Reducing executive and employee wage disparities in South Africa: the Environmental, Social and Governance principle

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ABSTRACT

Wage inequality has been proven to be one of the crisis in South Africa, considering the reports that South Africa is now one of the countries with high inequalities in the international level. The Supreme law of the republic speaks against inequalities and any form of unfair discriminations, furthermore there has been law enacted to effect of the Constitution in promoting fairness and equality. These are legislations that need to be followed in exercising equality, however despite such laws in place South Africa still remains a country with concerning wage disparities between executives and employees.

The Environmental. Social and Governance (ESG), required businesses to exercise fairness between employees which includes fair remunerations and fair working environments. It further necessitates companies to exercise transparency and disclosure of remunerations of employees to enhance companies in ensuring there is fair remuneration practices in their business.

Provided the nature of ESG, this research seeks to find out how ESG can intervene in reducing wage disparities in the Republic, by looking at its nature and any positive developments other countries businesses encountered in complying with the ESG framework. We are to further discuss the laws in place and their effectiveness in complying with ESG frameworks to minimised remuneration inequalities between employees of different ranks.

Keywords:

King IV, corporate governance, environmental social and governance (ESG), Johannesburg Stock Exchange (JSE), employees, gap, disclosure/transparency, inequality, employee's performance

TABLE OF CONTENTS

ACKNOWLEDGEMENTS ..... **i**

ABSTRACT ..... **ii**

LIST OF ABBREVIATIONS ..... **v**

CHAPTER 1: INTRODUCTION TO THE RESEARCH **1**

1.1 Research problem ***1***

1.1.1 Background to the problem *4*

1.1.2 Motivation for the study *7*

1.2 Research question ***9***

1.3 Aims and objectives ***10***

1.3.1 Aims *10*

1.3.2 Objectives *10*

1.4 Research method ***10***

1.5 Framework ***11***

1.6 Relevance for the research unit ***12***

1.7 Statement regarding ethics ***12***

CHAPTER 2: INTRODUCTION TO THE ENVIRONMENTAL, SOCIAL AND GOVERNANCE FRAMEWORK **13**

2.1 Introduction ***13***

2.2 What are the Environmental, Social and Governance principles? ***14***

2.3 Components of the Environmental, Social and Governance framework ***16***

2.4 essence of Environmental, Social and Governance principles in corporate governance ***18***

2.5 Negative and positive Environment, Social and Governance factors in a company ***20***

CHAPTER 3: AN OVERVIEW OF INTERNATIONAL ENVIRONMENTAL, SOCIAL AND GOVERNANCE WAGE DISPARITY PRACTICES **22**

3.1 Introduction 22

3.2 Comparative analysis of Environmental, Social and Governance principles on wage disparities in other countries..... 22

3.3 Legal theories on fair pay and wage disparity at the international level 29

CHAPTER 4: SOUTH AFRICAN LEGAL FRAMEWORK ON PAY GAPS..... 37

4.1 Introduction 37

4.2 Constitution of the Republic of South Africa, 1996 40

4.3 Labour Relations Act 66 of 1995..... 44

4.4 Employment Equity Act 55 of 1998..... 46

4.5 Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000..... 51

4.6 Companies Amendment Act 16 of 2024..... 52

4.7 Fair Pay Bill..... 53

CHAPTER 5: CASE STUDIES, COMPARATIVE ANALYSIS, AND A SOUTH AFRICAN CORPORATE ANALYSIS *55*

5.1 Effect of Environmental, Social and Governance principles and the King Codes on South African wage disparities 55

5.2 Wage disparities in South Africa 58

CHAPTER 6: CHALLENGES, RECOMMENDATIONS 65

6.1 Challenges 65

6.2 Recommendations..... 65

6.3 Conclusion 66

BIBLIOGRAPHY *68*

Literature 68

Case law 74

Legislation 74

Other literature resources on the Internet..... 75

LIST OF ABBREVIATIONS

AI	artificial intelligence
BBBEE	broad-based black economic empowerment
BHB	Bahrain Bourse
CCMA	Commission for Conciliation, Mediation and arbitration
CEO	chief executive officer
CSR	corporate social responsibility
DEI	Diversity, equity, and inclusion
EEA	Employment Equity Act
ESG	Environmental, Social and Governance
FTE	Full Time Equivalent
GB	gay and bisexual
HCM	human capital management
HR	human rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organization
JSE Guidance	Sustainability and Climate Disclosure Guidance
JSE	Johannesburg Stock Exchange
LGBTQ+	lesbian, gay, bisexual, transgender and queer
LRA	Labour Relations Act
LRS	Labour Research Service
MNE Declaration	Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy
OECD	Organisation for Economic Cooperation and Development's
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
PRI	Principles for Responsible Investment
SACU	Southern Africa Customs Union

SDGs	Sustainable Development Goals
SOEs	state-owned companies
SSE	Sustainable Stock Exchanges
TRC	Truth and Reconciliation Commission
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNEPFI	UN Environment Programme Finance Initiative
UNGC	United Nations Global Compact
UNGPs	United Nations Guiding Principles on Business and Human Rights

CHAPTER 1: INTRODUCTION TO THE RESEARCH

1.1 Research problem

The Environmental, Social and Governance (ESG)[1] framework refers to a set of criteria used to assess the performance and impact of a company. It evaluates how businesses handle social concerns and responsibilities, manage environmental risks and opportunities, and whether they maintain sound governance procedures.[2]

While ESG consists of environmental,[3] social and governance considerations, this dissertation focuses predominantly on the social and governance pillars. The social pillar is concerned with issues such as human rights,[4] fair remuneration, equality, employee welfare and workplace dignity. The governance pillar relates to the systems through which companies are directed and controlled,[5] including board oversight, remuneration governance, accountability, transparency and compliance with corporate governance standards such as King IV and King V. The environmental pillar is acknowledged but falls outside the primary focus of this study because it relates mainly to environmental sustainability and climate-related concerns rather than executive-employee remuneration disparities.[6]

Remuneration committees play an essential role in corporate governance by making sure that organisations practice transparent and fair executive compensation practices.[7] The directors and the board committees, including the remuneration committee, are established under sections 66 and 72 of the *Companies Act*.[8] Remuneration committees are composed of the executive directors or independent

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1 Olivero 2023 ESG goals for employees.
2 Krantz and Joker 2024 *What is ESG?*
3 Krantz and Joker 2024 *What is ESG?*
4 Krantz and Joker 2024 *What is ESG?*
5 Krantz and Joker 2024 *What is ESG?*
6 Krantz and Joker 2024 *What is ESG?*
7 Board Portal 2023 https://board-room.org/blog/remuneration-committee/.
8 Section 66 and 72 of the Companies Act 71 of 2008.

directors of a given company with aligned compensation and corporate governance expertise.[9]

At the moment, South Africa is among the most unequal nations in the world for reasons other than only unemployment.[10] These high levels of inequality are mostly caused by exceptionally high real earnings for high earners, and low wages or no real earnings growth for medium- and lower-level workers.[11] This should be a primary area of concern for ethical investors and active owners since it has "major consequences for the broader political economy of growth".[12]

In addition to perpetuating inequality, a significant pay gap between the highest or executive employees and lowest paid employees in an organisation jeopardises the company's long-term value generation.[13] For purposes of this dissertation, the term "highest or executive employees" refers primarily to executive directors and prescribed officers who participate in the strategic management and governance of a company and whose remuneration is usually determined through board-approved remuneration policies.[14]

There is high inequality in South Africa, whether measured by income or wealth.[15] This inequality is addressed by the *Constitution of the Republic of South Africa*, 1996 (hereinafter the *Constitution*) and the *Employment Equity Act*[16] (hereinafter the *EEA*), which both prohibit unfair discrimination in employment.[17] However, there has been a decline in public scrutiny of executive compensation.[18] Many of South

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9 Zhang 2024 Remuneration Committee.
10 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
11 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
12 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
13 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
14 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
15 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
16 55 of 1998.
17 Section 9(3) of the *Constitution*. See also s 6(1) of the *EEA*.
18 Valodia and Ewinyu 2023 *South Africa's wage gap is huge*.

Africa's largest publicly listed companies have high payment discrepancies between the lowest and highest paid employees.[19]

There is ongoing debate on the disclosure of the vertical pay gap between the highest and lowest paid employees in a company, since it must be disclosed in either the financial statements or in the sustainability reports of the company.[20] Sustainability reports are generally not issued jointly with financial statements for consideration by investors.[21] Wage gap transparency in the Republic is not a prerequisite of the law,[22] although numerous Johannesburg Stock Exchange (JSE)-listed companies across South Africa have begun to make this information available. The amended section 30 of the *Companies Act* regulates salaries and requires the disclosure of the remuneration of the highest and lowest paid employees.[23] The contention that wage gap disclosure in South Africa would be "taken out of context" or "misinterpreted" is a favoured excuse.[24]

The *Companies Amendment Bill* and the *Companies Second Amendment Bill* were introduced in 2023, and if passed, it will make it mandatory for companies to make their pay gaps transparent.[25] This will encourage adequate disclosure so that all stakeholders have sufficient data to make informed decisions.[26] The Bill applies to public and state-owned companies, private companies, all companies that have dispute resolution mechanisms in place, and corporates that should be aware of annual financial statements and disclosures.[27]

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19 Fraser 2023 CEO vs Lowest-paid workers salaries in South Africa.
20 Mahanyele-Dabengwa 2022 *Remuneration Report*.
21 Fraser 2023 CEO vs Lowest-paid workers salaries in South Africa.
22 Fraser 2023 CEO vs Lowest-paid workers salaries in South Africa.
23 Section 30B of the *Companies Amendment Act* 16 of 2024 (hereinafter the *Companies Amendment Act*).
24 Section 30B of the *Companies Amendment Act* 16 of 2024 (hereinafter the *Companies Amendment Act*).
25 Valodia and Ewinyu 2023 *South Africa's wage gap is huge*.
26 Valodia and Ewinyu 2023 *South Africa's wage gap is huge*.
27 Truter, Yuill and Hopkins 2024 The Companies Amendment Bills have been signed into law.

1.1.1 Background to the problem

As a key guide to effective corporate citizenship, the King IV report lays out the philosophy, values and procedures that form the standard for corporate governance in South Africa.[28] The principles in King IV apply to all forms of companies, regardless of their kind of incorporation.[29] However, the King IV report has no legal force.[30] The JSE's listing criteria impose a responsibility on issuers to comply with the report,[31] meaning that certain features are enforceable for firms that are primarily listed on the JSE securities exchange, which is limited.

One of King IV's objectives is to promote corporate governance as fundamental to the running of an organisation and to reach governance outcomes such as an ethical culture, good performance, legitimacy, and effective control.[32] This includes the promotion of corporate governance not concerned with only structure and processes but also with ethical consciousness and conduct.[33]

The amount of executive compensation and the disparity between the high and low remuneration earners have become significant sources of societal unrest and have fuelled the inequality debate premised on the perception of unreasonably high salaries.[34] This has emerged as a crucial governance issue with significant ramifications for long-term company sustainability according to the recently released King IV™ Report on Company Governance.[35]

Remuneration forms part of the King IV Code, which aims to foster enhanced accountability with respect to remuneration.[36] King IV's qualitative techniques concentrate on the goals that compensation committees and boards should

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28 Brookes 2025 King IV Principles.
29 Brookes 2025 *King IV Principles*.
30 Brookes 2025 *King IV Principles*.
31 Brookes 2025 *King IV Principles*.
32 Ramalho 2016 King IV: Report on Corporate Governance 22.
33 Ramalho 2016 King IV: Report on Corporate Governance 22.
34 IoDSA 2016 King IV provides critical guidance.
35 IoDSA 2016 King IV provides critical guidance.
36 Ramalho 2016 King IV: Report on Corporate Governance 22.

pursue.[37] King IV Principle 14 requires the governing body to ensure that organisations give fair, responsible, and transparent remuneration.[38]

King IV encourages effective accountability with respect to remuneration by allowing shareholders or prospective investors an opportunity to decide whether to invest or continue with their investments in the company as a way to close the unreasonable remuneration gap.[39] Addressing this includes more definitive disclosure prerequisites that should be actively pursued by the remuneration committee and fully disclosed through financial statements or sustainability reports or statements. This would give a holistic overview of the companies' remuneration practices.[40]

In 2023 it was reported that Shoprite's chief executive officer (CEO) was the highest-paid CEO with a single-figure remuneration of R63 458 000.00.[41] According to the same data,[42] Shoprite's own internal minimum wage was the lowest on the list, coming at R58 700 if the employee worked 45 hours per week for all 52 weeks of the year. The CEO of Woolworths, on the other hand, had a single-figure remuneration of R36 133 000 and their own internal minimum wage was R85 500 if the employees worked 45 hours per week for all 52 weeks of the year.[43] Shoprite's pay gap was over 1 000% and Woolworths' was 423%,[44] demonstrating that Shoprite's pay gap was more than double that of Woolworths.

The ESG framework, especially the social relations and corporate governance legs, is relevant to the issue of the gap between the highest and lowest paid employees.[45]

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37 IoDSA 2016 King IV provides critical guidance.
38 SARA 2025 A guide to the Application of King IV (Principle 14) 10.
39 IoDSA 2016 King IV provides critical guidance 35.
40 IoDSA 2016 King IV provides critical guidance 35.
41 Fraser 2023 CEO vs Lowest-paid workers salaries in South Africa. See also Just Share 2024 New analysis shows extremely large pay gaps.
42 Fraser 2023 CEO vs Lowest-paid workers salaries in South Africa. See also Just Share 2024 New analysis shows extremely large pay gaps.
43 Fraser 2023 CEO vs Lowest-paid workers salaries in South Africa. See also Just Share 2024 New analysis shows extremely large pay gaps.
44 Fraser 2023 CEO vs Lowest-paid workers salaries in South Africa. See also Just Share 2024 New analysis shows extremely large pay gaps.
45 Olivero 2023 ESG goals for employees.

The social relations leg, which deals with human rights, promotes a sustainable workplace and a supportive and inclusive workplace culture.[46] The governance leg enhances strong leadership, transparency, and ethical business practices.[47] The environmental leg falls outside the scope of this study since it deals largely with the carbon emissions companies produce.[48] Companies with strong governance practices make sure of employee human rights protection,[49] which includes fair compensation and opportunities for growth in the profession. The *Constitution* provides for everyone's right to fair labour practices, which one can interpret to include fair compensation.[50]

The majority of South African companies has set measurable ESG goals for their CEOs and have begun to introduce the ESG targets into executive compensation packages.[51] According to a recent survey, individual board directors and senior managerial employees stated that ESG performance is a key contributor to sustainable company profitability performance.[52] Including the ESG metrics in executive pay packages is a smart way to close the concerning gap for a sceptical audience, though it will not be without challenges.[53]

Boards must integrate perspectives from operational teams, the sustainability function, and finance in order to choose and appropriately calibrate ESG metrics for compensation.[54] They must also adopt an unusual and occasionally unsettling perspective on the future.[55] Additionally, the business should have a clear goal and should understand the realities of incorporating ESG into pay metrics. Numerous stock exchanges are teaming up to solve this disclosure problem and to follow the principles of the United Nations (UN) stock exchange regulations.

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46 Olivero 2023 ESG goals for employees.
47 Olivero 2023 ESG goals for employees.
48 Olivero 2023 ESG goals for employees.
49 Olivero 2023 ESG goals for employees.
50 Section 23(1) of the *Constitution*.
51 O'Connor, Harris and Gosling 2021 *Linking Executive Pay to ESG Goals* 2.
52 O'Connor, Harris and Gosling 2021 *Linking Executive Pay to ESG Goals* 2.
53 O'Connor, Harris and Gosling 2021 *Linking Executive Pay to ESG Goals* 2.
54 O'Connor, Harris and Gosling 2021 *Linking Executive Pay to ESG Goals* 2.
55 O'Connor, Harris and Gosling 2021 *Linking Executive Pay to ESG Goals* 2.

There are several examples of institutions' attempts to incorporate ESG metrics into their executive salary packages. The ESG-linked deposit was introduced in the case of Standard Bank, which means that investments are solely aimed at companies that have attained high ESG ratings.[56]

Well-known corporations such as Apple, McDonald's, Shell, and a few more have linked ESG and executive compensation.[57] Apple modifies executive bonus payments by up to 10% depending on how well executives performed in relation to the company's "Apple Values",[58] which include supplier responsibility, diversity and inclusion, accessibility, education, and the environment. In 2021, Shell, the first oil major to tie ESG to compensation in 2018, raised the weighting of the long-term goals centred on lowering its net carbon footprint from 10% to 20%.[59] A greater number of investors are advocating for the inclusion of ESG targets.[60]

1.1.2 Motivation for the study

The income variation between highest and lowest paid employees of a company can either be fair or unfair.[61] This begs the question of what the acceptable payment gap is when considering the ESG principles and whether the current state of affairs complies with acceptable gaps.[62] The King committee and the Institute of Directors in South Africa released the King V report for public comment in February 2025 and it is expected to be officially released soon.[63] King V retains and strengthens the commitment to fair, responsible and transparent remuneration and places increased emphasis on stakeholder inclusivity,[64] sustainability and transparent governance practices.

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56 Standard Bank 2022 ESG Index Linked Deposit Issue 5.
57 O'Connor, Harris and Gosling 2021 *Linking Executive Pay to ESG Goals* 2.
58 O'Connor, Harris and Gosling 2021 *Linking Executive Pay to ESG Goals* 2.
59 O'Connor, Harris and Gosling 2021 *Linking Executive Pay to ESG Goals* 2.
60 O'Connor, Harris and Gosling 2021 *Linking Executive Pay to ESG Goals* 2.
61 IoDSA 2025 King V Code on Corporate Governance 17.
62 IoDSA 2025 King V Code on Corporate Governance 17.
63 IoDSA 2025 King V Code on Corporate Governance 17.
64 IoDSA 2025 King V Code on Corporate Governance 17.

The report provides for 12 principles, clearer disclosure and focus on artificial intelligence (AI), ethics, sustainability, and stakeholder value.[65] Principle 10 of King V provides that the governing body should ensure that the organisation remunerates fairly, responsibly, and transparently to promote sustainable value creation with in its economic, social, and environment context.[66]

Any substantial pay inequality between the highest and the lowest paid employees of an organisation not only reinforces inequality but also poses a risk to value creation in the long run.[67] The introduction of *CEO total guaranteed pay* rather than the *CEO total remuneration* as a way to calculate gaps makes it clear that the major portion of executive remuneration comes from short-term and long-term incentives.[68] It is thus encouraging to witness some institutions like Nedbank, Old Mutual, and Investec calculating pay gaps using total remuneration.[69]

JSE-listed companies advocate for fairness of executive remuneration,[70] though they do not stand by these claims through pay gap disclosures or any relevant evidence. This is because it is currently not a legal prerequisite to disclose wage gaps or the remuneration of any other employees other than directors or prescribed officers.[71] Currently there is no prescribed method for the public disclosure of the pay gap in South Africa.[72]

The development of a transparent and clear channel of accountability is vital to help companies ensure that their practices of governance meet the ESG goals.[73] This would require policies and procedures that can govern decisions, risk management, and engagement with stakeholders.[74] Transparency with regard to the gaps between the highest and lowest paid employees will ensure that companies adhere

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65 IoDSA 2025 King V Code on Corporate Governance 17.
66 IoDSA 2025 King V Code on Corporate Governance 17.
67 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
68 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
69 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
70 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
71 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
72 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
73 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
74 Davies et al 2023 Vertical pay gaps at JSE-listed companies.

to the ESG goals.[75] It will be easy to monitor whether the company is adhering to the "S" and "G" components,[76] which include the fair treatment and remuneration of employees, and to which extent the companies/industries can be held accountable in cases of non-compliance.

Most investors and companies' stakeholders regard the ESG factors as vital for the measurement of results.[77] However, sufficient disclosure is needed for an understanding of a company's ESG performance and the identification of areas that are in need of improvement.[78] This calls for the disclosure of key metrics. In promoting disclosure and transparency, companies can provide updates on their progress towards complying with the ESG commitments and goals.[79]

This research aims to address the issue of wage gaps among employees by examining whether the incorporation of the ESG governance practices can ensure balanced gaps between the highest and the lowest employees in South African companies. The role of ESG governance practices in employees' remuneration is analysed, together with the effectiveness and advantages of these practices in ensuring the proportionality of pay wages between the employees of an organisation.

1.2 Research question

How can the ESG framework inform a fair and proportionate remuneration gap between the highest and lowest paid employees in South Africa?

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75 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
76 Davies et al 2023 Vertical pay gaps at JSE-listed companies.
77 White 2023 Prioritizing the 'G' in ESG.
78 White 2023 Prioritizing the 'G' in ESG.
79 White 2023 Prioritizing the 'G' in ESG.

1.3 Aims and objectives

1.3.1 Aims

For the purposes of this study, a research aim is the goal that the researcher intends to reach at the conclusion of the research. This research aims to analyse the challenges of pay gaps and the effects of these gaps on employees with consideration of the ESG framework. In this study, the objectives are the specific, measurable and achievable steps that were taken to achieve the overall aim of the research.[80]

1.3.2 Objectives

To achieve the aim, the researcher sought to reach the following objectives:

- To analyse the theoretical framework of ESG, especially the social relations and corporate governance aspects;
- To discuss the legal framework of South Africa by analysing the *Companies Act*, King IV, and the relevant aspects of the UN;
- To provide readers with the relevant case studies to explore discrepancies in the application of the ESG framework; and

To propose and analyse possible legal reforms and the challenges in applying the ESG framework for a fair payment gap of employees.

1.4 Research method

The research question is answered using a qualitative doctrinal method, analysing different primary sources such as case law, international law, legislation, King IV

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[80] Research objectives break down the research aims into smaller, more manageable components and provide a clear picture of what the researcher wants to achieve and how he or she intends to achieve it. The number of different research objectives in one legal research text depends on the complexity of the topic, available time, the type of research, among other factors. See Kestemont 2014 *Russ Jurid J* 5, 7; Van Schaaijk *Praktiikgericht Juridisch Onderzoek* 34.

and King V; supplemented by secondary sources such as law journals, books, and international ESG standards. To ensure accurate information and arguments, search engines such as LexisNexis and the University library was used to find primary and secondary sources.

1.5 Framework

The framework of the research in question is as follows:

Chapter 1: Introduction to the ESG

Chapter 1 offers an introduction to the research, including an overview of the research question, a problem statement, and the importance of this study. It further discusses what the ESG framework entails, the impact of positive and negative ESG in a company, why companies strive for positive ESG, and different parts of the ESG framework.

Chapter 2: An overview of international ESG wage disparity practices

Chapter 2 examines the principles of ESG in corporate governance and the applicable principles by means of a comparative analysis. This chapter further discusses the legal theories on fair pay and wage disparity at the international level.

Chapter 3: South African legal framework on pay gaps

This part of the study discusses the legal framework that is relevant to the research question. Legislation such as the *EEA* and *Labour Relations Act*[81] (*LRA*) is discussed. The Code of Good Practice on Equal Pay and Labour Court rulings (case law) on discrimination that involves remuneration are used to address the question at hand.

Chapter 4: Case studies, a comparative analysis, and a South African corporate analysis

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[81] 66 of 1995 (hereinafter *LRA*).

Chapter 4 analyses the existing disparity in wages in the different South African industries. This chapter further addresses the research question by evaluating the compliance of corporates with the ESG principles and the King IV principles, including the fair pay policies in the South African legislation.

Chapter 5: Challenges and legal reforms

In answering the research question, Chapter 5 identifies the gaps that exist in the South African wage regulations based on the results of the previous chapter to offer policy change recommendations.

Chapter 6: Conclusion

Chapter 6 summarises the findings of this study and addresses implications for corporate governance and labour law. It addresses the legal mechanisms that are in place to regulate disparities in wages and their effectiveness in promoting fair pay within the ESG framework.

1.6 Relevance for the research unit

This study is of relevance to the North-West University's *Faculty of Law: Justice and Sustainability* research unit since it is concerned with corporate governance and company law, which falls under the subtheme of *finance, trade, investment, and justice in practice.*

1.7 Statement regarding ethics

The research does not include interviews, surveys or questionnaires.

CHAPTER 2: INTRODUCTION TO THE ENVIRONMENTAL, SOCIAL AND GOVERNANCE FRAMEWORK

2.1 Introduction

The Financial Times Lexicon defines the ESG[82] principles as terminology investors and capital markets use to evaluate business behaviour and to forecast a company's future financial performance. This is a hot topic at the moment,[83] yet many legal representatives are not satisfied that they have clarity about what exactly ESG entails. The ESG framework emerged at the UN level as an effort to solve the issue of regulatory disparity.[84] This includes the non-existence of binding mechanisms to ensure that multinational enterprises respect intentional human and labour rights in developing countries.[85]

The launch of the United Nations Global Compact (UNGC) initiative in 2000 and the adoption of United Nations Guiding Principles on Business and Human Rights (UNGPs) in 2011 were crucial steps in promoting businesses' respect for human rights.[86] This commitment is also echoed in the Organisation for Economic Cooperation and Development's (OECD) Guidelines for Multinational Enterprises and the ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration).[87] The adoption of the UNGPs and ESG compliance – which includes compliance with human rights (HR) and the ILO's fundamental principles – has been a topic of concern for academics,[88] investors and big business. Recent developments show that firms with unshakable performance on material ESG measures generate 4% higher returns over a three-year period as measured by return on invested capital.[89]

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82 Sychenko 2023 *ILLeJ* 135–148.
83 Sychenko 2023 *ILLeJ* 135–148.
84 Sychenko 2023 *ILLeJ* 135–148.
85 Sychenko 2023 *ILLeJ* 135–148.
86 Sychenko 2023 *ILLeJ* 135–148.
87 Sychenko 2023 *ILLeJ* 135–148.
88 Sychenko 2023 *ILLeJ* 135–148.
89 Sychenko 2023 *ILLeJ* 135–148.

ESG ratings serve as an indicator to assess corporate sustainability performance. Most institutions focus on financial performance when they consider the impact of ESG ratings,[90] and the shareholder returns and effect of employee performance is not fully understood.

Higher ESG ratings have been found to adversely affect the disparity between executives and normal employees[91] due to performance-sensitive increases in executive pay. However,[92] studies also reveal that lower ESG ratings are closely associated with a widening pay disparity between executives and ordinary employees.

According to Huang and Qiu,[93] firms with higher ESG ratings have better employee performance and higher job satisfaction compared to firms with low ESG, and firms with high ESG ratings pay more attention to employee efficiency and productivity. Good application of the ESG principles makes companies more likely to stand out than similar firms.[94] In addition, the widening pay gap is more pronounced in non-state owned,[95] large-scale enterprises, and industries in traditional and highly competitive sectors where executive pay is performance sensitive.

2.2 What are the Environmental, Social and Governance principles?

The ESG principles have received significant attention in the corporate landscape.[96] They are now key for various businesses.[97] They not only prioritise responsible practice but offer a framework for assessing sustainability and ethical impact, which has an effect on the long-term success and reputation.[98] The ESG principles are used for the purposes of investing.[99] At the same time it also applies to customers,

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90 Sychenko 2023 *ILLeJ* 135–148.
91 Li et al 2025 Humanit Soc Sci Commun 10.
92 Li et al 2025 Humanit Soc Sci Commun 10.
93 Huang and Qiu 2023 *AJMSS* 89.
94 Huang and Qiu 2023 *AJMSS* 89.
95 Li et al 2025 Humanit Soc Sci Commun 09.
96 Generis Global Legal Services 2024 The Impact of Environmental, Social and Governance (ESG).
97 Byrne 2025 What is ESG and Why does it matter?
98 Byrne 2025 What is ESG and Why does it matter?
99 Krantz and Jonker 2024 *What is ESG?*

suppliers, employees, and the general public.[100] It is used as an instrument to allow investors to track the environmental and societal impact.[101] The ESG does not only deal with the financial factors but includes non-financial factors.[102] Investors use the criteria to screen potential investments. A firm can cut risk and boost long-term value in this manner.[103]

The factors include a set of provisions that are used to evaluate the operations and the effect of these factors on the environment and society itself.[104] The three ESG factors are interrelated and are considered when developing business strategies.[105]

ESG compliance has a great impact on the growth of businesses and companies. The impact of a company on its surrounding ecosystem has become important and people are now more concerned with issues such as climate change,[106] human rights, and executive compensation. In turn, sustainability in business is a priority for executives and investors.[107] Investors seek businesses that align with their values,[108] and the ESG framework helps with these considerations.

However, the concept is much broader and more complex.[109] It is about the voluntary and mandatory commitment of businesses to align their actions with the international norms on human and labour rights.[110] Businesses are measured by their due diligence operations and the transparency of the relevant non-financial information.[111] ESG is in this sense similar to corporate social responsibility (CSR).[112] The EU defined the subjects of CSR as labour and employment practices such as

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100 Byrne 2025 What is ESG and Why does it matter?
101 Byrne 2025 What is ESG and Why does it matter?
102 Byrne 2025 What is ESG and Why does it matter?
103 Evans and Thomas Environmental Governance.
104 Generis Global Legal Services 2024 The Impact of Environmental, Social and Governance (ESG).
105 Generis Global Legal Services 2024 The Impact of Environmental, Social and Governance (ESG).
106 Krantz and Joker 2024 *What is ESG?*
107 Krantz and Joker 2024 *What is ESG?*
108 Krantz and Joker 2024 *What is ESG?*
109 Sychenko 2023 *ILLeJ* 135.
110 Sychenko 2023 *ILLeJ* 135.
111 Sychenko 2023 *ILLeJ* 135.
112 Sychenko 2023 *ILLeJ* 135.

well-being and employee health,[113] diversity, training and gender equality; human rights; environmental issues; and combatting bribery and corruption.

2.3 Components of the Environmental, Social and Governance framework

There are three ESG components – the environmental, the social and the governance factors – and they are interrelated and taken into consideration in the formulation of business strategies.[114]

The environmental factors assess a company's impact on the planet,[115] which includes its carbon footprint, energy efficiency, and the waste management. Institutions with a firm environmental performance make renewable resources, sustainability, and conservation a priority. It also includes risk management practices such as direct and indirect greenhouse gas emissions,[116] management's stewardship over the natural resources, and the company's overall resilience against physical climate risks such as climate change, flooding, and fires. Corporate responsibility with respect to environmental sustainability has become essential in that stakeholders demand that organisations mitigate climate change and preserve biodiversity.[117]

The social factors assess the relationship of the organisation with the stakeholders.[118] One example is the human capital management (HCM) metrics such as those for fair wages and employee engagement.[119] This factor includes the impact of the organisation on the communities in which it operates.[120] One hallmark of ESG is the extent to which the assessment of social impact has expanded to supply chain

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113 Sychenko 2023 *ILLeJ* 135.
114 Byrne 2025 What is ESG and Why does it matter?
115 Peterdy ESG (Environmental, Social and Governance).
116 Peterdy ESG (Environmental, Social and Governance).
117 Generis Global Legal Services 2024 The Impact of Environmental, Social and Governance (ESG).
118 Peterdy ESG (Environmental, Social and Governance).
119 Peterdy ESG (Environmental, Social and Governance).
120 Peterdy ESG (Environmental, Social and Governance).

partners outside the walls of the company,[121] especially in developing economies where environmental and labour standards may be less robust.

The social aspect has a direct impact on employees by fostering a supportive and inclusive workplace culture.[122] The companies that pursue social responsibility instil diversity and inclusion, fair treatment, and employee well-being. This accommodates equal opportunities, work-life balance, the promotion of health and wellness programmes, and a safe and respectful working environment. An environment that emphasises social factors make employees feel respected and values.

The governance factor assesses how an organisation should be led and managed.[123] This aspect of ESG assesses whether the company uses accurate and transparent accounting methods,[124] diversity in choosing its leadership, follows integrity, and is accountable to shareholders. It is common for investors to want assurances that companies avoid conflicts of interest when they choose the members of their boards and senior executives.[125] This includes not being involved with political contributions to get preferential treatment or involvement in illegal conduct.[126]

This factor influences employees by encouraging strong leadership,[127] ethical business practices, and transparency. Companies with vigorous governance practices make sure of employee rights,[128] fair compensation, and opportunities for professional growth. It further encourages participation in decision-making processes,[129] open communication,[130] and employee engagement. Employees gain

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121 Peterdy ESG (Environmental, Social and Governance).
122 Olivero 2023 ESG goals for employees.
123 Peterdy ESG (Environmental, Social and Governance).
124 Investopedia Team 2025 Environmental, Social and Governance (ESG) Investing.
125 Investopedia Team 2025 Environmental, Social and Governance (ESG) Investing.
126 Investopedia Team 2025 Environmental, Social and Governance (ESG) Investing.
127 Olivero 2023 ESG goals for employees.
128 Olivero 2023 ESG goals for employees.
129 Olivero 2023 ESG goals for employees.
129 Camara 2015 The importance of ESG in Corpora
130 Olivero 2023 ESG goals for employees.

trust and confidence in the leadership of their organisation and have a voice in its direction.

2.4 essence of Environmental, Social and Governance principles in corporate governance

ESG should be considered when making investments. Making sure a company does not contribute to environmental degradation or violations of human rights is as important as having a strong return on investment.[131] In order to help businesses better analyse their risk exposure and take precautions against it,[132] ESG is integrated into the corporate governance framework, as well as risk management and risk assessment frameworks.

Considering ESG principles when investing has become increasingly popular,[133] with many investors giving preference to businesses that follow ethical and sustainable business practices.[134] ESG-compliant businesses frequently show better long-term profitability and lower risk. Since companies with strong ESG frameworks are perceived as more resilient and progressive,[135] institutional investors and asset managers are increasingly incorporating ESG criteria into their investment strategies.

Globally, governments and regulatory agencies are enforcing more stringent ESG-related regulations.[136] Businesses that proactively implement ESG standards are better equipped to handle legal and compliance issues.[137] Business operations are shaped by regulations pertaining to corporate governance changes,[138] human rights

131 Camara 2015 The importance of ESG in Corporate Governance.
132 Camara 2015 The importance of ESG in Corporate Governance.
133 Bhagat 2025 Understanding ESG.
134 Bhagat 2025 *Understanding ESG*.
135 Bhagat 2025 *Understanding ESG*.
136 Bhagat 2025 Understanding ESG.
137 Bhagat 2025 *Understanding ESG*.
138 Bhagat 2025 *Understanding ESG*.

commitments, and climate disclosures. In addition to lowering legal risks,[139] staying ahead of these requirements improves corporate credibility.

More than ever, consumers are aware of business principles. Businesses that are dedicated to ESG principles frequently experience long-term brand loyalty and greater consumer relationships.[140] Consumers today favour companies that put social responsibility,[141] environmental sustainability, and ethical sourcing first. Businesses that ignore ESG issues run the risk of losing customers and market share.[142]

Effective corporate governance,[143] especially with regard to ESG problems, depends on proper entity management procedures. Companies may improve transparency and accountability,[144] guarantee compliance with pertinent laws and standards, and identify and manage ESG risks and opportunities with the use of effective entity management techniques.[145] This entails making certain that decision-making procedures are transparent and thoroughly documented,[146] that all pertinent stakeholders are included and informed, and that suitable internal controls and risk management frameworks are in place. Businesses can reduce possible ESG-related risks and take advantage of opportunities to generate long-term value and beneficial effects for all stakeholders by prioritising appropriate entity management.[147]

ESG initiatives help companies to identify and reduce risks related to social unrest, environmental disasters,[148] and governance failures. A proactive strategy guarantees resilience and business continuity. Risks associated with climate change,[149] supply chain interruptions, and reputational harm from unethical

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139 Bhagat 2025 *Understanding ESG*.
140 Bhagat 2025 *Understanding ESG*.
141 Feng *et al* 2022 *CSREM* 1884-1895.
142 Feng *et al* 2022 *CSREM* 1884-1895.
143 Camara 2015 The importance of ESG in Corporate Governance.
144 Camara 2015 The importance of ESG in Corporate Governance.
145 Ellili 2022 *CSR-EM* 1396-1413.
146 Ellili 2022 *CSR-EM* 1396-1413.
147 Ellili 2022 *CSR-EM* 1396-1413.
148 Bhagat 2025 Understanding ESG.
149 Bhagat 2025 *Understanding ESG*.

behaviour can all influence how a business operate. Businesses may create strong frameworks for long-term sustainability and crisis readiness by integrating ESG into risk management strategies.

2.5 Negative and positive Environment, Social and Governance factors in a company

ESG principles are key in the eyes of businesses and investors.[150] Their criteria are used not only for financial performance but also for their effect on environmental matters,[151] social issues, and governance practices.

Most companies opt for a positive ESG rating as it helps with the growth and development of their businesses.[152] Positive ESG outcomes in a company is when the company implements ESG principles in such a way that it is beneficial to the institution, that is, when the company can identify and manage risks associated with environmental and social factors.[153] An example is that a company's reduction of their carbon footprint makes it less vulnerable to regulations and fluctuations in energy prices.[154] Companies with positive ESG ratings become popular with investors who want to gain both financial returns and positive social and environmental outcomes.[155]

The ESG framework puts a firm emphasis on the sustainability of an environment[156] by motivating companies to reduce their carbon footprint, conserve natural resources, and mitigate pollution. It further pushes companies to prioritise fair labour practices,[157] ethical supply chains, and philanthropic initiatives, leading to

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150 Albertová 2024 *Vision Factory*.
151 Albertová 2024 *Vision Factory*.
152 Albertová 2024 *Vision Factory*.
153 Albertová 2024 *Vision Factory*.
154 Albertová 2024 *Vision Factory*.
155 Albertová 2024 *Vision Factory*.
156 Albertová 2024 *Vision Factory*.
157 Albertová 2024 *Vision Factory*.

positive social impact. Aligning with ESG principles can further result in long-term growth for businesses.[158]

However, the ESG framework also has negative consequences in that it relies on subjective judgements and varying interpretations of criteria, and in many instances this subjectivity can undermine the reliability and objectivity of assessments, which leads to inconsistencies and misrepresentation.[159] ESG as a valuable framework is still not immune to potential pitfalls and unintended consequences,[160] and balancing shot-term financial goals with the ESG objectives can be complex and may entail trade-offs.

Nevertheless, ESG contains environmental,[161] social and governance pillars. This dissertation focuses on Social and Governance. Human rights,[162] fair remuneration and employee welfare fall under Social. King IV and King V remuneration governance falls under Governance. ESG can therefore be used to evaluate executive remuneration practices.[163]

158 Albertová 2024 *Vision Factory*.
159 Albertová 2024 *Vision Factory*.
160 Albertová 2024 *Vision Factory*.
161 Albertová 2024 *Vision Factory*.
162 Albertová 2024 *Vision Factory*.
163 Albertová 2024 *Vision Factory*.

CHAPTER 3: AN OVERVIEW OF INTERNATIONAL ENVIRONMENTAL, SOCIAL AND GOVERNANCE WAGE DISPARITY PRACTICES

3.1 Introduction

The *EEA* makes it compulsory to interpret the Act in light of the international law obligations of the Republic.[164] This is also in line with the provisions of the *Constitution*, which obliges any court, tribunal or forum to consider international law when interpreting the Bill of Rights.[165]

As the ESG principles developed, scholars, policymakers and practitioners alike have become deeply interested in examining how national and regional economic progress can align with sustainability objectives.[166] There are significant regional differences in how wage disparities affect ESG scores.[167] The ESG evaluation system assesses corporate performance across multiple dimensions, including environmental protection, social responsibility fulfilment, and corporate governance structure.[168]

3.2 Comparative analysis of Environmental, Social and Governance principles on wage disparities in other countries

ESG principles are crucial for businesses to achieve sustainable growth and meet the expectations of investors, consumers, and regulators.[169] It is often embedded in corporate governance through shareholders.[170] The responsibilities of shareholders include the oversight of corporate governance,[171] which includes ensuring that companies maintain sound management structures and demonstrate good ethical practices, as well as financial performance. The members of the board

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164 Section 3(d) of the *Employment Equity Act*.
165 Section 39(1) of the *Constitution*.
166 Ko *et al* 2025 *IGD* 100231.
167 Sustainability Directory 2025 Are There Regional Differences in How Wage Inequality Impacts ESG Scores Globally?
168 Zhou, An and Shen 2025 *Sustainable Futures* 1-11.
169 Bhagat 2025 Understanding ESG.
170 Camara 2015 The importance of ESG in Corporate Governance.
171 Camara 2015 The importance of ESG in Corporate Governance.

should be able to identify and assess the ESG risks and opportunities through a combination of their own knowledge and external advice.[172] The social and governance aspects of the ESG principles are the crucial parts of this study.[173]

The "S" in ESG refers to the relationship of a company with people, which includes employees, suppliers, customers and surrounding communities.[174] It highlights how businesses treat workers, respect human rights,[175] and contribute positively to society. For the SMEs this is inclusive of practical steps such as fair wages, maintaining workplace safety,[176] supporting employee well-being, and engaging with local communities. A firm social strategy can lead to higher employee retention,[177] improved brand loyalty, and enhanced stakeholder trust. Companies that prioritise social factors actively work towards fostering an inclusive workplace,[178] ensuring fair treatment of workers, and giving back to their communities. Diversity,[179] equity, and inclusion (DEI) initiatives are becoming central to corporate culture, as businesses recognise the essence of representation and fair opportunity in driving innovation and productivity.

The "G" in ESG relates to the internal practices and policies that ensure ethical and effective management. Robust governance frameworks build investor confidence and prevent corporate scandals.[180] Companies with strong governance policies are more likely to make ethical decisions,[181] adhere to legal requirements, and uphold accountability. Transparency in financial reporting,[182] fair treatment of stakeholders,

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172 Camara 2015 The importance of ESG in Corporate Governance.
173 Camara 2015 The importance of ESG in Corporate Governance.
174 Emerick 2024 What is the Social in ESG?
175 Emerick 2024 What is the Social in ESG?
176 Emerick 2024 What is the Social in ESG?
177 Bhagat 2025 Understanding ESG.
178 Bhagat 2025 *Understanding ESG*.
179 Bhagat 2025 *Understanding ESG*.
180 Bhagat 2025 *Understanding ESG*.
181 Bhagat 2025 *Understanding ESG*.
182 Bhagat 2025 *Understanding ESG*.

and a commitment to ethical business conduct contribute to long-term stability and trust in an organisation.[183]

With growing differences in wealth and income distribution endangering social cohesiveness and economic stability, income inequality has emerged as one of the most important social challenges of our day.[184] By encouraging businesses to implement policies that support fair pay,[185] equitable opportunities, and inclusive growth, ESG-focused investing has become a potent instrument for addressing these disparities. Many countries have adopted the ESG principles,[186] which has had a positive impact on managing executive and employee wage disparities. Businesses that place a high priority on social responsibility are more likely to have policies in place that address salary inequities,[187] encourage equitable chances for promotion, and make investments in the welfare of their employees. In addition to lowering economic disparity,[188] these strategies improve worker loyalty, productivity, and satisfaction, all of which can improve the business's bottom line.

As the ESG framework gained prevalence globally, it has gradually been embraced in China by Chinese enterprises.[189] A compelling investigation has begun into the effect of ESG ratings on executive compensation structures and income disparities within firms.[190] The distinction between state-owned companies (SOEs) and their non-state equivalents is a fundamental component of this discourse.[191] SOEs operate

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183 Bhagat 2025 *Understanding ESG*.
184 Bose 2024 The Role of ESG in Addressing Income Inequality.
185 Bose 2024 The Role of ESG in Addressing Income Inequality.
186 Bose 2024 The Role of ESG in Addressing Income Inequality.
187 Bose 2024 The Role of ESG in Addressing Income Inequality.
188 Bose 2024 The Role of ESG in Addressing Income Inequality.
189 Shen *et al* 2023 *CJAR* 1-25.
190 Social Science 2025 ESG Ratings, Executive Pay for Performance Sensitivity, and within firm Pay gap.
191 Social Science 2025 ESG Ratings, Executive Pay for Performance Sensitivity, and within firm Pay gap.

under strict policy frameworks that regulate compensation and wage discrepancies since they are the foundation of China's public economy.[192]

Executive compensation in SOEs has grown more slowly as a result of this regulatory environment.[193] For example,[194] many SOEs implemented internal compensation limitation plans to effectively curb excessive executive remuneration when governmental salary caps were implemented. An analytical method that uses an interaction term between company ownership status and ESG ratings finds a considerably negative coefficient associated with the growth of the pay gap among SOEs.[195] This empirical conclusion highlights the effectiveness of government-mandated salary caps as a control mechanism against overpaying and demonstrates that ESG improvements do not increase compensation discrepancies in SOEs.[196]

According to traditional microeconomic theory,[197] in markets with asymmetric information, corporate ESG performance can send important messages. It can foster trust between businesses and stakeholders and lessen information asymmetry.[198] Customers are inclined to pay more for goods and services provided by businesses with greater ESG performance because of this emotional connection.[199] As a result,[200] it can boost the business's earnings and offer chances to raise employee pay. Nonetheless,[201] there is a significant difference in the negotiating power between regular employees and managers when it comes to the distribution of revenue.[202] Employees at different hierarchical levels share rent differently as a result of this

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192 Social Science 2025 ESG Ratings, Executive Pay for Performance Sensitivity, and within firm Pay gap.
193 Social Science 2025 ESG Ratings, Executive Pay for Performance Sensitivity, and within firm Pay gap.
194 Social Science 2025 ESG Ratings, Executive Pay for Performance Sensitivity, and within firm Pay gap.
195 Social Science 2025 ESG Ratings, Executive Pay for Performance Sensitivity, and within firm Pay gap.
196 Social Science 2025 ESG Ratings, Executive Pay for Performance Sensitivity, and within firm Pay gap.
197 Houston and Shan 2022 *RFS* 3373-3417.
198 Houston and Shan 2022 *RFS* 3373-3417.
199 Houston and Shan 2022 *RFS* 3373-3417.
200 Houston and Shan 2022 *RFS* 3373-3417.
201 Houston and Shan 2022 *RFS* 3373-3417.
202 Faleye, Reis and Venkateswaran 2013 *JBF* 3258-3272.

disparity.[203] Managers with more negotiating power typically get a bigger portion of the rent,[204] which increases the wage disparities inside the company. Therefore, through employee salary premiums, business ESG performance may have an impact on the pay gap.[205]

Furthermore, Europe is the leader in linking executive compensation to sustainability targets, showing that 81% of its companies correlate CEO pay to ESG goals.[206] About 17% of all listed European companies have implemented an ESG pay link,[207] compared to 13% in the US and Canada, and 42 of the top 100 listed European corporations use ESG measures as a variable component of CEO pay. According to a recent KPMG analysis of 375 organisations in 15 countries,[208] 78% of large multinational corporations have already incorporated sustainability measures into board-level incentive packages. The integration of CEO compensation with ESG objectives is increasingly considered a crucial component of corporate governance, propelling a wider transition toward sustainability.[209]

However, the inequality in the workplace is not only rooted in the executive and employee wage disparities.[210] Many transgender and gay workers still receive unequal pay for equal work in the US today.[211] The Human Rights Campaign Foundation,[212] which is the educational arm of the nation's largest lesbian, gay, bisexual, transgender and queer (LGBTQ+) civil rights organisation, provided that LGBTQ+ women workers in the US earn approximately 79 cents for every dollar that the American man earns. This means that women need to work 55 additional days into a new year to earn what the average American man earned in the previous

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203 Houston and Shan 2022 *RFS* 3373-3417.
204 Houston and Shan 2022 *RFS* 3373-3417.
205 Wang and Li 2023 ESG Performance, Employee Income and Pay Gap.
206 Editorial Team 2025 Europe ties CEO pat to ESG goals twice as often as the US.
207 Meloni and Aksu 2023 *The State of Pay*.
208 Editorial Team 2025 Europe ties CEO pat to ESG goals twice as often as the US.
209 Camilleri 2015 *SAMPJ* 224.
210 Mirza et al 2018 The state of the LGBTQ Community.
211 Mirza et al 2018 The state of the LGBTQ Community.
212 Olson 2022 Wage Gap for LGBTQ+ Women.

year.[213] This wage gap is wider than the one seen for women overall, who earn on average 83 cents for every dollar a man earns.[214]

Gay men are exposed to earnings penalties of 9% compared with the heterosexual men.[215] These earning penalties varied from 16% in the US to 4% in the Netherlands.[216] Further,[217] lesbian women had higher income when compared to heterosexual women. The highest earning premium was estimated to be 20% in the US,[218] with the lowest being 3% percent in the Netherlands. It is only in the Australia and Greece that lesbian women receive lower earnings than comparable heterosexual women.[219]

South African women are still earning 35% less than men for the same work.[220] Women were paid between 23% and 35% less for doing the same work as men in 2025 according to recent statistics from the World Economic Forum and other sources. This means that for every R100 earned by males, women make around R72.44.[221] Women who work in lower-paying businesses and sectors mostly account for this disparity.[222] Bosch and Barit[223] state that the country's median gender pay gap, which ranges from 23% to 35%, is stagnant despite a number of laws intended to prohibit inequalities in employment. The International Labor Organization (ILO) estimates that the average global difference is around 20%.[224]

Despite the laws that countries put in place to end unfair discrimination and inequalities,[225] there are still inequalities that hinder the progress and economic

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213 Mirza et al 2018 The state of the LGBTQ Community.
214 Mirza et al 2018 The state of the LGBTQ Community.
215 Drydakis 2021 Sexual Orientation and Earnings.
216 Drydakis 2021 Sexual Orientation and Earnings.
217 Drydakis 2021 Sexual Orientation and Earnings.
218 Drydakis 2021 Sexual Orientation and Earnings.
219 Drydakis 2021 Sexual Orientation and Earnings.
220 Bosch and Barit 2020 *SAJS* 1–6.
221 Bosch and Barit 2020 *SAJS* 1–6.
222 Bosch and Barit 2020 *SAJS* 1–6.
223 Bosch and Barit 2020 *SAJS* 1–6.
224 Bosch and Barit 2020 *SAJS* 1–6.
225 Bosch and Barit 2020 *SAJS* 1–6.

growth of many countries. One could ask if this means that the laws and the consequences of non-compliance should be strengthened.[226] Rather than a decrease in inequality with these measures in place,[227] it continues to grow.

Now, by encouraging equitable salaries, diversity and inclusion, community involvement, and business transparency,[228] ESG-focused investing can play a critical role in alleviating income inequality in the US. Investors can promote constructive social change and lessen income inequality by including these elements into their investment strategy.[229] ESG investing is becoming more and more important, and it provides a potent instrument with which to create a more fair and just economy.[230]

ESG principles aim to ensure equality in work industries and to set standards.[231] These principles require a balance between the wages of employees and employers in the workplace.[232] It has become clear that ESG metrics are beneficial in ensuring fair pay in workplaces as they help manage executive pay.[233] In this way,[234] companies can ensure that they award reasonable pay to both employees and executives without one group being financially suppressed. The growth in the implementation of these ESG metrics in countries show that they are indeed useful.[235] These metrics are now being entertained by more countries and are indeed a good instrument in this wage disparity challenge in countries.[236]

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226 Bosch and Barit 2020 *SAJS* 1–6.
227 Bosch and Barit 2020 *SAJS* 1–6.
228 Bose 2024 The Role of ESG in Addressing Income Inequality.
229 Bose 2024 The Role of ESG in Addressing Income Inequality.
230 Bose 2024 The Role of ESG in Addressing Income Inequality.
231 Bose 2024 The Role of ESG in Addressing Income Inequality.
232 Bose 2024 The Role of ESG in Addressing Income Inequality.
233 Bose 2024 The Role of ESG in Addressing Income Inequality.
234 Bose 2024 The Role of ESG in Addressing Income Inequality.
235 Bose 2024 The Role of ESG in Addressing Income Inequality.
236 Bose 2024 The Role of ESG in Addressing Income Inequality.

3.3 Legal theories on fair pay and wage disparity at the international level

Despite the fact that companies play a crucial role in determining wages,[237] the creation of income inequality, and the gender wage gap, companies have not received much attention in the policy discussions on these topics thus far. The average CEO-to-worker pay ratio at the low-wage 100 companies widened by 12,9% from 560 to 1 in 2019 to 632 to 1 in 2024.[238] The disparity between CEO compensation and average worker wages has reached concerning levels.[239] According to a report by Oxfam International from 2019, the average remuneration for CEOs internationally has increased by 50%, whereas workers have experienced an increase of 0.9% in their salary.[240]

According to Oxfam International,[241] the CEOs in Ireland and Germany are the highest paid, earning an average of $6.7 million and $4.7 million a year in 2024 respectively. In South Africa,[242] the average CEO pay was $1.6 million in 2024 and in India it reached $2 million. "Year after year,[243] we see the same grotesque spectacle: CEO pay explodes while workers' wages barely budge. This isn't a glitch in the system,[244] it's the system working exactly as designed, funnelling wealth ever upwards while millions of working people struggle to afford rent, food, and healthcare", said Oxfam International Executive Director, Amitabh Behar.

International law is applicable to sovereign states and other entities that are acknowledged as international actors,[245] such as international organisations and individuals. It is a set of principles,[246] agreements and treaties that bind countries.

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237 OECD 2021 The role of firms in Wage Inequality.
238 Roeloffs 2025 The wage gap between CEOs and workers is widening.
239 Brussels Reporter 2025 CEO pay skyrockets 50% since 2019.
240 Brussels Reporter 2025 CEO pay skyrockets 50% since 2019.
241 Oxfam International 2025 Global CEO pay increased by 50 percent since 2019.
242 Oxfam International 2025 Global CEO pay increased by 50 percent since 2019.
243 Oxfam International 2025 Global CEO pay increased by 50 percent since 2019.
244 Oxfam International 2025 Global CEO pay increased by 50 percent since 2019.
245 Oxfam International 2025 Global CEO pay increased by 50 percent since 2019.
246 Oxfam International 2025 Global CEO pay increased by 50 percent since 2019.

Countries come together and develop principles that are binding on them in the belief that it would benefit their citizens, and promote peace, justice, common interests, and trade. States and non-state actors may decide to disregard international law,[247] although doing so may result in condemnation and, in certain situations, coercive measures like economic and diplomatic penalties, or even war.

The ILO works to enhance employment security and quality of employment for employees globally[248] with a set of international labour laws and standards implemented by the member countries. The role of the ILO is to collaborate with employees, employers, and governments to create standards that are internationally recognised to promote social justice through the elimination of "injustice,[249] hardship and privation" in the workplace. The ILO advocates for rules that would ensure fair work conditions.[250] Its conventions address issues such as the minimum wage,[251] work hours, and occupational safety. Even a lay person can that there should be fairness in the wage disparity between executives and employees.[252] This means that the high wages of executives should be justified and the low wages of employees should be justified.[253] Unfairness should intentionally be avoided.[254]

The international regulatory standards that play a role in executive and employee wages include the *Universal Declaration of Human Rights* of 1984,[255] the *Minimum Wage Fixing Convention* 131 of 1970, and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Article 23 of the *Universal Declaration of Human Rights* (UDHR) guarantees everyone the right to work,[256] which includes the right to equal pay for equal work and the right to just and favourable remuneration to ensure human dignity and

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247 Oxfam International 2025 Global CEO pay increased by 50 percent since 2019.
248 Katsapaos 2023 What are International Labour Law and Standards.
249 Katsapaos 2023 What are International Labour Law and Standards.
250 Van der Loo 2025 Article 23 of the Universal Declaration of Human Rights.
251 Van der Loo 2025 Article 23 of the Universal Declaration of Human Rights.
252 Van der Loo 2025 Article 23 of the Universal Declaration of Human Rights.
253 Van der Loo 2025 Article 23 of the Universal Declaration of Human Rights.
254 Van der Loo 2025 Article 23 of the Universal Declaration of Human Rights.
255 WageIndicator Foundation 2024 *Labour Rights Index 2024*.
256 Article 23 of the Universal Declaration of Human Rights, 1948.

social protection of everyone and their families. This provision includes the three dimensions of the right to a fair remuneration that are still relevant to this day. Fair and non-discriminatory remuneration allows for a decent living.[257] The content of the UDHR was included in the ICESCR. Article 7 of the ICESCR is pursuant to everyone's right to the enjoyment of just and favourable work conditions. It further provides for fair wages and equal remuneration and equal value work without differences of any kind,[258] including a decent living for workers and their families.

Article 3 of the Minimum Wage Fixing Convention provides for the elements that should be considered when deciding on the level of minimum wages in relation to the national practice and conditions.[259] It includes the needs of workers and their families, taking into consideration the general level of wages in the country,[260] the cost of living, social security benefits, and the relative living standards of other social groups. The economic factors include the prerequisites of economic development,[261] levels of productivity, and the desirability of attaining and maintaining a high level of employment.

A global platform called the Sustainable Stock Exchanges (SSE) seeks to promote sustainable investing an improving stock exchanges' performance on[262] ESG concerns. The Principles for Responsible Investment (PRI),[263] the UN Environment Programme Finance Initiative (UNEPFI), the UN Global Compact, and the United Nations Conference on Trade and Development (UNCTAD) are the organisations that organise the SSE. Five main areas are the focus of the initiative:[264] Gender equality, green finance, ESG disclosure, SME development, and securities

257 Müller 2024 The Human Right to a Just Wage.
258 Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966.
259 Article 3 of the Minimum Wage Fixing Convention, 1970.
260 Article 3 of the Minimum Wage Fixing Convention, 1970.
261 Article 3 of the Minimum Wage Fixing Convention, 1970.
262 Li date unknown Sustainable Stock Exchanges Initiative.
263 Li date unknown Sustainable Stock Exchanges Initiative.
264 Li date unknown Sustainable Stock Exchanges Initiative.

regulation.[265] Stock exchanges are invited by the SSE to voluntary and public pledge to support sustainability in their markets to become "SSE Partner Exchanges".[266]

One example of success is the stock exchange of Bahrain, Bahrain Bourse (BHB). In order to achieve sustainable growth and satisfy stakeholder expectations,[267] BHB recognises the significance of integrating ESG elements into their daily business operations. At the moment,[268] the Kingdom of Bahrain ranks 76 in the UN Sustainable Development Goals (SDGs) Global Ranking and one of the top two countries in the GCC. According to BHB,[269] sound corporate ESG practices are essential for the country's ongoing success and the delivery of improved business performance. This ESG insert is in line with the UN SDGs and presents BHB's updates and accomplishments across ESG aspects for the year 2020.[270]

The BHB formulated an ESG strategy that is in line with its sustainability.[271] The ESG strategy's key elements include to promote collaboration and dialogue between companies and investors;[272] to promote market education and sustainability/ESG disclosure; to promote the internal capacity of the exchange to meet the SSE initiative requirements; to promote the development of sustainable financial products such as ESG indices; and to promote digital innovation through ESG data dissemination.

BHB claims to have been doing well with satisfying the ESG elements,[273] which was advantageous to the country's sustainability. With regard to the social aspect of ESG,[274] in 2020 the BHB workforce was composed of 59% male and 41% female employees, with seven females in middle management positions and three females

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265 Li date unknown Sustainable Stock Exchanges Initiative.
266 Li date unknown Sustainable Stock Exchanges Initiative.
267 Bahrain Bourse 2020 Sustainability at Bahrain Bourse.
268 Bahrain Bourse 2020 Sustainability at Bahrain Bourse.
269 Bahrain Bourse 2020 Sustainability at Bahrain Bourse.
270 Bahrain Bourse 2020 Sustainability at Bahrain Bourse.
271 Bahrain Bourse 2020 Sustainability at Bahrain Bourse.
272 Bahrain Bourse 2020 Sustainability at Bahrain Bourse.
273 Bahrain Bourse 2020 Sustainability at Bahrain Bourse.
274 Bahrain Bourse 2020 Sustainability at Bahrain Bourse.

in senior management positions. Furthermore,[275] the BHB's Board of Directors is composed of nine members who are wholly independent and non-executive. There are seven male board members and two female board members.[276] BHB implemented initiatives aimed at supporting women in the workforce,[277] including the working from home initiative and the formation of the Gender Equality Committee to encourage a healthy balance for women in the organisation. The Gender Equality Committee ensures that equal benefits and opportunities are accessible to both genders,[278] whether by direct support in the workplace or indirect support for spouses and family. The role is to promote gender equality and to empower women in the capital markets sector and reinforce the role of women in executi[279]ve and board positions across capital markets.[280]

Companies with ESG disclosure show lower systematic risk profiles (higher valuations and lower capital costs) and lower idiosyncratic risk profiles (lower exposures to tail risk and higher profitability) than companies with weak or no ESG disclosure[281] according to recent research published in the Journal of Portfolio Management. The Global Reporting Initiative 102 aims to enhance transparency and accountability reporting and requires reporting of CEO pay ratio in a company.[282] In Bahrain it is expressed as a ratio of the CEO's salary and bonus (X) to median Full Time Equivalent (FTE) salary, usually expressed as "X1".[283]

South Africa's JSE is the largest stock exchange in Africa,[284] providing a platform for trading a wide range of financial instruments and facilitating investment opportunities in South Africa. JSE-listed companies are obliged to comply with the King Code and report annually on the extent of their compliance.[285] The JSE is a

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275 Bahrain Bourse 2020 Sustainability at Bahrain Bourse.
276 Bahrain Bourse 2020 Sustainability at Bahrain Bourse.
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279 Bahrain Bourse 2020 Sustainability at Bahrain Bourse.
280 Bahrain Bourse 2020 Sustainability at Bahrain Bourse.
281 Bahrain Bourse 2021 *Sustainability Report*.
282 Bahrain Bourse 2021 *Sustainability Report*.
283 Bahrain Bourse 2021 *Sustainability Report*.
284 Lesaoana 2025 The Johannesburg Stock Exchange.
285 Lesaoana 2025 The Johannesburg Stock Exchange.

member of the standing King Committee and further has mandatory governance disclosure prerequisites beyond the principles of King,[286] namely the King III, IV and the recently officially released King V report to be discussed in Chapter 5 of this study.

All workers have the right to just and favourable compensation in order to guarantee fair wages and a decent living according to article 23(3) of the Universal Declaration of Human Rights,[287] article 3 of ILO's *Minimum Wage Fixing Convention* 131 of 1970 and article 7 of the ICESCR (Fair Wage clauses). Convention No 131 also states that economic conditions and the needs of workers and their families must be taken into account when setting minimum wages.[288]

International instruments prohibit unfair labour practices,[289] which includes unfair wages. Unfair wage disparity on its own is therefore a prohibited labour practice because why should one person receive a disproportionally lower wage and another receive an unfairly higher wage.[290] The difference in wages should be justified and aligned with applicable principles. In the UK case of *Hayward v Cammell Laird Shipbuilders Ltd,*[291] the House of the Lord held that Hayward, a female cook, was entitled to an increase in her basic salary to align it with the basic pay of her comparators e.g., shipyard painters.

Gaps in firm remuneration show differences in wage setting power and productivity.[292] Firm-oriented policies must be balanced with worker-centred policies (such as education and adult learning) to alleviate high pay disparities while promoting sustainable and high growth.[293] This includes (1) policies that encourage lagging firms to catch up in productivity,[294] which would increase overall wages and

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286 Lesaoana 2025 The Johannesburg Stock Exchange.
287 Labour Rights Index 2024 *Fair Wages*.
288 Labour Rights Index 2024 *Fair Wages*.
289 1998 IRLR 257 HL.
290 1998 IRLR 257 HL.
291 1998 IRLR 257 HL.
292 OECD 2021 The role of firms in Wage Inequality.
293 OECD 2021 The role of firms in Wage Inequality.
294 OECD 2021 The role of firms in Wage Inequality.

productivity while also reducing pay discriminations; (2) principles that lessen pay disparities at specific productivity disparities without restricting efficiency-enhancing reallocation, particularly the promotion of employee mobility; and (3) policies that reduce the wage-setting power of employees with high positions in local labour markets, which would increase pay and lessen pay inequality without having a negative effects on firms and output.

The main focus of agency theory is how ESG-related governance, such as unbiased boards and more transparency, may minimise disputes between shareholders and managers.[295] According to Clark, Feiner and Viehs, institutional maturity[296] and the value of ESG principles in developed economies may be increased by more stringent disclosure regulations and investor bases that prioritise ESG. On the other hand, because of laxer regulations and a higher incidence of "greenwashing", ESG advantages may be diminished or skewed in emerging countries.[297]

One study found that in Europe, out of 300 companies,[298] 183 (61.6%) consider ESG principles when determining executive compensation. They were divided into two groups.[299] The first group, which comprised of 35 firms,[300] stated in their compensation report that while they did not use any ESG metrics to determine managers' total compensation at the time, they would begin to do so in 2021–2022. When determining executive compensation, the remaining 148 businesses were already taking ESG factors into account.[301] Only four of these organisations integrated ESG measurements in their financial performance,[302] which is not surprising given the nature of ESG-related issues. The vast majority of these companies include ESG indicators as part of their non-financial performance.[303]

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295 Clark, Feiner and Viehs "From the stockholder to the stakeholder" 1-63.
296 Clark, Feiner and Viehs "From the stockholder to the stakeholder" 1-63.
297 Giese *et al* 2019 *JPM* 69-83.
298 Dell'Erba and Ferrarini 2024 *EBOLR* 439-479.
299 Dell'Erba and Ferrarini 2024 *EBOLR* 439-479.
300 Dell'Erba and Ferrarini 2024 *EBOLR* 439-479.
301 Dell'Erba and Ferrarini 2024 *EBOLR* 439-479.
302 Dell'Erba and Ferrarini 2024 *EBOLR* 439-479.
303 Dell'Erba and Ferrarini 2024 *EBOLR* 439-479.

ESG goals and KPIs for compensation only address the demands and interests of particular stakeholders,[304] including workers, clients, and, more broadly, the environment and local communities.

In South Africa, ESG metrics are being adopted as a way to manage the wage inequalities between executives and employees in the country. This is also motivated by the King IV and King V reports that both push for equality in remuneration and transparency about remuneration to ensure fairness in employment and to protect the rights of both lower and higher positioned employees. It is now driven by the South African legislation that regulate employment conditions and protect the relevant rights. Wage disparity is a global pandemic, but it can be overcome by adhering to ESG principles. High ESG adherence results in good governance in a company.

In concluding this chapter, it is clear that International practice increasingly links executive pay to ESG metrics.[305] Several jurisdictions require greater remuneration disclosure.[306] ESG-linked remuneration can improve accountability but does not automatically reduce pay gaps.[307]

304 Dell'Erba and Ferrarini 2024 *EBOLR* 439-479.
305 Dell'Erba and Ferrarini 2024 *EBOLR* 439-479.
306 Dell'Erba and Ferrarini 2024 *EBOLR* 439-479.
307 Dell'Erba and Ferrarini 2024 *EBOLR* 439-479.

CHAPTER 4: SOUTH AFRICAN LEGAL FRAMEWORK ON PAY GAPS

4.1 Introduction

Discrimination in the workplace occurs when an employee or job applicant is unfairly treated due to personal characteristics such as age,[308] race, disability, gender, religion, or other prohibited factors. Workplace discrimination is unlawful in South Africa and is firmly regulated to enhance equality and fairness in employment.[309] South Africa is one of the countries with a large income gap.[310] Due primarily to the effects of colonialism and apartheid, South Africa is one of the world's most unequal societies.[311] In the years since the global financial crisis of 2008,[312] there has been increased local and worldwide focus on the issue of how much executives should be paid for their contributions to the company. The debate on inequality has been fuelled by executive compensation,[313] both in terms of its sum and the gap between top and bottom wage earners, which has become a major source of societal unrest. This has grown to be a crucial governance issue with significant ramifications for long-term business sustainability,[314] according to the King IV report on business governance.

Concerns about excessive CEO compensation,[315] the growing pay disparity between senior executives and the rest of the workforce, and the impact that the outrageous sums paid have on stakeholder interests, have sparks a discussion about the changes needed. King IV recommendations that policies should include proper planning[316] for the fair and responsible remuneration of executive management in the context of overall employee remuneration.

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308 Legal Experts 2025 What is Workplace Discrimination in South African Labour Law.
309 Legal Experts 2025 What is Workplace Discrimination in South African Labour Law.
310 Matemane, Moloi and Adelowotan 2024 *JLERI* 1-13.
311 Alvaredo, Assouad and Piketty 2018 *Rev Income Wealth* 685-711.
312 Bradley 2013 *JEF* 539-564.
313 IoDSA 2016 King IV provides critical guidance.
314 IoDSA 2016 King IV provides critical guidance.
315 Madlela and Lehloenya 2016 *Obiter* 1-19.
316 IoDSA 2018 Remuneration policy.

The process used to calculate CEO compensation is one of the most important topics in the ongoing discussion over it.[317] The lacking consensus on the causes of the ongoing increase in CEO compensation and the severity of the issue complicates matters further.[318] Lack of objectivity,[319] accountability, and transparency in determining such compensation, conflicts of interest among decision-makers, misalignment of management and shareholder interests, insufficient protection of shareholder governance rights, unemployment, and subpar service delivery are some of the perceived causes in South Africa.

The *Companies Act* as amended and the common law provides for executive duties inclusive of honesty,[320] loyalty and good faith. The Act requires that the fiduciary duties of executives are not only compulsory and unchangeable,[321] but they are also applicable and prescriptive to all companies in the South African State. Magnan and Martin argue that principles derived from norms define that just pay should apply to both employees and executives.[322] However,[323] executives and employees can receive different levels of remuneration to match the different types of work they perform. They may have different contractual agreements with the companies.[324]

The directors and the board bear the duty to determine the remuneration of executives.[325] An organisation should be attentive in its approach to responsible and fair pay.[326] It should be committed to eliminating all the instances of unreasonable differentiation between employees who perform duties that are substantially similar or similar[327] when presenting a report on the structure of the remuneration of employees and executives.

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317 Scholtz and Smit 2012 *SABR* 24.
318 Scholtz and Smit 2012 *SABR* 24.
319 Green "Candid remuneration reporting and clear disclosure" 1.
320 Magnan and Martin 2019 *J Bus Ethics* 98-105.
321 Magnan and Martin 2019 *J Bus Ethics* 98-105.
322 Magnan and Martin 2019 *J Bus Ethics* 98-105.
323 Magnan and Martin 2019 *J Bus Ethics* 98-105.
324 Magnan and Martin 2019 *J Bus Ethics* 98-105.
325 Madlela and Lehloenya 2016 *Obiter* 2 para 2.
326 Madlela and Lehloenya 2016 *Obiter* 2 para 2.
327 Green "Candid remuneration reporting and clear disclosure" 1-20.

Currently a trust deficit is spreading in various sectors of the economy, fuelled by the recent corporate scandals.[328] However, despite considerable criticism in the media and academic circles,[329] only a few companies in South Africa have taken steps to address the concerns surrounding rising executive pay. While some laws have been targeted to remedy the inequality,[330] the problem still persists and unequally higher levels of executive compensation contributes to this challenge. Similar to the USA's *Dodd-Frank Act*,[331] 2010, a specific disclosure requirement that requires companies to disclose pay ratios could be beneficial to draw attention to companies that pay their executives excessive compensation while ordinary workers receive lower salaries. It should also compel these companies and their compensation committees to take fairness into account when they determine executive compensation.[332]

South Africa has enacted legislation that regulates rights of employees and employers.[333] The said legislation provides for equality rights and remuneration in employment.[334] This chapter discusses the South African legislation that should redress the wage disparities between executives and employees in workplaces in the country and its effect on the said issue.[335] The *Constitution* on its own caters for fair conditions of employment.[336] In addition,[337] the *EEA*, the *Promotion of Equality and Prevention of Unfair Discrimination Act* (hereinafter *PEPUDA*), the *LRA* and the proposed *Fair Pay Bill* (2025) are analysed to evaluate their impact on the country's wage disparities between high and low paid employees in the Southern Africa.

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328 Matemane, Moloi and Adelowotan 2024 *JLERI* 42 1-13.
329 Ferrarini and Moloney 2002 *OxREP* 309–310; Sykes 2002 *Corporate Governance* 256–257.
330 Matemane, Moloi and Adelowotan 2024 *JLERI* 1-13.
331 Matemane, Moloi and Adelowotan 2024 *JLERI* 1-13.
332 Matemane, Moloi and Adelowotan 2024 *JLERI* 1-13.
333 Matemane, Moloi and Adelowotan 2024 *JLERI* 1-13.
334 Matemane, Moloi and Adelowotan 2024 *JLERI* 1-13.
335 Matemane, Moloi and Adelowotan 2024 *JLERI* 1-13.
336 Matemane, Moloi and Adelowotan 2024 *JLERI* 1-13.
337 Matemane, Moloi and Adelowotan 2024 *JLERI* 1-13.

4.2 Constitution of the Republic of South Africa, 1996

Constitutions are situated at the nexus of political, social, and legal life. Constitutions are, at their most basic, legal documents that present the foundational rules that define the authority and organisation of the state.[338] Although they differ in age, length and substance,[339] the majority of constitutions outline the institutions, laws, and principles that organise authority and decision making inside a state, as well as the rights and obligations that govern the relationship between the state and its citizens. Beyond this, constitutions define a country's "people", articulate its ideals, and outline its goals as a whole.[340] Importantly,[341] constitutions are political creations that are ingrained in the historical, social, legal, and economic framework of a certain state.

The Freedom Charter, which states that "South Africa belongs to all who live in it", is included in the 1996 *Constitution*, democratic South Africa's founding covenant.[342] In order to achieve democratic change,[343] political solidarity, broad-based economic expansion, and substantive equality, it establishes a new political community that is no longer defined by race (or gender and other axes of disadvantage). These idealistic goals stand in stark contrast to the reality of gendered and racialised poverty and severe social and economic inequality more than 20 years later.[344]

The *Constitution* is the supreme law of the country and provides direction, principles and limitations that frame all South African laws.[345] The prime set of rules that guide the South African *Constitution* is founded in the Bill of Rights as outlined in Chapter 2 of the *Constitution*.[346] The *Constitution* of South Africa supports equality in workplaces.[347] South Africa stands for celebrating every individual's diversity as a

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338 Albertyn 2019 *DSA* 752.
339 Albertyn 2019 *DSA* 752.
340 Albertyn 2019 *DSA* 752.
341 Albertyn 2019 *DSA* 752.
342 Preamble in the *Constitution*.
343 Preamble in the *Constitution*.
344 Preamble in the *Constitution*.
345 Diedericks and Bosch 023 *SAJHRM* 1-10.
346 Diedericks and Bosch 023 *SAJHRM* 1-10.
347 Diedericks and Bosch 023 *SAJHRM* 1-10.

beacon of human dignity.[348] Legislation like section 9 of the *Constitution* and the *EEA*,[349] which speaks out against prejudice and discrimination in the workplace as well as in society and promotes inclusivity by recognising a range of identities, demonstrate South Africa's dedication to equality.

Regarding pay equality, section 7 of the *Constitution* affirms the democratic values of human dignity,[350] equality, and freedom. Additionally, Chapter 2 stipulates that "the state must respect, protect, promote and fulfil the rights in the Bill of Rights".[351] The chapter highlights the limitations of the Bill of Rights, particularly with regard to section 36 and other sections. Section 9 of the Bill of Rights defines equality, which includes pay equality.

Section 9(1) provides:

> [e]veryone is equal before the law and has the right to equal protection and benefit of the law.[352] And mind you that includes anyone regardless of their wealth or status even the President in the Republic of South Africa.

Section 9(2) provides:

> Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.[353]

Section 9(3) provides:

> The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.[354]

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348 Cenenda 2024 "Breaking Barriers: Ensuring Workplace Equality".
349 Cenenda 2024 "Breaking Barriers: Ensuring Workplace Equality".
350 Section 7(1) of the *Constitution*.
351 Sections 7(2) and (3) of the *Constitution*.
352 Section 9(1) of the *Constitution*.
353 Section 9(2) of the *Constitution*.
354 Section 9(3) of the *Constitution*.

Section 9(4) provides:

> No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.[355]

The *Constitution* guarantees the right to fair labour practices in section 23(1).[356] The *Constitution* guarantees this right even though it still is a relatively novel concept.[357] In *National Union of Health and Allied workers Union v University of Cape Town,* the Constitutional Court held that the word "everyone" in section 23(1) is sufficiently broad include employers and juristic persons.[358] The right is guaranteed to everyone, both employees and employers.[359] This clause basically states that even when the one person is an executive over the other, they should entitle the other to fair labour practices.[360]

The equality clause equalises everyone before the law and protects every individual from unfair discrimination on various grounds,[361] not limited to those provided in the *Constitution*. Section 9(3) states that direct or indirect unfair discrimination against any person on one or more grounds is prohibited, which means any ground that can be viewed as unfair discrimination is addressed by this provision. An unfair disparity between the wages of executives and employees is in fact discriminatory and is prohibited in section 9.[362] It is labelled an unfair labour practice in terms of the section 23(1) of the *Constitution*.[363]

Section 2 of the *Constitution* establishes its supremacy in the Republic,[364] stating that any law or conduct that is inconsistent with it is invalid and that the obligations the *Constitution* imposes must be fulfilled. The Constitutional Court's emphasis on

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355 Section 9(4) of the *Constitution*.
356 Section 23(1) of the *Constitution*.
357 Conradie 2016 *Fundamina* 163-204.
358 2002 4 BLLR 311 (LAC).
359 Laubscher 2024 South Africa: Fairness in dealing with employee misconduct.
360 Laubscher 2024 South Africa: Fairness in dealing with employee misconduct.
361 Laubscher 2024 South Africa: Fairness in dealing with employee misconduct.
362 Laubscher 2024 South Africa: Fairness in dealing with employee misconduct.
363 Laubscher 2024 South Africa: Fairness in dealing with employee misconduct.
364 Section 2 of the *Constitution*.

impact,[365] context, intent, and values when determining unfair discrimination makes this analysis more compatible with the objective of substantive equality. Albertyn asserts that there are four essential components to the Constitutional Court's substantive equality jurisprudence.[366] These include an awareness of the positive value of diversity and difference,[367] an emphasis on context, an awareness of how discrimination affects the individual who is complaining about it, and the goal of the right to equality and its guiding principles in addressing systematic disadvantage and subordination.

The standards for taking fairness into consideration during the unfair discrimination enquiry of the court are all relevant when assessing socio-economic disadvantage.[368] The essential improvement in the equality jurisprudence of South Africa has been that the value of dignity can be located at the centre of the equality right. The *Constitution* protects citizens' right to inherent human dignity and their dignity to be respected and protected.[369] If the equality right is to address the impoverished conditions that limit people's development and participation in our new democracy, then a revolutionary vision of dignity is required. Some cases provide for a wider and more substantive interpretation of human dignity.[370] Dignity should be established as a key interpretive tool for a meaningful understanding of equality.[371]

The spirit, purpose, and goals of the fundamental rights protected by the *Constitution* must be considered when interpreting and applying the statutory definition of an unfair labour practice.[372] It is unclear what kind of value judgment can guarantee justice and how it should be carried out.[373] Moreover,[374] there is

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365 Albertová 2024 *Vision Factory* 258-260.
366 Albertová 2024 *Vision Factory* 258-260.
367 Albertová 2024 *Vision Factory* 258-260.
368 *Harksen v Lane* 1998 1 SA 300 (CC) para 38.
369 Section 10 of the *Constitution*.
370 See City Council of Pretoria v Walker 1998 2 SA 363 (CC); Hoffmann v South African Airways 2001 1 SA 1 (CC).
371 Albertová 2024 *Vision Factory* 258-260.
372 Conradie A critical analysis of the right to fair labour practices.
373 Conradie A critical analysis of the right to fair labour practices.
374 Conradie A critical analysis of the right to fair labour practices.

uncertainty about the standard and content of such a value assessment. According to Conradie's article, Brassey's judgment of fairness instils greater confidence:[375] Only when a labour practice is both legitimate and has an economic justification will it be considered fair. Weighing each party's interests in a particular circumstance determines fairness.[376]

All regulations are aligned with the *Constitution*. South Africa therefore has legislation that prohibits all forms of discrimination and advocates for equality in workplaces. These pieces of legislation are all rooted in the *Constitution*. A wage gap between executives and employees that is concerning to the extent of being unreasonable is a form of unfair discrimination. If an executive earns more than what their duties are worth and employees earn less than what their duties are worth, that is unfair discrimination that results in unfair wage gap in their earnings. When a person's equality right is infringed then their dignity is too. If a person receives a wage that is too low to match his scope of employment and the superiors get an exceptionally unreasonable pay, that is not only unfair, but also humiliating to the extent of harming the employee's dignity.

4.3 Labour Relations Act 66 of 1995

South Africa includes unfair discrimination in the workplace in item 2(1)(a) of the residual unfair labour practice in schedule 7 of the *LRA*.[377] It has been repealed and replaced by the section 6 of the *EEA*.[378]

The *LRA* is central to the enforcement and regulation of labour rights in South Africa, specifically the right to fair labour practices provided in section 23(1) of the *Constitution*.[379] The developing South African labour courts and Constitutional Court jurisprudence is refining and defining the concept and scope of fairness in the

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375 Conradie A critical analysis of the right to fair labour practices.
376 Conradie A critical analysis of the right to fair labour practices.
377 Hlongwane 2007 *LDD* 69-84.
378 Hlongwane 2007 *LDD* 69-84.
379 Naidoo 2025 Fairness, Finality, and the Evolving Meaning of Labour Rights.

employment context.[380] The Constitutional Court upheld that implementing the rights outlined in section 23 of the *Constitution* is one of the main goals of the *LRA*.[381] The Court emphasised that although the *LRA* grants the right to fair labour practices,[382] decisions made by specialised tribunals like the Labour Court and the Labour Appeal Court are principally responsible for developing the concept's content.

The purpose of the *LRA* is to promote social justice,[383] economic development, labour peace, and workplace democracy. The Act aims to give effect to and regulate the fundamental rights granted by section 23 of the *Constitution*;[384] to give effect to obligations incurred by the Republic as a member state of the ILO; to provide a framework for collective bargaining among employees, their trade unions, employers, and employer's organisations to determine wages, terms and conditions of employment, and other matters of mutual interest; to formulate industrial policy; and to promote orderly collective bargaining at the sectoral level, employee participation in workplace decision making, and the successful settlement of labour disputes.

In *NUMSA v Vetsak Co-Operative Ltd and Others*,[385] the Supreme Court of Appeal ruled that the interests of employers and employees must be balanced when determining fairness. The Court stated that in view of the *LRA*'s goals,[386] moral and value judgements must be applied to the circumstances.

The *LRA* prohibits unfair labour practices,[387] which includes discrimination, victimisation and the unfair treatment of employees. It further provides protection

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380 Naidoo 2025 Fairness, Finality, and the Evolving Meaning of Labour Rights.
381 NEHAWU v University of Cape Town 2003 24 ILJ 95 (CC).
382 Naidoo 2025 Fairness, Finality, and the Evolving Meaning of Labour Rights.
383 Section 2 of the *Labour Relations Act* 66 of 1995.
384 Schulenburg 2023 A Comprehensive Guide to Understanding the Labour Relations Act.
385 *NUMSA v Vetsak Co-Operative Ltd* (295/93) [1996] ZASCA 69; 1996 4 SA 577 (SCA); [1996] 6 BLLR 697 (AD).
386 *NUMSA v Vetsak Co-Operative Ltd* (295/93) [1996] ZASCA 69; 1996 4 SA 577 (SCA); [1996] 6 BLLR 697 (AD).
387 Schulenburg 2023 A Comprehensive Guide to Understanding the Labour Relations Act.

against unfair dismissals.[388] Unfair labour practices refer to any act by an employer or employee that undermines the rights of employees or the principles of fair labour practices. Practices of this kind are regarded as detrimental to the employment relationship and are not permitted under the Act.[389] The *EEA* and the *LRA* both prohibit unfair discrimination and promote equal opportunity in the workplace.[390]

The *LRA* does not specifically deal with wage inequalities or disparities in the workplace.[391] However,[392] it gives effect to the *Constitution*, which prohibits any form of unfair discrimination. It also promotes social justice, freedom and equality in workplaces.[393] This simply entails that the Act includes the same prohibitions as the *Constitution*.[394] The *Constitution* prohibits unfair discrimination on various grounds, which most authors deem to include unfair wage disparities.[395] The *LRA* is applicable in this regard.[396] It not only protects employees from victimisation and unfair dismissals,[397] it further provides mechanisms to resolve disputes by way of the Commission for Conciliation, Mediation and arbitration (CCMA).

4.4 Employment Equity Act 55 of 1998

The *EEA* is the cornerstone of the anti-discrimination legislation in South Africa.[398] It was enacted to address the inequalities of the apartheid era,[399] to promote equal opportunities and to protect employees from unfair practices. By eliminating unfair discrimination and promoting equal opportunity and fair treatment in employment,[400] this Act aims to attain equity in employment contexts. It also implements affirmative action measures to address the employment inequalities

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388 Schulenburg 2023 A Comprehensive Guide to Understanding the Labour Relations Act.
389 Schulenburg 2023 A Comprehensive Guide to Understanding the Labour Relations Act.
390 Legal Expert 2025 What is workplace Discrimination in South African Labour Law.
391 Haynes 2025 Understanding Workplace Discrimination Laws.
392 Haynes 2025 Understanding Workplace Discrimination Laws.
393 Haynes 2025 Understanding Workplace Discrimination Laws.
394 Haynes 2025 Understanding Workplace Discrimination Laws.
395 Haynes 2025 Understanding Workplace Discrimination Laws.
396 Haynes 2025 Understanding Workplace Discrimination Laws.
397 Haynes 2025 Understanding Workplace Discrimination Laws.
398 Haynes 2025 Understanding Workplace Discrimination Laws.
399 Haynes 2025 Understanding Workplace Discrimination Laws.
400 Section 2 of the Employment Equity Act.

specific groups face to ensure that they are equally represented at all occupational levels in the labour force.[401]

Currently, unequal pay for work of equal value is indirectly regulated by the *EEA*, which intends to promote equality in employment context.[402] The Act does not *sui generis* prohibit unequal pay for work of equal value,[403] it simply prohibits discriminatory practices, which would include unequal pay and separate pension funds for groups of different races in the company. The case of *Leonard Dinger Employee Representative Council v Leonard Dinger* 1998,[404] was the first discrimination case before the new Labour Court. The employer had different retirement benefit funds that effectively segregated black from white employees and conferred unequal benefits.[405] The court held that this amounted to indirect as well as direct racial discrimination and thus constituted an unfair labour practice in terms of item 2(1)(a) of schedule 7 to the *LRA*.[406] Discrimination in terms of race was regarded as an unfair labour practice in the case of *SACWU v Sentrachem Ltd*.[407]

The *EEA* of 1998 forbids unfair discrimination, but does not define it. In the case of *Minister of Posts and Telegraphs v Rasool,* "differentiating" was defined as "to distinguish from another".[408] The identification of differentiation as something that is different from discrimination means that differentiation cannot be regarded as discrimination in the absence of the element of inequality.[409] The court held in *Prinsloo v Van der Linde* that there has to be equality to establish discrimination.[410] The 1998 *EEA's* prohibition of unfair discrimination stems from the *Constitution*'s guarantee of equal protection and,[411] more precisely, from the idea that national

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401 Haynes 2025 Understanding Workplace Discrimination Laws.
402 Hlongwane 2007 *LDD* 69-84.
403 Hlongwane 2007 *LDD* 69-84.
404 Leonard Dingler Employee Representative Council v Leonard Dingler 1998 19 ILJ 285 (LC).
405 Leonard Dingler Employee Representative Council v Leonard Dingler 1998 19 ILJ 285 (LC).
406 Leonard Dingler Employee Representative Council v Leonard Dingler 1998 19 ILJ 285 (LC).
407 *SACWU v Sentrachem Ltd* 1998 9 ILJ 410 (IC).
408 Minister of Posts and Telegraphs v Rasool 1934 AD 167, 186.
409 Minister of Posts and Telegraphs v Rasool 1934 AD 167, 186.
410 *Prinsloo v Van der Linde* 1997 6 BCLR 759 (CC).
411 Cele 2021 Unfair discrimination in the workplace.

laws must be passed to forbid unfair discrimination. Thus, the national law implementing the fundamental constitutional right is the *EEA*.[412]

The *EEA* does deal with equal remuneration claims indirectly under section 6(1), read with the definition of employment policy or practice in section 1.[413] Section 6(1) of *EEA* provides that,[414]

> No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground.

In defining employment policy or practice, section 1 provides that employment encompasses among other things[415] recruitment practices, advertising and selection criteria, appointments and the appointment process, job classification and grading, compensation, employment benefits, and terms and conditions of employment, job assignments, the working environment and facilities, training and development, performance evaluation systems, promotion, transfer, demotion, disciplinary actions other than termination, and dismissal.

In accordance with section 6(1), discrimination for equal labour is not forbidden unless the discrepancies are founded on either listed or unlisted criteria. The *Mangena v Fila South Africa (Pty) Ltd*[416] judgment determined that the section 6(1) clause was sufficiently wide to include the problem of equal pay,[417] despite the fact that it did not specifically regulate equality with regard to compensation.

Unfair discrimination is defined as any distinction in provisions and conditions of employment between workers of the same employer who perform similar or substantially similar work or work of same value that is directly or indirectly based

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412 Minister of Posts and Telegraphs v Rasool 1934 AD 167, 186.
413 Cele 2021 Unfair discrimination in the workplace.
414 Section 6(1) of the *Employment Equity Act*.
415 Section 1 of the Employment Equity Act.
416 2009 12 BLLR 1224 (LC).
417 Mangena v Fila South Africa (Pty) Ltd 2009 12 BLLR 1224 (LC).

on any or more of the listed grounds in section 6(1).[418] Not all disparities constitute unjust discrimination and the differential ground is not described in terms of section 6(1). Generally speaking, unless the differential is due to the grounds listed in section 6(1),[419] unequal compensation is not unreasonable and does not always lead to discrimination. Therefore,[420] if someone discovers that their co-worker makes more money than they do, the difference will only be considered unfair discrimination if it is based on one or more of the specified grounds.

The *EEA* prohibits unfair discrimination on the ground of sexual orientation. In principle an employer could be sued for pay discrimination against LGBTQIA people.[421] In the case of *Satchwell v The President,* the *Judges Remuneration and Conditions of Employment Act*[422] sections 8 and 9 and the corresponding regulations were held unconstitutional by the High Court on the grounds that they do not afford benefits to the same-sex life partners of judges but award benefits to the spouses of judges.[423] The High Court declared the said principles unconstitutional based on section 9(3) of the *Constitution*, which prohibits discrimination on the grounds of marital status and sexual orientation.[424] The Constitutional Court found that the provisions in question unfairly and unjustifiably discriminate on the basis of sexual orientation.[425]

It was reported in 2019 that when sociodemographic factors and work type are taken into consideration,[426] the average monthly wages of gay and bisexal (GB) males and gender-nonconforming heterosexuals were 30% less than those of gender-conforming heterosexual men. LGBTQI South Africans face significant

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418 Section 6(4) of the *Employment Equity Act*.
419 Cele 2021 Unfair discrimination in the workplace.
420 Cele 2021 Unfair discrimination in the workplace.
421 Department of Labour 2025 Employment Equity in the Workplace.
422 47 of 2001.
423 *Satchwell v The President of the Republic of South Africa* (CCT45/01) [2002] ZACC 18; 2002 6 SA 1 (CC); 2002 9 BCLR 986 (CC) (25 July 2002).
424 *Satchwell v The President of the Republic of South Africa* (CCT45/01) [2002] ZACC 18; 2002 6 SA 1 (CC); 2002 9 BCLR 986 (CC) (25 July 2002).
425 *Satchwell v The President of the Republic of South Africa* (CCT45/01) [2002] ZACC 18; 2002 6 SA 1 (CC); 2002 9 BCLR 986 (CC) (25 July 2002).
426 Nyeck et al 2019 The Economic Cost of LGBT Stigma and Discrimination.

obstacles to economic inclusion based on race,[427] sexual orientation, and gender identity and expression, despite a progressive legal environment for sexual minorities and judicial rulings that have affirmed the rights of transgender adults. The *EEA* is in place to cure these discriminations.

By 2000, 80% of senior managerial jobs were held by white men according to research by Deloitte and Touche Human Capital Corporation.[428] According to the report, women were paid 10% less than males in the same firm at the same employment level.[429] Even though some businesses have been closing the racial gap, the gender gap persisted.[430] Furthermore, while women's earnings are much lower than men's,[431] the average income of African males is lower than that of white women, according to the ILO Community Review. Meintjes-Van der Walt claims that the concentration of white women and Africans in lower-paying occupations exacerbates the issue of wage disparity.[432]

Employers are required under section 5 of the *EEA* to eliminate unjust discrimination from all employment policies and practices to promote equal opportunity in the workplace.[433] Section 6 of the *EEA*, read with section 9 of the *Constitution*,[434] lists the grounds that are presumed to be unfair. However, unlisted grounds amount to unfairness if the differentiation on that ground has the effect of nullifying or impairing equality of treatment in employment or occupation.[435] According to the Court's ruling in *Ntai v South African Breweries Ltd*,[436] discrimination on unlisted grounds may only be deemed discriminatory if it is founded on "attributes and characteristics which have the potential to impair the fundamental human dignity of the applicants as human beings".

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427 Nyeck et al 2019 The Economic Cost of LGBT Stigma and Discrimination.
428 Anon *Business Day* (6 June 2001) 9.
429 Anon *Business Day* (6 June 2001) 9.
430 Anon *Business Day* (6 June 2001) 9.
431 Meintjes-Van der Walt 1998 *ILJ* 23.
432 Meintjes-Van der Walt 1998 *ILJ* 23.
433 Section 5 of the Employment Equity Act.
434 Section 5 of the *Employment Equity Act*.
435 Article 1(1)(b) of Discrimination (Employment and Occupation) Convention.
436 Ntai v South African Breweries Ltd 2001 2 BLLR 186 (LC) para 72.

This does not imply that all employees should receive the same salary;[437] rather, compensation disparities should be determined by factors such as experience, length of service, and degree of responsibility. An employee's position or job category must be compared to that of other workers or job categories to determine fair compensation.[438] However,[439] this does not justify the wage disparities between those in high positions and the normal employees. The *EEA* still advocates for fairness in that department.[440] The payment gap between executives and employees should be fair in terms of the legislation and justified.[441] It should not infringe on the rights of both employees and employers as ruled in various case laws.[442]

4.5 Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

PEPUDA protects beyond the workplace by addressing discrimination in public and private spheres.[443] This legislation was enacted to give effect to section 9 of the *Constitution* as a way to enhance equality.[444] *PEPUDA* is not applicable to all the persons to whom the *EEA* applies.[445] The *EEA* is applicable to all employers and employees, excluding those of the National Defence Force, the National Intelligence Agency, or the South African Secret Service.[446] The word "employee" includes an applicant for employment and a temporary employee,[447] and *PEPUDA* covers any person who does not fall into the employee definition.

Chapter 2 of the Act provides for the prevention,[448] prohibition and elimination of unfair discrimination, hate speech, and harassment. Section 6 provides that neither

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437 Du Toit et al Labour Relations Law 579.
438 Du Toit et al Labour Relations Law 579.
439 Du Toit et al Labour Relations Law 579.
440 Du Toit et al Labour Relations Law 579.
441 Du Toit et al Labour Relations Law 579.
442 Du Toit et al Labour Relations Law 579.
443 Haynes 2025 Understanding Workplace Discrimination Laws.
444 See *PEPUDA*.
445 See *PEPUDA*.
446 See *PEPUDA*.
447 See *PEPUDA*.
448 Chapter 2 of the *PEPUDA*.

the State nor any person may unfairly discriminate against any person.[449] The Act specifically prohibits discrimination on the grounds of race, gender, and disability. However, provided that there is no restriction or limitation in section 6 as to the grounds on which unfair discrimination is prohibited, the Act can be interpreted broadly to apply to wage discrimination.

4.6 Companies Amendment Act 16 of 2024

The *Companies Amendment Act* (hereinafter the *Companies Amendment Act*) marks the beginning of a revolutionary period in corporate governance by greatly increasing the requirements for compensation transparency and vertical pay-gap disclosure.[450] The *Companies Amendment Act*,[451] which went into effect in July 2024, imposes strict new reporting requirements on public and state-owned companies. The start date of the compensation and pay-gap disclosure obligations under sections 30A and 30B has not yet been declared.[452] However,[453] certain elements came into effect on 27 December 2024.

According to section 30B of the *Companies Amendment Act*,[454] "total remuneration" includes all income and benefits, including any short-term or long-term incentives like share options and incentive awards, as well as employer contributions to benefit funds.

The *Companies Amendment Act* mandates that public and state-owned companies disclose critical remuneration metrics,[455] including the total remuneration of the highest-paid employee; total remuneration of the lowest-paid employee; average total remuneration of all employees; median total remuneration of all employees;

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449 Section 6 of *PEPUDA*.
450 Dahms-Jansen and Machado 2025 South Africa: The Companies Amendment Act.
451 Dahms-Jansen and Machado 2025 South Africa: The Companies Amendment Act.
452 Dahms-Jansen and Machado 2025 South Africa: The Companies Amendment Act.
453 Dahms-Jansen and Machado 2025 South Africa: The Companies Amendment Act.
454 Section 30B of the Companies Amendment Act.
455 Section 30B(3) of the *Companies Amendment Act*.

and ratio between the top 5% highest-paid employees and the bottom 5% lowest-paid employees.

Early market trends show that some firms have proactively embraced pay-gap reporting in accordance with the *Companies Amendment Act*,[456] while others have chosen to provide limited disclosures, even though the disclosure obligations have not yet been formally enforced.

4.7 Fair Pay Bill

The *Fair Pay Bill* has not been enacted. It was introduced to Parliament by Build One South Africa in June 2025.[457] This bill seeks to amend the *EEA* and is aimed at removing all salary discrimination and promoting wage transparency.[458]

Key provisions in this bill include salary history prohibition.[459] This means that during the hiring, selection, and appointment process, employers will not be allowed to ask about or depend on a candidate's prior or present salary.[460] The sole exception is when a candidate requests in writing that their prior compensation be disclosed after receiving an offer.[461] The pay range disclosure means that employers may not mention "market-related" compensation in any job,[462] transfer, or promotion ads. Instead, the pay or wage range must be stated up front. The right to discuss remuneration means that employees will be able to compare and exchange information about their pay with other workers.[463] Clauses prohibiting such conversations due to confidentiality will not be upheld.[464]

This bill will increase the chances of job applicants to be hired without having to disclose how much they earned previously, which is usually one of the deciding

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456 Dahms-Jansen and Machado 2025 South Africa: The Companies Amendment Act.
457 Labourwise 2025 Fair Pay Bill – What to expect.
458 Labourwise 2025 Fair Pay Bill – What to expect.
459 Labourwise 2025 Fair Pay Bill – What to expect.
460 Labourwise 2025 Fair Pay Bill – What to expect.
461 Labourwise 2025 Fair Pay Bill – What to expect.
462 Labourwise 2025 Fair Pay Bill – What to expect.
463 Labourwise 2025 Fair Pay Bill – What to expect.
464 Labourwise 2025 Fair Pay Bill – What to expect.

factors for the hiring committee.[465] Furthermore,[466] pay disclosures help applicants assess twhe kind of employment they are applying for and saves them from wasting their time by applying for jobs that do not match their pay standards. The job applicant and employee's financial opinion and freedom is enhanced by this bill;[467] employees are able to state their opinions on salaries.[468] The improvements in this bill will help to eradicate discrimination,[469] provided that it promotes pay disclosures. Employers will have to abide by fair pay for all employees (executives and normal employees) and will have to ensure fair wage disparities to avoid public criticisms.[470]

This chapter finds that, South African legislation promotes equality and fair labour practices.[471] The Companies Amendment Act strengthens transparency.[472] Existing legislation addresses unfair discrimination but does not prescribe an acceptable executive-worker pay ratio.

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465 Labourwise 2025 Fair Pay Bill – What to expect.
466 Labourwise 2025 Fair Pay Bill – What to expect.
467 Labourwise 2025 Fair Pay Bill – What to expect.
468 Labourwise 2025 Fair Pay Bill – What to expect.
469 Labourwise 2025 Fair Pay Bill – What to expect.
470 Labourwise 2025 Fair Pay Bill – What to expect.
471 Cele 2021 Unfair discrimination in the workplace
472 Dahms-Jansen and Machado 2025 South Africa: The Companies Amendment Act.

CHAPTER 5: CASE STUDIES, COMPARATIVE ANALYSIS, AND A SOUTH AFRICAN CORPORATE ANALYSIS

5.1 Effect of Environmental, Social and Governance principles and the King Codes on South African wage disparities

South Africa's internationally recognised framework to guide organisations in the interest of justice,[473] accountability, responsibility, and openness, is known as the King Code of Corporate Governance, or "King Code". The King Reports on Corporate Governance,[474] or "King Reports", have long been a source of guidance for businesses trying to strike a balance between profitability and moral leadership and accountability.

The King Code is a convincing norm to which all organisations should aim to adhere,[475] even if it is neither required nor a law. Poor governance may occur when the King Code has been disregarded and problems with governance emerge.[476] Early acquaintance with the Draft Code is crucial,[477] since firms registered on the JSE are obliged to adopt the King Code and to demonstrate its practical execution. The Draft Code's modifications promote improved credibility,[478] investor trust, and organisational resilience in addition to compliance.

Subsequent iterations have changed over time to consider global best practices and shifting business realities.[479] In February 2025,[480] the updated Draft King V Code (also known as the "Draft Code") was made available for public discussion. The goal of this version is to improve on the 2016 release of the King IV Code.[481] Important improvements from the previous draft code have been included into the current

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473 Seymore Du Toit & Basson Inc 2025 King V: A new era for Corporate Governance.
474 VDMA 2025 Understanding the King Code.
475 Seymore Du Toit & Basson Inc 2025 King V: A new era for Corporate Governance.
476 Seymore Du Toit & Basson Inc 2025 King V: A new era for Corporate Governance.
477 Seymore Du Toit & Basson Inc 2025 King V: A new era for Corporate Governance.
478 Seymore Du Toit & Basson Inc 2025 King V: A new era for Corporate Governance.
479 Seymore Du Toit & Basson Inc 2025 King V: A new era for Corporate Governance.
480 Seymore Du Toit & Basson Inc 2025 King V: A new era for Corporate Governance.
481 Seymore Du Toit & Basson Inc 2025 King V: A new era for Corporate Governance.

one. Building on King IV,[482] King V seeks to streamline corporate governance,[483] conform to *Companies Act* revisions, and represent changing best practices in technology governance, independence, transparency, compensation, and sustainability reporting.

King V Code defines corporate governance as the governing body's exercise of ethical and effective leadership towards the realisation of the following governance outcomes for the organisation within its economic,[484] social and environmental context: ethical culture; performance and value creation; conformance and prudent control; legitimacy.

The King Code have been acknowledging the significance of reducing the salary disparity between CEOs and lower-level employees even before the section 30 amendments were introduced.[485] King IV principle 14 is a remuneration governance principle that required that the governing body should ensure that the organisation remunerates fairly,[486] responsibly, and transparently to promote the achievement of the strategic objectives and positive outcomes in the short, medium and long term. The notion is essentially codified by section 30B of the *Companies Amendment Act*,[487] which requires companies that have previously claimed that their compensation practices are fair to prove this by openly and consistently disclosing vertical wage discrepancies.

The remuneration principle in King V is principle 11, which amends the King IV principle 14 and states that in order to encourage the organisation's sustainable value creation within its economic,[488] social, and environmental context, the governing board should make sure that compensation is fair, responsible, and transparent. As a recommendation it further steers and directs that the governing

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482 Seymore Du Toit & Basson Inc 2025 King V: A new era for Corporate Governance.
483 Gcabashe et al 2025 King V – what companies need to know.
484 Seymore Du Toit & Basson Inc 2025 King V: A new era for Corporate Governance.
485 Just Share 2025 JSE Top 40 Vertical Wage Gap Disclosure Practices.
486 IoDSA 2016 King IV Provides Critical Guidance.
487 Just Share 2025 JSE Top 40 Vertical Wage Gap Disclosure Practices.
488 IoDSA 2016 King IV Provides Critical Guidance.

body should set the organisation's strategy and be in charge of ensuring that all employees get just, responsible, and open compensation.[489] In addition to any legislative tasks that the committee may have, the governing body may,[490] at its discretion, assign its remuneration-related activities as listed below to the committee in charge of remuneration governance, if one is in place.

The JSE released the Sustainability and Climate Disclosure Guidance (JSE Guidance) consultation papers in an effort to assist listed firms on best practice in ESG[491] disclosure and to encourage openness and good governance. The King Code now further promotes this transparency on remuneration of individuals as a way for companies to enhance the ESG framework as specified in the code.[492] The JSE Guidance aims to improve the quality of sustainability-related disclosures and to help companies navigate changes in the worldwide reporting landscape.[493] It advises companies to be transparent on issues of the ratio between the CEO's total annual remuneration and the median,[494] lower quartile, and upper quartile of employee remuneration (excluding the CEO); the total annual remuneration of the highest- and lowest-paid employees, the average, and the median remuneration of all employees; and the ratio between the average remuneration of the top 10% of earners and that of the bottom 10%.

The King Code, the *Companies Amendment Act*, and the JSE Guidance all point to a growing consensus about the necessity of fair pay policies,[495] accountability, and openness in resolving income disparity in South African companies.

Furthermore, from a social ESG perspective,[496] excessive disparities between the remuneration of directors and the lowest-paid employees may undermine employee dignity, social cohesion and perceptions of fairness within the workplace. Although

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489 IoDSA 2016 King IV Provides Critical Guidance.
490 IoDSA 2016 King IV Provides Critical Guidance.
491 JSE 2021 JSE launches sustainability and climate change disclosure guidance.
492 JSE 2021 JSE launches sustainability and climate change disclosure guidance.
493 Just Share 2025 JSE Top 40 Vertical Wage Gap Disclosure Practices.
494 JSE 2021 JSE launches sustainability and climate change disclosure guidance.
495 Just Share 2025 JSE Top 40 Vertical Wage Gap Disclosure Practices.
496 Douglas, Tucker and Kitcat 2025 Environmental, Social and Governance Law Guide.

differentiated remuneration may be justified by differences in responsibility and performance,[497] excessively large discrepancies can conflict with the broader objectives of the social pillar, namely fairness, equality, human rights and responsible treatment of employees.

From a governance perspective, remuneration practices must be transparent, responsible and capable of justification. King IV Principle 14 and King V's remuneration principle emphasise that remuneration should contribute to sustainable value creation while remaining fair and responsible within the organisation's economic and social context.[498] Accordingly, governance concerns arise where remuneration committees approve executive remuneration that is disconnected from company performance,[499] stakeholder interests or broader remuneration outcomes within the organisation.

5.2 Wage disparities in South Africa

In 2022, South Africa as the largest country in Southern Africa Customs Union (SACU) was named the most unequal country in the world,[500] ranking first among 164 countries in the World Bank's global poverty database. While developing countries have managed to reduce inequality on average,[501] South Africa has not. The legacy of wealth disparity persists after more than thirty years of democracy. Whether measured by wealth or income,[502] there is significant inequality in South Africa. The public's intense scrutiny of CEO salaries is one outcome.[503] This makes sense considering that one of the main causes of growing inequality in South Africa and throughout the world is the disparity between CEO compensation and worker salaries.[504]

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497 Douglas, Tucker and Kitcat 2025 Environmental, Social and Governance Law Guide.
498 Gcabashe et al 2025 King V – what companies need to know.
499 Seymore Du Toit & Basson Inc 2025 King V: A new era for Corporate Governance.
500 World Bank Group 2022 *New World Bank Report*.
501 Ngogela and Dasnois 2024 *Why wage inequality matters*.
502 Valodia and Ewinyu 2023 South Africa's Wage Gap is Huge.
503 Valodia and Ewinyu 2023 South Africa's Wage Gap is Huge.
504 Valodia and Ewinyu 2023 South Africa's Wage Gap is Huge.

The preamble of the *Constitution* provides that we aim to change the inequalities of the past.[505] However, it seems that the past is still haunting the country. Executives in South Africa continue to make large salaries in both the public and private sectors. Executive compensation has increased significantly since 2000.[506] Research indicates that it has increased by up to 34% in 2005 and 2006 alone.[507] Research from trade unions,[508] labour research organisations, and independent researchers shows that South African executives make disproportionately more money than regular workers. At times,[509] executives are awarded hefty salaries, bonuses, and share options even if their company's performance has declined.

Directors are not remunerated equally because they do not carry identical responsibilities,[510] levels of expertise, experience, risk exposure or performance obligations. Executive directors often exercise day-to-day management functions and are accountable for strategic decision-making,[511] organisational performance and regulatory compliance. Their remuneration packages therefore frequently include incentives,[512] bonuses and long-term share-based awards that are not available to non-executive directors or ordinary employees. Differences in remuneration are therefore not inherently unfair,[513] provided that they are objectively justified, transparent and aligned with the value contributed by the individual concerned.

Finance writers Crotty and Bonorchis[514] demonstrate that the top five earning CEOs in 2005 came from Pick n Pay at R65 million, Anglo American at R62.2 million, Shoprite at R59 million, the JD Group at R46.2 million, and BHP Billit at R30.9 million. Based on these numbers,[515] the two writers came to the conclusion that in 2005,

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505 World Bank Group 2022 *New World Bank Report*.
506 World Bank Group 2022 *New World Bank Report*.
507 World Bank Group 2022 *New World Bank Report*.
508 World Bank Group 2022 *New World Bank Report*.
509 World Bank Group 2022 *New World Bank Report*.
510 Valodia and Ewinyu 2023 South Africa's Wage Gap is Huge.
511 Valodia and Ewinyu 2023 South Africa's Wage Gap is Huge.
512 Valodia and Ewinyu 2023 South Africa's Wage Gap is Huge.
513 Valodia and Ewinyu 2023 South Africa's Wage Gap is Huge.
514 Crotty and Bonorchis Executive Pay in South Africa.
515 Crotty and Bonorchis Executive Pay in South Africa.

the average compensation for a CEO in the private sector was around R15.7 million, while in the retail sector it was an astounding R35 million. The Labour Research Service (LRS),[516] an independent research organisation, examined a sample of 55 packages for CEOs and 238 packages for senior directors. It found that CEOs made an average of R8.2 million in 2006,[517] executive directors R4.6 million, and non-executive directors a little over R300 000.

These sums represented increases of 14%, 17%, and 6%[518] respectively from executive packages from the prior year, 2005.[519] Together, the sample's 55 executive directors made an incredible R448.7 million.[520] Because of this,[521] the LRS came to the conclusion that a typical worker would need 273 years to make the same amount of money as an average CEO in a single year. From 2006 to 2007 it was still the case that the packages of executives increased while those of regular employees decreased.[522] The CEO compensation had increased from an average of R5.3 million to R6.1 million.[523] Executive director compensation increased from an average of R2.9 million to R3.3 million,[524] while non-executive director compensation decreased a little from an average of R300 000 to just over R200 000.

According to a recent study,[525] CEOs in the wholesale and retail sectors listed on the JSE make, on average, 597 times as much as the lowest-paid employees in the industry. To make what an average CEO in this industry makes in a single day,[526] the lowest-paid employee in the industry would have to labour for 21 months. The salary disparity is enormous.[527]

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516 Crotty and Bonorchis Executive Pay in South Africa.
517 Crotty and Bonorchis Executive Pay in South Africa.
518 Crotty and Bonorchis Executive Pay in South Africa.
519 Crotty and Bonorchis Executive Pay in South Africa.
520 Crotty and Bonorchis Executive Pay in South Africa.
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525 Crotty and Bonorchis Executive Pay in South Africa.
526 Crotty and Bonorchis Executive Pay in South Africa.
527 Crotty and Bonorchis Executive Pay in South Africa.

It is evident even from the 2019 Statistics South Africa Inequality Trends Report,[528] which was released 21 years after the Truth and Reconciliation Commission's (TRC) report, that not much has been done to address the imbalances in the labour market. According to this research,[529] South Africa's growing income gap is caused by negative real wages growth for low and medium workers and surging compensation at the top.

The recent data from PwC's 2023 report paint the stark picture that the National Minimum Wage,[530] which is around R52 873 for the ordinary worker, is dwarfed by a telecoms executive's complete guaranteed package, which may reach as high as R10.56 million annually.

Dr Salome Teuteberg[531] did a comparative analysis of executive and workers' wage disparity ratios in various South African JSE listed companies and found that in the year 2023, executive-employee wage gap ratios were high. BHP Billiton had a gap of 4895;[532] Investec was at 3153; AngloGold Ashanti at 2510, Woolworths at 2316, Naspers at 2039, and Anglo-American Pic at 1622. The 73 assessed CEOs had a combined earning of a staggering R2.7 billion.[533]

In 2024, ten JSE-listed wholesale and retail firms' most recent public disclosures were examined by an advocacy group for improved climate results and reduced inequality.[534] The study shows that the average CEO in this sector gets paid 597 times what the lowest paid workers earns.[535] In South Africa, CEO compensation is ridiculoussly high, particularly in the banking and mining industries.[536]

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528 World Bank Group 2022 *New World Bank Report*.
529 World Bank Group 2022 *New World Bank Report*.
530 Satori News 2024 Tackling the Disparity.
531 Teuteberg 2025 Understanding CEO pay ratios and wage inequality.
532 Teuteberg 2025 Understanding CEO pay ratios and wage inequality.
533 Teuteberg 2025 Understanding CEO pay ratios and wage inequality.
534 Opperman 2024 *Pay gap.*
535 Ngogela and Dasnois 2024 *Why wage inequality matters*.
536 Ngogela and Dasnois 2024 *Why wage inequality matters*.

Salary disparities and low levels of diversity at the board and management levels are highlighted in the study.[537] These companies include Shoprite Holdings,[538] Pick n Pay, Pepkor Holdings, the Foschini Group, Woolworths, the Mr Price Group, Dis-Chem, the Clicks Group, Truworths International, and the Spar Group. These companies combined employ 389 766 full-time staff and account for R833.7 billion in yearly revenue.[539]

Shoprite had a vertical pay gap of 1 308;[540] Mr Price had a vertical pay gap of 711; Spar Group had a vertical pay gap of 421; Clicks had a vertical pay gap of 326; Woolworths had a vertical pay gap of 1308. In terms of the research, the average unweighted ratio between total CEO compensation and total lowest earner compensation is 597,[541] with Woolworths having the highest ratio of 1 308. The company's internal minimum wage of R93 600 annually is 57% higher than the sectoral determination figure of R59 483 annually for 2023 and significantly higher than that of its competitors.[542]

The *Companies Amendment Act*, which requires JSE-listed companies to reveal any wage gap transparency,[543] was recently enacted into legislation amid the high levels of financial inequality. The wage gaps disclosed by South Africa's largest companies are inconsistent and fragmented.[544] Of the 15 companies studied,[545] six disclosed their vertical wage gaps as per the *Companies Amendment Act*, despite the requirement not being in force yet.

The 2025 wage gap report showed that of those who followed the *Companies Amendment Act*, Harmony Gold hat the smallest difference between top 5% and

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537 Opperman 2024 *Pay gap*.
538 Opperman 2024 *Pay gap*.
539 Opperman 2024 *Pay gap*.
540 Opperman 2024 *Pay gap*.
541 Just Share 2024 New analysis shows extremely large pay gaps.
542 Just Share 2024 New analysis shows extremely large pay gaps.
543 Fraser 2025 CEOs in South Africa are earning up to 300 times more.
544 Fraser 2025 CEOs in South Africa are earning up to 300 times more.
545 Fraser 2025 CEOs in South Africa are earning up to 300 times more.

bottom 5% earners at 7.9.[546] Investec Ltd had the widest internal pay gap,[547] with the top 5% of workers earning 34 times more than the lowest 5%.

Wage inequalities also continue to rise between employees and/or employers of different genders and sexual orientations in workplaces in South Africa. There are various reports on the status of the gender pay gap in South Africa.[548] Some women still get paid less than their male colleagues even if they perform work of the same level a[549]s men or possess the same qualifications.[550]

When conducting business in South Africa, transformation and broad-based black economic empowerment (BBBEE),[551] which are intended to address historical racial injustices, are crucial factors to consider.

The *Constitution* addresses inequality in the country.[552] Unfair discrimination is further prohibited by various pieces of legislation that enforce the equality provisions of the *Constitution*.[553] Despite the legislation in place,[554] the country continues to face this issue. Many authors concede that this is due to inadequate wage disclosure and lack of strict measures to prohibit discrimination.[555] The *Companies Amendment Act*, though not all of its provisions are in force,[556] it is already having a positive effect on some JSE-listed companies who are aligning themselves with the provisions of the Act by disclosing the wage gaps and trying to lessen the gap to fairness. This shows that it is not impossible to fight this wage disparity.[557] Strict and binding measures need to be imposed for a better South Africa.[558]

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546 Fraser 2025 CEOs in South Africa are earning up to 300 times more.
547 Fraser 2025 CEOs in South Africa are earning up to 300 times more.
548 Steyn 2012 *SAJEMS* 224–234.
549 Douglas, Tucker and Kitcat 2025 Environmental, Social and Governance Law Guide.
550 Bosch "Reasons for the gender pay gap" 3–6.
551 Douglas, Tucker and Kitcat 2025 Environmental, Social and Governance Law Guide.
552 Douglas, Tucker and Kitcat 2025 Environmental, Social and Governance Law Guide.
553 Douglas, Tucker and Kitcat 2025 Environmental, Social and Governance Law Guide.
554 Douglas, Tucker and Kitcat 2025 Environmental, Social and Governance Law Guide.
555 Douglas, Tucker and Kitcat 2025 Environmental, Social and Governance Law Guide.
556 Douglas, Tucker and Kitcat 2025 Environmental, Social and Governance Law Guide.
557 Douglas, Tucker and Kitcat 2025 Environmental, Social and Governance Law Guide.
558 Douglas, Tucker and Kitcat 2025 Environmental, Social and Governance Law Guide.

In many nations, such as the US, the UK, and the Netherlands,[559] disclosing vertical pay discrepancies is either required by law or regarded as best practice. However,[560] it is evident that the majority of South African companies will not act willingly even after 30 years of democracy due to the continued existence of blatant economic disparity. To promote income equality in the nation,[561] regulatory action is required, such as modifications to the *Companies Act*. Corporate disclosure policies on salary disparities provide insight into how South Africa's biggest corporations are addressing or failing to address the pressing need for pay transparency in light of the country's growing income disparity.[562]

However, King IV and King V reinforce fair and responsible remuneration.[563] Excessive pay disparities remain prevalent despite governance reforms.[564] Greater disclosure improves accountability but does not necessarily ensure fairness.[565]

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559 Just Share 2025 JSE Top 40 Vertical Wage Gap Disclosure Practices.
560 Just Share 2025 JSE Top 40 Vertical Wage Gap Disclosure Practices.
561 Just Share 2025 JSE Top 40 Vertical Wage Gap Disclosure Practices.
562 Just Share 2025 JSE Top 40 Vertical Wage Gap Disclosure Practices.
563 Seymore Du Toit & Basson Inc 2025 King V: A new era for Corporate Governance.
564 Seymore Du Toit & Basson Inc 2025 King V: A new era for Corporate Governance.
565 Seymore Du Toit & Basson Inc 2025 King V: A new era for Corporate Governance.

CHAPTER 6: CHALLENGES, RECOMMENDATIONS AND

6.1 Challenges

The findings of this study indicate the following challenges:

- It is trite that South Africa is a country with high wage inequalities. Yet the problem is not that the country does not have sufficient legislation to prohibit these inequalities. South Africa has implemented many pieces of legislation and continues to enact more to eradicate this problem. However, the problem seems to rather.

- Although South Africa has enacted laws to address the said inequalities, limited steps are taken to ensure compliance with such legislation. For example, there are laws that advocate for remuneration fairness, but it is easy for a company to ignore these laws and to act in their own interest. What is South Africa doing about that?

- Some of the transparency and disclosure provisions/legislation are only binding on certain companies. For instance, the King Codes are only binding on JSE-listed companies. Other companies can abide by it if they choose to. Why not make it binding on all companies? This is especially relevant considering the extent of the executive-employee wage inequalities that we are trying to cure.

Corruption is hindering progress in the country. Corruption is so bad in South Africa that companies can buy themselves out from under the law.

6.2 Recommendations

Based on the findings of the research, the study offers the following recommendations:

- South Africa should be stricter to ensure that the relevant laws are not just there on paper. Legislation that requires companies to operate in a certain manner to ensure equality should carry consequences that will leave the

company with no choice but to comply. For example, a company should be required to disclose its wage ratios every six months, failure of which its branches will be shut down in the whole country.

- The regulations that are already in place to address the disparity in question should be made to apply to all companies that operate in South Africa. Only 30% of the companies in South Africa are JSE-listed and abide by the King Codes. The other 70% are not bound to these governance guidelines. As a result, South Africa is left with a high rate of inequality.

It is high time that corruption is dealt with. Corruption is the mother of almost all challenges in this nation. If South Africa was to focus on addressing this problem, issues like wage disparities will disappear.

6.3 Conclusion

Inequality is a very serious concern in South Africa. It is the country with the highest inequality rate worldwide. ESG refers to a set of standards used to measure an organisation's impact and sustainability practices. Many countries acknowledge the ESG principles, and they claim that it has had positive results.

On the positive side, the ESG framework can help a company to make progress and to acknowledge the rights of both the employees and employer. It also helps companies attract national and foreign investors. However, on the negative side, one should always bear in mind that the ESG framework is not immune to discrepancies and unintended errors that can lead to negative results.

It is evident from this study that the ESG framework is accepted internationally and has been adopted in many countries. Many countries have used the ESG principles to address inequality.

There are international instruments that address inequality in workplaces, including the *Universal Declaration of Human Rights*, the *Minimum Wage Fixing Convention*

131 of 1970 and the ICESCR. It is trite that international instruments are binding on member states. States that are bound by these laws should comply.

South Africa has enough domestic legislation that prohibits discrimination on various grounds and advocates for equality. The *Constitution* offers the foundation by addressing inequality. Further legislation specifically prohibits unfair wage disparities in places of employment. The *EEA*, *LRA*, and prohibit unfair discrimination in workplaces, including unfair wage disparities between executives and employees. However, despite these instruments, South Africa still has the highest rate of such discrimination.

Wang and Xhao[566] suggest that authorities should focus more on internal income distribution while promoting ESG principles in order to reduce the growing income disparity in businesses. South Africa is introducing the ESG principles by relying on the King Codes. However, they are only binding on JSE-listed companies. Wage disparities in these companies have decreased, revealing the potential of these guidelines as a mechanism to address the problem.

King V has recently been released to amend King IV. Principle 14 of King IV and Principle 11 of King V provide for fair and equitable remuneration. Principle 11 of King V stipulates that remuneration must be fair and responsible. It encourages transparency and a disclosure of remuneration as per the ESG principles. If applied to all South African companies, King V which is are in line with the ESG frameworks can help lessen the executive-employee wage disparity when combined with the relevant South African equality legislation.

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[566] Li et al 2025 Humanit Soc Sci Commun 1–10.

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