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Ethics in the State-Owned Companies (SOC) in the public sector: A thin line between corporate governance and ethical leadership.

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Abstract:

Ethics suggest that all persons are by nature moral, as it would not be possible for humans to exist collectively or even individually without an innate ethical sense. In order for the public sector to thrive in business, the board of directors needs to be guided by ethics and take into account the abiding interests of humanity and public good. It is argued in this paper that the abuse of power in the public sector has often been associated with unethical leadership and conducts which undermines the ubuntu notion. The irregularities which often arise in the awarding of tenders in the state-owned companies are some of the challenges that are prone to the public sector. In order to address these challenges and promote a flourishing democracy it is argued that ethical leadership as envisaged in the King III Report needs to be adhered to by the boards of directors. This paper concludes that the direction and control of ethics in any organisation is vital especially where the line between corporate governance and ethical leadership has become blurred.

Keywords: ethics, state-owned companies, corporate governance, ubuntu, leadership and good governance.

1. Introduction

The South African Government, through its Department of Public Enterprises, (DPE) has made it clear that it expects state-owned companies (SOC's) to be run in line with strict corporate governance principles (Business Day, 2005).

According to Mokoena (2005) there has been a lot of theory and information in the body of knowledge on the principles of good corporate governance and ethical leadership. Many countries have developed guidelines, codes and legislation on good corporate governance and ethics. In addition, many corporate governance change programmes have been developed and used in the implementation of governance codes by many organizations and institutions. Regardless of all these corporate governance developments and implementation initiatives, many catastrophic corporate failures, caused by unethical individual behaviour and weak corporate cultures, still continue to this day. These corporate failures have resulted in serious economic consequences with grave socio economical implications of job losses, loss of revenue by in land revenue, erosion of pension reserves and loss of investor confidence, etc.

Ethics is a very important pillar of leadership and if it has been applied properly in all the governance structures, it can yield results which can lead to good governance which is responsible, transparent and accountable.

2.What is ethics?

According to BBC Ethics guide (2012) "ethics are a system of moral principles and a branch of philosophy which defines what is good for individuals and society. At its simplest, ethics is a system of moral principles. They affect how people make decisions and lead their lives. Ethics is concerned with what is good for individuals and society and is also described as moral philosophy. The term is derived from the Greek word ethos which can mean custom, habit, character or disposition. Ethics covers the following dilemmas, how to live a good life, our rights and responsibilities, the language of right and wrong and moral decisions (what is good and bad?) (BBC, 2012).

Our concepts of ethics have been derived from religions, philosophies and cultures. They infuse debates on topics like abortion, human rights and professional conduct (BBC, 2012).

According to David and Resnik (2011), "when most people think of ethics (or morals), they think of rules for distinguishing between right and wrong, such as the Golden Rule ("Do unto others as you would have them do unto you"), a code of professional conduct like the Hippocratic Oath ("First of all, do no harm"), a religious creed like the Ten Commandments ("Thou Shalt not kill..."), or a wise aphorisms like the sayings of Confucius. This is the most common way of defining "ethics": norms for conduct that distinguish between acceptable and unacceptable behaviour.

David and Resnik further alluded that "most people learn ethical norms at home, at school, in church, or in other social settings. Although most people acquire their sense of right and wrong during childhood, moral development occurs throughout life and human beings pass through different stages of growth as they mature. Ethical norms are so ubiquitous that one might be tempted to regard them as simple common sense. On the other hand, if morality were nothing more than common sense, then why are there so many ethical disputes and issues in our society?

According to Pritchard (2006), "ethics is concerned with what is right or wrong, good or bad, fair or unfair, responsible or irresponsible, obligatory or permissible, praiseworthy or blameworthy. It is associated with guilt, shame, indignation, resentment, empathy, compassion, and care. It is interested in character as well as conduct. It addresses matters of public policy as well as more personal matters. On the one hand, it draws strength from our social environment, established practices, law, religion, and individual conscience. On the other hand, it critically assesses each of these sources of strength. So, ethics is complex and often perplexing and controversial. It defies concise, clear definition. Yet, it is something with which all of us, including young children, have a working familiarity."

3. What is corporate governance?

Corporate governance is about how companies are directed and controlled. "It is concerned with holding the balance between economic and social goals and between individual and communal goals. The aim is to align as nearly as possible the interests of individuals, corporations and society" (King, 2002).

According to Peters (2004), corporate governance comes down to relationships. It is about people interacting with other people. It is all about people interacting with products and technology and people interacting with systems. Governance at heart, is about human nature. The following figure shows the results of a survey conducted in the UK by PWC through MORI in 2004, in order to find out how employees feel about the way they work, what they are asked to do, and how their colleagues and bosses behave.

Nevondwe (2012:16) opined that corporate governance is generally understood to mean the way in which companies are directed and controlled such that it can fulfil its goals and objectives in a manner that adds to the value of the company and is also beneficial for all stakeholders in the long term (Esser and Havenga 2008:74). Thus, the emphasis is on those organs which play a vital role in corporative decision-making (John and Senbet 1998: 371- 403) Corporate governance is based on principles such as conducting the business with integrity and fairness, being transparent with regard to all transactions, making all the necessary disclosures and decisions, complying with all the laws of the land, accountability and responsibility towards the stakeholders and commitment to conducting business in an ethical manner (Rossouw 2005:94-106).

From the above explanation, it can be said that corporate governance had been originally associated with the companies and having a domain in the company law. Company law is essentially concerned with: first, making available the corporate form to facilitate and regulate the process of raising capital (corporate finance or capitalisation of a company); and, secondly, imposing controls on persons whose power is derived from the finance that the users of the corporate form have put at their disposal (i.e. corporate governance) (Nevondwe 2012:16).

4. Corporate Ethics and Values and their Influence on Corporate Governance.

Business ethics is concerned with good and bad or right and wrong behaviour and practices that take place within the business context. Concepts of right and wrong are increasingly being interpreted today to include the more difficult and subtle questions of fairness, justice, and equity. Values are the individual's concepts of relative worth, utility, or importance of certain ideas. One's values, therefore, shapes one's ethics (Carroll & Buchholtz, 2003).

According to Landman (2002), Ethics are not an optional extra or a discretionary add-on to normal business. We do not first set up and manage a marketing function devoid of "ethics", only to consider adding "ethics" as an afterthought when we run into difficulties with misleading advertisements or irate customers. Another example is that we do not first develop a financial investment product and then ask whether it is ethical. The product itself, together with our disclosure or nondisclosure to the public, is in essence an ethical process. In short, ethics are woven into the fabric of the business.

5. Ethical leadership as outlined in King III

The underlying philosophy of the King III Report revolves around leadership, sustainability and corporate citizenship (Cassim et al 2011). On the issue of leadership, the King III Report requires the board of directors to provide effective leadership based on ethical foundation. Ethics or integrity is the foundation of and very reason for corporate governance. An ethical corporate culture constitutes more than social philanthropy or charitable donations. The reasoning behind the ethics of corporate governance, which requires the board of directors to ensure that the company is run ethically, is that, as this is achieved, the company would earn the necessary approval from those affected by and affecting its operations.

Jajbhay J in South African Broadcasting Corporation (SABC) Ltd v Mpofu [2009] 4 ALL SA 169 (GSJ) found that Ubuntu-botho is deeply rooted in our society. These values should assist in informing corporate decisions made by directors in state owned enterprises. Proper and constructive dialogue would enable better outcomes in the decision making process. This form of governance is underpinned by the philosophy of ubuntu-botho. The time is right to incorporate the views of umuntu ngumuntu ngabantu in the King code of good governance

The court further ruled that integrity is a key principle underpinning good corporate governance. Good corporate governance is based on a clear code of ethical behaviour and personal integrity exercised by the board, where communications are shared openly. There are no opportunities in this environment for cloaks and daggers. Such important decisions are not made in haste or in anger. There must be ethical behaviour in the exercise of dealings with fellow board members. These dealings must be dealt with in such a manner so as to ensure due process and sensitivity (para 64 of the judgement).

The Constitution of the Republic of South Africa recognises the importance of good governance. Section 195 deals with basic values and principles governing public administration. In terms of this section there must be a high standard of professional ethics. In fact this standard must be promoted and maintained. These principles apply to organs of state and public enterprises (section 195(2) of the Constitution).

This is not surprising, given our history and the advent of our new democratic era. Our Constitution compels government in all of its forms, both through government departments and organs of state (including state-owned enterprises) to adhere to principles of good governance. State-owned enterprises such as the SABC are included in the definition of “organ of state”. It is for this reason that the provisions of the Constitution as well as the legislation enacted in terms thereof are applicable to state-owned enterprises (Goodman Brothers (Pty) Ltd v Transnet Ltd 1998 (4) SA 989 (W). Our Constitution has enshrined certain rights that also have a direct bearing on the corporate governance of state-owned enterprises.

The Public Finance Management Act No. 1 of 1999 as amended was promulgated to give effect to Chapter 13 of the Constitution. According to the then Minister of Finance, Trevor Manuel, “The aim of this Act is to modernise the system of financial management in the public sector. It represents a fundamental break from the past regime of opaqueness, hierarchical systems of management, poor information and weak accountability. The Act will lay the basis for a more effective corporate governance framework for the public sector.

The Constitution imposes a number of general obligations on all organs of state to promote cooperative government. In particular, organs of state involved in intergovernmental disputes are required to make every effort to settle the dispute and exhaust all other remedies before approaching the courts. This does not prevent organs of state seeking relief from the courts and is therefore a workable model” (Khoza and Adam 2005).

In state-owned enterprises, like other organisations, good corporate governance is ultimately about effective leadership. An organisation depends on its board to provide it with direction, and the directors need to understand what that leadership role entails. Khoza and Adam in The Power of Governance correctly set out that the concept of leadership in state-owned enterprises is not always understood. The learned authors set out at page 49: “In the case of state-owned enterprises, this problem may be magnified: here one needs to consider the respective roles not only of the Board and management, but also the role of government as a shareholder. It is critical that there is an understanding by government, in its capacity as shareholder, of its leadership role in directing and guiding the state-owned enterprise. The concept of a shareholder performance agreement can assist in clarifying the respective roles of the Board and shareholder …”

“... The solution begins with a proper understanding of what leadership means to the Board and to the shareholder.”

6.Final Considerations

Thompson & Strickland (2003) continued to argue that a strong corporate culture founded on ethical business principles and moral values is a vital driving force behind continued strategic success (e.g. implementation of a corporate governance programme). Many executives are convinced that a company must care about how it does its business, otherwise a company's reputation, and ultimately its performance, is put at risk.

They argue that corporate ethics and values programs are not window dressing, they are typically undertaken to create an environment of strongly held values and convictions and to make ethical conduct a way of life. Moral vales and high ethical standards nurture the corporate culture in a very positive way – they connote integrity, "doing the right thing," and genuine concern for stakeholders. Value statements serve as a cornerstone for culture building; a code of ethics serves as a cornerstone for developing a corporate conscience.

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