

Understanding the “spirit” of uBuntu and how it links to B-BBEE and South African law



What is the Spirit of *uBuntu*?

***uBuntu* is essentially about togetherness, and how all our actions have an impact on others and on society.**

In this article we aim to explain the correlation between *uBuntu* within the spheres of SA Law, and specifically the Broad-Based Black Economic Empowerment Codes of Good Practice (B-BBEE) or within *the context of BEE*.

What is *uBuntu*?

The concept of *uBuntu*, like many African concepts, is not easily definable. In broad terms, it is an ethic of interdependence; it is an ethic that recognises that everything that one does has an effect on the next person. *uBuntu* refers to behaving well towards others or acting in ways that benefit the community. Such acts could be as simple as helping a stranger in need, or far more complex ways of relating with others.

***uBuntu* and South African Law**

Examples of how the values of *uBuntu* are instilled in the law regulating South African businesses include the following:

- It is a rule that the chosen name of business enterprises should not be offensive, racist or impinge negatively on any individual or legal person's right to dignity;
- The values of *uBuntu* must inform the manner in which corporate decisions are taken by directors. Proper, constructive dialogue requires the infusion of the culture of *uBuntu* to promote social cohesion;
- *The Companies Act aims to continue to provide for the creation and use of companies in the manner that enhances the economic welfare of South Africa as a partner within the global economy* – s7(e);
- *uBuntu* is also evident in light of the fact that **humanity is promoted** when agreements are respected and honoured by those who concluded them. This applies to various types of contracts: partnership agreements, contracts concluded for the formation of trusts; shareholders' agreements; the Memorandum of Incorporation which is the constitutive document of a company; and association agreements of close corporations. Fairness also plays an important role in the interpretation of shareholders' agreements.

***uBuntu* and the Constitution**

The founding values of the democracy established by the Constitution, *viz.* human dignity, equality, promotion of human rights and freedoms to ensure accountability, responsiveness, openness and the rule of law, arguably coincide with some key values of *uBuntu*, i.e human dignity, respect, inclusivity, compassion, concern for others, honesty and conformity.

Our Constitution does not *per se* refer to *uBuntu*, but it has been recognised by our Courts as an underlying constitutional concept. *uBuntu* was given explicit application in our jurisprudence in the highest court in *S v Makwanyane*. The case dealt with the constitutionality of the death penalty where the Constitutional Court described the right to life and dignity as the most important of all human rights. Langa J then proceeded to link respect for life and dignity with the African philosophical concept of *uBuntu*. The dominant theme of a culture is based on *uBuntu* is that the life of another person is “at least as valuable as one’s own”.

What is Broad-Based Black Economic Empowerment?

Broad-Based Black Economic Empowerment (B-BBEE or BEE) is an essential policy tool aimed at broadening the economic base of South Africa, promoting economic growth, mobilising investment, creating jobs and empowering communities. The complexities of the B-BBEE Codes, a low-growth economic environment and various other challenges to which businesses are exposed, mean that *B-BBEE is not simply a “tick box” exercise*.

The concept of *uBuntu* and the social values it represents in B-BBEE

1. **Ownership:** *measures the percentage Black Ownership shareholding in the measured entity.* The principle of transparency is instilled in the requirement that Directors must disclose any financial interest that they have in any transaction affecting the company they serve. Humanity and fairness must be observed in conclusion of contracts;
2. **Management and Control:** measures the directorship, executive management, other executive management, senior management, middle management, junior management and disabled staff. Appointments to such roles should be fair and in line with the relevant legislation;
3. **Skills Development:** *measures the extent to which companies carry out initiatives designed to develop competencies of individuals internally and externally.* Selection of such individuals must be fair;
4. **Enterprise and Supplier Development:** measures spend on helping black-owned enterprises grow, by both suppliers and non-suppliers, and recognises the inter-connectedness of people and the accompanying responsibilities, integrity and ethical behaviour in selection of beneficiaries and conclusion of agreements;
5. **Preferential Procurement:** measures the extent to which a company procures goods and services from suppliers with B-BBEE Recognition levels, with open channels of communication and transparency and due process and sensitivity in dealings with one another;
6. **Socio-Economic Development:** measures spend on assisting non-profit organisations with a minimum of 75% black beneficiaries. The general idea is for businesses to identify and assist with the needs of communities. This displays *uBuntu* as it is the ability to show compassion.

Conclusion

In the words of Desmond Tutu: “The profound truth is that you cannot be human on your own. We are humans through relationships and helping one another”. The power of shared humanity is rooted in kindness, compassion and interconnectedness, which play a major role in the daily running of businesses. This is strongly linked to *B-BBEE compliance*.

I would like to believe that the values of *uBuntu*, if consciously harnessed, can become central to a process of harmonising all existing legal values and practices with the Constitution and abiding by the spirit and purpose of the B-BBEE Act.

SERR Synergy assists businesses to implement viable B-BBEE initiatives and ensure alignment of initiatives with the legal requirements of the B-BBEE Codes.

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