

Faculty of Law News Quarterly

THE CORPORATE GOVERNANCE & COMPLIANCE ISSUE

*Professor Mtendeweka Mhango: A Study In
Transformational Leadership & Excellence*

**REFLECTIONS FROM FORMER
FACULTY ACADEMIC STAFF:
PROFESSOR EVANCE KALULA**

**INTRODUCING THE “COFFEE WITH A
LAWYER” COLUMN BY MAZVI GUNI.**

CORPORATE GOVERNANCE THOUGHT PIECES:

*Judge Moroke Mokhesi, Dr. Seth
Pusetso Macheli, Adv. Lintle Tuke,
Judge Selemeng Mokose,
Adv. Pheta Setlojoane,
Adv. Buti Sehapi Motloun,
Adv. Harriet Acheampong-Brown &
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This publication ties in with the trajectory that was set in motion by Professor Nqosa Leuta Mahao and Associate Professor Kananelo Mosito and driven to new heights under the excellent stewardship of Professor Mtendeweka Mhango. Hence the decision to dedicate this first publication to Professor Mhango by featuring him on the cover page in recognition of his corporate governance abilities and our hope for the inspiration to continue this trend. The publication dedicates three articles to corporate governance.



*Dean of the Faculty
– Dr. Letzadzo Isaac
Kometsi*

Professor Mhango is the perfect manifest of the doctrine judged by his leadership style. Without reducing the faculty administration to a corporate entity, Professor Mhango was able to ensure accountability and transparency through consultation and cooperation.

This publication is also in line with our strategic mission to “Disseminate knowledge that advances human development and responds to national goals.” It is my fervent hope that the diversity of topics explored in the magazine, and the manner of presentation, will reach all sectors of our population including the youth and the general population. This is, in part, achieved by sharing the success stories of our Legal Aid Clinic and community service and engagement.

Our students and lecturers have engaged in various activities of community service and engagement, from public debates to symposia and free legal representation. This places our Faculty, and the University, at the heart of national development. We do hope that the impending alumni engagement policy of the University will enable the new leadership of the Faculty to engage further with the alumni of the Faculty for further engagement and collaboration, for example, by way of technical and financial support for attaining the goals of the Faculty. I take the opportunity to invite the alumni to register on the following link: <https://www.nul.ls/alumni-registration/>

This publication contains stories of success and hope. It records some of the outstanding achievements of our Faculty over its 40 years running. We feature two judges of the High Courts of Lesotho and South Africa respectively who graduated from our Faculty. We also feature alumni such as the former CEO of the South African Human Rights Commission of South Africa and the Founder of the Southern African Institute for Responsive and Accountable Governance. Together with our colleague in the Faculty, Dr. Seth Macheli, they explore topical issues in corporate governance in Lesotho. Our alumni contributions also include two top corporate executives, based in Lesotho and Zimbabwe respectively, and an internationally based lawyer in London, UK. A Senior Counsel based in South Africa at the Free State Bar rounds off these considered contributions. We also feature an engaging thought piece from the Law Society of Lesotho on the issue of corporate governance and compliance.

Our work continues. We continue to research, synthesise, and disseminate information. We have also widened the scope of activities that help to nurture the leadership skills of our students. This is done in the form of moot court competitions, debates and trial advocacy skills. We also continue to develop short courses and postgraduate programs intended to build the capacity the local market at affordable cost, while engaging important stakeholders to ensure the relevance and efficacy of our offerings. The development of these programs gives us the hope that, with the

synergies established along the way, we shall be able to achieve sustainability despite any challenges that we may face. We are guided on this path by our Faculty Strategic Plan and the unwavering commitment from our staff, students and the University administration. We bank on your support for sustaining the ambition of our Faculty to grow into a leading Faculty of Law, staffed by highly qualified, focused and dedicated personnel that, through teaching and research, produces graduates that are ready to serve Lesotho, Africa and the world.”

YOURS,
DR. LETZADZO I. KOMETSI
DEAN, FACULTY OF LAW
NATIONAL UNIVERSITY OF LESOTHO



Attorney Tiisetso Sello-Mafatle

Attorney Tiisetso Sello-Mafatle heads the International Investment Law and Transactional Advisory Department at Sello-Mafatle Attorneys. She is also a Corporate Governance Specialist with 18 years' experience in Corporate Law. Amongst others, she is a Committee Member the Mohlomi Corporate Governance Code. She holds LLM (Mercantile Law) specializing in International Investment Law, Company Law and Advanced Contracts from the University of the Free State.

The economic challenges of stagnant and slow growth of commerce and industries in Lesotho has led to introspections that made us reflect and remember that: Good Governance will always breed positive and responsible outcomes. In the face of the global pandemic of COVID-19, Lesotho is showing agility and making positive strides with the launch of

the Mohlomi Corporate Governance Code during September 2021. The moral and ethical conduct on how we do business and relate with the core economic and socio-political institutions has not only become fundamental but has become an everyday compliance issue for: Economic Profits that create Intergenerational Wealth; Enable Sustainable Growth; and have Impactful Value Creation for the Stakeholders. We all, in our respective corners and constituencies, have to allow ourselves to be responsive to good corporate governance and transformational leadership.

To the NUL Alumni: As we all re-kindle our inner strengths with this historical and inaugural launch of the Law Magazine, let us remember, we are all Patrons of the National University of Lesotho. The excitement should go beyond the borders of this Mighty Mountain Kingdom that the Spirit of Chief Mohlomi nurtured through the young Lepoqo (King Moshoeshoe). Let us all make this Magazine a Boardroom icebreaker and a subject of animated dinner table discussions. Khotso! Pula! Nala!



Advocate Tseliso Thipanyane

Adv Tseliso Thipanyane, an Advocate of the High Courts of Lesotho and South Africa, is the holder of a Bachelor of Science (BSc), LL.B., LL.M (Human Rights and Constitutional Law) and LL.M (Corporate Law). He is currently a PhD candidate in Business and Human Rights at the Gordon Institute of Business Science, University of Pretoria. Adv Thipanyane is the Chairperson of the non-profit company, the Southern African Institute for Responsive and Accountable Governance (SAIRAG) and a former CEO of the South African Human Rights Commission (2017-2022 and 2005-2009). He is a former legal academic and researcher in various institutions including Columbia University School of Law, the University of the Western Cape, and the Defence Force Colleges of the South African Defence Force.

CORPORATE GOVERNANCE AND COMPLIANCE

Institutions, in their various formations, and in relation to their respective founding mandates, can play a crucial role in society in advancing social good and the national interests of the countries they operate in. Institutions can thus make a significant so-

cio-economic and political impact in environments they operate in. The proper and effective governance of institutions is thus necessary in ensuring and in enhancing the realisation of their mandates and their well-being. Corporate governance in this regard, and to a large extent, determines the success or failure of institutions and the extent to which they can operate optimally in the realisation of their mandates. It is thus important that a lot of effort and resources be invested in sound corporate governance in institutions.

The success of the National University of Lesotho, our beloved and much valued institution, and its tradition as one of the leading academic institutions in the Southern African region, and even in the African continent, depends on adherence and effective implementation of good corporate governance principles. An investment in good corporate governance of our alma mater is the best and only way to go in this regard. Adherence to sound corporate governance will help the institution to play its role in responding to the challenges of conflict, poverty, corruption, environmental degradation, and health challenges, including Covid-19, that have and continue to wreak havoc and severely undermine the development of the region and its people. Let us all, as alumni, get involved and make our respective contributions.

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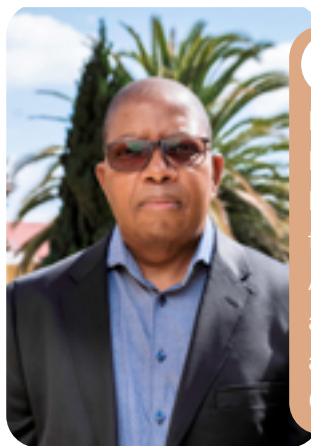


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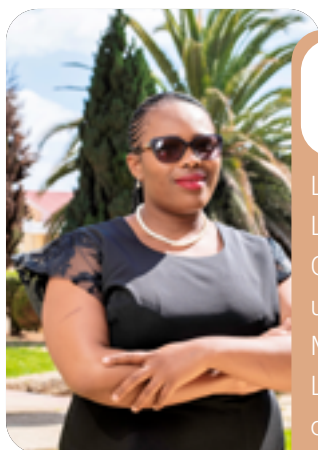
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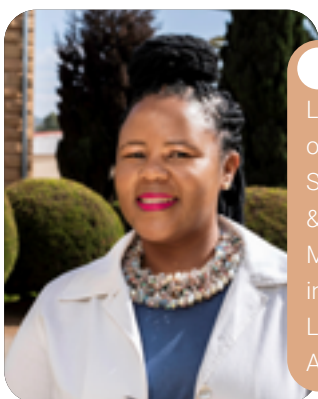
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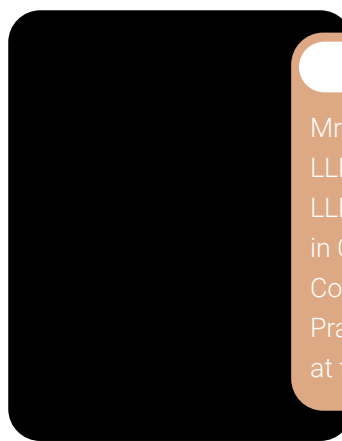
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Professor Mtendeweka Mhango: A Study in Excellence in Corporate Governance and Compliance

By: Advocate Mothepa Ndumo

Professor Mtendeweka “Mtende” Mhango set the bar very high in terms of administration and academics during his four year tenure as a Dean of the Faculty of Law and a Professor. He was and continues to be a friend, mentor and brother to all of us in the Faculty and this piece honours his contributions to the Faculty of Law and the National University of Lesotho (NUL).

In his last report to the Faculty Board as he departed from the NUL in October 2022, Professor Mhango grounded his report in the policies and Statutes of the University thus demonstrating fidelity to corporate governance and compliance principles. Whether it was him crafting policies for the University or taking the lead in the creation of the Faculty of Law Strategic Plan, Professor Mhango always started with the policy and legal frameworks governing his actions. As he delivered his report to the Board, Professor Mhango made the following opening remarks,

“As you know, in terms of Statute 24(5) the Dean is responsible to the Faculty FIRST for the general organization of the Faculty. Statute 24(5) means that the Faculty is its own democracy when it comes to its general organization.”

These kinds of preliminary remarks, always replete with references to the Statutes and/or internal policies and plans, were par for the course for Professor Mhango. I often told him, “Prof. I am furiously taking notes as I watch you operate”; oh you best believe I was and still am. In his ultra-modest way, Professor Mhango would deflect attention away from himself and refocus my attentions on the deliverables.

Professor Mhango joined the Faculty of Law on the 3rd of October 2018, a day before the Kingdom of Lesotho’s Day of Independence which is on the 4th of October 2018.

Advocate Mothepa Ndumo

When he was setting up the structures that would govern the groundbreaking, historical Metropolitan Research Chair in Pension Law Studies, Professor Mhango championed the creation and constitution of an Advisory Board that would govern the workings of the Research Chair. The Advisory Board is composed of the Chairperson, Mr. Seenyane Nthejane, Head of Life Business at Metropolitan Lesotho, Professor Beatrice Ekanjume, former Pro Vice Chancellor of the NUL, Associate Motlamelle Kapa who is also the

Co-Chair of the WTO Research Chair in International Trade Law also housed in the Faculty of Law and Dr. Regina Kulehile, Head of Department of Public Law. The Advisory Board supervises Professor Mhango and the rest of the Secretariat thus ensuring accountability and a responsive ecosystem. Professor Mhango would not have wanted to operate any other way. I am fortunate to be the Metropolitan Research Fellow in Pension Law and to be co-supervised, in my PhD in Pension Law, by Professor Mhango and Professor Clement

Marumoagae at the University of the Witwatersrand.

Like all my colleagues, I have felt seen and mentored as an academic by Professor Mhango and I have felt that he is totally invested in my progression as an academic. Prof Mhango possesses the distinct ability of pulling diverse threads together in order to deliver stellar results: policy, legal, academic conventions, empathy, firmness and a laser sharp focus on deliverables.

In his four-year tenure he has accomplished many feats including:

*The development and championing of the FOL's first ever Strategic Plan (2019 – 2024) nestled beautifully and synergistically under the University's Strategic Plan. Prof. Mhango's report observes that various stakeholders made inputs to the development of the Strategic Plan thus,

"There were many other colleagues who gave their input. I remember Justice Makara spoke passionately about entrepreneurship, we also had Prof Mahao, y and a representative from the Attorney General's office. Prof Mahao helped us reflect on the institutional goals and how to achieve them. Remember, he was fresh from the Vice Chancellor's office at that time. The point being made is that the Plan was a product of input from colleagues internal and external to the Faculty."

Soliciting the views of stakeholders, internally and externally, is the mark of a true leader, and Prof. Mhango excelled at this.

*The creation of Faculty Committees including the Research Committee, Quality Assurance Committee, Postgraduate Studies Committee, the Undergraduate Studies Committee and the Fundraising Committee. All these Committees are now institutionalised and are populated by the FOL Staff.

*Increasing the enrolment of postgraduate programmes and the creation of new areas of specialisation from the Postgraduate Diploma level to the PhD level. The LLM enrolments have seen a staggering increase from 9 students in 2019/2020 to 51 in 2022/2023. The 7 PhD candidates represent internationalization at its best with some hailing from Zimbabwe, Botswana, South Africa and the Czech Republic.

*The creation of a NUL Research Chair Policy and the institution of a record-breaking three Research



*In this photo: Professor Mntendweka Mhango (Left)
Advocate Mothepa Ndumo (Right)*

Chairs in the University. These Research Chairs are the Metropolitan Research Chair in Pension Law Studies sponsored by Metropolitan Lesotho Limited, the WTO Research Chair in International Trade Law sponsored by the World Trade Organization and the Human Rights Research Chair sponsored by the United Nations Development Programme (UNDP).

*The conclusion of MOUs with various institutions including UNISA, the Law Society of South Africa, the University of Pretoria, Metropolitan Lesotho Limited, the UNDP and the WTO amongst others.

*A virtual book launch was hosted in partnership

with Metropolitan Lesotho and Juta on Friday, 9th of September 2022 to celebrate the book "Pension Law and Death Benefits: Law, Practice and Policy Harmonisation in the Southern African" lead authored by Professor Mhango with Professor Ntombizozo Dyani-Mhango and Mothepa Ndumo.

*A robust Research Chair in Pension Law which has hosted various Roundtable Discussions (all available on the Research Chair's website, www.nulpensionlawchair.org.ls) and a diverse cast of panellists from countries such as Malawi, Botswana, Eswatini, South Africa, the USA and Lesotho of course straddling pension funds, the Regulator, pension law

academics, asset managers and investment loss recovery specialists.

*Fundraising to the tune of M430 000 to cater for the development and accreditation of Faculty academic programmes with the Council of Higher Education (CHE).

Professor Mhango is now with the University of the Limpopo effective from November 2022 but he thankfully maintains his ties with the NUL and the Faculty of Law as the Metropolitan Research Chair in Pension Law. For this, we are truly grateful.

Yewo chomene Professor Mhango! Godspeed.



In this photo: Professor Mtende Mhango (second from bottom left) with the Staff of the Faculty

CORPORATE GOVERNANCE IN LESOTHO

Dr. Seth Macheli

INTRODUCTION

HISTORICALLY, THE NEED FOR CORPORATE GOVERNANCE WAS BORNE OUT OF THE POTENTIAL CONFLICT THAT RESULTED FROM THE LEGAL NOVELTY OF CORPORATE LEGAL PERSONALITY WHEREBY A COMPANY BECAME A JURISTIC PERSON THAT IS DISTINCT AND SEPARATE FROM THOSE WHO FORMED IT.

By virtue of separate legal personality, the control of the company, its property and affairs shifted from those who formed the company and vested in a board and management (that is, officers of the company). There were thus concerns of possibility of abuse of control of companies by a board and/or management for their own benefit and at the expense of the owners. Corporate governance thus grew out of the need to protect the interests of the

owners/shareholders.

While it could safely be said to date to at least the formation of the East India Company, the Hudson's Bay Company, the Levant Company and the other major chartered companies launched in the 16th and 17th centuries, the concept of corporate governance became in vogue only in the 1970 in the United States of America, growing to distinct prominence after the global economic

and financial meltdown in 2008.

Good corporate governance is today generally accepted as one of the critical factors for driving economic growth and development, safeguarding of the

broader generality of a corporate organisation's stakeholders and protection of the environment.

For developing countries, good governance of companies is seen as critical to attract and retain

capital investment, particularly foreign capital investment. Indeed, the Government of Lesotho's National Strategic Development Plan II (2018/19 - 2022/23) (NSDP II) has, under Key Priority



Area (KPA) IV, identified the strengthening of national governance and accountability systems as vital for the delivery of the NSDP II itself by providing a conducive environment for private investment and inclusive growth. Unsurprisingly, one of the outcomes of the KPA IV is improved corporate governance and protection of investor rights.

This piece briefly defines the concept of corporate governance and casts a look at what informs corporate governance in Lesotho. In this latter sense, an attempt is made to conceptualise corporate governance from the broad mix of legal regulation, self-regulation and market regulation of companies.

Defining corporate governance

Corporate governance is a variegated concept and understood differently by different people depending on such factors as background, history, tradition, experience and circumstances of whomsoever defines it. Thus, there is no unanimity on its definition. In the broadest sense, the definition of corporate governance has over time been informed by two analytical standpoints, namely, shareholder protection and stakeholder protection. In its traditional conception, and admittedly narrow sense,

the focus of corporate governance is the promotion and protection of the interests of shareholders in a company. To that end, corporate governance was famously defined in the United Kingdom by the Cadbury Report as “The system by which companies are directed and controlled, the primary concern being with those who supply finance to companies, the shareholders.”

Akin to the Cadbury Report’s take, the Supreme Court of Delaware in *MM Companies Inc. v Liquid Audio Inc.* stated that, the most fundamental principles of corporate governance

are a function of the allocation of power within a corporation between its stockholders and its board of directors. ... The power of managing the corporate enterprise is vested in the shareholders’ duly elected board representatives. Accordingly, while these “fundamental tenets of Delaware corporate law provide

for a separation of control and ownership,” the stockholder franchise has been characterized as the “ideological underpinning” upon which the legitimacy of the directors’ managerial power rests.

The above system of corporate governance is commonly referred to as the shareholder model of corporate

governance, with its lodestar as maximisation and preservation of shareholder investment and value. This model sees a corporate organisation as a private, rather than a public, body defined by a set of relationships between the principal (the shareholders) and agent (the board and management). Company law in

Lesotho, both in terms of the common law and legislation, is founded, it may be observed, upon the construct of this model. As an example, the fundamental duties of directors in section 63 of the Companies Act revolve exclusively around the best interests of the company.

The stakeholder model of corporate governance, by contrast, conceives inherent relationships concerning a company more broadly beyond its owners and controllers. There is now a growing consensus amongst academic scholars and governance practitioners that corporate governance is about “supervising management performance and ensuring accountability of management to shareholders and other stakeholders”. According to this model, stakeholders are seen as tied in a symbiotic relationship with the company such that the company’s success or failure depends on the kind of relationship that it has with its stakeholders. In recognition of the critical role that other stakeholders play in relation to governance and accountability management of a company, the OECD observes:

The competitiveness and ultimate success of a corporation is the result of teamwork that embodies contributions from a range of different resource providers including investors, employees, creditors, customers and suppliers, and other stakeholders. Corporations should recognise that the contributions of stakeholders constitute a valuable resource for building competitive and profitable companies. It is, therefore, in the long-term interest of corporations to foster wealth-creating co-operation among stakeholders. The governance framework should recognise the interests of stakeholders and their contribution to the long-term success of the corporation.

South Africa Corporate Governance Code, colloquially known as the ‘King Code’, is probably



the first governance code to expressly recognise the role of other stakeholders to a corporate entity in addition to shareholders. From its first iteration to the fourth one, the King Code articulates the point that good corporate governance requires an acknowledgement that an organisation does not operate in a vacuum but is an integral part of society and therefore has accountability towards current and future stakeholders. Lesotho's Mohlomi Governance Code of Lesotho takes the issue of concern for other stakeholders of the company a step further and introduces the concept of

Intergenerational Thinking and Value Creation. This concept can be described broadly as requiring organisations, private and public, for-profit as well as not-for-profit, to integrate and mainstream concerns about future generations in everything they do and create value for such generations and thereby assure their own long-term sustainability from generation to generation. This opens the envelope further to include not just environmental, social and governance matters but also broader economic value creation concerns. Importantly, it also pushes the issue of climate change to the centre of boardroom decision-making and good corporate governance frameworks.

In the final
analysis,

corporate governance is increasingly looked at beyond the interests of the shareholders but also embracing the broader interests of society as a whole from one generation to the next. This is all anchored on the fundamental principles of responsibility, accountability, transparency and intellectual honesty, as those may be couched in one form or another.

Legal regulation

Legal regulation in the context of corporate governance refers to the imposition of legally enforceable obligations on governance of relationships between and amongst shareholders, the board and management. In Lesotho, there is the common law and statute that apply in that context. By virtue of section 2 of the General Law Proclamation of 29th May, 1884, read with section 4(1) of the Independence Order in Council of 1966, Lesotho's legal system has been closely intertwined with that of South Africa. Thus, unless specifically changed, varied or otherwise modified by statute in Lesotho, the South African common law applies with greater persuasive value before the courts of law in Lesotho. The common law of companies in South

Africa is therefore now broad variation between the current South Africa's Companies Act 71 of 2008 and the current Lesotho Companies Act of 2011. Thus, it is vital to appreciate such differences especially in reading South African cases that interpret the Companies Act in that country.

The Companies Act of 2011 includes statutory provisions of directors' duties. These provisions are modelled on the common law fiduciary duties of directors and officers and on the duty to act with care, skill and diligence. On the fundamental duties of directors, section 63(1) provides that a director of a company, when exercising powers or performing duties, must act in good faith and on reasonable grounds in the interests of the company. Section 63(2) provides that, when exercising powers or performing duties as a director, must exercise the care, diligence and skill that a reasonable director would exercise in the same circumstances taking into account the nature of business of the company, the nature of the decision being taken, the position of the director and the nature of the responsibilities undertaken by that director.

By virtue of section 2 of the General Law Proclamation of 29th May, 1884, read with section 4(1) of the Independence Order in Council of 1966, Lesotho's legal system has been closely intertwined with that of South Africa.

Arguably, section 63(2) imports a statutory business judgment rule. This rule has its roots in American case law where it acted, first,

as a defence available to a director of a company where the director was accused of breach of the duty of good faith, and second, as a bar for courts to second-guess directors in taking decisions for the company. If the director can show that he or she acted reasonably and took diligent steps to inform himself or herself sufficiently before taking the decision and in circumstances where he or she had no conflict of interest, then it would be the end of the matter; the courts cannot inquire further. It is further arguable that if indeed section 63(2) does import the business judgment rule, the rule would apply in all instances where the director's fiduciary duty of care, good faith and

diligence are called into question. It remains to be seen how the courts will deal with this matter.

Liability in terms of these provisions is determined in accordance with the principles of the common law relating to a breach of fiduciary duties or in delict for a breach of the duty of care, skill and diligence. Directors and officers, including former directors and officers, are also potentially liable for any loss, damages or costs sustained by the company, its shareholders and any third parties as a result of the directors' or officers' failure to comply with the duties spelt out above. Executive officers of a company are settled with the same fiduciary duties under section 63, in

terms of section 61(3).

Legal regulation covers not only the common law of companies and the Companies Act 2011 but also all manner of legislation that have an impact on how directors, shareholders, management and investors (including credit-givers), employees, and other stakeholders conduct themselves vis-à-vis one another in a host of situations including conflict of interest, disclosure of information and other accountabilities in relation to the handling and management of the company's assets and affairs. Reference is here generally made to legal compliance as one of the features of good corporate governance.

SELF-REGULATION

Self-regulation broadly refers to the regulation resulting from commitments that a company voluntarily makes which have a bearing on its corporate governance framework. These range from the company's own policies and standards, professional standards and those imposed by corporate governance codes. All these instruments are known as soft law to the extent that their enforcement may not carry the sanction of the law of the country. Soft law is not founded on legislation, which would call for the state

to enforce, but rather on practical principles and proven practices for desired outcomes.

The Mohlomi Code, named after Chief Mohlomi, teacher and mentor of King Moshoeshoe I, has filled the void that had existed up to its launch. The Institute of Directors of Lesotho ('IoDLesotho'), an industry body representing directors, convened a committee consisting of representatives of various stakeholders in corporate governance in Lesotho which compiled the Code. The Code has a total of 22 principles bundled into six clusters of Board Leadership; Board Conduct; Board Composition, Structures and Remuneration; Audit, Compliance and Risk; Digitalization Governance; and Sustainability and Integrated Reporting. It is intended to apply to companies, corporations, state-owned enterprises, not-for-profit companies, non-profit organisations including political parties and religious bodies, and local government.

One of the key innovations of Mohlomi Code is its adoption of the dual compliance regime of 'apply and explain', applying alongside 'apply or explain' principle of compliance. In respect of the first principle, the assumption is that companies will comply with the principles of the Code and it requires them further to explain how they achieve their targets. The intention is to move beyond a simple "tick box" approach to corporate governance, and to task companies with showing how practices that underpin the principles achieve compliance with the designated principles. By contrast, the second principle stipulates that corporations should comply with the Code, failing which they should explain reasons why they did not comply. According to the Code, the 'apply

and explain" is intended to apply to public, listed and large companies, state-owned companies and foreign companies. The 'apply or explain' principle is intended to apply to small and medium enterprises, non-profit organisations, non-governmental organisations and to local government. However, all the entities to which the 'apply or explain' basis of compliance apply to, may optionally adopt the 'apply and explain' principle. In this way, there might be healthy competition for these entities to move to the higher level of compliance and thereby engender broader culture of good corporate



MARKET REGULATION

Market regulation covers that form of regulation which is enforced through a company losing favour and influence with its stakeholders such as when a bank stops a credit facility on account of the company not complying with good governance practices or being delisted from the Stock Exchange. For listed companies, the effective mechanism of ensuring compliance with good corporate governance practices is incorporation of the principles of a corporate governance code into the listing requirements. It is hoped that the Maseru Securities Market will incorporate Mohlomi Code into its listing requirements.



CORPORATE GOVERNANCE AND STATE-OWNED COMPANIES: A focus on the Lesotho National Development Corporation Act of 1990 as regards the appointment and dismissal of Chief Executive Officers

By: **Judge Moroke Mokhesi**

INTRODUCTION

The value of state ownership of businesses cannot be overemphasised, and as Korin Kane and Hans Christiansen observed:

State-owned enterprises (SOEs) are assets that the government manages on behalf of citizens. Ensuring that these assets create value for society, and are managed professionally and transparently, is a cornerstone of sound public governance and a precondition for creating trust in governments and markets.

Sound governance of SOEs is important for development for a number of reasons. First, in many developing economies, SOEs are the sole providers of public services (e.g., water and electricity provision, telecommunications, and postal services). Second, bearing in mind that many developing economies

have largely agrarian economies, SOEs account for between 25% and 50% of the Urban economy. Third, in economies with less developed private sectors, SOEs can be an important source of employment and job training for local populations. These factors combined make the efficient and competitive operations of SOEs of paramount importance to economic development.

The reality that government is involved in business poses a challenge because of the uniqueness of the position it holds as the policy formulator, legislation initiator and a major shareholder in some, if not all, of those businesses. As the initiator of legislation, the challenge is always whether the laws it pushes through Parliament to regulate these businesses, engender, or foster compliance with corporate governance. There are a number of SOEs in this country with different

pieces of legislation regulating them, but the focus of this piece is on the Lesotho Development Corporation Act 13 of 1990 ('LNDC Act') regarding the appointment and independence of the Chief Executive Officer ('CEO'), to highlight whether this legislation fosters independence of judgment on the part of the CEO as required of him by company law and corporate governance principles. For obvious reasons, the Government, as the major shareholder of the LNDC, plays an active role through the Minister of Trade, in the appointment and dismissal of the Chief Executive Officer. This role poses a real potential for conflict of interest on the part of the Government to create a lax legislative environment which is conducive for appointing someone who would be easily pliable and readily receptive of its manipulation and control for the achievement of narrow political ends as against the public good, while, on the other hand, there is a strict requirement that the CEO be independent and maintain an unfettered discretion in discharging his functions and duties.

An analysis of the legislative framework

In terms of the LNDC Act, the LNDC is a body corporate whose purpose is to initiate, promote and facilitate the development of manufacturing and processing industries, mining and commerce in a manner which will increase income and employment in Lesotho, and crucially in terms of S.4(1) of the same Act:

The Government may, after consultation with the Corporation, give the Corporation general guidelines as to the policy to be applied in carrying out the purposes of the Corporation and the Corporation shall give effect to those guidelines. Every decision of the Corporation made in accordance with those guidelines is deemed, for all purposes, to be a decision of the Government.

Further, in terms of S.9B, the CEO is appointed by the Minister on the advice of the Board. The Board consists of eleven (11) directors representing the Ministries of Trade, Finance, Development Planning and Agriculture; one representative from the Lesotho Chamber of Commerce and Industry; one representative from the Lesotho Manufacturers Association, and three members who shall be appointed by the Minister of Trade by virtue of their holding at least ten per cent shares in the corporation, or their skill, knowledge and experience in matters relating to the functions of the Corporation. This composition of the Board makes it apparent that it is heavily skewed in favour of Government as, out of eleven directors, four are representatives from four Ministries plus three who are appointed by the Minister, and so, clearly, the Board is heavily laden with directors who are heavily linked to Government. The CEO is also dismissible by the Minister on the advice of the Board.

What is apparent from this legislative framework is that the appointment of the CEO is the sole preserve of Government even though it does so on the advice of the Board. This, coupled with the Government's prerogative to formulate policy directives for implementation by the LNDC Board without fail, makes for uneasy reading, as it poses serious questions regarding the ability of a CEO to comply with corporate governance precepts in discharging his duties.

The appointment of the CEO is not subject to legislatively ordained substantive criteria. It is open to the Board, which is heavily government-learning, to formulate the appointment criteria as the need arises for such an appointment, and herein lies the real possibility for the tailoring of the requirements to suit a particular individual who may not necessarily be qualified, but who is amenable to the major shareholder's manipulation. This deficiency, it will be

observed, is also present in relation to the dismissal of the CEO, as there are no substantive criteria set for when his dismissal can be triggered. All these considerations point to a real concern regarding whether the CEO of the LNDC can discharge his functions in the best interests of the Corporation. Especially its corollary, that he exercises an independent judgment bona fide for its interest. Furthermore, if the Board is bound to follow the set Government policy direction without question, his appointment and removal are not predicated on substantive and objectively set criteria. The inescapable conclusion to be possibly drawn from all these is that the LNDC CEO is most probably unlikely to act independently bona fide in the interest of the Corporation.

Conclusion

The absence of set criteria for the appointment and dismissal of the CEO does not inure to the benefit of good corporate governance as he always has to look over the horizon

to see if his position is not under threat, and accordingly readjust his conduct in conformity, to avert its actualisation. With a Board that is heavily laden with Government-aligned directors, it is not difficult to imagine how negatively this could affect the CEO's independence of judgment on any particular matter. Reform of the LNDC Act is sorely needed to address these corporate governance concerns, especially in light of the recently launched Mohlomi Code on Corporate Governance, which is intended to apply to SOEs as well. SOEs are not immune to what brought about major corporate collapses in Lesotho's modern history, which were solely due to the neglect of corporate governance issues hence the necessity of legislative intervention to address these glaring deficiencies for the public good.





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REFLECTIONS ON GOVERNANCE, RISK AND COMPLIANCE (GRC)

Advocate Lintle A. Tuke

Vice President – Law Society of Lesotho

President – Friends of the Faculty of Law

GRC Specialist – Tuke & Scholtz Inc.

Good corporate governance is a base characteristic for a strong and vigorous organisation. It sets the right tone for how the organisation behaves and relates both internally with itself, and with the market at large. It delineates the connection and relationship between the Governing Body, management and the entirety of the organisation.

Most, if not all, of the known compliance failures are directly attributable to a weak Governing Body setting the wrong tone for governance, risk and compliance. The effects almost always trickle down from the top to the very bottom. Take for instance, the South African Steinhoff scandal involving accounting and financial fraud for over 15 years. For that period, Steinhoff had consistently falsified its financial position, confirmed by audit reports, to obtain more credit and investment. This was a successful scam until the scandal surfaced in 2019. The company's share price instantly plummeted to epidemic proportions, from over thousands to just R46 per share in a matter of minutes, wiping out investors' stakes, including pensions, in the process. Many employed by the company lost their jobs. A

cursory look at the company's Governing Body and executive committee (exco) reveals that there was no diversity.

“The Board did not have black people and only one female.”

Let us recall the woes of a Lesotho legal expenses insurance company – The Legal Voice Ltd – which led to its fall. This company had enjoyed a seemingly leading position in its industry. It had branches in almost every district in Lesotho with no apparent or significant competition. Arguably, this company enjoyed a self-created monopoly from 2011 till 2017 when it failed to comply with the mandatory statutory requirements for licensing. The Central Bank of Lesotho (CBL), as the Regulator, had to abstain from renewing the Legal Voice Ltd license for

its non-compliance. Fortunately, this company was acquired by Zenith Horizon (Pty) Ltd which was fully compliant

We can finally ruminate on yet another incident which unfolded in the public sphere, i.e., the Vodacom Lesotho and Lesotho Communications Authority (LCA) debacle of 2020. After failing to





comply with the LCA's binding directives involving 'out-of-bundle' billing against clients, Vodacom landed in hot soup as the LCA engaged in a bid to revoke the telecommunications giant's license. This drastic move came as a result of Vodacom's failure to pay an imposed fine of over a hundred million maloti for its non-compliance. To date, the legal battle between the two entities remains pending before the High Court of Lesotho.

The tripartite relationship between governance, risk and compliance is a sacred one. A compromise on one is a compromise on others since the three do not exist in silos. They are not, and should never be isolated one from another. Therefore it is humbly submitted that the misplaced link in all of the abovementioned illustrations is a strong and ethical Governing Body which is not only aware of its obligations, but also remains intentionally rooted in the same. It should be reiterated that the tone for compliance and risk management is set by the Governing Body.

Failure in this regard will almost certainly manifest in catastrophic costs from reputational damage occasioned by media reports, financial losses due to fines and dipping stock prices, loss of investor and/or consumer confidence, and even the loss of a license leading to abrupt organisational collapse.



NATIONAL UNIVERSITY OF LESOTHO LEGAL AID CLINIC (NULLAC)

The Faculty of Law at the National University of Lesotho, through the Department of Procedural and Adjectival law established a Legal Aid Clinic as part of clinical legal education on the 07 September, 2013 in collaboration with Human Rights Development Initiative (HRDI), based in Pretoria, South Africa.

The clinic commenced operations on 06th February 2015. The Faculty of Law rose to the consciousness that students learn best in a posture in which they have primary responsibility for their learning experience, in which they handle every aspect of the



In this picture: Kabelo Justice Kelepa, 5th year LLB student and volunteer at the Legal Aid Clinic.



learning process.

On the other hand, the clinic provides legal advice, assistance and representation on a range of legal problems such as, but not limited to, divorce and custody disputes, family violence matters, delictual claims, eviction, housing and land related matters. Clients are represented in courts ranging from the lower courts to the upper courts such as the Subordinate Courts and the Court of Appeal.

There may be an inverse relationship between the economic efficiency of legal work and its instructive value. Some of the best learning is accomplished through a lengthy reflective dialogue in which the student is able to raise and explore a wide range of questions about how to address a legal problem, especially a real and practical problem presented by a client.

NULLAC has established strategic partnerships that are key to enabling it to achieve its set objectives with various stakeholders within the NGO sector and the judiciary. As a result of these partnerships, it has been able to access grassroots communities and align its mandate to be responsive to the needs of its target audience.

The mandate of the clinic goes beyond legal advice and representation and includes mediation, case preparation and grassroots consultations.



In this picture: Kabelo Justice Kelepa, 5th year LLB student and volunteer at the Legal Aid Clinic.

Mission, Vision and Values of NULLAC

NULLAC intends to provide quality legal services to all Basotho and to facilitate access to law through an independent, impartial and professional institution.

The legal services provided by NULLAC enhance confidence in the judicial system and promote peace, stability and development of our society.

The values that NULLAC upholds are designed to achieve its mission and vision. These values are derived from the Law Society Act of 1983 and the Legal Practitioners' Act of 1983.

Projects within the clinic

The mandate of the clinic is not limited to provision of legal services only; it encompasses practical learning. Because the clinic is established through an academic mandate, it further has an obligation to provide development assistance to communities, amongst other things, through the following activities:

- Organisation of workshops centered around development as one of the fundamental human rights.
- Seminars/webinars/workshops on the promotion and protection of human rights in Lesotho
- Teaching seminars on the human rights protection mechanisms nationally, regionally and internationally
- Research on topical human rights issues

PUTTING THEORY INTO PRACTICE

The Faculty of Law at the National University of Lesotho houses an institution within it that is called the Legal Aid Clinic (NULLAC). The purpose of the clinic is to provide students with relevant practical experience in interacting with Law. Its services are provided pro bono to the public. I am part of the Legal Aid clinic as a student in the Faculty of Law.

To achieve its mandate, NULLAC has partnered with Transformation Resource Centre (TRC) which is a human rights organisation that provides a platform for robust advocacy on human rights related issues.

In June 2021, TRC initiated a project that was aimed at identifying the human rights violations made by the security institutions of Lesotho, scale of service delivery during the Covid-19 period and provision of legal counselling to the identified victims. As a result of the collaboration between NULLAC and TRC, law students were brought on board by TRC and I became part of the team that visited Mohale's hoek, Quthing and Qacha's nek.

Let me hasten to acknowledge the immense experience I got from that project. One gets to put

the theory learned in class into practice. The constitutional law that we learn in class, specifically the Bill of Rights, gets to be experienced in action as one shares with and educates the community. On the other hand, members of the community looked up to us as their hope and believed that we shall give them lasting solutions to their problems. This heightened my sense of responsibility to ensure that I am well prepared to give the best

legal advice possible.

The range of legal content which I shared with the community from lessons learned to understanding procedures one has to follow while instituting cases before court, challenged and inspired me to work harder in my studies. The exercises on advocacy and civic education need preparation not only of a pen and paper but also of mind as one will be interviewing people on serious issues which at times, makes the narrator

so emotional to the extent of shedding tears, thus this means that even emotionally, one has to be ready.

One grandmother who is a street vendor was so emotional in narrating her hardships experienced during the Covid-19 lockdown. I had to comfort her and note the important information she gave. Soon I could remember myself seated in L181(Legal Methods and Systems) class discussing how to interview a client and



In this picture: Kabelo Justice Kelepa, 5th year LLB student and volunteer at the Legal Aid Clinic.

our Lecturer demonstrated to us how emotional some clients will be, but one has to be patient, comforting and extract relevant information from that client. I

“It is imperative that I stress the importance of this collaboration between TRC and NULLAC”

had to apply the skills taught in class and conduct those interviews.

The far reaching benefits

one got from the practical experience gained while in the field is immeasurable. I do not wish to talk about how hard one has to work in preparation, it comes with the territory but it is quite an experience.

After we returned from the field one had to prepare a detailed report. Isn't that a requisite skill needed for one to be a good lawyer? I also prepared a legal opinion which was aimed at holding government accountable for the

loss of livelihoods as a result of numerous Covid-19 lock-downs and discussed what could be done to remedy the situation. In that opinion, I had to discuss issues related to the right to life and the right to livelihood. This sharpened my research skills immensely.

It is very important for students to be given an opportunity to interact with the outside world and get to put the theory learned in class into practise, deal with real

issues and be ready to provide real solutions to real problems. I indicated that we were also focusing on service delivery. As part of the outreach, the advocacy efforts lead to the discovery that there is no probation officer in the District of Thaba-Tseka, which meant that all child related cases are pending at the police station. As solution oriented FOL trainees, we organised a meeting with the Principal Secretary in the Ministry of Justice and Correctional Service to advocate for the placement of the probation officer in that district. The meeting was successful. The preparations are at an advanced stage.

Lastly, I wish to point out that it is not enough that students focus mainly on the legal theory, this practise is necessary and pivotal. NULLAC should therefore be in a position to conduct its own community outreach initiatives, address real life issues and impact positively within the communities even without TRC or any collaborators.

Lastly, I wish to recommend that NULLAC pursues more collaborations and partnerships which will enhance its capability to deal with an array of issues. Otherwise, I am very glad and cannot cease to thank NULLAC for the opportunity presented to me which I grabbed with both hands. I can honestly and boldly now say that the study of law is very nice.

END.

FACULTY OF LAW STUDENTS ACTIVITIES COMPLIMENTARY TO LECTURES

BY: DR. LETZADZO ISAAC KOMETSI

1. INTRODUCTION

The following is an account of the Faculty of law student activities outside the class room. The account is more descriptive and basically provides a historical background. It thus forms the basis for a series of columns to follow in the coming years. The purpose is also to give a full picture of the innovation and pave way for formalisation and regulation. The activities start-

ed in a rather haphazard way and relied mainly on the energy and enthusiasm of one lecturer on the one hand, and the readiness, eagerness and zeal of individual students on the other hand. They include debates, moot court competitions, symposia (Khotla), and constitution day celebrations and students' courts.



2. MOOT COURT COMPETITIONS

THE ALFRED DEAKIN INTERNATIONAL COMMERCIAL MOOT COURT

Alfred Deakin International Commercial Arbitration Moot is similar to the Vis Moot, but requires much less work. It offered a great opportunity to give more students from Africa everything that the experience of participating in an international moot court brings with it. Our students participated for the first time in this competition in 2021. The feedback from the organisers was that: "Our arbitrators were very impressed by the quality of teams who participated in the Moot. We had a total of 43 teams from 33 universities in 12 countries, transforming the fifth Alfred Deakin ICA Moot into Australia's largest international moot competition. Your team placed #10 of the 43 teams who participated in the general rounds, with a total team score of 651. The highest team score was 716."

Other moot court competitions include the following:

KOVSI MOOT COURT COMPETITION

The Kovsie Moot court competition focuses on Constitutional law and is open only to first year students. Our students took part in this moot court for the first time in 2019 and performed well.

FDI MOOT COURT COMPETITION

The FDI moot court competition takes place in two stages. The first round is regional, followed by the internal round. Our students participated in the 2018 chapter whose finals were held in Stockholm.

3. SYMPOSIA: KHOTLA

Khotla is the only symposiums in which students participate fully both in the organisation and in the implementation. This forum was first launched in 2012 on 28 September. The purpose of khotla was to bring together all the stakeholders in the legal profession

in Lesotho to discuss and debate issues that affect the legal profession as well as to inspire ambition and professionalism amongst young lawyers. That is, to facilitate cohesion of efforts amongst members of the Profession for the betterment of legal professional services. We have now had five instalments of Khotla since its inception. The following pictures show the participants of the first 2012 Khotla.



Former CJ Lehohla being ushered by praise songs by Advocate Masiphole

Former VC Professor Seron Siverts making opening remarks

CONSTITUTION DAY CELEBRATIONS

In 2013, L. Kometsi together with Advocate Mohau KC launched the first annual celebrations of what was to become the Constitution day. The 2nd April marks the first day when the Constitution came into effect back in 1993. This was the second constitution for the country since independence. The adoption of

the Constitution of 1993 provided an opportunity for the country to open a new chapter characterized by political stability and economic progress, but that proved elusive.

The idea behind the celebrations was and still remains to mark the day on which the Constitution came into force; to promote its principal provisions; to generate a healthy debate around those provisions; to review the progress made in Lesotho's constitutional development over the last twenty years and generally, to promote respect for the rule of law and constitutionalism. These are evidently lofty ideals that could not be achieved in one day. The goal is thus to promote the 2nd of April every year as Constitution Day in the hope that over time, the above stated ideals will be realized; and the Day will attain national recognition.

In the first celebrations the program activities were as follows

THE WALK TO THE HIGH COURT

As part of the activities of raising public awareness about the Constitution, the students, accompanied by Mr. L. Kometsi, walked from Ha 'Nelese to the High Court (a distance of about 10 kilometres) distributing pamphlets containing a summary of the Constitution (in both Sesotho and English) to persons along the main South 1 road.

They all reached the High Court safely without any incident; and the police escorted them for the rest of the way from IEMS.

THE DEBATE

When the students reached the High Court, they were welcomed by Mr. Justice T.E. Monapathi C.J. a.i. In his brief address, the Chief Justice raised concern that unlike in earlier days when students and lecturers from NUL led public debates on topical issues through research and other means, there was paucity of such scholarly leadership of late. The Chief Justice encouraged the students to always

strive for academic excellence.

After they were welcomed by the Chief Justice, the students proceeded to debate the motion that: Lesotho should allow dual citizenship so as to enable Basotho working in the Republic of South Africa to access ARVs and other socio economic benefits available in that country.

5. STUDENT DISCIPLINARY COURTS/LITIGATION CLUB

The Litigation Club was established in 2018 with a view to provide the students of law with a laboratory for the law gymnastics at an early stage of their LLB program. Traditionally, the students are first exposed to moot courts and mock trials only at fourth and fifth years after they have studied procedural law courses. The litigation club however allows them to start while in first year to learn by doing. In the club students are introduced to trial advocacy skills and given live cases of minor transgressions to adjudicate. It is from the club that we have been able to harness talent in mooting

and ultimately in public speaking and advocacy. The following is an example of charges that have been laid against students, and prosecuted to finality.

**IN THE MOOT COURT ON
TUESDAY THE
NUL V NOOSI**

You are hereby charged with contravention of the Legal Methods (L181) conduct of lectures rules as contained in the course outline of 2016 and verbally communicated to the students in the first lecture of the course during the academic year 2016–2017, in that he arrived late in the lecture on the 9th August 2016 to DTF 105.

6. The Debates/the Debate Club
The Faculty of Law had its first student debate on 13 October 2016. Following these debates, students of law took part in a debate league intended to run (much like a soccer league) until the end of the academic year, each year. At the end of the academic year, the winning team win prize money and a roaming trophy. The inaugural debate featured veteran debaters from town, in the likes of Adv. Tembo, Adv. Moiloa and Mr Mosito (amongst others). The goal was and remains to horn our future activists, human rights advocates and leaders. Incidentally, the motions for the

two sessions of debate were: “Government should censor communication in all social networks for preservation of peace”; and “This house believes that there should be general amnesty for all the soldiers alleged to have been involved in crimes in the period preceding 2015 general elections in Lesotho”. Since then, students debate controversial but concurrent issues that impact their every day lives, but equally have a bearing on leadership challenges.

7. COMMUNITY SERVICE

Since I have started teaching a first year law course, I have engaged the students in annual visits to the nearby High schools in an effort to do community service. For all the years that we have been doing this the program is always the same. We walk to these places and offer lectures to the students about the hierarchy and functions of the courts, and then share some old clothing and pads for the girl students. We have so far rounded all the High schools within and near the valley of Roma.



Introducing The Coffee With a Lawyer Column and Mazvivamba 'Mazvi' Maharasoa (Nee Guni)

By Advocate Mothepa Ndumo

In this photo:
Mazvivamba 'Mazvi'
Maharasoa



INTRODUCING THE COLUMN

The Coffee with a Lawyer column is a contribution from one of the most well-regarded corporate executives in Lesotho and the brainchild of Ms. Mazvivamba 'Mazvi' Maharasoa (nee Guni). This column evolved from discussions that I had with Ms. Maharasoa when I mooted the idea of this publication as a mechanism that the Faculty of Law desired to utilise strategically to meet several of its objectives. These objectives include (a) public engagement and education on all matters involving the legal sphere in terms of laws, policies, guidelines, codes and public policy debates and discussions around proposed Bills, (b) fundraising for staff and student activities in a sustainable mutual-value-adding fashion in partnership with public and private entities inside and outside the country, and (c) reviving and maintaining strong links with our alumni all over the world in order to create spaces for them to express Thought Leadership in their chosen areas of legal expertise and to interest them in mentoring the new breed of lawyer that is emerging from the FOL at the NUL in this Fourth Industrial Revolution era.

Happily, Ms. Maharasoa did not need much convincing and immediately said yes and began to conceptualise this column and the objectives it would serve particularly in line with the first abovementioned objective of promoting public education around legal developments primarily inside Lesotho.

Ms. Maharasoa is the daughter of two National University of Lesotho Faculty of Law alumni in the persons of Honourable Justice Kelello Justina Mafoso-Guni and Dr Vengai Greeley Guni (PhD in Law). Both Justice Mafoso-Guni and Dr. Guni gained their BA Law degrees from our Faculty of Law many decades ago and Ms. Maharasoa is fond of saying that she is the epitome of a child of the Faculty of Law.

We are, indeed, deeply grateful that someone of Ms. Maharasoa's stature has seen it fit to make this valuable and

very necessary contribution to public debate in the legal sphere of Lesotho, the SADC region, Africa and beyond by penning this column.

Dear Reader, be on the lookout for her first column piece in the second Quarterly Magazine issue!

MEET THE COLUMNIST

Mazvi attained a Masters in International and Commercial Law in 1997 and commenced her professional career in the public service for 5 years before moving into the private sector.

- Mazvi is a professional with nearly 30 years of senior management experience.
- In summary, Mazvi's strengths and extensive experience is in:
- good corporate governance
- developing and driving corporate short, medium and long terms goals

Advocate Mothepa Ndumo

and objectives (in line with growth opportunities);

- a strong background in corporate and legal governance (legal, compliance, risk management);
- organisational structure (skills deployment, systems and processes);
- stakeholder management (employees, shareholders, regulators, communities, strategic partners, media);
- operating in an international listed environment in an emerging domestic market.

Mazvi's corporate career reached its public pinnacle in 2009 when she was appointed Chief Executive Officer of Letseng Diamonds (Pty) Ltd, at the age of 39, the

youngest of the then only 2 black African women managing listed diamond mining operations in Southern Africa. In 2016 Mazvi received international recognition as the sole black African of 5 women defined as "Power Players – Women Who Rock The Diamond Industry", and in 2017 recognised by Standard Lesotho Bank for "outstanding contribution to the economy and people of Lesotho" as part of the launch of Lionesses of Africa. She further was a member of the drafting

committee that saw the recent publication of the Mohlomi Code, the first governance instrument for Lesotho developed by the Lesotho Institute of Directors, of which she is a member. Currently Mazvi, at the age of 52, has embarked on a material career change, looking to scale new heights. The core passion for governance that Mazvi has informed this change, as she runs an advisory service that specialises in corporate governance (from small start-ups to large corporations). Furthermore, she sits as a Non-Executive Director on several companies, most recently for Gem Diamonds Limited, listed on the London Stock Exchange, and First National Bank of Lesotho. Mazvi strongly believes that good corporate governance is the source of all success and

has a critical role in the development of individuals and entities alike. It is her desire that citizens, more especially women, take up the mantle for leadership roles and be a shining example of good governance. Women globally currently make up less than 5% of executive leadership. Our entities have an obligation towards their stakeholders; however it is incumbent on the stakeholder to demand transparency and accountability. Basotho need to be factually informed of all sides of the story, see the value in constructive debate, and hold leadership accountable. This is the sole intention underpinning the Coffee With A Lawyer column. To address questions such as, what happens in our houses of parliament? How does it impact and seek to improve our citizen quality of life?

Mazvi is actively pursuing her passion in property development in a registered company called Exquisite Properties (Pty) Ltd which is embarking on its first development.



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The Metropolitan Research Chair in Pension Law Studies

Introduction

The Metropolitan Research Chair in Pension Law Studies in the Faculty of Law at the National University of Lesotho is the first named Research Chair in the country's higher education history. The Metropolitan Research Chair in Pension Law Studies is a partnership between the Faculty of Law at the National University of Lesotho and Metropolitan Lesotho Limited. The partnership was established in November 2020 to promote research in pension studies; develop and offer professional development programmes; and organise public discussions about pension matters in Lesotho and the region. To view the Chair's activities and learn more about its programmes, thought leadership, partnerships and many more, visit www.nulpensionlawchair.org.ls

Vision

To be a centre of excellence in pension law studies in Lesotho and the Southern African Development Community region.

Mission

- To produce cutting edge research that is relevant to the pension and the insurance industry in Lesotho.
- To develop and offer professional development programmes and short-learning programmes for the pension and insurance industry.
- To organize public deliberations and

debates about pension funds and related matters in Lesotho.

In-House Conferences and webinars

The Research Chair launched its Roundtable Discussions Series known as In Conversation with the Pension Funds Industry in April 2021. The purpose of this series is to facilitate public education and conversations about the pension funds industry developments and is therefore designed to meet one of the aspects of the Research Chair's three-pronged mandate of facilitating debate and discussions amongst industry stakeholders.

A VIRTUAL ROUND TABLE DISCUSSION



10th Sep 2021,
10:00 a.m. - 12:30 p.m.



**Prof. Mtende
Mhango**

Metropolitan–NUL
Research Chair in Pension
Law Studies



**Adv. Muvhango
Lukhaimane**

Pension Funds Adjudicator, South Africa
& Adjunct Professor, NUL Faculty of Law



**Teboho
Makoetlane**

Principal Officer, Rainmaker
Umbrella Pension & Provident Fund



**Tokiso
Nthebe**

Principal Officer, Lesotho Umbrella
Fund & Founder, TKO Consultancy

Space limited. Join early.

Webinar ID

890 2458 7261

Webinar Passcode

979415

METROPOLITAN

Roundtable Discussion One

Theme: The Pension Funds Act 5 of 2019:
A Paradigm Shift in Lesotho?

Panelists: Ms. Mamello Phomane (Insur-
ance Association of Lesotho); Advocate
Lindiwe Sephomolo (Association of
Lesotho Employers and Business) and Mr.
Ts'eliso Ramochela (Lesotho Federation of
Trade Unions)

Convenor: Professor Mtende Mhango (Re-
search Chair)

Moderator: Advocate Mothepa Ndumo
(Research Fellow)
Platform: Zoom Webinar
Attendance: approximately 200

Roundtable Discussion Two

Theme: The Pension Funds (Disclosures)
Regulations, 2020: Do They Adequately
Empower Members?

Panelists: Advocate Muvhango Lukhai-
mane (South African Pension Funds
Adjudicator & Adjunct Professor, National
University of Lesotho); Mr. Teboho Ma-
koetlane (Principal Officer, Rainmaker
Umbrella Pension Fund, Metropolitan); Mr.
Tokiso Nthebe (Principal Officer, Lesotho
Umbrella Pension Fund, Alliance Insur-
ance); Advocate Thobeli Kabai (Central
Bank of Lesotho) and Mrs. Selloane Kho-
abane (Central Bank of Lesotho).

Convenor: Professor Mtende Mhango (Re-

search Chair)

Moderator: Advocate Mothepa Ndumo
(Research Fellow)

Platform: Zoom Webinar

Attendance: approximately 200

Academic and Short Learn- ing Programmes

The Research Chair's current academic
and short learning offerings can be divid-
ed into:

Post Graduate Programmes

- The Postgraduate Diploma in Pension
Law (awaiting accreditation by the
Council on Higher Education)
- The Master of Laws (LLM) in Pension
Law (awaiting accreditation by the
Council on Higher Education)
- The Doctor of Philosophy (PhD) in
Pension Law (awaiting accreditation
by the Council on Higher Education)

These programmes shall commence in
2022 once accreditation has been final-
ized by the Council on Higher Education.

The Metropolitan Research Chair has
cultivated several partnerships to enable
it to deliver its academic programmes
mandate.

These partnerships are with:

Associate Professor Clement Marumoagae, University of the Witwatersrand.
Adjunct Professor Naleen Jeram, University of Cape Town.

Adjunct Professor Muhango Lukhaimane, Office of the Pension Funds Adjudicator, South Africa.

Adjunct Senior Lecturer Ms. Rosemary Hunter, University of the Witwatersrand.

Introduction to Pension Fund Trusteeship

The main objective of the Introduction to Pension Fund Trusteeship programme is to impart the necessary knowledge and skills to enable participants (mostly trustees) to manage pension funds in a manner that is in the best interest of its members, and in terms of the Pension Funds Act, the regulations, and the rules.

For more information visit www.nulpensionlawchair.org.ls/training

External conferences and webinars

The Research Chair Secretariat have attended a number of external conferences and webinars hosted by a variety of institutions where they presented or attended as delegates. In terms of presentations at external conferences:

- International Labour and Employment Relations Association Conference, 26–29 September 2021, Kruger National Park, South Africa
- Professor Mtende Mhango and Advocate Mothepa Ndumo presented a paper at this conference on the 27th September 2021. The paper was titled “The Regulation of Withdrawal and Death Benefits from Pension Funds as a Social Protection Mechanism for Migrant Professionals in the SADC”
- 4th African Labour Law Society Hybrid Conference, 21–22 October 2021, Nairobi Kenya
- Advocate Mothepa Ndumo virtually presented a paper titled “A Case Study of Lesotho’s Hospitality Industry and its Response to COVID-19 in the Context of Labour and Pension Laws” on the 21st of October 2021.
- 2nd Annual Pensions and Retirement Summit Hybrid Conference, 21–22 October 2021, Cape Town



Advocate Mothepa Ndumo presented a paper to the Summit in person titled "Future proofing Lesotho's pension funds industry in the context of the COVID-19 pandemic and other future shocks: A legal perspective on Regulation 6 of the Pension Funds (Investment) Regulations of 2020" on the 21st of October 2021.

For more information visit:

www.nulpensionlawchair.org/seminars-and-conferences-attended-by-the-team/

THE DEAN'S MERIT LIST

	STUDENT NO.	SURNAME	NAMES	GRADUATION YR	PASS GRADE
1	200000612	MOSAE	REITUMETSE	2004	SECOND CLASS – FIRST DIVISION
2	200100448	NYANE	HOOLO BARTHOLOMEW	2005	SECOND CLASS – FIRST DIVISION
3	200101529	MATSOHA	MAJALIHLOHO GERTRUDE	2005	SECOND CLASS – FIRST DIVISION
4	200603494	MOHAPI	KENEUOE	2010	SECOND CLASS – FIRST DIVISION
5	200701119	RAMOKANATE	LUCAS LEHLOHONOLO	2011	SECOND CLASS – FIRST DIVISION
6	200704913	SEPHEKOLA	TSHEPISO	2011	SECOND CLASS – FIRST DIVISION
7	200800867	LECHE	TSEPANG DOMINIC	2012	FIRST CLASS
8	200800416	MOCHESANE	PONTSO ANGELINA	2012	SECOND CLASS – FIRST DIVISION
9	200801056	MOLAPO	INNOCENTIA MAMELLO	2012	SECOND CLASS – FIRST DIVISION
10	200800145	SEKOANKOETLA	MASEKARA VELERIA	2012	SECOND CLASS – FIRST DIVISION

11	200800389	TAOLE	TEELE ELIAS	2012	SECOND CLASS – FIRST DIVISION
12	200901004	DHEMBA	KUDZAI PATIENCE	2013	FIRST CLASS
13	201100066	HLAKAMETSA	MAMESA	2015	FIRST CLASS
14	201100465	BANYANE	TSEKO	2015	SECOND CLASS – FIRST DIVISION
15	201101731	TSEPHE	RELEBOHILE RODWELL	2015	SECOND CLASS – FIRST DIVISION
16	201303927	MOKOMA	KOPANO	2017	SECOND CLASS – FIRST DIVISION
17	201402877	MOKALOBA	MASALEMONE ROSA	2018	SECOND CLASS – FIRST DIVISION
18	201501821	THETSANE	MAMOHAI MARY-ROSALINE	2019	FIRST CLASS
19	201501992	MOCHCHONONO	LIZZIE	2019	SECOND CLASS – FIRST DIVISION
20	201600790	MASHININI	VUSI JUNIOR	2020	FIRST CLASS
21	201403304	GWELE	PALESA ROZA	2020	SECOND CLASS – FIRST DIVISION
22	201601345	RAMATLAPENG	MAPESHOANE JOHANNES	2020	SECOND CLASS – FIRST DIVISION
23	201600361	RASEBONOANG	MAMOKOENA BERNICE	2020	SECOND CLASS – FIRST DIVISION



FOL ALUMNI CORNER:

5 FOL ALUMS REFLECT ON CORPORATE GOVERNANCE AND COMPLIANCE

Corporate Governance and Compliance: a symbiotic relationship

By: Advocate Pheta Setlojoane



Corporate governance and compliance have gained significance in our modern-day corporate world. The success and sustainability of any corporate entity largely depends on the strength of its governance and compliance culture. Although the common measurement

of success for any company is its financial performance and shareholders' value creation, corporate governance and compliance are the critical 'behind the scene' levers without which corporate success and sustainability are attainable. It is apposite to argue that the two are inextricably linked notwithstanding how each of the two is defined.

Corporate governance on one hand is concerned with the way the company is governed, how powers are shared and exercised by various stakeholders in the company and ways to hold those on whom powers have been conferred **accountable**. In context, **the power to hold any stakeholder accountable** vests in the Board of Directors. Typically, whilst the Board plays an oversight role and provides a strategic direction, it delegates operational powers to

Management. This is however not a blank cheque as the Board will always hold Management accountable for its decisions. Compliance on the other hand speaks to the process through which companies demonstrate conformance to the laws, regulatory requirements, policies, and best practices. Compliance is irrefutably an indispensable key for both the survival and thriving of any company. Failure to observe any compliance requirements carries both financial and reputational implications. With this in mind, the Board oversight responsibility is, at all times, focused on ensuring that the control environment is strengthened, and all lines of defense are operating effectively.



Advocate Sehapi Motloun studied for his Bachelor of Arts in Law (BA Law) at the National University of Lesotho, Faculty of Law, from 1983 – 1987. He then proceeded to the then University of Natal University (now known as the UKZN) to complete his Bachelor of Laws (LLB) in 1990. Advocate Motloun then worked for the then Government of QwaQwa for four (4) years in various capacities including Legal Officer and District Court Prosecutor. He briefly served articles for a year with the Legal Aid before enrolling as an Advocate in 1996.

He took a detour when the Commission for Conciliation Mediation and Arbitration (CCMA), under the South African Labour Relations Act was promulgated as he was part of the first cohort of Commissioners in 1996 when

the CCMA was established. In 1999, Advocate Motloun was called to the Bar, while retaining his position as a part-time Commissioner of the CCMA until 2006. Advocate Motloun has been at the Bar since then,

establishing a busy practice in labour law, criminal law (short-time) and general civil litigation. He has also acted as a judge in the High Court of the Free State and took silk in 2021, although he has not yet received his Letters Patent.

Corporate Governance and Compliance vis-à-vis Employee Rights in Terms of the Labour Relations Act 66 of 1995 of South Africa

By Advocate Sehapi Motlounq (Free State Bar)

INTRODUCTION:

1.1 I write this article cognisant that my perspective is largely based on the South African experience. However, I know that the processes of Mediation and Arbitration set out in the South African Labour Relations Act 66 of 1995 as amended, were adopted by the SADC and are applicable in the neighbouring countries, although the effectiveness thereof cannot be overplayed. This is mostly because of the capital concentration in the South African market with a high unionization rate of the labour force.

1.2 I will be approaching governance and compliance as it relates to the workforce in particular. Most of the material available tends to put emphasis on corporate governance in the context of a return to the

shareholders, while downplaying the role of the labour force in the process.



2.DEFINITION:

2.1 Corporate governance is the overreaching set of policies, procedures and relationships that enable an organisation to establish objectives, set ethical boundaries to the acceptable means with which those objectives will be met, monitor the achievement of objectives, reward successful achievements and discipline unsuccessful or inappropriate attempts to meet objectives, in order to keep the organization aligned with the needs and interest of its primary stakeholder (per **Neel, Corporate Governance Centre**).

2.2 In other publications, the governance structure establishes the fundamental relationship among the Board, its committees, management shareholders and other stakeholders (read workers). The last category will normally be under Human Resources, and, depending on the structure, forms a very small part of the bigger group.

3.

3.1 The guiding principles can be summed up as:

- Effective and regular interaction among the stakeholders.
- Stakeholder feedback to evaluate whether policies meet expectations.
- Balancing the interests of the company and its shareholders.
- Maintaining long-term performance and values.
- Ensuring healthy and regular

evaluation of the core culture and values.

- Ensuring that the company is transparent and purposeful and allows stakeholders an opportunity to evaluate whether the chosen policies and procedures are optimal for the specific company.

3.2 This is broadly the framework upon which corporate governance is based. The Human Resource element is expected to review talent and development, including succession plans.

4.

4.1

The political transition in South Africa ushered in the 1990s coincided with the rise of labour militancy. This forced a rethink on the labour dispensation to try and curb the wildcat strikes that threatened economic stability. A new model of corporate structure and governance was called for. This resulted in the formation of the National Economic Development and Labour Council (**NEDLAC**), which is an umbrella organization consisting of Industry, Government and Labour.

4.2

The result from this development was the establishment of the Commission for Conciliation, Mediation and Arbitration (CCMA), which would found its mandate from the new Labour Relations Act.

4.2.1 A key element of the CCMA's functioning was to ensure a

	speedy resolution of labour disputes.		of dealing with each other's pressing needs.
4.2.2	The CCMA statutorily had 30 days to try and solve disputes between employer and employee.	5.3	As soon as the CCMA came into effect, and the Commissioners were appointed, the employer found it difficult to hire and fire at will.
4.2.3	Arbitration would follow immediately should the matter not be resolved within the 30 days. The arbitration process would have a maximum period of 90 days to be finalised.	5.4	This led to a strain in the relationship and almost caused a total collapse of NEDLAC. This organization is yet to reach its full potential.
4.3	The dispute resolution mechanism would be under the auspices of the Labour Relations Act but semi-autonomous to ensure minimal government or industry influence.	6.	
4.4	Organizational rights, i.e., the right to belong to a trade union (which is constitutionally protected) and other interest issues would be resolved differently by the right to strike, should the parties not agree/ or fail to find one another.	6.1	Working against the employer in the process was the fact that, the firing of workers had to be procedural and for a good reason. These were prescribed by the Act, and the notion of "fair labour practice" was constitutionally protected.
5.		6.2	It is sad that, for the better part of 10 years after the establishment of the CCMA, the employer sought to have the law changed instead of finding ways to work around it. At the same time they did not want the Constitution to be amended willy-nilly. On the other hand, the worker representatives stood firm on the gains made during the establishment of the NEDLAC.
5.1	NEDLAC was supposed to play a vital role in curbing strikes, mainly because the convergence of employers, organised labour and government would try and push for the objectives of economic growth, ensure minimum wages for workers and contribution by the private sector.	6.3	I can venture to say, if this was allowed, it would most probably trigger other unexpected amendments to the Constitution.
5.2	This was a perfect vehicle that was supposed to usher in new methods	7.	
		7.1	In the meantime, the new vehicle for the resolution of labour disputes was rolled out to the neighbouring countries to

align them with the process of mediation which held such good promise.

would be to ensure a happy workforce to buttress good governance and compliance with the company ethos.

7.2 It is also sad that while the process has not changed, much of the benefits have not filtered down as expected.

8.4 A happy workforce is good for profits but, whether this is achievable in the economic climate we are in, is another story altogether.

8.

9.

8.1 This takes us back to our topic regarding whether corporate governance and compliance has been realised as per the definition set out at the beginning.

I would like to finalize by saying, maybe in the not so distant future, leaders of industry will be trained to value the Human Resource more to achieve better outcomes for their corporates. Hopefully this will trickle down to the workforce. It's no secret why the economies that have prospered have had, as their basis, the triad as in NEDLAC. This requires the government to inform industry what its priorities are, making available the training of the workforce in those fields and remunerating the workforce adequately. As I stated previously, a happy workforce makes for better profits too.

8.2 To answer this we need to look at the role that each party brings to the table. Based on the framework set out at the beginning, it would appear that it would still be satisfied should the Board be making profits. However, if a big component of the company, being its Human Resource, is not adequately covered, it might be short gain.

8.3 This would be gunning for short-term profits at the expense of good governance and is, by that reason, not sustainable. As stated earlier, putting emphasis, as most authors do, on good governance on the welfare of the Board and shareholders, is, in my view, short-termism. A more sustainable outcome

SEHAPI MOTLOUNG (Adv.)

CHAMBERS

BLOEMFONTEIN

(The views expressed herein are private)



TERENCE TERERAYI MACHAWIRA B.A. LAW, LLB
(NUL ROMA), LLM (UP), MSCSM (CUT)

Constitutional Commission, Secretary to the Zimbabwe Electoral Commission 2004-2005, Assistant Bank Secretary at the Reserve Bank of Zimbabwe, Company Secretary and Legal Counsel at Fidelity Printers and Refiners (Pvt) Ltd and worked in the Minister's office in the Ministry of Energy and Power Development. Until recently he was Board Secretary for Sanctuary Insurance Company (Pty) Ltd before joining the Procurement Regulatory Authority of Zimbabwe as Corporates Services Director in 2021. Terence holds a Master of Science degree in Strategic Management from Chinhoyi University of Technology, a Master of Laws degree from University of Pretoria and a Bachelor of Laws and Bachelor of Arts

Terence has worked in the legal services industry in both Government and Commerce and has over 20 years' experience. He started work as a law officer in the Ministry of Justice Legal and Parliamentary Affairs, he was a tutorial assistant at the University of Zimbabwe and examiner for the Foundation for Business Studies, twice Secretary to the Delimitation Commission for electoral boundaries in 1999 and 2004, core resource person for the 1999-2000

Law from the National University of Lesotho. He was admitted as a legal practitioner of the High Court of Zimbabwe in 1999. He has attended various courses, workshops and seminars on Corporate Governance, Strategic Planning and Quality Management Systems amongst others. Terence is a family man, married with three children. He is a swimmer, enjoys fishing and of late has taken to playing golf. He has farming interests and is a trustee of the Pulsebeat Foundation Trust.



TERENCE TERERAYI MACHAWIRA B.A. LAW, LLB
(NUL ROMA), LL.M (UP), MSCSM (CUT)

A glance at history will show that the thrust of corporate governance has evolved from the preoccupation with checks and balances to mitigate corporate scandals that centred around creative accounting which affected profits, environmental concerns focusing on sustainability hence the planet and lately Covid-19 has invariably reminded us of the need to focus on people. Whatever the issue that is trending, compliance remains but a quintessential facet that the law cannot overlook. Different jurisdictions regulate corporate governance through various codes which have the force of law whilst others remain persuasive sources of best practice. Whether it is the comply-or-explain or the comply-or-else approach, one cannot escape from the harsh reality that the cost of compliance has to be appreciated in the context of the greater good. Given that compliance is an inescapable reality, be it self-regulation or the carrot and stick approach, in the wake of the Covid-19 pandemic novation, the law is required to rise to the occasion as a tool of social engineering and elevate the compliance discourse. To remain alive, comply we must!

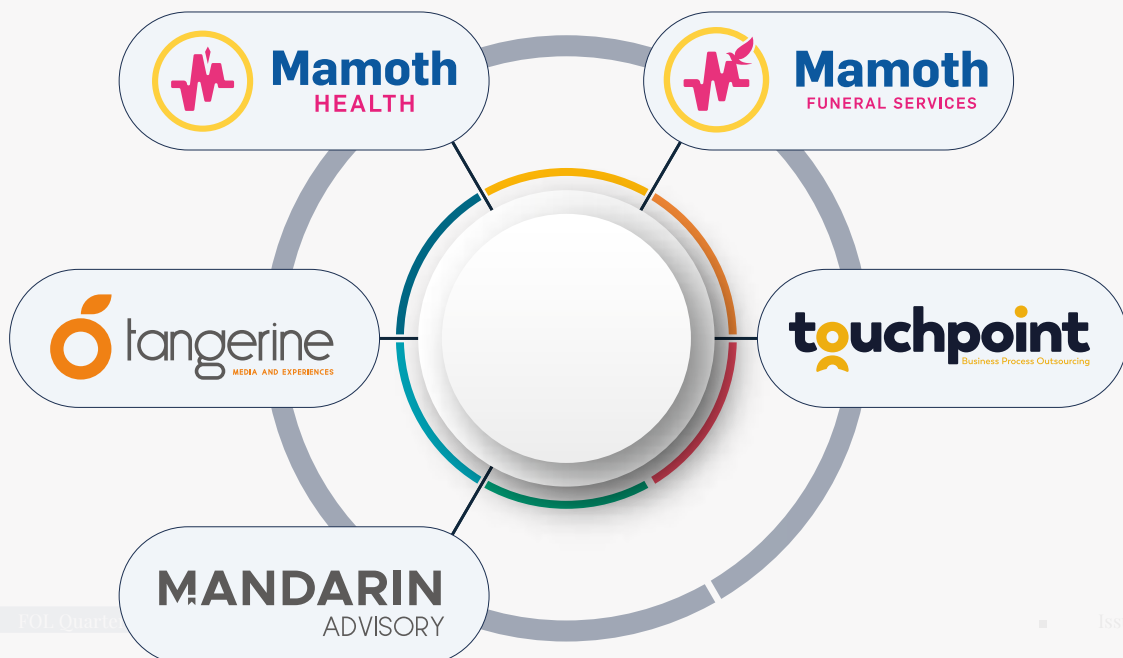
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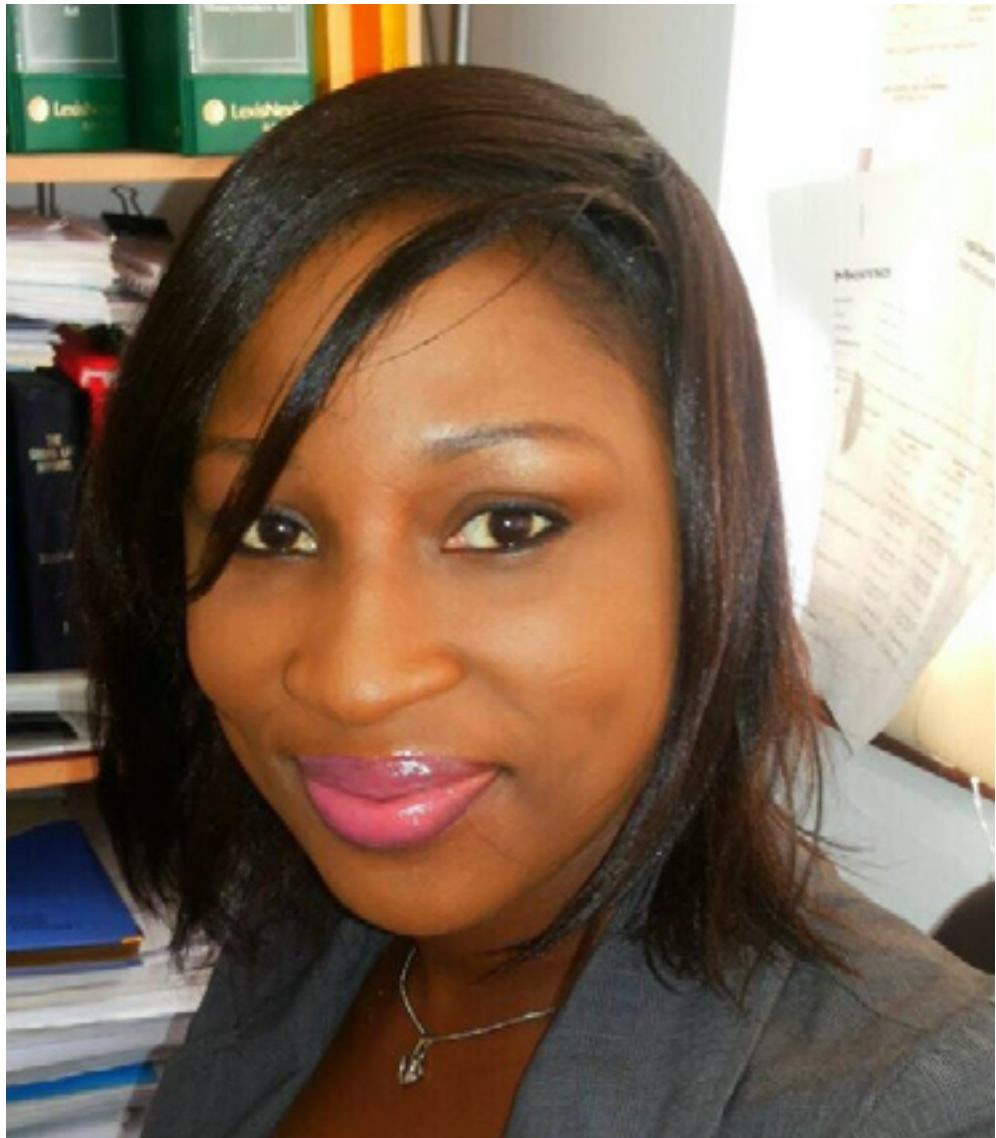
We are an ecosystem of companies that provide integrated life and business solutions through our; Healthcare Management & Financing solutions; Advisory & Legacy Management Solutions; Customer Relationship Management, Commercial Management, Talent Acquisition & Optimisation; and Funeral Services.

We use our ecosystem model to drive innovation and capital efficiency to create value for the customer as the Group continues to forge relationships and partnerships with both Lesotho and international players. That's why now, more than ever, collaboration is key in taking care of the customer from the cradle to the grave and back. We are Stronger Together!



Adv. Harriet Owusuwaa Brown

Harriet Owusuwaa- Brown (nee Acheampong) is a Barrister and Solicitor of the Supreme Court of Ghana and Advocate of the High Court of Lesotho. Advocate Brown was born in Ghana and raised in various parts of Africa particularly in Lesotho where she obtained her Bachelor of Laws (LLB) degree from the National University of Lesotho in 2005.



She then obtained her Qualifying Legal Certificate from the Ghana School of Law in 2010 prior to which she was an Associate at Zoe, Akyea and Co. Law Firm. She interned for Judge Akua Kuenyehia at the International Criminal Court in The Hague dealing mainly with International Criminal Law. She worked with the Public Procurement Authority

in Ghana where she was Secretary to the Appeals and Complaints Panel and Senior Legal Officer, assisting the Legal Director in the Agency. She obtained her Master of Laws (LLM) in Government Procurement Law from the George Washington University in Washington D.C in 2016. In April 2018, she had an occasion to work with Freshfields Bruckhaus

Deringer LLP in London, where she gave presentations on the Procurement System in Ghana. Harriet is the Compliance Officer and Team Coordinator at Save the Children UK. Harriet currently lives in London and is inspired daily by her husband and two children. In her free time, she likes to travel, cook, play, and read to her children.

CORPORATE GOVERNANCE AND COMPLIANCE: ROLE OF COMPANY SECRETARY

Adv. Harriet Owusuwaa-Brown

Corporate governance is the system of rules, practices, policies and procedures that direct and control an organisation and its behaviour. It usually refers to the framework and the relationships that define corporate performance and direction.

Effective corporate governance nurtures a culture of integrity thereby, aligning the interests of management with those of key stakeholders, an organisation practicing good corporate governance will set itself apart from competitors.¹ Compliance on the other hand, is “the set of internal processes used by firms to adapt behaviour to applicable norms.”² Corporate governance and compliance work in tandem to ensure an organisation stays within the regulatory framework of the law. In recent years, there has been increasing focus on corporate governance and, with it, the role of the company secretary has grown in importance. As such, the company secretary is seen as the guardian of the company's proper compliance with both the law and best practice. The importance of the role of the company secretary was stressed in The Cadbury Report (1993) thus:

“The company secretary has a key role to play in ensuring that board procedures are both followed and regularly reviewed. The chairman and the board will look to the company secretary for guidance on what their responsibilities are under the rules and regulations to which they are subject and

on how these responsibilities should be discharged...”

Organisations that would be successful are those that place importance on the role played by a company secretary and provide an enabling environment for the company secretary to play its role.



¹ See <https://www.careersinaudit.com/article/the-importance-of-corporate-governance-in-an-organisation/> accessed on 4/01/22

² See GEOFFREY P. MILLER, THE LAW OF GOVERNANCE, RISK MANAGEMENT, AND COMPLIANCE

3 (2014) (defining compliance as “the processes by which an organization seeks to ensure that employees and other constituents conform to applicable norms—which can include either the requirements of laws or regulations or the internal rules of the organization”) cited from Sean J. Griffith, Corporate Governance in an Era of Compliance https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2766661# accessed on 4/01/22

JUDGE SELEMENG MOKOSE

A portrait of Judge Selemeng Mokose, a Black woman with her hair in braids, wearing a black judicial robe over a white collared shirt. She is standing in a courtroom with wooden bookshelves filled with books in the background. The lighting is warm, highlighting her face and the texture of the robe.

Selemeng Mokose received a BA (Law) degree from the National University of Lesotho in 1984, an LLB degree from Wits University in 1988, a Certificate in Refugee Law from UCT in 2008 and a Post Graduate Diploma in Property Development from the UCT Graduate School of Business in 2013. She was a practicing attorney for 27 years specializing in property law and notarial practice. She was the first African female conveyancer in the Republic of South Africa having been admitted as a conveyancer in 1991 from which time she had been involved in legal education in conveyancing as a drafter, moderator and examiner of exams. She also contributed extensively to the profession as chairperson of the Property Law Committee of the Provincial Law Society (Law Society of the Northern Provinces) as well as the Law Society of South Africa. Due to her passion for Refugee Law, Judge Mokose contributed her time pro bono to the Refugee Law Clinic run from the Women's Jail in Braamfontein whilst practicing as an attorney.

She was appointed a judge of the High Court of South Africa with effect from January 2019 and is presently seated in the High Court in Pretoria.

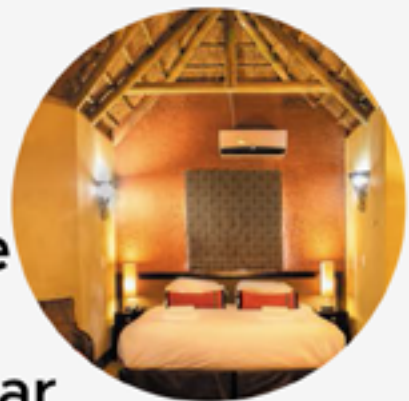


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A NOTE FROM JUDGE SELEMENG MOKOSE

(Gauteng High Court, Pretoria Division)

Corporate governance is a system that aims to instil policies and rules that assist in maintaining the cohesion of an organisation. This system exists to help hold a company accountable while helping it to steer clear of financial, legal, and ethical pitfalls. By corporate governance, one not only refers to the legal constraints but also to the norms of “best practice”. Corporate governance epitomises the principles of responsibility, accountability, fairness, and transparency. Whether courts can change corporate behaviour must be viewed against the backdrop of the corporate governance environment in a particular country at a particular time. The courts get involved in enforcing corporate governance laws mainly through the interpretation of those laws and through their application of the common law where the relevant legislation does not exist. Employing good corporate governance assists a company in regulating risk and reducing the opportunity for corruption. Scandals and fraud within a company are more likely to occur where directors and senior management do not comply with a formal corporate governance code.

The judiciary has several major responsibilities in terms of corporate governance, and these include:

- (i) Interpretation of the laws;
- (ii) Settling legal disputes;
- (iii) Determining guilt or innocence of those accused of the commission of offences and punishing offenders accordingly;
- (iv) Hearing civil cases; and
- (v) Protecting the rights granted under the Constitution.

The judicial system in any country has an important role to play in ensuring better corporate governance. There may be many laws and regulations, rules, and procedures but ultimately, the disputes must be settled in our courts.

REFLECTIONS FROM FORMER NUL FACULTY OF LAW STAFF

Professor Evance Kalula

Evance Kalula, a Zambian, is Chairperson of the International Labour Organization (ILO) Committee on Freedom of Association (CFA). He is the first African to serve in the position in the ILO's hundred-year history. He is also Emeritus Professor of Law at the University of Cape Town and Honorary Professor at the University of Rwanda. He holds a number of degrees in law, including a PhD. He was educated at the University of Zambia School of Law (LL B Class of 1974); King's College, London; Balliol College, Oxford (where he was a Rhodes scholar); and the University of Warwick School of Law. He is a fellow of the African Academy of Sciences (AAS), member of Council of the Academy of Science of South Africa (ASSAf), member of the Zambian Academy of Sciences and fellow of the Stellenbosch Institute for Advanced Study (STIAS). He is also a visiting lecturer in law at Mulungushi University, as well as an associate of the Southern African Regional Universities Association, (SARUA). He is the General Editor of the Juta African Titles series and sits on various journals' editorial and similar boards internationally. He previously served as Chair of the University of Lusaka Council (UNILUS) where he still serves as Executive Policy Advisor; Chair of the then South African Employment Conditions Commission (EEC); member of the ILO Commission of Inquiry on Freedom of Association in Zimbabwe and member of the Ministerial Advisory Panel of the former South African Department of Economic Development (EDD).

He is a past President of the International Labour and Employment Relations Association (ILERA).

He taught in the Faculty of Law at the National University of Lesotho in Roma from 1988 to 1992.



MOSHOESHOE'S ENDURING SPIRIT: ECLECTIC MEMORIES OF THE FACULTY OF LAW, NATIONAL UNIVERSITY OF LESOTHO (1988- 1992)

I have been asked to reflect on memories of my time at and continuing links with the National University of Lesotho focusing on Corporate Governance and Compliance. I gladly do so, it is a great honour and privilege to reflect my enduring memories of NUL on this platform. I sincerely commend the editors for this excellent initiative. It is remarkable that both my NUL experience and Corporate Governance somehow not only helped to shape my career but continue to be central to what I am pre-occupied with in my active retirement.

It all started in early 1988. Like many roads that lead to great experience, my going to Lesotho was not certain. I had just completed my PhD at the University of Warwick School of Law when I was alerted to an advert from the Commonwealth Secretariat in London for a researcher on a Labour

and Human Rights project. I followed it up only to find out that the project had not come through, instead it was suggested that I might be interested in a teaching position which had just been advertised at the National University of Lesotho Faculty of Law. Although the position was for a Lecturer in Law, the University had an Institute of Labour Studies, I was encouraged to apply and so I did.

And so, my NUL experience began. I was appointed and arrived there in late 1988. I knew very little about Lesotho other than the Makololo historical connection the Kingdom had with the Balozi people of Western Zambia, and, as I was later to find out, that Lesotho was outside the tropics and was bitterly cold in winter. My experience teaching Law was even more confounding, I had expected to teach Labour or Human Rights, areas in which I had proven pretensions, but that was not to be. In fact, I did not have any contact with Human Rights let alone Labour Law as a teacher. The only incidental connection I had with Labour Law was my formal appointment as Director of the Institute of Labour Studies which I could not take up as I had accepted a

position at the University of Cape Town in 1992, just before my appointment was confirmed.

“Despite my rocky beginning as Basotho Customary Law teacher, it is the students that I most remember.”

My teaching came to be mainly in the Private Law Department to

which I was later appointed as head. My teaching subjects turned out to be Private International Law (Conflict of Laws), and, most remarkably, Basotho Customary Law. Teaching Basotho Customary Law was quite an experience. Although I had an excellent book written by one Professor Sebastian Poulter on the subject, making head or tail of Basotho names and intricate traditional ways was quite a challenge. I barely got on top on it. Whatever my lapses then, I had always been a confident ‘pair of safe hands’, being able to master my brief as I found it, but, for once in my life, I found myself close to being declared incompetent. None other than someone who later became my star student and friend, now Professor Kananelo Mosito, led the revolt. Fortunately for me the combined persuasive powers of Dean Umesh Kumar and, my old teacher, the late Bill McClain gave me another chance.

I also benefitted from the advice of Sam Rugege whom I was to meet again in Cape Town, before he returned to Rwanda to become Deputy Chief Justice and later Chief Justice, positions he discharged with distinction for some sixteen years, I have been fortunate to continue to be in contact with him

and his wife Elizabeth. I was also later to learn that Professor Nqosa Mahao who became a close friend, kindly gave Mosito and his peers some talking to. Apart

from this early misadventure, my time in the Faculty of Law was a happy and rewarding one. I had the fortune of being taken under the wing by Professor Nasila Rembe as Associate Editor of the Lesotho Law Journal, a role I greatly cherished. I also benefitted from the presence of the late Ntate Moses Owori, as excellent a human being and teacher as one could come across.

I was privileged to teach some excellent students, including such leading figures as the late General Maaparankoe Mahao who was tragically taken too young, and the current Labour Commissioner Mrs ‘Mamohale Matsoso. There were, indeed, some very good students some of whom I was later to encounter as a teacher and supervisor at the University of Cape Town, notably Kananelo Mosito. Other NUL graduates who came after my time that I have been privileged to teach and closely get to know include Advocate Mothepa Ndumo. Not only Mothepa but others, such as Advocate Rethabile Sakoane, and, not least, the current Dean of the Faculty of Law, Professor Mtende Mhango, whom I briefly taught in Cape Town have helped to sustain my privileged links

with the National University of Lesotho and I greatly treasure these connections.



The editors have also asked me to briefly relate to the subject of Corporate Governance in the context of my current work at the International Labour Organization (ILO). The concept of Corporate Governance, in its broader sense, invokes the consideration and inclusion of the interests of all the stakeholders. It is essentially also a system of accountability, to ensure responsible behaviour and achieve maximum efficiency in a given organization. The ILO is an ideal image of Corporate Governance, both in structure and function.

The ILO was a consequence of a tragic human conflict, the first World War. Its establishment of what later became the first specialised agency of the UN which it preceded, was envisioned to be sustainable peace through social justice, and, as such, its Constitution was in fact an article of the Treaty of Versailles, undoubtedly unique in that respect. Another unique feature of the ILO which directly relates to Corporate Governance is its tripartite character. This structure of representation in its stakeholders in the governance system of the ILO is unique among international

agencies.

In the context of workplace social dialogue, this tripartite nature of governance where governments representatives are joined by the social partners in the form of employers and worker representatives is critical. It helps to ensure not only accountability but also participation in joint decision-making and transparency.

As an example, this vital principle is reflected in the working of the ILO Committee on Freedom of Association (CFA) which for my sins I serve as independent Chairperson of. The CFA is one

of the three major supervisory bodies of the ILO which oversees the implementation of freedom of association and collective bargaining. Freedom of association and collective bargaining are fundamental principles of the ILO's Constitution embodied in the Freedom of Association and Protection of the Right to Organise Convention 87 of 1948 and the Right to Organise and Collective Bargaining Convention 98 of 1949. The CFA is a Committee of the Governing Body of the ILO, and it consists of 18 tripartite members representing the three groups, namely governments, employers,

and workers. Not only does the CFA reflect the cardinal rule of good governance in its representation, but also in its deliberations which reflect transparent social dialogue. The deliberations of the CFA are extensive and exhaustive, and decisions rendered to the Governing Body, in the form of recommendations, are by consensus.

ILO deliberations in other structures the Organization follow similar approaches which observe cardinal principles of corporate governance. What the example of the ILO amplifies is that corporate governance in its wider sense is relevant to all entities which cherish accountability, shared responsibility, and transparency, to help enhance the effectiveness and common ownership of the decision-making processes.

Evance Kalula.

Cape Town, 21 November 2021.



LAW ACADEMIC PROGRAMMES

A. UNDERGRADUATE DEGREE PROGRAMMES

BACHELOR OF LAWS

ACCREDITED

Preamble

The Bachelor of Laws (LL.B.) is offered under 3 modes:

- Mode 1 – LL.B. 5-year programme
- Mode 2– LL.B. 3-year programme
- Mode 3– LL.B. 2-year programme.

Mode 1 – LL.B. 5-year programme

ACCREDITED

For entry into the LL.B. 5-year programme, applicants must have:

- Sat for a minimum of six (6) subjects in LGCSE or COSC examinations
- Obtained a C grade or better in at least four subjects
- Obtained a D grade in two other subjects
- A minimum of a C-grade in English Language.
- A total not exceeding 26 Average Point Score (APS) is the acceptable achievement of a candidate.

Mode 2 – LL.B. 3-year Programme

ACCREDITED

The normal requirements for applicants shall be:

A Bachelors' Degree from any other discipline with at least a Second Class, Second-Division pass.

Mode 3 – LL.B. 2-year Programme

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EVENTS



SEMINARS/ CONFERENCES HOSTED OR CO-HOSTED BY THE FACULTY OF LAW

'In Conversation with the Pension Funds Industry'

The Metropolitan Professorial Research Chair in Pension Law Studies hosted two virtual roundtable discussions in 2021 under its speaker series titled, *'In Conversation with the Pension Funds Industry'* via the Zoom webinar platform.

ROUNDTABLE DISCUSSION 1 –

Date: 23 April 2021

Theme: *'The Pension Funds Act 5 of 2019: A Paradigm Shift in Lesotho?'*

Panellists:

- Ms. Mamello Phomane (Insurance Association of Lesotho)
- Advocate Lindiwe Sephomolo (Association of Lesotho Employers and Business)
- Mr. Ts'eliso Ramochela (Lesotho Federation of Trade Unions).

Convenor:

Professor Mtende Mhango

Moderator:

Advocate Mothepa Ndumo

ROUNDTABLE DISCUSSION 2 –

Date: 10 September 2021

Theme: *'The Pension Funds (Disclosures) Regulations, 2020:
Do They Adequately Empower Members?'*



Panellists:

- Advocate Muvhango Lukhaimane (South African Pension Funds Adjudicator & Adjunct Professor, National University of Lesotho)
- Mr. Teboho Makoetlane (Principal Officer, Rainmaker Umbrella Pension Fund, Metropolitan)
- Tokiso Nthebe (Principal Officer, Lesotho Umbrella Pension Fund, Alliance Insurance)
- Advocate Thobeli Kabai (Central Bank of Lesotho)
- Mrs. Selloane Khoabane (Central Bank of Lesotho)

Convenor:

Professor Mtende Mhang

Moderator:

Advocate Mothepa Ndumo



THE 4TH INTERNATIONAL CONFERENCE ON THE RIGHT TO DEVELOPMENT (VIRTUAL VIA MICROSOFT TEAMS WEBINARS)

Theme: *'The Right to Development and Illicit Financial Flows from Africa'*

Date: 1–2 Nov 2021 hosted virtually by the Free State Centre for Human Rights

Partners/Co-hosts: the Centre for Human Rights, University of Pretoria; the Free State Centre for Human Rights, University of the Free State and the Faculty of Law, National University of Lesotho

NUL Faculty of Law leads and presenters: Dr. Carol Chi Ngang, Dr. Lehlohonolo Ramokanate, Dr. Lloyd Chigowe, and Pro-Vice Chancellor, Associate Professor Kananelo E. Mosito

FOL STAFF CONFERENCES ATTENDANCE AND/OR PRESENTATIONS

Professor Mtendeweka Mhango, Dean, Faculty of Law and Metropolitan Professorial Research Chair



- International Centre for Pension Management's Virtual Spring Discussion Forum 2021. Prof. Mhango was invited by the ICPM to attend the ICPM's Virtual Spring Discussion Forum 2021.
- ICPM Pension Board Education Session, 29 June 2021. Prof. Mhango attended the ICPM Pension Board Education session in June 2021.
- Pension Lawyers Association Webinar, 28 September 2021 (attended the Pension Lawyers Association webinar on death benefits and pension reforms)
- **International Labour and Employment Relations Association Conference, 26-29 September 2021, Kruger National Park, South Africa**

Professor Mtende Mhango and Advocate Mothepa Ndumo

Paper presented: *'The Regulation of Withdrawal and Death Benefits from Pension Funds as a Social Protection Mechanism for Migrant Professionals in the SADC'*

Advocate Mothepa Ndumo, Lecturer, Department of Procedural and Adjectival Law and Metropolitan Research Chair Fellow



- Pensions Lawyers Association of South Africa, Annual General Conference, 13 – 14 May 2021 (attended this two-day virtual conference)
- Pension Lawyers Association Webinar, 28 September 2021 (attended the Pension Lawyers Association webinar on death benefits and pension reforms)
- **International Labour and Employment Relations Association Conference, 26-29 September 2021, Kruger National Park, South Africa**

Advocate Mothepa Ndumo and Professor Mtende Mhango

Paper presented: *'The Regulation of Withdrawal and Death Benefits from Pension Funds as a Social Protection Mechanism for Migrant Professionals in the SADC'*

- **4th African Labour Law Society Hybrid Conference, 21-22 October 2021, Nairobi Kenya**

Paper presented: *'A case study of Lesotho's hospitality industry and its response to COVID-19 in the context of labour and pension laws'*

- **2nd Annual Pensions and Retirement Summit Hybrid Conference, 21-22 October 2021, Cape Town**

Paper presented: *'Future proofing Lesotho's pension funds industry in the context of the COVID-19 pandemic and other future shocks: A legal perspective on Regulation 6 of the Pension Funds (Investment) Regulations of 2020'*

Dr. Carol Chi Ngang, Senior Lecturer, Department of Public Law



- ACTCJ-ILPAN Conference (virtual) on Africa, International Criminal Justice and Accountability for Colonial Crimes, co-organised by African Centre for Transnational Criminal Justice (ACTCJ), University of the Western Cape and International Law and Policy in Africa Network (ILPAN), University of Leicester, 21-22 Sept 2021.
- Paper presented: *'Post-coloniality; freedom, identity and the right to development in Africa.'*
- International Conference on Human Rights and Fundamental Principles, organised by the World Academy of Science, Engineering and Technology, Toronto, 29 Oct-1 Nov 2021.
- Paper presented: *'Post-coloniality; freedom, identity and the right to development in Africa.'*
- Social Policy in Africa Conference, organised by the University of South Africa (UNISA), CODESRIA and the UN Research Institute for Social Development; 22-24 Nov 2021
- Co-authored paper to present: *'Right to development governance: A policy proposition for the Kingdom of Lesotho'*
- LDRN 5th Annual Conference on the theme *'Beyond the Crisis: Challenges and Opportunities for Law and Development'*, organised by the Law and Development Research Network and hosted virtually by Nelson Mandela University, 24-26 Nov 2021.
- Paper presented: *'Right to development governance: responsiveness to COVID-19 and the impact of policy deficiencies on sustainable livelihood in Africa.'*



Dr. Itumeleng Shale & RSA Government and University of Pretoria

Dr. Itumeleng Shale, one of the Faculty of Law's experts on Human Rights and Humanitarian Law, was engaged by the Centre of Human Rights at the University of Pretoria in 2021 to provide support to the government of South Africa on its reporting obligations under the Protocol to the African Charter on Human and Peoples' Rights in Africa (Maputo Protocol). Dr Shale provided training to delegates from the Department of Women, Youth and Persons with Disabilities (the DWYPD) and the Department of Justice and Correctional Services (the DOJCS) which will enable said delegates to draft and finalise South Africa's State report under the Maputo Protocol.



The World Trade Organization (WTO) is the premier organization for the regulation of international trade. It became operational on the 1st of January, 1995 and currently has 164 members. Lesotho became a member on the 31st May, 1995. The key mandate of the organization is to influence the global expansion of trade, including supporting the fuller participation of developing countries in the multilateral trading system. The latter objective is fulfilled through trade capacity building.

The WTO Chairs Programme was created to support universities and research institutions in developing and least-developed countries to become local centres of excellence in international trade law. This will be of benefit, not only to the public and private sector in the nations that hold the Chair, but also of neighbouring country institutions. Thus far there have been two cycles of the Chairs programme, benefiting 31 institutions. The current cycle saw 126 institutions apply for selection. Out of these applicants, only 17 institutions were chosen. One of these is the National University of Lesotho (NUL). NUL will hold the Chair for four years. The successful application was submitted by a Committee that was principally composed of members of staff of the Faculty of Law. Under the auspices of the programme, the Faculty will run projects under three pillars: curriculum development, research and outreach. The Faculty intends to partner with other University units, government entities, private sector organisations and other Universities in the sub-region so that the impact of hosting the Chair can have as wide a reach as possible.

"More details coming in a special issue!"

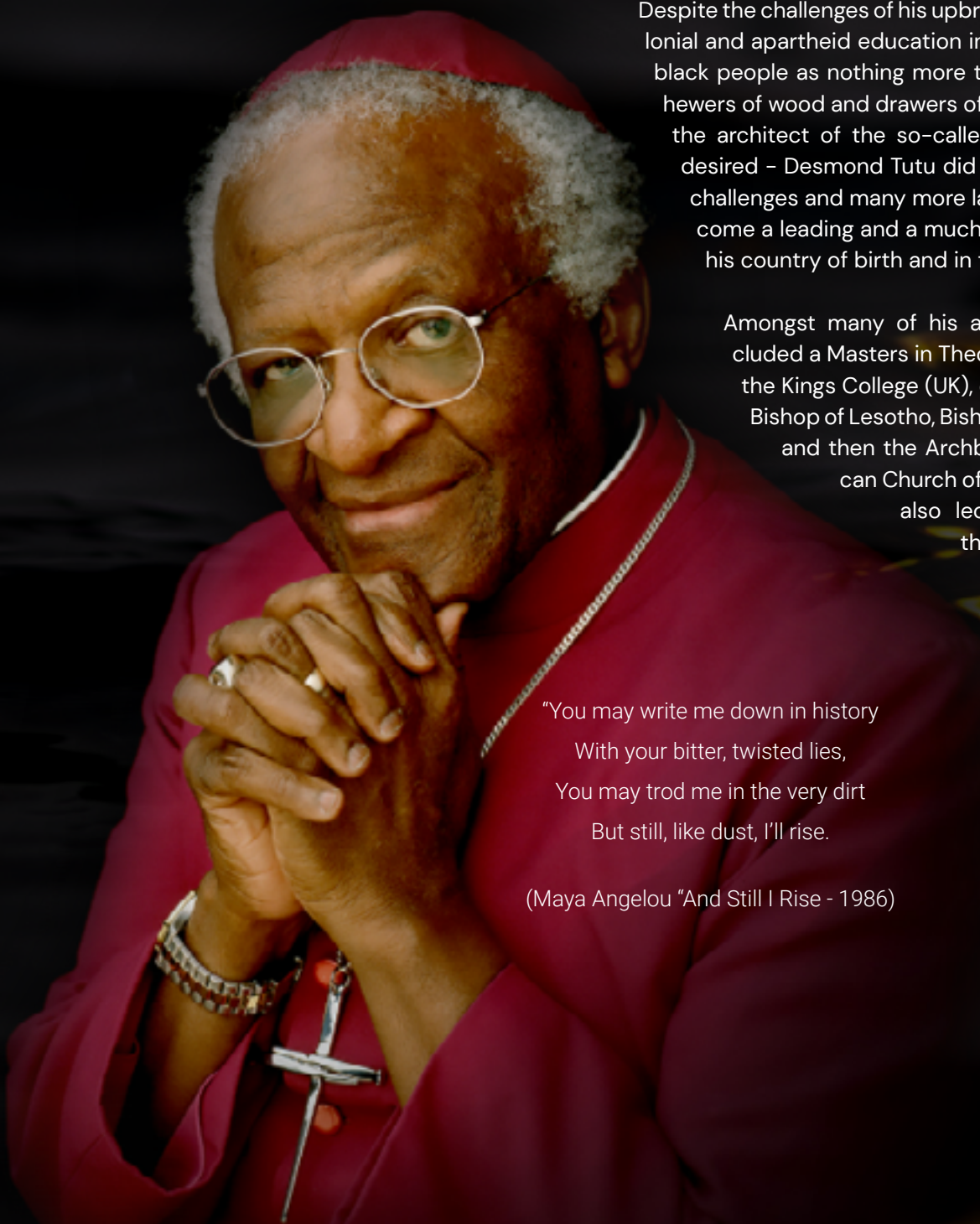
TRIBUTE TO ARCHBISHOP DESMOND MPIOLO TUTU: A FREEDOM FIGHTER AND HU- MAN RIGHTS DEFENDER PAR EXCELLENCE

By
Advocate Tseliso Thipanyane

Growing in apartheid South Africa, and from very humble beginnings, few expected Desmond Tutu, like many other black people, to amount to much under a racist and oppressive system introduced to maintain and perpetuate the underdevelopment and exploitation of black South Africans – a system declared as constituting a crime against humanity in terms of the International Convention on the Suppression and Punishment of the Crime of Apartheid that came into effect in July 1976.

Despite the challenges of his upbringing, including colonial and apartheid education intended to produce black people as nothing more than cheap labour – hewers of wood and drawers of water as Verwoerd, the architect of the so-called bantu education, desired – Desmond Tutu did rise above all these challenges and many more later in his life to become a leading and a much acclaimed figure in his country of birth and in the whole world.

Amongst many of his achievements is included a Masters in Theology obtained from the Kings College (UK), consecration as the Bishop of Lesotho, Bishop of Johannesburg and then the Archbishop of the Anglican Church of Southern Africa. He also lectured Theology at the then University of Botswana, Lesotho, and Swaziland (UBLS) in Lesotho in 1970 to 1971, became the Secretary General of the South African Council of Churches (SACC), got awarded the Nobel Peace Prize in 1984 for his contribution to the

A portrait of Archbishop Desmond Tutu, an elderly Black man with white hair and glasses, wearing a red clerical garment. He is smiling slightly and has his hands clasped in front of him. A silver cross is visible on a chain around his neck.

"You may write me down in history
With your bitter, twisted lies,
You may trod me in the very dirt
But still, like dust, I'll rise.

(Maya Angelou "And Still I Rise - 1986)



struggle against apartheid and for freedom, justice and peace amongst many other awards received in recognition of his contribution to society. He was also appointed, by President Nelson Mandela, as the Chairperson of the Truth and Reconciliation Commission (TRC) in post-apartheid South Africa – a body intended to help in establishing a new South African society based on non-racism, non-sexism and respect for human rights and fundamental freedoms.

Desmond Tutu, was certainly not just a great and respected religious leader, he was also a leading human rights defender and a visionary to the end of his days. His support for the rights of sexual minorities and the rights of people to die in dignity (euthanasia) are good examples in this regard. He was indeed a fearless champion of good governance and was never shy, where it mattered and was necessary, to criticise any leader or government in this regard, including the likes of President Ronald Regan, Mandela's government and even the African National Congress (ANC) – the governing party in post-apartheid South Africa which played a leading role in the country's struggle for freedom against colonialism and the apartheid system.

Whilst there will not be another Desmond Tutu, his life, leadership abilities, courage, and commitment to justice, peace and fairness will, and should, inspire current and future leaders to continue his mission and objective of making his country, South Africa, and the rest of the world, a better place for current and future generations.

Desmond Tutu certainly did rise like dust as per Maya Angelou, to become a much loved, admired and respected figure for his contribution and efforts in South Africa and the international community. He did not allow himself, as per Maya Angelou, to be written down in history, nor allow the many challenges he faced, including "bitter, twisted lies" to trod him in dirt and disappear into oblivion.

Like most human beings, he certainly had his own faults and failures but these are certainly nothing compared to his acts of courage and love for humanity and his deep commitment to his beliefs without disregard and disrespect for the beliefs of others. His friendship with the 14th Dalai Lama and the respect and admiration across religious, political, class and racial divides are good examples of his qualities. Amongst his friends and close associates are the likes of Nelson Mandela, Bill Clinton, Queen Elizabeth, Mary Robinson, Richard Branson, Barack Obama, Oprah Winfrey and many other luminaries.

He shall surely and sorely be missed!

May his good work and courageous commitment to the well-being of humanity inspire many others,, today and tomorrow who, like him, will rise above life's challenges and live a legacy like his.

