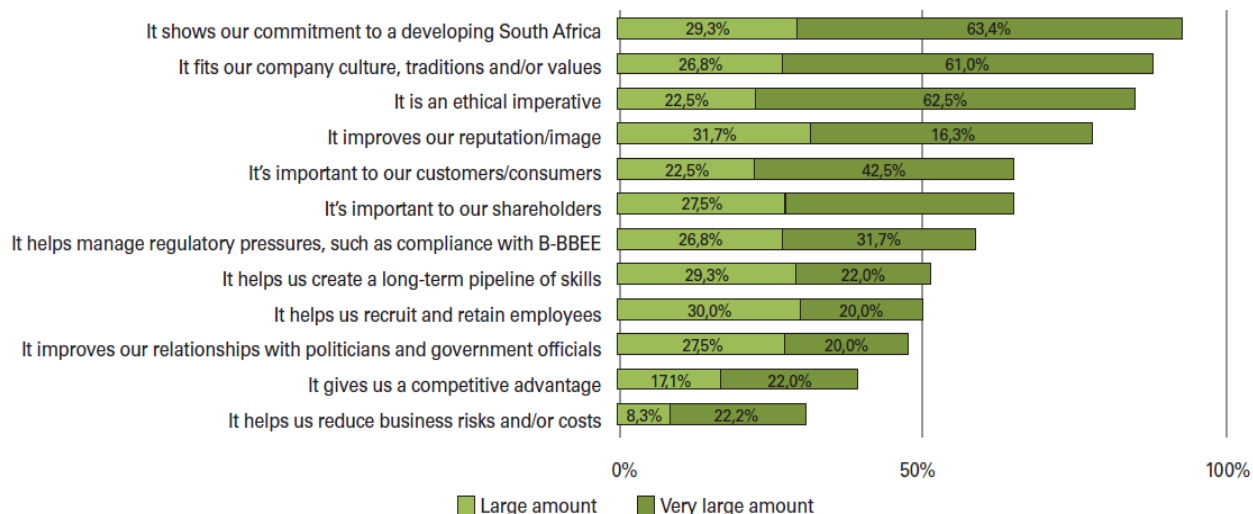
The Tshikululu study, *Value and Values*, conducted in 2013, based on research with 39 companies, (the majority big business and in the financial sector) also finds that, for the sample as a whole, regulatory pressures are not the most significant driver, but instead lie much lower down the list. Again, further analysis of the data by Tshikululu reflects that this varies significantly depending on whether companies are “consumer facing” or “non-consumer facing” industries. Nearly all respondents in non-consumer facing industries – mining, engineering, energy and industrial services – indicated that regulatory compliance motivates companies’ CSI a moderate amount or more, and more than half reported that compliance motivated it a large amount. In contrast, only 10% of consumer-facing sectors spoke of the importance of regulatory pressure. Again, we see that the influence of regulatory pressure needs to be understood in a much more nuanced and disaggregated manner.

Graph 2 – Tshikululu Study: Motivations for CSI²⁷

²⁵ Trialogue, however, notes that the “industry charter” option is significantly influenced by the sample which in this year, included many less mining and telecoms companies who are bound by industry charters rather than the generic B-BBEE codes

²⁶ Trialogue: 2014

²⁷ Tshikululu:2013



Looking generally at both these studies, with over 40% citing B-BBEE as a motivator in the Trialogue study, and a cumulative 58.5% citing regulation as influencing their motives to a large or very large amount in the Tshikululu study, the data clearly shows that whilst B-BBEE is not listed as a primary driver in this sample, it certainly does have significance as a motivating factor for some sectors of business. Again we must remember that these study samples don't have equal respondents per sector and that they reflect primarily the larger end of corporates. They cannot be used to make determinations for the sector as a whole, and particularly not for Small and Medium Enterprises (SMEs).

The data on SMEs is very outdated. A study by Maposa and Oliver-Evans in 1997, which was undertaken not too long after guidelines were gazetted, showed that 50% of the SME respondents indicated they were responsive to B-BBEE and 25% that they were working on a B-BBEE solution, indicating that even at the early stages, BEE was beginning to factor into the reality of doing business for companies of all sizes. No recent studies are available on SMEs, and this is something that needs to be explored.

The interviews

It is interesting to contrast the results of the surveys with the interview data. In exploring whether regulation or brand value/reputation played a more critical role as a driver, while there was some difference of views, the majority opinion was that compliance with B-BBEE, particularly once you move beyond the biggest corporates, is a key driver in corporate giving.

As one corporate CSI representative remarked, "many do it for compliance – it's very common - there are very few entities that have been doing it for years and been doing it for a different reason...for the rest, many people don't quite care what difference it makes. They say well what's in it for us... [and] it's the compliance and the PR kind of angles that they put together...So in terms of the behaviour, certain people still need a lot more time in terms of buy-in into the idea of BEE and why it's there in the first place."

Another corporate CSI respondent remarked, "My opinion on the codes is mixed. I feel very strongly that if it had been left up to corporates' discretion they probably would have not done much because corporate life is busy, your business takes up most of your time and your headspace... The fact that

they're obliged to now adhere to the codes is a good thing because it does push transformation a lot further than it would have been pushed if it had just been left up to people."

This view is strongly echoed by the B-BBEE experts, who on the whole reflect that, with the exception of the very large corporates, many business still look at the scorecard and begin with what provides the easiest points, which in most cases is SED,²⁸ and then use the 1% of Net Profit After Tax ((NPAT) spend as the first step to becoming more compliant. In other cases, businesses determine a specific amount, then see how that can be used to provide the maximum number of points available under SED.

Another respondent who spent years in business and is now in the non-profit sector has a very stark opinion that giving money to a community is only done if it's "going to put pennies on the bottom line". This does not, however, necessarily relate to B-BBEE, and could equally mean the value received from public relations or good corporate citizenship. He sees B-BBEE as a fundamental motivator, and goes on further to say that without B-BBEE, his NPO would certainly fold up, as would many others.

There is certainly recognition, however, that a multitude of drivers exist, which produced some contradictory opinions on B-BBEE as a motive. For some, separating the brand marketing motive from the compliance motive is tricky. For one philanthropy expert, corporates were giving money anyway before B-BBEE, and while compliance is seen to be playing a part, as something that needs to be done to do business, it was not the major driver. This resource person goes further to note that companies are spending 1% NPAT and getting points on the scorecard, but that they were engaging in development initiatives, with larger budgets, out of their marketing departments. The concept of shared value²⁹ was mentioned several times in the interviews as a key driver, with B-BBEE points a bonus. For another CSI/philanthropy expert, there are certainly cases where there is a recognition that CSI is a "necessary investment for long term prosperity and the investment was made for those reasons as opposed to some tick-box compliance."

Though neither the previous reports nor the interview data show consensus on the extent to which B-BBEE motivates CSI, what they do show is that the codes have had an influence on corporate giving. The extent of that influence is very dependent on sub-sectors of the economy as well as size of business. It also seems to be accepted that, irrespective of whether it was a primary motivator or not, the codes have now become an integral part of business and an integral part of the CSI conversation and practice. Any changes in the codes will most definitely significantly affect what happens to CSI.

Influence on amount and rate of corporate giving spend

Again, the questions to consider here are whether CSI has increased since the implementation of the B-BBEE codes and, if it has, how much is attributable to the codes. Here, too, the sparseness of the data

²⁸ This works differently when looking at sectors that have to meet "licence to operate" conditions or are required to engage on local economic development plans for employee- related geographies, as per their sector charters,

²⁹ Shared Value was used here to refer to initiatives that have benefit both for beneficiaries of CSI as well as for the corporate entities that provide CSI

makes it difficult to determine whether the B-BBEE has changed or influenced the *amount* of corporate giving.

There is some dispute as to whether amounts of corporate giving have risen in the period of the codes or whether what is given is simply being counted more carefully. A study by CDE in 1997 estimated CSI at R1.1 billion (on a broad definition of CSI) and at R725 million (if excluding sports sponsorship). The estimate reflects that, at the time, major corporations were spending roughly 1.3% of after-tax profits. In 1998, Trialogue's Corporate Social Responsibility and Development Handbook estimated CSI at R1.5 billion, with CSI among the largest 100 corporates at 1.16%.³⁰

Fast forward to the 2013/14 Trialogue data, and the estimates suggest R8.2 billion in CSI, with an average of 1.4% of NPAT being spent. For several years, CSI estimates showed a year on year above inflation increase, until 2013/14, when the data showed a nominal increase of 4% but a real value decline of 2%.

A leading expert in the CSI sector believes that the increase over the 10 year period does not necessarily mean that cash giving has increased much in real terms, but that corporates have used better accounting practices and become more adept at including non-cash elements of CSI. Trialogue's data lends some colour to this, showing that while non-cash items represented 5% of total CSI value in 2012, this rose to 12% in 2013 and 2014. Moreover, Trialogue notes the percentage of companies reporting non-cash allocations has risen from 6% in 2010/11 to 40% in 2013/14.

Up-to-date data on SMEs is lacking. The CDE study on business of all sizes reflected that in 1997, the CSI of small and medium sized companies was lower than the relative expenditure in the bigger corporate sector. According to a 2008 report on SMEs by Maposa and Evans, 80% of SMEs reported giving, and just under 70% of this was cash giving - with training, industry-related services, donated goods and industry-related goods forming at least 30%. This presents a picture of a diverse giving space. That study further analysed Stats SA data, and extrapolated that in the study period, SMEs gave at least R436, 000.

The same question – is the amount rising or is it simply being counted better? - arises about non-cash giving. Anecdotal evidence suggests that donation of goods has long been part of CSI. Donation of volunteer time, as part of CSI, however, needs to be further interrogated. While company sponsored volunteering events are on the rise and companies are allowed to add their related costs as part of SED expenditure (thus increasing the reflected CSI amounts), they do not always do so. Trialogue's data shows that 58% of companies did not require volunteering to be linked to CSI and while 34% measure the rand value equivalent of volunteering, only 27% reported this value as part of CSI. It's possible therefore that there is a good deal of non-cash giving that is not taken account of in South African CSI, but as noted before, this data represents only a slice of the pie, and a broader study may reveal a very different picture.

The third issue is the difficulty with using average amounts in the face of significant outliers. The Trialogue 2013/2014 handbook shows that 31 companies accounted for half of this CSI spend, and the top 100 companies for 70% of estimated total CSI expenditure. One possible implication here is that the larger spend by the larger companies could distort the average, and that the picture of CSI spend for

³⁰ CDE:1999

corporates lower down the ladder may be very different. The interviews appear to bear this out, with many seeing bigger, profiled companies consistently spending in excess of requirements over the years, and smaller or newer companies perceived to be engaging in increasing spend at or close toward the 1% NPAT requirement. Without data that reflects on actual percentages, rather than amounts, however, again, this cannot be confirmed.

How much can be attributed to B-BBEE?

So if an increase in the amount of CSI *in the period since the introduction of the codes* is likely though unproven, have any of the respondents seen an increase in giving *as a direct result of the codes*? Opinion, once again, is divided. In the words of one B-BBEE expert, “Certainly I do think the codes have created a shift in giving. I’m not convinced that it’s created an increase in giving, maybe amongst smaller businesses, but I think when you start getting to medium organisations (and by that I mean quite big) those kind of organisations have been giving for a long time and that giving is not necessarily different.”

On the other hand, a corporate executive whose institution also accepts funds from others for its programs, says that while their own giving pre-dates the codes, and has not been influenced by it, the codes have made an enormous difference to the funds that they receive from other smaller companies. The work this corporate foundation did was seen as aligning to key areas in the codes, hence attracting funding, particularly from smaller businesses, has been very successful. “Part of its success has been because of the codes, very much part of its success.” Similarly, a B-BBEE consultant sees the SED points, particularly for the QSE sector (which could attain 25 points on SED), playing a very significant role in giving.

In terms of percentages, bearing in mind the increased value added by the non-cash giving, the statistics reveal that the percentage of NPAT given to CSI has ranged between the 1.1 – 1.4% over the years, (though an expert in the sector is of the opinion that this will begin to level down and stabilise at 1% over the next few years). Trialogue’s data shows that while previously, board decisions determined the CSI spend of more than 50% of corporates, NPAT is now the most used method (39%), arguing that the codes have created a sort of industry norm. The existence of the above 1% spend is, however, used by a few respondents to argue that CSI motivations are not necessarily linked to B-BBEE (as the scorecard posits a 1% spend of NPAT) and that this spend would have happened anyway, given the evolution of the corporate sector, corporate governance principles and international standards for corporate behaviour. One philanthropy expert argues that “companies were already spending, and in some cases companies were spending more than the 1% NPAT. And still to a large extent many companies continue to spend more than 1% of NPAT.”

Another view is that it is not so much that companies are adhering to the 1% benchmark through mere compliance, but because the economic downturn prevents them from giving more. Another B-BBEE resource person argues that big businesses used to be more generous. “They used to give as much as they can, now it’s a lot more aligned to just meeting the 1% because we need to use this money elsewhere within our operations. With all the retrenchments and strikes it’s a difficult environment to be in at the moment for most of the sectors if not all of them. So everyone wants to save every last rand by as much as possible. So instead of giving because you wanted to, give now it’s a case of I want to give but I can only give up to the 1 % mark.”

For small and medium-sized enterprises, the reluctance of respondents in the CDE study to disclose information on turnover together with the lack of any updated statistical data, mean that no findings can be made on whether B-BBEE has contributed to an increased rate of giving in the SME sector, even though the interviews seem to indicate it has. What is felt strongly by several respondents, however, is that now that giving structures have become aligned to the existing B-BBEE structure and intricately interwoven with the codes and charters, any changes in the codes will have a detrimental effect on future rates of giving for SMEs. This will be dealt with in a later section.

The Trialogue data suggests that the level of giving differs not just by size of organisation, but across sectors. Those who say their giving is motivated by Industry Charters spend significantly more than those listing other drivers – almost three times greater than the average spend of the primary sample. This might simply be because those motivated by Industry Charters like mining, telecoms etc. are much bigger businesses in terms of turnover and hence their 1% NPAT contribution is much larger than average. Another reading is that some of the Industry Charter scorecards go beyond the 1% mandate, for example, in the Information and Communication Technology and the Media, Advertising and Communications arenas.

A further important point to note is that according to this report, the percentage of corporates that were fully compliant to the SED five points was 60%, indicating that for a fair amount of companies in the sample, these points are not as important, and hence corporate giving spend for many may be lower than the average percentage. As one philanthropy expert points out, “I think that companies don’t always respond to every element of the codes so that might have been the reason.” In order to determine this, the regulatory authorities would need to undertake a tracking of the compliance rates over the years of B-BBEE implementation.

There is no data that tells us that the codes have definitely increased the incidence of volunteering. The Tshikululu data certainly shows an increasing amount of companies that include Employee Volunteering Programs, but the statistics on uptake by employees are still relatively low. Again, the motives for these programs are debatable. According to a conference report entitled “Beyond Painting Classrooms”, while BEE, King III and the JSE SRI Index incentivise volunteering, companies are tending to support volunteering because of compliance rather than genuine commitment to corporate citizenship, leading to volunteering initiatives that are not always in the best interest of the NPO.

The B-BBEE guidelines allow non-cash giving to be included in the SED points allocation, and one CSI/philanthropy expert notes that while companies previously did not pay a lot of attention to measuring their cumulative CSI, one certain effect of the codes is that they are now deliberately measuring what they give and how. “In this view, companies are interrogating their spending more closely and being clearer about demarcating what falls where.” In other words, whether in cash or non-cash giving, one of the effects of the B-BBEE requirements has been to create greater consciousness and measurement of ways in which companies are giving.

Flexibility of giving

If the Codes have had an effect on counting what money goes to CSI, have they also had an effect on the destination of that money? Was CSI more flexible prior to or during B-BBEE? Again, opinions differ. In the words of one CSI/philanthropy expert, prior to B-BBEE, companies had “much broader freedom as to where their funding went” and that they had to narrow the focus so as to deliver specific services to a particular group of people and, importantly to be able to count that. Increasing precedence, on this reading, is given to output as a measurement (rather than impact) and there are perceived limitations to a system where points are more easily measured against tangible activities - which meant that those organisations not involved in immediate first-level service delivery got cut out. This emphasis on measurement of output is extended to social justice issues, with a resource person commenting “if you [are] dealing with policy, advocacy, you[re] not going to be able to measure it, [like] vaccines, food, school bursaries. It narrows it to far more practical service delivery issues.”

A contrasting view is that the B-BBEE requirements coincided with the evolving professionalization of the sector, and have had no real bearing on a change of approach. Previous flexibility was linked very much to the “chairman’s whim” or a “spray and pray” approach. In line with global standards and recognition of the role of business in society, corporates are seen to have naturally professionalised and evolved, by for instance aligning their CSI and business strategies, adopting the concept of shared value, developing multiple structures and mechanisms to manage their giving, etc.

For others, the evolution has not been about professionalization, but rather about compliance, and B-BBEE period is seen as marked very much by a tick-box compliance approach, where attainment of points is the determining factor, and development impact a secondary issue (if at all). In the words of one non-profit respondent, “the first requirement of business is that they get their points... A number of B-BBEE consultants place their business with us for various reasons; yes, they think we’re a good cause, but first, we deliver the points.” This is echoed by a CSI/philanthropy expert who remarks that, “corporates have got to the point now where they won’t do anything unless they can count it in the scorecard. That is where the problem comes in because that cuts out a whole lot of organisations and it cuts out some activities as well.”

A B-BBEE resource person adds a more nuanced view. “I think it has changed the thinking in terms of contributions. What used to happen was at the end of the year people, when they need to do their sustainability reporting, then they realise they forgot to do donations and they quickly look for organisations and they write a check, and boom! gone, finished. Then they write a report that they’ve donated to such and such an organisation and this is what they do. This time around, because the scorecard gives parameters in terms of the beneficiaries you need to be contributing to, which is at least 75% black SA beneficiaries, you now have to think about it a lot more than to just give away money.” There is also a minority view that there is a will to move beyond compliance, and engage more meaningfully, but no clear idea of how to do so through lack of information and experience.

The wording of the Codes and the effect on flexibility

The regulations are seen as unsatisfactory in two ways. On the one hand, the fact that they are not prescriptive allows a good deal of latitude in their interpretation, which can have both good and bad consequences. On the other hand, because they furnish examples of projects that qualify for points, they are silent about those that don’t. As a result, the examples have more or less been used as a guideline by many businesses and by the sector charters as well (with some variation/addition),

entrenching the idea of what is seen as “appropriate” support to obtain points in the codes. As such, even though the list is open to interpretation, there is a view that the examples given in the official documentation have become the broad parameters for what is allowed under the codes.

In the words of one CSI representative, “I don’t think there has been much playing on the unsaid space. Because remember, there are entities that are doing it (and I started by saying why are you doing CSI) purely for compliance purposes; that wouldn’t bother thinking through their initiatives and therefore, there is a tick-box kind of approach. And because of the tick-box kind of approach they will look at whatever is seemingly prescribed and follow to that tee.”

Table 5 Qualifying SED contributions³¹:

³¹ DTI:2007c

QUALIFYING CONTRIBUTIONS:

TYPE	GENERAL NATURE & OBJECTIVE	EXAMPLES
SOCIO-DEVELOPMENT -	Socio-economic development contributions: <ul style="list-style-type: none"> • should typically strive to promote access to the economy for beneficiaries 	<ul style="list-style-type: none"> • development programmes (especially for Black Designated Groups as defined in Code 100) • HIV/ AIDS & healthcare support • Support to schools and educational assistance through bursaries • Skills development for the unemployed; ABET programme support • Support for arts and culture • Guarantees/ security for beneficiaries • Development capital for beneficiary communities • Training/ mentoring of communities to assist them to increase their financial capacity • Investment in the social wage of employees (e.g. housing, transport and healthcare)
APPROVED SOCIO-ECONOMIC DEVELOPMENT PROGRAMMES	Contributions to projects which have been approved by organs of state as well as those that are sector specific as agreed to by sector representatives through their sector codes	Approved Project contributions include <ul style="list-style-type: none"> • Infrastructure Development • Reconstruction in underdeveloped areas • Rural Communities • Geographical areas identified in the government's Integrated Sustainable Rural Development and Urban renewal projects

There seems to be a view that very large corporations that have been engaged in CSI for a long time, have evolved differently, given much more thought to their CSI and CSR objectives, and as such, see ample opportunity for their CSI work to happen within the existing structure. They also, depending how holistic their CSI/CSR view is, support institutions that are not covered by the codes at all, and do this over and above the initiatives that are included for their SED points. Compliance in these cases is secondary and so the perceived limitations do not apply. That said, many feel that this is far from general and most businesses still need a lot of progression and professionalization of their CSI, hence the compliance mind-set dominates and the nature of issues supported fall within what the codes prioritise. Again, generalisations are perilous and disaggregation by industry type would give different pictures for different sectors. The Mining Charter, for instance, which pre-dates the codes and is not aligned with them, is seen to have had a significant influence on where CSI funds are spent.

A glance at the thematic issues arising out of Trialogue's yearly research consistently reflect a concentration of budget spend on education (with health and social and community development following far behind). In 2008, Trialogue's research showed the proportion of CSI spend on education to be 45%. This decreased to 37% in its 2010/11 research and has been steadily increasing again, to 49% in 2014, so while there has been some fluctuations in education budgets since the codes came out, this can't be really attributed to the codes. The codes may, however, have very likely led to some decrease in

the purely welfare spend that cannot easily be linked to economic access. It is difficult to say that the codes in general have influenced education or other thematic issues drastically, though it could certainly influence the types of institutions and/or activities supported within these thematic areas. It is envisaged, however, that the new codes will definitely shift the thematic focus considerably. There are also very likely certain areas that have been influenced by some of the sector charters, but an in-depth analysis is required for that determination.

A note on Non-Profit Organizations (NPOs)

Many South African NGOs remain dependent on corporate funding for their survival. What has been the effect of the B-BBEE regime on them? NPOs formed a very small component of the research, hence while no generalisations can be made, a few points are worth mentioning. The short answer is that depends what kind of NPO you are and what types of thematic activities you engage in. Again, this is an area that requires some in-depth qualitative research. More generally speaking, in a climate where short-term and measurable returns take precedence, those that deliver services have fared better than those whose aims and achievements are harder to evaluate, such as lobbying and advocacy institutions.

One respondent's reflection is that companies want to know that they will get points before putting money in and, that having a B-BBEE certificate has been an advantage to fundraising for new donors, but has also, very critically, helped retain a long-standing donor. Another respondent remarks that the survival of the NPO he works for is completely dependent on funds aligned to B-BBEE points, and his view is that many other NPOs are in the same position. He further reflects on how their institution had re-positioned what it did and how it was structured to be able to generate more points under the enterprise development (ED) aspect of the codes, while still retaining its core focus. "We did nothing illegal... what the drafters of the B-BBEE legislation intended and what they wrote are two different things but you can only work with law in written form... you cannot work with what was intended."

This brings up the general question of the effect of the points system on what NPOs do and say they do. A B-BBEE expert believes that the ability of NPOs to provide B-BBEE points becomes not just a fundraising tool, but can also change what the institution does or how it reflects what it does. This was seen as both positive and negative. On the one hand, the new codes could result in NPOs having to find innovative ways to generate "enterprise Development" points for their corporate givers, while still retaining their SED profiles – thus bringing more money into the NPO sector. On the other hand, there is a "donor-driven agenda" danger, where the availability of funding for specific activities could lead to NPOs having to find ways of including these activities as an add-on to their core work.

The codes, CSI and social justice work?

There has long been a perception among human rights organisations that the codes unintentionally limit the flexibility of CSI spend by the examples provided in the guidelines. This perception sees limited potential in the codes for advocacy on key socio-economic political issues that would help catalyse long-term systemic change – for instance, issues around resource governance, transparency and accountability; advocacy that challenges the state to meet its constitutional obligations etc.

While many institutions would deliberately shy away from advocacy and development research, it would be unfair to say that all do so. There is a view that, among some corporates, there is definitely more willingness to look at interventions that support systemic rather than short-term change. The progression of some work on education, for instance, has seen a fair amount of advocacy support from CSI, likewise children's rights. The real criticism is that advocacy support is generally focused on non-controversial elements, with corporate funders backing away from issues that threaten the underlying rules of the game. "It is for this reason that government and private sector are much more willing to talk about getting children into classrooms rather than transforming the migrant labour economy so that children can grow up with their parents".³² A cursory look at the websites of several leading human rights institutions show corporate funding for these institutions to be a very small proportion of a large list of international funders, and in many cases, corporate sponsorship is non-existent.

On the face of it, while not prescriptive, the codes do constitute a barrier to certain types of funding. Some are of the opinion that while, for instance, education can easily be linked to economic accessibility, issues such as accountability and transparency are a stretch, and hence would not even be considered. Other respondents, however, are of the opinion that these systemic issues would not have been supported anyway, codes or no codes, and that engaging on the contentious work, especially work that criticises the state or that ultimately serves society at the expense of corporate interests/profit, would not happen anyway.

There is a recognition, however, that there are some – a very tiny number - of corporates who have engaged in supporting this work, and such support is seen primarily a result of progressive leadership at the very top – a CEO who is willing to stick his/her neck out and/or understands the necessity of engaging in these issues. For one NPO that is engaged in advocacy work, and which has had some corporate support, B-BBEE has played no part. Instead, such funding was very much based on personal relationships with corporate executives who are seen as progressive.

In the words of one CSI/philanthropy expert, "if you are looking at gender rights and more advocacy organisations, those generally are not well funded in the CSI space and I don't think it's because of interpretation of the codes, I think that it's more a kind of a philosophy around funding that kind of work that it's seen to be aggressive towards government and unfortunately, in this country, locally based, marketing-driven, reputation-driven organisations that spend for a very specific reason will not have the same funding philosophy of an international foundation."

Another CSI/ philanthropy expert reflects, "We've seen companies more prepared to invest in research, advocacy but they still shy away from representing causes like human rights etc. primarily because they don't want to compromise their relationship with government and I don't think the codes will change that. ... But one of the main limitations is that companies really do like to see the results of their work... So investing in an endowment or these sort of long term systemic issues, while I think it's probably developmentally quite sensible, it's not something that companies naturally resonate with."

Broader strategy and conversation on CSI in South Africa

If there is one thing that can be said about B-BBEE, it is that, irrespective of influence on motives, amounts, flexibility etc. it has certainly changed the conversation on CSI in South Africa. Whereas

³² O'Riordan:2014

previously, CSI conversations had at their core branding, consumer perceptions and local and international guidelines and obligations, today, no CSI conversation in South Africa happens without including the interaction with or influence of B-BBEE.

Again, there are two distinct views on this. The one view is that there was a huge positive spin-off in being a good corporate citizen and building social capital, and corporates were beginning to understand that, but the introduction of B-BBEE codes have, in the words of one CSI/Philanthropy respondent “dumbed it down”, such that behaviour is around compliance, not around what it means for corporates to add value back to society.

The contrasting view is that B-BBEE has changed the focus and conversations of corporate giving in positive ways, and that without B-BBEE, those conversations would not happen organically. Again, these views are primarily referring to the top corporates, and not to business as a whole. One CSI/philanthropy expert goes further to say “When the codes came along we were quite keen that the CSI or SED tagline was in that, although we recognised that it wasn’t a BEE issue, it was more a developmental issue. But it was, until recently, the only way companies could really look outside of their value chain and make some sort of contribution to societal conditions, and so we recognised it was important.”

Structure

An area that has not been talked about much is the kinds of independent structures that have been established as a result of the codes. All the corporate representatives interviewed indicated that their companies had established separate trusts/foundations, either to manage their CSI giving or in addition to their existing CSI units. They all also indicated that such structures are not the norm. According to Trialogue’s 2014 research, more than 59% housed CSI directly in their company, the remaining 41% had a separate legal structure. Of this latter group, 8 % had a separate NPO and 33% had a legal trust /foundation. We must further recall that these figures apply to the upper end of corporates, and that the proportion of smaller businesses having such structures is likely to be very much less.

The statistics alone, however, do not permit an in-depth picture of corporate giving mechanisms, and further work is required to understand these - how they operate, how they link to existing CSI work, where are the differences and alignments, do they face different issues, are they more or less flexible, etc. What has been the effect of the codes on the establishment of these structures? While the information available is limited, it would seem a fairly safe inference that few have been set up as a direct result of the codes.

The second structure to consider is that of PDI beneficiary trusts. These are independent trusts where the beneficiaries are previously disadvantaged individuals. In some cases, these have been established as workers’ trusts, in others as community trusts, and in some a trust aimed to benefit NPOs, where NPOs were able to benefit from purchase or donations of shares in new companies or new developments within existing companies which could be invested for future maturity. It is important to note that these fall into the “Ownership” component of the codes, and not under SED. Anecdotal evidence reflects that community trusts in particular have been fraught with difficulties. While there has

been some efforts to bring together businesses involved in establishing such Trusts, again, very little is documented about how many such trusts have been established, how and what has happened to them or what impact they have had. The only completed research linked to this appears to be a theoretical framework on the establishment of PDI beneficiary trusts, though there is indication that some new research may be underway on community trusts specifically.

Of particular interest are ownership initiatives that have been linked to NPOs. While a few have been set up, again, there is scant information. The most often mentioned in interviews is that of Ditikeni, an investment vehicle that was used to benefit a set of NGOs through their inclusion in an ownership deal. Another respondent mentions an educational NPO that established a trust that has successfully garnered B-BBEE deals. Two NPO respondents talked about trusts in relation to their institutions. The first talked about being in a negotiation to establish a B-BBEE ownership deal. The second, a respondent from a human rights NPO, speaks of how their institution established a trust to try and benefit from the scorecard, but did not receive any funds. This respondent attributes it both to the lack of interest of corporates in funding their type of work, but also to the lack of connection of human rights institutions to the corporate space and the lack of champions who are able to link them to deals when these are being considered.

Whether these trusts and initiatives fall under the heading of “giving” is open to debate. Some feel that they cannot be counted, as in many cases, this money is simply leveraged finance and does not come out of the profit of the corporate. The trusts are simply a business transaction that benefit non-profits or communities. Others, however, may operate differently. Anecdotal evidence on community trusts – many of which were set up as a result of the Mining Charter – show little impact, though belief in the potential of the idea still remains. It would be extremely valuable to explore what has been the incidence of creation of community, worker or NPO related-trusts and more importantly what impact these have had on their beneficiaries.

The new B-BBEE codes

Table 6: New 2013 B-BBEE Generic Scorecard³³

Element	Weighting
Ownership	25 points
Management Control	15 points
Skills Development	20 points
Enterprise and Supplier Development	40 points
Socio-Economic Development	5 points

When considering the effect of the B-BBEE codes on CSI, there is another triangulation point to take into account. As noted, the DTI has, as of 1 May this year, introduced new codes, following many concerns about *the lack of overall transformation, and the limited impact of the codes*. In other words, the government itself believes the existing B-BBEE codes had not had the desired stimulating effect on

³³ DTI 2013

transformation. The new codes have brought in wide-ranging changes at all levels, but for the purposes of this study, we will focus on the SED element, which has also garnered much controversy.

The draft codes released for public comment changed the beneficiary component of the SED element to 100% (instead of 75%) black and further introduced phrasing that focused specifically on “income generating activities”, rather than the broader term “access to the economy”. Following an uproar in the civil society sector, and a collaborative submission urging reconsideration, the DTI released a notice indicating that the statement relating to the SED element was withdrawn, and that the SED components remain unchanged.

In the final codes released thereafter, however, while the original 75% black beneficiaries element has been re-instated, the new codes refer to a “specific objective of facilitating income generating activities”, causing much consternation among the NPO sector at the likely resulting impact, and much confusion in the corporate and B-BBEE accreditation sectors. Without further information or verification guidelines to aid in clarifying the implementation of the new codes, this issue remains unclear.

It is likely, however, that whichever way the new codes play out, there will be a negative effect on NPOs, particularly those that do not fall into areas that the new codes prioritise (income generation, education and training, skills development). One B-BBEE expert remarks, “ the reality is that we’re in a space where organisations are needing to reinvent themselves in any case, so what you might find is that an organisation like that [women’s rights organisation] they might need to tag on support to get them doing some work...there could be angles to an organisation or a new part of the organisation that needs to be created to almost account for it, and that aspect of the organisation might be able to get funding specifically for that. But of course if we are just talking about funding research in human rights and activism and stuff like that I think it’s going to be a difficult sell.” A B-BBEE expert who was not part of the study but writes/presents publically holds an alternative view that the new codes present an opportunity for civil society organizations to partner with business as trainers and mentors. While this may be so for some institutions, again, the effect on broader civil society is still detrimental.

According to CAFSA³⁴, South Africa has over 85,000 NPOs, many of whom are not involved in income-generating activities, but who rely in part on corporate support. Trialogue’s 2014 research shows that over 50% of CSI funds are channelled to NPOs and that corporate support provided 22% of NPO income for that sample. There is significant concern among several respondents that the new codes will result in corporates withdrawing support from NPOs that have been receiving funds, and instead will focus on those specifically involved in income-generating activities. For institutions working on child rights, women’s rights, health care etc, there is significant worry that the new codes have the potential to significantly compromise the effectiveness and survival of many organizations in the NPO sector.

Indeed, this may already be starting. One CSI manager has said that while their company will still support some NPOs that do not fall into the SED criteria, other NPOs that have long received their support are very likely to fall away as they will no longer be counted in the SED points.

³⁴ 2012a

In the words of one CSI/philanthropy expert, “there’s no one driving government agenda in this giving space, which is why the codes are just seen as a default, but actually they’re not. They are far from solving the problem. But everyone just relies on them so much. Which is why I find so interesting where the codes are becoming more job creation focus - its jobs, jobs, jobs - and that’s been government’s rhetoric for the last 4-5 years. It is becoming more and more dangerous for the social space because there is so much work that sits outside of job creation. It creates a pipeline, but CSI serves such an important purpose and it’s such a little amount of money that’s being spread over such a large amount of work.”

There is an alternative view that this issue is still too ambiguous to make any determinations until technical guidelines are released by the DTI. What it means is that in the interim, implementation of the code depends on the interpretation that verification agencies allow, and that many things can be included, provided you frame it as linked to the priorities in the new codes. This issue of framing came up several times, with some reflecting that it’s all in how the initiative is presented and that there are structures and mechanisms that can be developed and adopted by NPOs to enable a contribution to be counted for points. There is a recognition that this is not in line with the spirit of the law, but in the absence of clarity, this seems to be one interpretation.

Another B-BBEE expert is of the opinion that whilst the wording emphasises income-generating activities, private conversations with DTI suggest that this won’t be the limitation, and that many broader issues supported before can still be allocated points. The DTI has, however, not released anything to this effect in writing.

There is also a concern on the impact this will have on existing corporate strategy, where certain companies have developed thinking around areas of work that will no longer be included in the codes. According to Rockey³⁵ “forcing companies into unfamiliar developmental space will simply entrench a compliance mind-set, increase the cost of verification and take us back to the fragmented thinking of the past.”

A further concern is that the new codes have three priority elements: (i) Ownership, (ii) Skills Development and (iii) Enterprise and Supplier Development, and each of these require some minimum level targets that must be met. Some respondents believe that with the codes becoming that much more difficult (entry level to being rated as compliant has increased from 30 points to 40 points) and the emphasis on the priority elements, many companies may decide not to bother with the SED component at all. A conversation with one corporate representative reflects that corporates now have to put more money into enterprise development element (targets for ED have been raised, but points have also been increased) and since funds for ED and SED are seen as being in a similar basket, CSI funds earmarked for SED, may well be used for enterprise development instead. “Inevitably they going to have to increase budgets, they will, but they will cut and dice what they’ve got already to make sure that they can fulfil the mandate as required by B-BBEE codes. It’s inevitable.” For this respondent, who works at a large, well-known corporate with recognition for its CSI activities, while the codes have not affected what they gave to in the past, he sees that the new codes will definitely do so in the future. Indeed, anecdotal evidence reflects guidance to corporates on how to support non-profit activities via the enterprise and supplier development part of the codes.

³⁵ 2012

For another philanthropy expert, there is a danger that the marginal weighting given to SED may well mean that, if it will not make a huge difference to their overall B-BBEE status, then CSI will no longer be seen as a strategic interest, and be scaled down. For another, the new codes are seen to do more damage by making corporates more ruthless about their CSI spend, and creating the view that the societal problems we face can be solved through the codes, and not through what may be practical and obvious.

Three related issues need to be noted. The first is that the codes for QSEs have also changed significantly. Under old codes, QSEs could earn 25 points on the SED component, under the new codes the SED component is reduced to 15 points. Moreover, in the old codes, QSEs could also choose 4 out of 7 elements that they sought to get points on. Under the new codes, there are certain priority elements for which sub-minimum targets must be met. The reduced points, together with the mandate of sub-minimum targets in other areas, again puts even less focus on SED than previously and could have a detrimental impact on what part of the codes smaller businesses seek to get points on.

The second issue to be noted is that of skills development. Whereas the terminology of skills development previously applied only to employees, under the new codes it applies to initiatives that support both employees and non-employees. As such, a great portion of the types of education and training activities currently supported under the SED points, could now, if framed correctly, be included for points in the skills development element, yielding a higher points allocation for the company. The concern is that, as these budgets will begin to move from SED towards skills development and enterprise development, funds for important NPO activities that are not linked to education, training or enterprise development, will start to suffer tremendously.

The last is that the point allocations allowed for PDI beneficiary trusts, mentioned earlier, are now significantly reduced. Whereas, previously, such trusts could form a huge component of ownership deals, in the last instalment of the new codes, written just as this report was finalised, they will only attain a maximum of 3 points (out of 25 Points). The DTI's rationale for this is that such trusts were not devolving real ownership, amongst other critical issues. While the trusts have definitely had problems, they have also been seen as a cornerstone of making B-BBEE more broad-based. It is unclear what will be the effect of these changes on the creation of broad-based trusts in the future, or on efforts to support and strengthen existing ones.

Finally, a question that arises is whether there was a lost opportunity in civil society's and corporates' response to the revised draft codes around SED. The revised codes initially sent out for comment had two problematic changes related to SED and these formed the crux of the civil society submission to the DTI. In hindsight, however, there is such dissatisfaction from corporates, B-BBEE experts and NPOs around the difficulties of the codes, it seems that perhaps these absorbed too much attention and that that may have been the space for raising some of the structural issues that required addressing. To be fair, the general feedback from civil society however, is that the DTI is not open to listening to submissions on such issues.

The place of legislation and incentives: "carrots and sticks"

It must be repeated here that B-BBEE was never intended as a CSI incentive, just as one tool to enable economic transformation – but it has become a de facto driver of CSI driver. With that in mind, issues around what kind of CSI drivers are appropriate needs to be raised. Do incentives work better, or do mandatory requirements have a greater influence? Where should drivers these be placed: In economic transformation elements, in tax legislation, in business regulations? How do different drivers align and reinforce each other?

The SED points in the codes are seen by some as an incentive, a dangling carrot that provides a return for giving, but not a stick that mandates it as a compulsory element. For others, the fact that giving is linked to the BEE points, which have become more than just about being able to do business with government, but also an increasingly pervasive aspect of business process, makes it a less voluntary element. For those bound by license to operate requirements, the compliance with the codes becomes a mandatory element. As such, depending on your business and industry, the codes have different interpretations and applications.

Some argue that business giving should be incentivised, and not mandated; others that mandatory giving should be a key feature. Irrespective of which view you take, however, there is a majority viewpoint that some kind of legislative framework is needed. For one former businessperson, “Business people do not spend money unless they have to, that’s step number 1. So whatever you do there has to be some form of legal framework, whether it’s an incentive or a stick or whatever it is.” There is an ongoing discussion in the NPO and philanthropy sector about appropriate and productive ways of incentivising CSI. Several issues need to be interrogated.

First, with the SED codes now seen as a de facto CSI incentive (despite intentions that may not have been directed as such), should the SED element have been included in the codes? For some respondents, the automatic response is yes, where else would one incentivize CSI? and that being included as part of B-BBEE forces corporates think about external societal matters in conjunction with their own internal transformation issues. According to one CSI resource person, “the status quo tends to perpetuate just because it’s so much easier and if you want to change the status quo you do have to incentivise people differently, and legislation is a way of driving incentives to be quite frank. So I do think from that perspective the codes were imperative for SA.”

For others, the inclusion of an incentive aimed at socio-economic development should have been separate from a business transformation initiative. As it stands, oversight of SED by a business-minded ministry is seen as continuing to result in SED being a marginal element in the codes. Those who hold this view point to the fact that SED points only count for five points (out of 100) in the generic scorecard and that the SED section is not well thought out, or grounded in the evolving development prerogatives of our country.

Another element is the reach of the codes, and their selective application. According to DTI³⁶ the generic scorecard applies to only 2% of the business sector, and the QSE to 3% of the business sector. Even if you remove micro and small businesses from the equation, that still leaves a large sector of business with neither incentive nor obligation under the codes, and hence completely excluded from its influence.

³⁶ 2012a

The third aspect is what kind of incentive is useful and productive. Again for some, there is the perception that incentivising giving through the codes almost guarantees that a good portion of corporates will give back to society. Without the hard data tracking what compliance looks like, however, it is very difficult to tell how many businesses have indeed attained the maximum available points on the SED scorecard. As mentioned earlier, the Trialogue study showed that only 60% of businesses attained the full five SED points, but only a small sample was involved in the study. For others, there is no guarantee of uptake of the SED component (and this will be further jeopardised in the new codes) and hence incentives may need to be located elsewhere and need to be stronger.

Moreover, there is a questioning about the unintended impact of the codes. A philanthropy resource person remarks: "I do believe that the codes ...really did a lot to catalyse a connectivity even if it's a forced connectivity between social development and corporates...So I think it has catalysed and it probably has fast-tracked but I think it has created an environment of compliance and a very rigid thinking towards what social development is and it separated people out from their responsibility as citizens. Because they're like 'oh I've done this so therefore I don't need to do that'. It's a bit like, 'I buy fair-trade so therefore I don't need to connect'. And you're creating a very shallow system, and the consequences of that are not positive."

Incentives within the tax regime have been mentioned by several as the alternative avenue. In South Africa, some incentives for giving do exist. For corporates, a donation to what a NPO that has been granted a "Public-Benefit Organizations" status, upto a limited amount, can be claimed as a tax deduction. As it stands, if a corporate makes a donation to a BO for activities that fall under the codes, than they are able to both claim a tax deduction as well as attain points toward the B-BBEE scorecard. These two however, do not always align. It is likely that because the codes were not intended as a CSI incentive that no thought was initially given to how to link or align it to the tax incentive, but with the broadened use of the codes as an incentive, there needs to be some thought given to how different CSI incentives can be connected.

In the last several years, there has been consistent lobbying of revenue authorities that tax incentives for giving be broadened significantly, from increasing the limitations and time periods on tax-free giving to regulations that allow for tax breaks on endowments, on testamentary trusts or giving related to inheritance tax etc. Interestingly, while the advocacy has been moving on this, the tax regime appears to be tightening up in some respects. For instance, there is a government proposal that interest on endowments has to be spent within five years, which if implemented, would negatively affect the establishment and growth of long-term private foundations.

One additional legislation needs to be mentioned here i.e. The Companies Act of 2011. According to Kloppers³⁷ the new Companies Act, while not directly referencing CSR, contains an aspect that could be used to drive CSR i.e. the establishment of Social and Ethics Committees (SEC). According to this Act, companies who attain a certain number of points (this depends on turnover, workforce and nature of activities) must set up a SEC. The SEC must include one non-executive director, and be responsible for monitoring and reporting related to (1) Social and Economic Development, (ii) Good Corporate Citizenship, (iii) Environment, Health and public Safety, (iv) Consumer relationships and (iv) labour and

³⁷ 2013

employment. While Klopper sees significant potential in the SECs to drive CSR, it is interesting to note that Trialogue's 2014 research shows that less than 10% of their sample had oversight from a SEC and, that in the research interviews for this study, not a single respondent mentioned these committees or its potential as a regulatory mechanism. It would be useful to engage in more research on this – how many have been established, how do they function, are they being held accountable and what influencing role they have played on CSR and CSI in particular.

It is instructive at this point to ask if there are there other countries where regulation has been used as a driver for CSI. There are, in fact, very few places where this has happened. While this paper provides a brief outline of the structure of such regulation, it would be extremely valuable for some in-depth comparative analysis of the structure and impact of these regulations to be undertaken.

The case of Mauritius:³⁸

The Mauritian Finance Act of 2009 compels Mauritian companies, with the exception of some offshore and foreign companies and local trusts, to have a CSR fund that will be used to finance specific programmes. Upto 2012, this fund needed to be equivalent to 2% of their book profit, but following much criticism, in 2012 it was changed to 2% of chargeable income. Also, from 2012, 1% of these funds need to be directed towards four priority areas: absolute poverty, social housing, welfare of children from vulnerable groups, and non-communicable diseases. A company may use its CSR funds to implement its own pre- approved programme; finance the project of an approved NGO; implement an approved programme under the National Empowerment Foundation, or implement projects in collaboration with public sector organisations. If companies do not fulfil this, any remaining amount upto the 2% is then taxed as an income. A publication by Pillay, just released in 2015, provides and analysis of the impact of this tax, and would be instructive to analyse and compare with the South African case.³⁹

The case of India:⁴⁰

Through the Companies Act, On 1 April 2014, the government of India implemented new CSR guidelines requiring companies over a certain size to spend 2% of their net profit on social development. These rules apply both to local companies as well as branches/offices of foreign companies. Each company is further required to institute a CSR committee within their Board, to formulate and recommend CSR policy. CSR is defined according to a set of rules which includes (but is not limited to) a schedule of specified activities as well as activities undertaken by the Board provided they cover subjects listed in the schedule. Companies can undertake/implement CSR activities directly, via its own no-profit foundation or through and independent non-profit organisation that meets certain criteria. According to the Act, companies need to give preference to local areas where the company operates, or they may collaborate with a group of companies, provided they report individually. Companies are instructed to spend this 2% and if they do not, must report on why. No punitive measures are yet in place for non-compliance.

³⁸ This section is drawn from Pillay:2013; CSR Mauritius & Yoganand:2011

³⁹ See The Changing nature of Corporate Social Responsibility: CSR and Development in Context: The case of Mauritius.

⁴⁰ This section has been drawn from Prasad:2014; Hiralal & Company:2015; PWC:2014

The case of Indonesia:⁴¹

In 2007, Indonesia enacted a CSR law, but this was fraught with challenges and not implemented. In 2012, Indonesia passed regulations relating to the CSR law, which mandates certain obligations for companies in the natural resource and related sectors. A company's CSR program and budget must be approved by a board of commissioners or shareholders meeting, and implementation must be reported on. Failure to comply can be subject to criminal sanctions. In addition, there is also legislation relating to CSR obligations of foreign investors, which are also subject to sanctions. Finally, there are requirements for State Owned Enterprises to assist SMEs, cooperatives and the people.

Other:

According to Thapar⁴², some form of limited CSR regulation also exists in (i) the Philippines (where large taxpayers fall under CSR provision; (ii) the United Kingdom, where companies above a monetary threshold need to comply with certain CSR regulations and (iii) in Saudi Arabia, where companies have to pay an equivalent of 2.5% of income and capital to a state Department which are then distributed to the poor.

⁴¹ Sukmono:2013; Juniato & Riyandi:2013

⁴² 2013

A reflection of some of the challenges and lessons

The sparseness of the material, ambiguity of the legislation and laxity in interpretation has meant that this research has raised more questions than it has provided answers. Nevertheless, a number of points for consideration and for future investigation have emerged.

- The inclusion of the SED element - which in practice has been interpreted as a CSI incentive - within an economic transformation framework is seen to have had several negative effects.
 - First, because of the way the South African codes are drafted, it appears to reduce the scope of SED related giving by big business to that which can be linked economic access. Moreover, the codes are perceived to have further influenced the aim of CSI away from being developmental, and towards ensuring compliance. In addition, because of inclusion in an economic access framework, emphasis on the long-term systemic change at other critical levels is lacking.
 - Second, the SED element in the Codes do not have any alignment with other CSI incentives/regulations – from the voluntary King Codes, to the Social and Ethics Committees in the Companies Act to tax incentives. As such, they are a stand-alone element that is marginalised in a business framework, and not correlated with any other regulatory or non-regulatory incentives – further contributing to the piecemeal compliance approach. Attention needs to be given to linking and harmonizing various regulations that directly and indirectly influence CSI
 - The codes have also not sought to align and complement with other broader developmental legislation and public policy instruments. For instance, beyond a few lines that allow SED points to be attained through supporting government approved projects and rural development initiatives, there is no integrated and substantive linkage with other development agendas, not even with the Governments National Development Plan.
 - Third, the inclusion of the SED component as a minority element in the codes, with a minimal weighting of only 5 points suggests that, in the overall B-BBEE framework, this element was not a significant concern. A critical question therefore is whether targeted CSI specific legislation linked to a broader developmental framework is better placed than regulations that subsume CSI in business and economic transformation imperatives. It would be interesting to explore other case studies, for instance, what lessons can be learned from the Mauritian and Indonesian experiences or from the of the recently-introduced CSI legislation in India?
 - Finally, despite being part of an economic transformation and business transformation strategy, the framing of the SED component has served to isolate and marginalise CSI within business, rather than integrate it into broader strategy.
- Is CSI regulation better served as an incentive or an obligation? Again, the experience of Mauritius and Indonesia would be instructive. At all events, regulation pertaining to CSI needs to be clear about whether it is one or the other. In South Africa at the moment, the codes are read

both punitively and as an incentive – depending on sector, size and nature of business. This has resulted in uneven application and confusion, but also, importantly, in a significant portion of businesses remaining or choosing to opt out of the sphere of legislative influence.

- Regulations encouraging or mandating CSI need to be straightforward, clear and simple. At the moment, the B-BBEE codes are complicated, cumbersome, contradictory – especially with legislation to which they should align- ambiguous and a burden to administer.
 - Such is the case that an entire industry of B-BBEE consultants and verification agencies has had to emerge to help understand the application of the codes. Moreover, the ambiguity has led to interpretation being in the hands of verification agencies, rather than in the hands of the regulatory authorities.
 - It has also led to interpretations which, while not being in violation of the spirit of the law, are not necessarily keeping in line with the intention of the law.
 - Lastly, this complexity has encouraged some companies to “do the minimum”, ministering to a compliance mentality. It has also made application of the codes open to misuse and misinterpretation.
- The codes deal only with spending targets and points and hence CSI conversation has become dominated by outputs rather than impact.
 - This is seen to be linked to significant spending on tangible short-term initiatives (as opposed to long-term systemic change work) as well as limited consideration on how these funded initiatives would lead to change. It is important that regulation go beyond emphasising outputs, to including emphasis on measurement of impact.
 - There is a dire need for critical discussion on the limited impact of CSI funds and the need for rethinking CSI. More importantly however, there is a vital conversation missing around the ethics of business, which goes beyond the broad CSR language to critically interrogating the contradictions and ethical frameworks within which profits are made – these relate to issues such as tax justice, illicit financial flows and resource governance etc.
 - Linked to this is that only monetary spend (or equivalent thereof) can be counted towards SED points, with no room for incentivizing partnerships and collaboration (strongly encouraged in the National Development Plan) or other mechanisms as a tool for SED points.
- Any regulatory regime needs to put in place some means of monitoring its success and take-up. Determining the influence of B-BBEE on CSI has been difficult because of a lack of baseline data, as well as inadequate planning on monitoring and evaluation. It is important that the areas that regulation seeks to effect have adequate baseline data, are tracked properly and that tracking goes beyond quantitative elements.
- Whatever the view of the Codes and their perceived effect, they have changed and will continue to change the nature of CSI in South Africa – for good or ill, most often for a mixture of both.

They have become part of the business climate and no CSI conversation or activity now takes place without factoring the implication of the codes and charters.

- The B-BBEE regulations have had some influence on the NPO sector that goes beyond the CSI element.
 - NPOs and community trusts have been in some cases included as part of the ownership element. No studies have been undertaken on whether this has been positive or negative for the beneficiaries, no tracking of community trusts has been undertaken and no exploration of its impact understood.
 - Any regulatory regime needs to draw into consultation representatives from all of public, private and non-profit sectors. In this case, the lack of both CSI and NPO voices were sorely missing. There is a need for a mechanisms that brings together the relevant government departments, the business sector and the NPO sector to collaboratively discuss what would be appropriate regulation or incentives and how best they could be instituted to achieve a better impact.
- The use of Sector Transformation Charters has been seen as both positive and negative. On the negative side, confusion due to misalignment of the charters with the generic codes has made compliance complicated and ambiguous. On the positive side, each sector is unique, and context-specific charters are seen as a way of ensuring appropriate application of the codes, and a useful element to consider.
- Tax incentives, other taxes and legislation that mandate CSI are one alternative to CSI being embedded in economic transformation imperatives. How good an alternative are they? Comparative research is required, for instance, in how the CSI tax has worked in Mauritius and how other legislation has been implemented Indonesia or how the new CSI tax in India has been framed.
- The new B-BBEE codes have sought to address many of the limitations and weaknesses identified in the implementation of the old codes. This has happened across all elements, except one— that of SED. It appears that the SED element has regressed, rather than progressed, with potentially disastrous impacts in many parts of civil society.
- As a general point, on almost every aspect of CSI and the B-BBEE approach, more research is required. Too little is known about who gives what to whom and why. At almost every point in this research, we have come up against limited information. A first step to improving the regime and making it work effectively for the benefit of those it is meant to serve is to commission in-depth longitudinal research which will provide a coherent and rounded view of CSI and the effect of the B-BBEE apparatus on it.

List of Sources

Africa Empowered, 2012, Contribution to Transformation by SOE's and Public Entities: Review of State Owned Entities Contribution to BBEEE.

http://www.thepresidency.gov.za/electronicreport/downloads/volume_4/development_and_transformation/SOE_and_Performance_against_B-BBEE_Codes/Draft_PRC_Report_on_BBEE.pdf

Allix, M., 2014, Mixed reaction to new BEE law. BD Live. Available from

<http://www.bdlive.co.za/business/2014/02/11/mixed-reaction-to-new-bee-law?>

Blizz, G. Tracing Corporate Social Investment Milestones in South Africa.

<http://www.ngopulse.org/blogs/tracing-corporate-social-investment-milestones-south-africa>

Barnes, M, 2013, Time to redesign black economic empowerment. BD Live.

<file://localhost/Volumes/NO%20NAME/BDlive%20-%20time%20to%20redesign%20bee.html>

CAF Southern Africa, 2012, Civil Society submission on Revised Broad-Based Black Economic Empowerment Codes of Good Practice.

http://www.ngopulse.org/sites/default/files/caf_southern_africa_-_dti_submission2.pdf

CAF Southern Africa, What Would the Proposed New B-BBEE Codes to Business SA's Commitment to Social Development.

Centre for Development and Enterprise, 1999, Corporate Business in a Wider Role. June 1999, No. 4.

<http://www.cde.org.za/corporate-business-in-a-wider-role-brief-results-of-two-cde-surveys-on-resource-flows-from-business-to-society-in-south-africa/>

Corporate Social Responsibility Mauritius. Undated. <http://www.csr.mu/index.html>

Corrigan, T., 2014, 'Good Citizens': Corporate Social Responsibility in Africa. SAIIA Policy Briefing 103. Available from http://www.saiia.org.za/doc_download/584-good-citizens-corporate-social-responsibility-in-africa.

Department of Finance, 2011, Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2011. Government Gazette, Vol., No. 34350.

Department of Mineral Resources, 2004, Scorecard for the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry. *Government Gazette*, Vol., No. 26661. <https://www.westerncape.gov.za/Text/2004/5/miningscorecard.pdf>

Department of Mineral Resources, 2010, Amendment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry.

http://www.gov.za/sites/www.gov.za/files/33573_838.pdf

Department of Trade and Industry, 2003a, South Africa's Economic Transformation: A Strategy for Broad-Based Black Economic Empowerment.

http://www.thedti.gov.za/economic_empowerment/bee_codes.jsp

Department of Trade and Industry, 2003b. Broad-Based Black Economic Empowerment Act, 2003

http://www.thedti.gov.za/economic_empowerment/bee_codes.jsp

Department of Trade and Industry, 2005, Broad-Based Black Economic Empowerment Act Section 9(5): Codes of Good Practice.

http://www.dti.gov.za/economic_empowerment/docs/2nd_phase/Code700Statement700.pdf

Department of Trade and Industry, 2007a, Code Series 200: Measurement of the Management Control Element of Broad-Based Black Economic Empowerment.

http://www.thedti.gov.za/economic_empowerment/bee_codes.jsp

Department of Trade and Industry, 2007b, Background To, Intention and Application of the Codes of Good Practice. https://www.thedti.gov.za/economic_empowerment/docs/Inside.pdf

Department of Trade and Industry, 2007c, B-BBEE Act, The Codes of Good Practice: An Interpretive Guide. http://www.thedti.gov.za/economic_empowerment/bee_codes.jsp

Department of Trade and Industry, 2007d, Broad-Based Black Economic Empowerment Codes of Good Practice 2007, *Government Gazette*, Vol. 500, No. 29617.

http://www.thedti.gov.za/economic_empowerment/bee_main_codes.jsp

Department of Trade and Industry, 2008, Media, Advertising and Communication M (MAC) Sector Charter on Black Economic Empowerment. *Government Gazette*, Vol. 518, No. 31371.

http://www.thedti.gov.za/economic_empowerment/bee_sector_charters.jsp

Department of Trade and Industry, 2009a, Codes of Good Practice on Broad-Based Black Economic Empowerment, Construction Sector Charter. *Government Gazette*, Vol. 528, No. 32305.

http://www.thedti.gov.za/economic_empowerment/bee_sector_charters.jsp

Department of Trade and Industry, 2009b, Codes of Good Practice on Broad-Based Black Economic Empowerment, Forest Sector Charter. *Government Gazette*, Vol. 528, No. 32320.

http://www.thedti.gov.za/economic_empowerment/bee_sector_charters.jsp

Department of Trade and Industry, 2009c, Tourism Sector Code on Black Economic Empowerment. *Government Gazette*, Vol. 527, No. 32259.

http://www.thedti.gov.za/economic_empowerment/bee_sector_charters.jsp

Department of Trade and Industry, 2012a, Presentation on Amended B-BBEE Codes of Good Practice 2012. http://www.thedti.gov.za/economic_empowerment/bee_main_codes.jsp

Department of Trade and Industry, 2012b, Amended Broad- Based Black Economic Empowerment Codes Of Good Practice October 2012.

http://www.thedti.gov.za/economic_empowerment/docs/bee_launch.pdf

Department of Trade and Industry, 2012c, Withdrawal of Statement 500 of the Revised B-BBEE Codes of Good Practice. <http://www.dti.gov.za/editmedia.jsp?id=2590>

Department of Trade and Industry, 2012d, Broad-Based Black Economic Empowerment Amendment Bill, 2012 Regulatory Impact Assessment.
http://www.thedti.gov.za/economic_empowerment/bee_sector_charters.jsp

Department of Trade and Industry, 2012e, Broad-Based Black Economic Empowerment Sector Codes for Agriculture. *Government Gazette*, Vol. 570, No. 36035.
http://www.thedti.gov.za/economic_empowerment/bee_sector_charters.jsp

Department of Trade and Industry, 2012f, Property Sector Code on Black Economic Empowerment. *Government Gazette*, Vol. 564, No. 35400.
http://www.thedti.gov.za/economic_empowerment/bee_sector_charters.jsp

Department of Trade and Industry, 2012, Codes of Good Practice on Broad-Based Black Economic Empowerment, Information and Communication Technology Sector Code. *Government Gazette*, Vol. 564, No. 35423. http://www.thedti.gov.za/economic_empowerment/bee_sector_charters.jsp

Department of Trade and Industry, 2013a, Amended Broad-Based Black Economic Empowerment Codes of Good Practice: Presentation to Portfolio Committee on Trade and Industry.
http://www.transcend.co.za/export/sites/transcend/downloads/pdfs/b-bbee_codes_20022013.pdf

Department of Trade and Industry, 2013b, Amended Code Series 000: Framework for Measuring Broad-Based Black Economic Empowerment. *Government Gazette*, Vol. 580, No. 36928.
http://www.thedti.gov.za/economic_empowerment/docs/code_gud_practice10102013.pdf

Department of Trade and Industry, 2013c, A Decade of Economic Empowerment- (2003- 2013) Summit Report. The National Broad-Based Black Economic Empowerment Summit 3-4 October 2013. http://www.thedti.gov.za/economic_empowerment/bee.jsp

Department of Trade and Industry, 2014a, Act No. 46 of 2013: Broad-Based Black Economic Empowerment Amendment Act, 2013. *Government Gazette*, Vol. 583, No. 37271.
<http://www.thedti.gov.za/news2014/Act46of2013BEE.pdf>

Department of Trade and Industry, 2014b, Broad-Based Black Economic Empowerment Act, 2013: Amended Broad-Based Black Economic Empowerment Codes of Good Practice. *Government Gazette*, Vol. 592, No. 38076. https://www.thedti.gov.za/economic_empowerment/docs/B-BBEE_phase2.pdf

Department of Trade and Industry, 2014c, Broad-Based Black Economic Empowerment Act (53/2003): Extension of Transitional Period. *Government Gazette*, Vol. 585, No. 37453.
https://www.thedti.gov.za/economic_empowerment/docs/codes/Gov_gaz_37453.pdf

Department of Trade and Industry, 2014d, Proclamation: Commencement of the Broad-Based Black Economic Empowerment Amendment Act, 2013 (Act No. 46 of 2013). *Government Gazette*, Vol. 592, No. 38126. http://www.thedti.gov.za/economic_empowerment/bee.jsp

Department of Trade and Industry, 2015. Broad-Based Black Economic Empowerment Act (46/2013): Amendment Codes of Good Practice.
http://www.thedti.gov.za/economic_empowerment/bee_codes.jsp

DuToit Coleen, 2012, New B-BBEE codes will harm the poor and marginalised. Business Day.
<http://www.bdlive.co.za/opinion/2012/11/28/new-bbbee-codes-will-harm-the-poor-and-marginalised>

Duff, C., 2012, Corporate Social Investment in South Africa. Making CSI Matter Conference May 2012. <http://www.slideshare.net/Trialogue/cathy-duff-csi-in-south-africa-2012>

Fasset, 2012, Corporate Social Responsibility. A handbook.
http://www.fasset.org.za/downloads/CSR_Handbook_Review.pdf

First Rand, 2013, Beyond Painting Classrooms Conference Report.
<http://www.firststrand.co.za/csi/volunteers/beyondpaintingclassroomsreports/BeyondPaintingReportFinalFinal.pdf>

Friedman, S., Hudson, J., & Mackay, S., 2013, Like Chalk, Like Cheese?: 'Professionalism' and 'Whim' in Corporate Giving at Anglo Gold Ashanti and Pick 'n Pay. The State of Social Giving in South Africa Report Series. Research Report #2.

Friedman, S., Hudson, J., & Mackay, S., The Colour of Giving: Racial Identity and Corporate Social Investment. The State of Social Giving in South Africa Report Series.

German Ministry for Economic Cooperation and Development, 2009, Built in or Bolted On? Corporate Social Responsibility in Sub-Saharan Africa.
http://commdev.org/files/2489_file_CSR_GTZ_Publication_Report_low_res_12_06_09k.pdf

Habib, A. & Maharaj, B., 2008, Giving and Solidarity: Resource Flows For Poverty Alleviation in South Africa. HSRC Press

Henry, T. & Rifer, M., 2013, Value and Values. What Motivates Corporate Citizenship in South Africa? Available from
http://www.tshikululu.org.za/uploads/files/Value_and_Values_Research_doc.pdf

Hiralal, Mansukhlal & Company. 2015. Corporate Social Responsibility - Indian Companies Act 2013.
<http://www.mondaq.com/india/x/366528/Corporate+Governance/Corporate+Social+Responsibility+Indian+Companies+Act+2013>

Hudson, J., 2013, Corporate Giving in the South African Context. Paper presented at the ISTR Conference, Bangkok. Available from
<http://ccs.ukzn.ac.za/files/CORPORATE%20GIVING%20IN%20THE%20SOUTH%20AFRICAN%20CONTEXT.pdf>

Janisch, P, 2006. Keep In Step. Broad-Based Bee for Small Business. Frontrunner Publishing, South Africa

Juniarto, Cornel B & Riyandi, Andika D. 2013. Corporate social responsibility regulation in Indonesia. <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=103427a1-0313-4d6c-b7f7-c5deb0bedbb5>

Klins, U., Van Niekerk, J. H. & Smit, A., 2010, in Visser, W. & Tolhurst, N. (ed.), The World Guide to CSR: A Country- By-Country Analysis of Corporate Sustainability and Responsibility. Greenleaf Publishing Limited: United Kingdom.

Kloppers, HJ. 2013. Driving corporate social responsibility (CSR) through the companies act: an overview of the role of the social and ethics committee. Potchefstroom electronic law journal. Vol 16, no 1 (2013) <http://dx.doi.org/10.4314/pej.v16i1.6>

Kuljian, C., 2005, Corporate Social Investment in South Africa – Social Justice not high on the Agenda. Alliance Magazine, June 2005. <http://www.alliancemagazine.org/feature/corporate-social-investment-in-south-africa-social-justice-not-high-on-the-agenda/>

Le Roux, Kabous. 2014 - South Africa's two richest people have wealth equal to the poorest 26.5-million. 702. <http://www.702.co.za/articles/634/south-africa-s-two-richest-people-have-wealth-equal-to-the-poorest-26-5-million>

Mathews, M., 2013, Defining CSI. Trialogue. <http://trialogue.co.za/csi-definition-and-regulation/>

Maposa, S.W & Oliver-Evans, C., 2008. Bottom Line or Bleeding Heart. The Result of a National Study of Giving on Small and Medium Business Enterprise (SME) in South Africa.

New World Wealth. 2015. The South Africa 2015 Wealth report

NPO Collaboration Dialogue, 2015, How NPOs can Benefit from the New Codes.

Oxfam. 2014. Even It Up: Time to End Extreme Inequality. https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/cr-even-it-up-extreme-inequality-291014-en.pdf

O'Riordan, A., 2014, Are Corporate Social Investment Programmes Serious about Social Justice in South Africa. SACIS. <http://sacsis.org.za/site/article/1967>

Pillay, Renginee. 2013. Legislating Corporate Philanthropy. <https://rengineepillay.wordpress.com/2013/11/19/legislating-corporate-philanthropy/>

Prasad, Ashok, 2014, India's new CSR law sparks debate among NGOs and businesses <http://www.theguardian.com/sustainable-business/india-csr-law-debate-business-ngo>

PWC. 2013. Handbook on Corporate Social Responsibility in India <http://www.pwc.in/assets/pdfs/publications/2013/handbook-on-corporate-social-responsibility-in-india.pdf>

Rockey, N, 2012, Corporate Social Investment: A Business Imperative or a Nicety. Trialogue. <http://trialogue.co.za/corporate-social-investment-a-business-imperative-or-nicety/>

Sage Pastel, Socio-economic development information. Available from <https://www.bee123.co.za/Marketing/SocioEconomicDevelopmentOrganizationInformation>

Shreuder, A., van Heerden P, & Khanya, M., 2007, The Progress of Broad-Based Black Economic Empowerment in South Africa- Executive Report. Consulta Research.

South Africa's Economic Transformation: A Strategy for Broad-Based Black Economic Empowerment. http://www.thedti.gov.za/economic_empowerment/bee_codes.jsp

Sukmono, Ahmad Firdaus. 2013. The Legal Framework of CSR in Indonesia http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2270580

Thapar, Shilpi. 2014. Corporate Social Responsibility (CSR) in India – Whether an Innovative Legislation & Its consequences? <http://shilpithapar.com/2014/06/09/corporate-social-responsibility-csr-in-india-whether-an-innovative-legislation-its-consequences/>

Thwaites, c., 2012, The GIBS Guide to Sustainability: Corporate Social Responsibility and Community Projects. Gordon Institute for Business Science. <http://www.gibs.co.za/SiteResources/documents/NewDocuments2012/Bongiwe/GIBS%20-%20Guide%20to%20Sustainability%20-%20Corporate%20Social%20Investment%20%26%20Responsibility%20Handbook.pdf>

Dialogue, 2010, CSI Grows Up. Mail & Guardian. <http://mg.co.za/article/2010-04-16-csi-grows-up>

Dialogue, 2011, Corporate Social Investment in South Africa: Launch of the CSI handbook, December 2011. <http://www.slideshare.net/Trialogue/csi-in-sa-handbook-launch-dec-2011>

Dialogue, 2013, Launch of the CSI Handbook 16th Edition. <http://dialogue.co.za/csi-in-sa-2013-research-results-presentation/>

Dialogue, 2014, The Dialogue CSI 2014 Handbook 17th Edition, Cape Town.

Tshikululu Social Investments, An Analysis of the Risks and Opportunities Inherent in PDI Beneficiary Trusts as Vehicles of Broad Based Black Economic Empowerment. Available from http://www.tshikululu.org.za/uploads/files/TSI_website_TL-community-trusts-part-one-160210.pdf

Woolley, R., 2011, A summary of the Broad-Based Black Economic Empowerment Amendment Bill 2011: For public comments. Available from http://www.transcend.co.za/resource-centre/blog/robin/a_summary_of_the_bbbee_broad_based_black_economic_empowerment_amendment_bill.html

Yoganand, Ramtohol. 2011. Corporate Social Responsibility in Mauritius. <http://www.slideshare.net/Ramtohol/corporate-social-responsibility-in-mauritius>