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ADDIS ABABA UNIVERSITY
SCHOOL OF LAW
BUSINESS LAW (LL.M PROGRAM)

‘CORPORATE SOCIAL RESPONSIBILITY IN ETHIOPIA: THE LEGAL AND PRACTICAL ASPECTS’

By

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SCHOOL OF LAW**

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Acknowledgement

I praise to the almighty GOD with your mother st. marry for all your open ways to my success journey and life.

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Acronyms

CSR- Corporate Social Responsibility

EU- European Union

ILO- International Labour Organization

UNGC- United Nations Global Compact

OECD- Organization for Economic Cooperation and Development

EIA- Environmental Impact Assessment

EPA- Environmental Protection Authority

CoM- Council of Ministers

CSR- Corporate Social Responsibility

UNCAC- United Nation Convention Against Corruption

UDHR- Universal Declaration of Human Rights

ICCPR- International Convention on Civil and Political Rights

ICESCR- International Convention on Economic, Social and cultural Rights

EFCCC- Environment, Forest and Climate Change Commission

GTP- Growth and Transformation Plan

AA- Addis Ababa

PESSA- Private Employees Social Security Agency

REA- Regional Environmental Agency

ETPCPA- Ethiopian Trade Practice and Consumer Protection Authority

FMHCACA- Food, Medicine and Health Care Administration and Control Authority

ETB- Ethiopian Birr

MoTI- Ministry of Trade and Industry

MoLSA- Ministry of Labour and Social Affairs

MNCs- Multinational Companies

UN- United Nations

ISO- International Standard Organization

Table of Contents

Acknowledgement	iv
Acronyms	v
Abstract	x
CHAPTER ONE	1
1. PROPOSAL OF THE STUDY	1
1.1. Background of the Study	1
1.2. Statement of the Problem	3
1.3. Scope of the Study.....	4
1.4. Objective of the Study.....	4
1.5. Methodology	4
1.6. Significance of the Study	4
1.7. Limitations of the Study.....	5
1.8. Organization of the Study	5
1.9. Hypothesis	5
CHAPTER TWO	6
2. THE NOTION, HISTORY, UNDERLYING THEORETICAL UNDERPINNINGS, PHILOSOPHICAL & POLITICAL IDEOLOGY AND LEGAL ASPECTS OF CSR	6
2.1. Defining CSR	6
2.2. The History of CSR.....	8
2.3. Underlying Theoretical Underpinnings Relating to CSR	9
2.3.1. Stakeholders' Theory	9
2.3.2. Legitimacy Theory	10
2.3.3. Shareholders' Theory	10
2.4. CSR Strategies	11
2.5. The Relationship Between CSR with Moral Philosophies and Political Ideologies.....	11
2.5.1. Moral and Justice Philosophies Relating to CSR	11
2.5.2. Major Political-Economy Ideologies Relating to CSR.....	13
2.5.2.1. Liberal-Democratic States and CSR.....	13
2.5.2.2. Social-Democratic Welfare-States and CSR	13
2.5.2.3. Socialist State and CSR	13

2.5.2.4. Developmental State and CSR	14
2.6. The Relationship between CSR and the Law	14
2.6.1 The Impact of Government Ideology and Policy on Pro-CSR Laws	14
2.6.2. The Law as a Determining Factor of CSR	15
2.7. Legal Approaches to Regulate CSR.....	16
2.7.1. Mandating.....	17
2.7.2. Facilitating.....	17
2.7.3. Partnering	17
2.7.4. Endorsing	17
2.8. The Aims and Contents of Pro-CSR laws.....	17
2.9. The Considerations on How Rigorous CSR Regulation Should Be	18
CHAPTER THREE	21
3. CSR IN INTERNATIONAL LEGAL INSTRUMENTS AND INTERNATIONAL GUIDING PRINCIPLES	21
3.1. UN Global Compact (UNGC).....	21
3.2. OECD Principles of Corporate Governance	22
3.3. OECD Guidelines for Multinational Enterprises	23
3.4. Human Rights Laws	24
3.5. Environmental laws.....	24
3.6. ILO Declaration on Fundamental Principles and Rights at Work	25
3.7. ISO 26000	25
CHAPTER FOUR.....	26
4. CORPORATE SOCIAL RESPONSIBILITY IN ETHIOPIA: POLICY, LAW, INSTITUTIONS, LEGAL GROUNDS TO PROTECT PUBLIC INTEREST AND THE PRACTICE	26
4.1. General Background	26
4.2. CSR Under the FDRE Constitution	26
4.3. CSR under Ethiopian Commercial Code	27
4.4. CSR under Labour and Related Social Protection Laws.....	30
4.4.1. The Labour Proclamation	31
4.4.2. The Disabilities Employment Proclamation.....	35
4.4.3. The Social Health Insurance Proclamation	36

4.4.4. The Private Employees' Pension Proclamation.....	36
4.5. CSR Under Environmental Laws of Ethiopia.....	39
4.6. CSR Under Mining Operations Proclamation.....	46
4.7. CSR under Trade Competition and Consumer Protection Proclamation.....	48
4.8. CSR under the Investment Proclamation	53
4.9 CSR under Anti-Corruption, Procurement, Tax, Lawyering Laws and Public Loan Policy	56
4.10. Analysis of the Hypothesis in Light of Findings.....	58
CHAPTER FIVE	60
5. CONCLUSIONS AND RECOMMENDATIONS	60
5.1 Conclusions	60
5.2. Recommendations	63
Bibliography	64

Abstract

The understanding that businesses are created and operate for the sole economic profit of their investors and undertaking social responsibilities is state duty has been challenged so long. As a sovereign, states' role to design the role corporations should play in society is usually recognized. The strength of legal intervention of states depends on the theoretical understanding, political ideology and political-economic policy in the pertinent state. The states' primary instrument to shape CSR is the law. Legal regulation envisages the way the state needs to channel the social behavior of businesses. States' regulation objective may be achieved in direct mandating, facilitating, incentive or simple recognition modalities to promote and enforce CSR. There are some common standard contents and considerations on how rigorous legal regulation of CSR should be. Also there are some International Guiding Principles on possible legally provided CSR contents like UNGC, OECD principles, ILO Declaration on Fundamental Principles and Rights at Work, International Human Rights and Environmental Laws, ISO standards etc. Simple regulation may not bring the desired conduct by businesses and institutions to bind, administer, monitor, promote and give effect the laws are necessary. Based on this background, the paper critically analyzes the Ethiopian policy, legal, institutional landscape and their practice. To achieve the objectives of the paper, an extensive and critical examination of Ethiopian laws, policies, binding court decisions and relevant literature review is made. Purposively sampled interviews and personal observation are also employed. Based on the analysis of the data so collected and predetermined hypothesis, it is found out that Ethiopian CSR regulation is getting more and more rigorous from time to time and currently, compared to International Guiding Principles, basically almost all the possible contents are covered under Ethiopian laws mixed in different modes. However, while the constitution resembles state-centric in aligning social responsibilities, CSR contents are scattered in different pieces of legislations, policies depending on the theme of regulation. Some laws contain the same CSR ideas redundantly. The trend in the laws and practical assessment data revealed that there are implementing institutions. However, the institutions are bestowed with duplicated mandate and chaotic miscommunications are observed in enforcing the laws. Also the enforcement is suffered from other limitations like inaccessibility, financial and man power incapacity, corruption etc. Besides, to back the regulatory enforcement, general public interest litigation against irresponsible business behavior doesn't exist despite the existence of the legal ground in Ethiopia. So, the paper concluded for the adequacy of pro-CSR legal framework in line with International Legal Framework and Guiding Principles with implementing institutional setups though the implementation of these laws is found poor due to various reasons.

Key words: CSR, regulation, pro-CSR law, Ethiopia, implementing institutions, business.

CHAPTER ONE

1. PROPOSAL OF THE STUDY

1.1. Background of the Study

The principal drive of corporations is securing profit to their owners leaving the fulfillment of common political, economic and social interests to states.¹ That is in consonant with the shareholders' view that the purpose of businesses is to enrich their investors in returns.² It is counter-argued that businesses should have concerns for the well-being of the society in which they operate.³ As businesses are with the resources, consequent various social responsibilities and expectations are attached to them emanating from the law, ethics, image-building, moral, stakeholders' pressure or religious teachings.⁴

Unlike the state with social, general economic, environmental and political charge to design common good to all, businesses emphasis on financial earnings though they affect the common good.⁵ Such situation requires governments to extend social responsibility to businesses.⁶ This is exercised by incorporating human, social and environmental values into the law to curb businesses' misbehavior and serve general social, environmental and economic justice.⁷

¹ Kell George and Ruggie John, 'Global Markets and Social Legitimacy: The Case of the Global Compact' (Governing the Public Domain beyond the Era of the Washington Consensus? Redrawing the Line Between the State and the Market conference), Toronto, Canada, November 1999). (as cited in UN document available at: <https://www.un.org/esa/socdev/rwss/docs/2001/20%20Corporate%20social%20responsibilities.pdf> (accessed on Dec 4, 2020)

² Milton Friedman, 'the social responsibility of business is to increase its profit' NY TIMES MAG,(Newyork 13 september 1970) 32 <http://www.Rohan.sdsu.edu/faculty/dunnweb/rprnts.friedman.html> (accessed on 21/03/2021.)

³ SF puvimanasinghe, *Foreign Investment, Human Rights, and the Environment: a perspective from South Asia on the Role of Public International Law for Development*, (Maritus Nijhoff Publishers, Leiden Boston, 2007) 34

⁴ Ibid

⁵Renitha Rampersad and Chris Skinner, 'Examining the practice of corporate social responsibility in Sub-Saharan Africa' [2014] VI 723 available at:

file:///C:/Users/hello/Downloads/Examining_the_practice_of_corporate_social_respons.pdf (accessed on 24/7/2021)

⁶ puvimanasinghe, *Foreign...* (n 3)34

⁷ Ibid 28

So, a company's appropriate social role can be framed through state regulation.⁸ Good regulatory and institutional settings are proved to impact business ethics as they provide conceptual foundation of standards, mechanisms and implementing institutions.⁹ Regulatory institutions may oblige corporations to assume CSR requirements as provided by the law.¹⁰ Therefore, how the law affects CSR depends on the state capacity to assure the implementation of its laws.¹¹ Generally, ensuring CSR becomes the primary function of the state in economy.¹² Regulation may be designed in direct coercion or in various pushing and pulling methods that reinforce CSR.¹³

Regarding the aim and contents of legal CSR, some argue that the laws need to impose duties to solve general social problems while others narrowed it to obligations only related to business's self-social impact.¹⁴ There are some international guiding principles on possible CSR legal contents like UNGC, OECD and ILO principles. However, the depth of intervention into the private economy may depend on political-economy ideology and the investment policy in the relevant state.¹⁵

Ethiopians and CSR are said well-suited as we are open towards common values.¹⁶ However, these behaviors are being eroded with the advancing of liberal individualistic way of life that breaks social solidity and social justice.¹⁷ The legal means helps to shift businesses with more social duties as South Africa use CSR legislation to balance ills of economic apartheid.¹⁸

⁸Kenneth D. Walters, 'Corporate Social Responsibility and Political Ideology' [1977] CMR 40

⁹SF puvimanasinghe, 'Foreign...' (n 3) 27

¹⁰ Alan Brejnholt, and others, 'The State and Corporate Social Responsibility: Theorizing the Relationship' [2020] 5 available at: [file:///C:/Users/hello/Downloads/TheStateandCSRaccepted_2%20\(2\).pdf](file:///C:/Users/hello/Downloads/TheStateandCSRaccepted_2%20(2).pdf) (accessed on 18/07/2021)

¹¹ Ibid.

¹² Ibid 4

¹³ Ibid

¹⁴ Antonio Vives, 'Corporate Social Responsibility: The Role of Law and Markets and the Case of Developing Countries' [2008] 83 CKLR 199, 201

¹⁵ Ibid 225

¹⁶ Tesfaye Fentaw, 'Corporate Social Responsibility for Social Dimension of Human Development in Ethiopia: Conceptual Paper' [2018] JCS D 25

¹⁷ Kefale Aschale, 'corporate governance regulation in Ethiopia and its impact on Ethiopia's global doing business

One research concluded that since the company law does not take stakeholders' interests into account, Ethiopia adopted the shareholders' model.¹⁹ Another study claimed that the nation lacks institutional structures to monitor the implementation of CSR and advocated for stronger legal, policy, and political assurance to curb enterprises' negative behavior and offer CSR incentives.²⁰ Also, Tasew characterized Ethiopia's CSR regulation as 'essentially unregulated or at least inadequately and scattered with weak enforcement.'²¹

Yet the writer feels that the extent and the way the Ethiopian laws carry CSR-akin ideas are not deeply and comprehensively reiterated. Neither the institutions (as the name and power of the executive institutions frequently reframed, the paper represents connotations up to August 2021, when the body of the thesis is written) designed to implement these laws are comprehensively investigated. Complete and detail studies on the trends of legislative development, institutional framework and their practice to implement pro-CSR laws are not available to date. Thus, to dispel the illusion where Ethiopian legal system falls, it is found worthy to evaluate the reality of the pro-CSR legal features in Ethiopia more inclusively, especially in light of international guiding principles that are supposed to keep businesses discipline.

1.2. Statement of the Problem

There are confusions whether CSR is adequately considered in Ethiopian legal system. Thus, the main research question involves:

- How far, in light of International Guiding Principles of CSR, is CSR regulated by Ethiopian law and what does the institutional framework to implement the laws, if any, and their practice look like?

standing'[blogged 2019] 4 <<https://addisababa.academia.edu/KefaleAschalew>> (accessed on 21/05/2021)

¹⁸ Renitha Rampersad and Chris Skinner, 'examining... (n5) 723, 729

¹⁹ Zelalem Fekadu, 'Shareholder or Stakeholder Model of Corporate Governance; Which One Should Ethiopia choose?' [unpublished, LLM thesis in AAU school of law, 2016]1, 60

²⁰ Birhanu Moltot, 'Corporate Social Responsibility Practices, Determinants and Challenges: Theoretical and Empirical Lesson for Effective and Successful Engagement' [2018] JIM 157, 162.

²¹ Tasew Abteu, 'Approaches to Regulating Corporate Social Responsibility in Ethiopia: the Case of Manufacturing Industries' [unpublished, LLM thesis, AAU school of law, 2021]1, 50

1.3. Scope of the Study

The study focuses on all privately established companies under Ethiopian company law. It also includes Foreign Private Companies investing in Ethiopia.

1.4. Objective of the Study

The primary focus of this work will be uncovering the regulation of CSR in Ethiopia, evaluated in light of pertinent International Guiding Frameworks, with a view to expounding a legal issue in which there may be a gap/excess in the law. Ethiopian CSR regulation will be critically evaluated with reference to trend of legislative development and institutional setup for implementation and their practice.

1.5. Methodology

The research opted for qualitative approach. So, it tries to resolve the research questions by analysis of collected data from books, reviews, laws, policy, court decisions, working manuals and standards to implement pro-CSR laws, implementation reports and interview results etc. Accordingly, the researcher reviewed how the issue is regulated in a wide variety of Ethiopian laws. International Conventions, Principles, Guidelines will be examined in comparison. Interview based on purposive sampling is administered as it is found appropriate to get information on institutions and personnel charged with implementation of the pro-CSR laws; and researcher's personal observations are included with clear indication therein. The approach in delimiting the Ethiopian laws as pro-CSR is determined by the contents of subject matters under the International Legal Instruments to promote CSR and the legal objectives that increase burden on businesses economically or procedurally to serve CSR.

1.6. Significance of the Study

The study would be valuable for its knowledge-sake as to how CSR is handled under Ethiopian law giving lights for future policy directions particularly in the investment sector. It is also expected to be too important to academicians, business community, NGOs and public-concerned litigants against business irresponsibility. The importance may be levered due to such comprehensive legal study, with different conclusion, has not yet been produced as to researcher's knowledge.

1.7. Limitations of the Study

The main problems the writer faced include lack of comprehensive and compiled data on institutional practice of implementing pro-CSR laws; and dispersed and office-time unavailable interviewees coupled with bureaucratic encumbrance to collect data from government sources vis-a-vis the researcher's limited research time.

1.8. Organization of the Study

The research has five chapters. The proposal of the study constitutes Chapter One. Chapter Two is allocated to literature review. Here the notion, history, underlying theoretical underpinnings, ideological and legal aspects of CSR would be discussed as a general background. Chapter Three reveals how the concept is framed under the International Legal Instruments and Guiding Principles. Chapter Four deals with CSR in Ethiopian Policy, Legal and Institutional Framework to implement-analyzed in light of the general concept under Chapter Two and International Framework under Chapter Three. And finally, Chapter Five presents concluding remarks with recommendations.

1.9. Hypothesis

At the end of the study, the thesis is expected to assert one of the following four scenarios of the hypothesis.

Hypothesis	Scenarios	Adequacy of Ethiopian legal framework in light of international legal framework and guiding principles and general CSR aims	Ethiopian institutional setup to implement the pro-CSR law and monitor business compliance	The implementation practice by the institutions
	1.	Adequate	Good	good
	2.	Adequate	Good	poor
	3.	Adequate	Poor	poor
	4.	Inadequate	Poor	poor

CHAPTER TWO

2. THE NOTION, HISTORY, UNDERLYING THEORETICAL UNDERPINNINGS, PHILOSOPHICAL & POLITICAL IDEOLOGY AND LEGAL ASPECTS OF CSR

2.1. Defining CSR

There is no common, enduring, typical CSR idea.²² Some consider ‘social’ as issues like health, education, security etc. which are mainly the state responsibilities and the environment.²³ Others consider ‘responsibility’ connotes accountability for one’s actions while for others CSR refers to good-doing to the general society.²⁴ Some even say that the concept of CSR lacks meaning.²⁵ Others contend that all of the different definitions of CSR are harmonious because they all deal to how organizations affect stakeholders.²⁶

The social responsibility of businesses, according to Archie Carroll, involves the economic, legal, ethical, and discretionary expectations that society has of corporations.²⁷ This definition is broad enough to include legally prescribed responsibilities as CSR. The World Business Council for Sustainable Development (WBCSD) defined CSR as ‘the commitment of businesses to contribute to sustainable economic development.’²⁸ Commission of the European Communities (2006) define CSR as ‘a concept whereby companies integrate social and environmental concerns in their business operations and interactions with stakeholders on a voluntary basis beyond minimum legal requirements and obligations stemming from collective agreements to address societal needs.’²⁹ The term CSR is also used to describe corporations' involvement in

²²Vives, ‘Corporate... (n14) 200.

²³ Ibid

²⁴ Ibid 201

²⁵ Zachary Cheers, ‘The Corporate Social Responsibility Debate’ [A senior thesis, Liberty University, 2011] 5.

²⁶ Ibid

²⁷ AB. Carroll, ‘A three-dimensional conceptual model of corporate social performance’ [1979] AMR 500 available at: <<https://scholar.google.com/citations?user=qMaUAcAAAAJ&hl=en>> (accessed on December 21,2020)

²⁸ Richards Holmes and Philip watts, ‘Corporate Social Responsibility: Making Good Business Sense’ [2000] Geneva, WBCSD, www.wbcsd.org/#!/includes (available on December 21,2020)

²⁹ Commission of the European Communities, ‘Implementing the partnership for growth and jobs: Making Europe a pole of excellence on corporate social responsibility, [2006] 2 available at:

(<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0136:FIN:en:PDF>) accessed on (27/06/2021)

voluntary social endeavors that transcend legal requirements, such as charitable donations, environmental campaigning, and community service.³⁰ The last two definitions consider CSR as a voluntary exercise of businesses beyond the legal minimum settings in clear contradiction to Carroll's definition.

Limiting CSR only to extra-legal activities is criticized for ignoring the progressive integration of voluntary initiatives into legally required standards and obligatory rules.³¹ Such limited CSR definitions would reduce the scope of CSR since it is ineffective in developing nations where regulatory enforcement is the primary means of achieving CSR.³²

The EU revised its definition of CSR expanding it beyond purely voluntary exercise to include firms' accountability to their social impact.³³ It appears to have accepted that legally regulated social and environmental matters as CSR. Countries are also recommended to enhance regulations to further socially responsible business conduct.³⁴

In general, it is believed that the concept of CSR will combine economic, environmental, and social objectives for their mutual advantages.³⁵ Once incorporated into the pro-CSR laws, legal compliance is the least obligation and being socially responsible may be featured even by acting beyond the law.³⁶ For the purpose of this study, CSR is the social and environmental purposes the business is expected to consider including those legally provided and legal compliance is taken as the first and inner circle of responsible business behavior.

³⁰ Cheers, 'the corporate ...' (n25)

³¹ Tom Fox and others, 'public sector roles in strengthening corporate social responsibility: A baseline study' [2002] IED 1

³² Ibid

³³ European commission, 'a renewed EU strategy 2011-14 for corporate social responsibility,' [COM 2011] 681 final

³⁴ Tom Fox and others, 'public...' (n31) 7

³⁵ Ibid

³⁶ Ibid

2.2. The History of CSR

According to sources, social and environmental issues have preoccupied humanity for at least 5000 years back.³⁷ A code was established by King Hammurabi of ancient Mesopotamia that imposed obligations on both businesses and individuals to behave properly and included sanctions for transgressions.³⁸

When the topic of a company's social responsibility was raised and started to be discussed in the early 20th century, the modern concept of CSR evolved.³⁹ The states considered regulation as a means of control and respond for concerns related to the conditions for the workers in the then industries.⁴⁰ In the 1910s and 1920s, trade associations and business school experts took action to demand that firms take the public interest into account. They also used to define industry standards and establish ethical codes of conduct.⁴¹

In the 1950s, businesses started to be viewed as artificial persons with obligations as individuals in the newly forming welfare states.⁴² Both national and international CSR legislations were started to be enacted on social and environmental matters following the demands from the society.⁴³ Despite these efforts, CSR was considered as charitable cost towards the society up until 1960s.⁴⁴

The term CSR was coined as such explicitly for the first time at Harvard University in 1958.⁴⁵ In 1960s and 1970s, corporations' huge bargaining capacity was perceived and this called for

³⁷Isabel Dreveborn and others, 'corporate social responsibility: the legal frame work for CSR' [bachelor's thesis, Jonkoping university 2010] 3

³⁸Ibid

³⁹Ibid

⁴⁰Ibid

⁴¹Marie-Lawrie Djelic and Helen Etchanchu, 'Contextualizing Corporate Political Responsibilities: Neoliberal CSR in historical perspectives' [---] JoBE 13 available at: <DOI10.1007/s10551-015-2879-7> (accessed on 29/9/2020)

⁴²Dreveborn and others, 'Corporate...' (n37) 3

⁴³Ibid 4

⁴⁴Cheers, 'the corporate...' (n25)

⁴⁵Ibid 6.

responsibility to counter and check the latter.⁴⁶ The social movements like civil rights, women's rights, consumers' rights and environmental movements began to demand additional duties from businesses.⁴⁷ In the 1960s, Milton Friedman asserted the negative impacts of CSR.⁴⁸ And in the late 1970s, movements sustained and claimed for ethical and principled businesses.⁴⁹

According to authors on international political-economics, CSR was devised to achieve a balance between liberalization and states' ability to control their own national economies.⁵⁰

2.3. Underlying Theoretical Underpinnings Relating to CSR

2.3.1. Stakeholders' Theory

The stakeholders' theory began in the 1960s but grew in 1984 by Freeman.⁵¹ This theory argues that corporations should serve all who have a stake in the corporation mainly employees, customers, suppliers, and local communities.⁵² The theory doesn't recognize the view that shareholders have an advantaged place in the business.⁵³ Supporters of the theory reasoned that taking care of stakeholders' interest would help corporations to guarantee their persistent success by building goodwill.⁵⁴ To counter stakeholders' theory overregulation argument is usually asserted which provides that the pursuit of CSR would tend to launch more rigorous CSR

⁴⁶S.O Idowu, & S Vertigans (Eds), 'Stages of Corporate Social Responsibility: From Ideas to Impacts,' (as cited in MA Camilleri, 'Corporate Social Responsibility: Theoretical Underpinnings and Conceptual Developments Heidelberg, Germany [2016] 99-122 available at: https://link.springer.com/chapter/10.1007/978-3-319-43536-7_5 (accessed 15/7/2021)

⁴⁷ Ibid

⁴⁸ Cheers, 'the corporate...' (n25) 6

⁴⁹ MA Camilleri, 'Corporate Social Responsibility: Theoretical Underpinnings and Conceptual Developments Heidelberg, Germany [2016] 99-122 available at: https://link.springer.com/chapter/10.1007/978-3-319-43536-7_5 (accessed 15/7/2021)

⁵⁰ Maria Gjolberg, 'the Political Economy of Corporate social Responsibility,' [ISSN 1504-3991 dissertation for phd in political science, 2011]

⁵¹ Kolis Karel and Kubicek Ales, 'Role of Customers in Stakeholders: Approach in Company Corporate Governance', [2012] WASET 12

⁵² Guosong Shao, 'Toward a Stakeholder Model of Corporate Governance: Evidence from U.S Media Companies, [Unpublished, University of Alabama, Alabama 2009] 1

⁵³ Ibid

⁵⁴ Cheers, 'the corporate...' (n25) 8

regulations which in turn pose challenges for undeveloped nations to compete in investment promotion and attraction.⁵⁵

2.3.2. Legitimacy Theory

The legitimacy theory is an extended extreme idea of stakeholders' theory and it claims that corporations have implied social contracts with stakeholders.⁵⁶ Since the society and corporations are not exclusive, rather mutually beneficial to each other, corporations legitimize their successful existence by fulfilling the needs of stakeholders.⁵⁷ Accordingly, as corporations have the resources, they are expected to engage in CSR.⁵⁸ This theory concurs with *the social contract theory* which examines a theoretical foundation for analyzing social relations between corporations and society.⁵⁹

2.3.3. Shareholders' Theory

According to shareholders' theory, maximizing the long-term shareholders' wealth is the mission of businesses.⁶⁰ The shareholders have invested and expect the firm's return; thus found inappropriate to expend shareholders' money for social causes.⁶¹ Steve Milloy advocated that managers are employed to run owners' business and fetch profit not to act like a state or a charity organization.⁶² His argument compliments the reasoning of Adam Smith and Milton Friedman, who argued that the very essence of business is wealth-maximization.⁶³ Whatsoever the reason, this theory insists on the incorrectness of being lavish with owner's money.⁶⁴ Friedman considered CSR as a tax imposed upon shareholders mandatorily.⁶⁵ The shareholders' idea is

⁵⁵ Ibid 10

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid 8-9

⁵⁹ Sintayehu Tilaye, 'The Current Practice of Corporate Social Responsibility in Ethiopia on Hilton Hotel' [2019] IJSW 45, 56

⁶⁰ Friedman, 'the social...' (n2) 14

⁶¹ Ibid

⁶² Steve Milloy, (as cited in Cheers, 'the corporate...' (n25) 8

⁶³ Ibid

⁶⁴ Ibid 14-15

⁶⁵ Ibid 19

criticized for putting a focus on short-term profit while neglecting businesses' impact, unfair stakeholder treatment and corporate misbehavior.⁶⁶

2.4. CSR Strategies

CSR strategies refer to the alternatives to respond to the demands and/or expectations of the society in relation to CSR. There are four well-accepted CSR strategies; namely reactive, defensive, accommodative, and pro-active.⁶⁷ Reactive strategies are passive approaches where CSR beliefs are not accepted and are not the norm in practice unless required by law, whereas defensive strategies only concentrate on regulatory compliance. While proactive businesses are the primary players and proponents of CSR and establish it in advance as the industry norm, an accommodating strategy embraces CSR as a set of internalized principles.⁶⁸

2.5. The Relationship Between CSR with Moral Philosophies and Political Ideologies

2.5.1. Moral and Justice Philosophies Relating to CSR

There are viewpoints on issue of the moral role of corporations in society, where authors construct for and against arguments regarding how business need to be conducted.⁶⁹ The moral philosophers such as Kant and Locke fundamentally critique power and domination in favour of emancipation.⁷⁰ By coordinating the rights and obligations of the various social actors, social and distributive justice theories also aim to achieve fairness.⁷¹ According to Rawls, socio-economic disparity leads to injustice.⁷² He views justice as such based on its function in distributing social benefits based on rights and obligations.⁷³ While Aristotle and Rawls favored distributive justice through the social contract, Rawl further questions one's enrichment through exploiting another

⁶⁶ Ibid 19-20

⁶⁷ Fuming Jiang and Others, 'Mapping the Relationship between Political Ideology, CSR mindset, and CSR Strategy: A contingency perspective applied to Chinese managers' [2015] JBE 10

⁶⁸ Ibid

⁶⁹ Gjolberg, 'the political...' (n50)14

⁷⁰ puvimanasinghe, 'Foreign...' (n 3)35

⁷¹ Ibid 36

⁷² J. Rawls, *A Theory of Justice*, (Clarendon Press, Oxford, 1972) 3 & J. Rawls, *Justice as Fairness:(A Restatement*, Belknap Press, Massachusetts, 2001) 10 available at: <file:///D:/CSR%20thesis/references/RAWL-%20theory%20of%20justice.pdf> (accessed on 18/7/2021)

⁷³ puvimanasinghe, 'Foreign...' (n 3)33

or depriving the latter of what he deserves.⁷⁴ Kant underlined that it is morally required to have respect for everyone and to form legal relationships with all.⁷⁵ Antonio Vives also argued that the company may be private in that it is owned by private individuals, but it does not necessarily operate only within the domain of its members and it does have public duties.⁷⁶

CSR is conceived as a rational for doing good by Neo-classical economists.⁷⁷ Humanist economist Amartyas Sen. holds that ‘development is a route of increasing the real freedoms that human beings enjoy, enabling them to realize their potential, build self-confidence, and lead lives of dignity.’⁷⁸ She argued that since unrestrained free trade and investment may not always serve the public interest and human welfare, businesses should be governed effectively to serve the general interest.⁷⁹

On the contrary, Rousseau argued for the existence of social contract only between the thesociety and the government.⁸⁰ This approach is against the concept of CSR as it clearly assigns social responsibilities to the state. Adam Smith’s assertion on the role of government echoes this stance by saying:

*The third and last duty⁸¹ of the sovereign is that of erecting and maintaining public institutions and those public works, which, though they may be in the greatest degree advantageous to a great society, are, however, of such a nature the profit could never repay the expense to any individual or small number of individual, which it therefore cannot be expected that any individual or small number of individuals should erect or maintain.*⁸²

⁷⁴ Ibid

⁷⁵ Ibid, kant’s *imperative theory* is also available at: <https://plato.stanford.edu/entries/kant-moral/> (accessed on 18/7/2021)

⁷⁶ Vives, corporate... (n 14) 208

⁷⁷ Camilleri, Corporate... (n 49) 99

⁷⁸ A. Sen, *Development as Freedom*, (Anchor Books, New York, 2000) 36

⁷⁹ puvimanasinghe, ‘Foreign...’ (n 3) 27

⁸⁰ Jeans-Jaques Raussaou, *the social contract*, (penguin publishers, 2006), first published in 1672, (as cited at Ibid)

⁸¹ The first two duties are national defense and administration of justice.

⁸² Adam smith, *an inquiry into the nature and wealths of nations*, S.M. Soares (eds), (metalibri lausane 2007) 559

2.5.2. Major Political-Economy Ideologies Relating to CSR

2.5.2.1. Liberal-Democratic States and CSR

CSR is usually related to the neo-liberalism as it is argued its development is aligned with an effort to strike a balance between free trade and states' authority to regulate its economy.⁸³ CSR is seen as an economic-political project in that it suggests regulation of corporate social and environmental conduct.⁸⁴

The Neo-liberal ideology provides that the state should have only a supportive and minimal regulatory role letting private freedom and thus urging voluntary character of CSR.⁸⁵ However, this stance is critiqued as the businesses are getting to contend the power of nation-states even by assuming political role.⁸⁶ Such states, as illustrated by US and UK, are characterized for having a strong institutional environment, high pressures from NGOs and stakeholders.⁸⁷

2.6.2.2. Social-Democratic Welfare-States and CSR

Social-democrat welfare-states are known for their active involvement in social and environmental policy issues through state regulation and corporatist arrangements.⁸⁸ The state does not intervene only if the social partners find a negotiated private solution.⁸⁹ It is characterized by low pressure from stakeholders, well-developed institutional environment and capable and willing state to legally mandate CSR standards whenever CSR cannot be achieved through arrangements between the social partners.⁹⁰

2.5.2.3. Socialist State and CSR

Socialist states support CSR strongly.⁹¹ Collectivism, class avoidance, anti-capitalism, economic wellness of the mass proletariat, and direct government regulation of social services are all

⁸³Gjolberg, 'the political...' (n 50)18

⁸⁴ Ibid 20

⁸⁵ Marie-Lawrie Djelic and Helen Etchanchu, 'contextualizing...' (n40) 14

⁸⁶ Ibid 2

⁸⁷ Brejnholt, and others, 'The State ...' (n 10)8

⁸⁸ Gjolberg, 'the political...' (n 50) 58

⁸⁹ Brejnholt, and others, 'The State ...' (n 10)6

⁹⁰ Ibid 7

⁹¹ Fuming Jiang and others, 'Mapping' (n67) 56

promoted by socialists.⁹² For example, Chinese socialist ideology advocates social-ownership of the means of production and co-operative management of the economy to serve the needs of the entire society.⁹³

2.5.2.4. Developmental State and CSR

Under developmental state enhancement of social policy in CSR is pursued through the involvement of the state itself directly or indirectly.⁹⁴ Firms are oriented to become more closely associated with public goals than in the regulatory state and take CSR as a means to outsource public functions to businesses.⁹⁵ Developmental states have a general tendency to engage in private spheres through ownership, partnerships, protection and pro-social investors subsidization; and are featured by strong institutional capacity to implement CSR- e.g. South Korea.⁹⁶

However, there are disagreements on CSR even in a similar political ideology.⁹⁷ For example, while business freedom is the essence in liberal economy, still CSR is seen as a neo-liberal agenda. CSR is also one essence of business in social-democratic, socialist and developmental states.⁹⁸ Thus there are assertions that the idea of CSR is uniting.⁹⁹ Thus, the variation seems to lay on the means and no longer about commitment to CSR.¹⁰⁰

2.6. The Relationship between CSR and the Law

2.6.1 The Impact of Government Ideology and Policy on Pro-CSR Laws

Political and regulatory processes are highly related with CSR. For example, a political-economic ideology and institutional set up of the implementing actors need to be considered in

⁹² Ibid 10

⁹³ Ibid 7

⁹⁴ Brejnholt and others, 'The State...' (n 10)9

⁹⁵ Ibid

⁹⁶ Ibid 9-10

⁹⁷ Kenneth D. Walters, 'Corporate...' (n 8)40

⁹⁸ Gjolberg, 'The Political...' (n 50)59

⁹⁹ Ibid

¹⁰⁰ Steve Milloy, (as cited in Cheers, 'the corporate...' (n 25)8

CSR regulation.¹⁰¹ It is acknowledged that CSR policy is the outcome of compromise between interested parties based on their advantages and political ideologies.¹⁰² It appears that this is the reason CSR is envisioned as an economic political endeavor that necessitates taking power, ideology, and stakeholders in one's sovereign politics into consideration.¹⁰³

Ideology and moral philosophy influences CSR in two ways. One by the inclination from the government in which case the latter would adopt pro-CSR laws and the other is through the ideological alignment of corporates' managers.¹⁰⁴ For example, the 1970s were characterised by dissent against capitalism with the growing of social demands that in turn calls for state regulation.¹⁰⁵ From the above assertions, we can grasp that the law is a reflecting instrument by which the government crystalizes its political ideological, policy aspiration and general principles into concrete norms to bind the practice.

2.6.2. The Law as a Determining Factor of CSR

As stated above the law is a standard setting instrument to human behavior. It is asserted that, ideally, legislation would not be necessary since managers would be required to uphold rigorous ethical standards.¹⁰⁶ Nevertheless, as human want is unlimited vis-à-vis limited resources, businesses may tend to ignore discipline in favour of high profit; and as self-markets regulation cannot bring the desired result; it necessitates state regulation of business in socially responsible manner.¹⁰⁷ Since a corporation is self-centered and hesitant to common purposes, state regulation should channel its behavior. Therefore, CSR goals are to be achieved through the means of state regulation.¹⁰⁸

¹⁰¹ Gjolberg, 'The Political...' (n 50)62

¹⁰² Ibid 67-68

¹⁰³ Ibid

¹⁰⁴ Marie-Lawrie Djelic and Helen Etchanchu, 'Contextualizing...' (n 40) 4

¹⁰⁵ MA Camilleri, 'Corporate...' (n 49) 99

¹⁰⁶ Vives, 'Corporate...' (n 14) 210

¹⁰⁷ Ibid

¹⁰⁸ puvimanasinghe, 'Foreign...' (n 3) 27

The law determines CSR by envisaging the idealistic goals, tools and institutional structures, all apparatuses in its realization.¹⁰⁹ Avoiding or reducing negative impact of business is a legal exercise and failure of which can be called a legal gap. However, mandatory legal regulation can be derived from business self-initiated CSR idea through the process of CSR “juridification”.¹¹⁰

The relationship between state regulation and CSR is found parallel because stronger regulation is proved to strengthen CSR practices since it sets expectable methods, results, checking and accountability mechanisms.¹¹¹ Most international principles related to CSR also regard the legislative measure as the main vehicle to achieve the purpose they stand for. For example, States are expected to protect human rights from abuse by business enterprises ... through *effective policies, legislation, regulations*.¹¹² However, it is not proper to assert that regulation is the sole factor of CSR as, for example in Nigeria, regulation contributes only 31% to enhance CSR.¹¹³

Regulations need to be adjusted to the unique circumstances in the relevant state in terms of their application and their impact on the overall common good.¹¹⁴ In developing countries, the trend to regulate and implement pro-CSR laws is poor and reactive trying to rectify a social defect instead of acting proactively.¹¹⁵

2.7. Legal Approaches to Regulate CSR

The law may choose to address different CSR themes by using any one or a combination of various mandatory, facilitating, partnering, and endorsing tools.¹¹⁶ These approaches are discussed herein below.

¹⁰⁹ Ibid

¹¹⁰ Gjolberg, ‘The Political...’ (n 50) 63

¹¹¹ Cheery, The Corporate... (n 25) 9

¹¹² UN Guiding principle on business and human rights, 2011 s IIA(11)

¹¹³ MA Camilleri, ‘Corporate...’ (n 49) 727

¹¹⁴ Ibid

¹¹⁵ Vives, ‘Corporate...’ (n 3) 221-222

¹¹⁶ Tineke Lambooy, ‘Legal Aspects of Corporate Social Responsibility’ [2014] UJIEL 30

2.7.1. Mandating

This approach refers to the cases whereby a binding order and monitoring approach in regulating CSR i.e. an unwanted behavior is identified and that behavior would then be prohibited by the law.¹¹⁷ In legal mandating approach to CSR, the law sets mandatory minimum standards to be observed by businesses.¹¹⁸

2.7.2. Facilitating

In its facilitating role to CSR, the law incentivizes companies to involve in CSR and its role is limited to a catalytic or supporting role by funding researches or by campaigning, training, or awareness creating etc.¹¹⁹ It can also be designed to encourage voluntary based product-labeling schemes; development of guidelines for company CSR or encourage pro-CSR businesses in the government procurement.¹²⁰ Subsidies or tax cuts for companies engaging in CSR can also be other legally provided incentives in facilitating approach of the law.¹²¹

2.7.3. Partnering

This approach refers to the legal approach that empowers state and stakeholders to work with businesses. The law designs the ways how the skills and resources of the state, stakeholders, businesses and even civil society come together to pursue CSR purposes.¹²²

2.7.4. Endorsing

This approach is just about states' encouragement of companies taking CSR through praise in several forms, including demonstration, public procurement, simple recognition, awarding, mentioning in official speech while shaming irresponsible businesses.¹²³

2.8. The Aims and Contents of Pro-CSR laws

Drawing pro-CSR laws enables companies to know what is expected of them and it creates a level playing field.¹²⁴ It also enables the beneficiaries of the pro-CSR laws to claim their legally-

¹¹⁷ Vives, 'Corporate...' (n 14) 211

¹¹⁸ Fox and others, 'Public...' (n 31) 3

¹¹⁹ Ibid 3-4

¹²⁰ Ibid

¹²¹ Brejnholt, and others, 'The State...' (n10) 2

¹²² Fox and others, 'public...' (n31) 5

¹²³ Ibid 6

¹²⁴ Ibid

stated CSR rights by asserting the legal basis of their claims.¹²⁵ The reasons and contents of CSR depend on particular state context, culture; and may even revolve with time.¹²⁶ According to sources, the following aims are mostly common to determine the contents in crafting pro-CSR laws.¹²⁷

- ❖ Controlling labour related issues like safety and welfare of employees like working conditions, child labour, capacity building, social security, anti-slavery etc.;
- ❖ Caring for the interest of creditors, suppliers, local community to smoothen the company-society relationships;
- ❖ Protecting commercial transactions, fair competition and consumers;
- ❖ Protecting human rights;
- ❖ Protecting the environment from any pollution or adverse impact;
- ❖ Ensuring company contribution to national development goals or enhancing a country's power in the international system;
- ❖ Securing technology transfer and local economy bondages;
- ❖ Guiding limited public loan and procurement process based on CSR criteria;
- ❖ Encouraging investment in marginalized areas;
- ❖ Punishing corrupt business behavior;
- ❖ Establishing corporate accountability based on principles of company law;

2.9. The Considerations on How Rigorous CSR Regulation Should Be

Arbitrary legal intervention detracts investment attraction and business expansion.¹²⁸ Unreasonably intricate laws are also difficult to understand and enforce effectively.¹²⁹ Conversely, legal lacuna may enable the businesses to evade their share of responsibility towards public purpose. Thus, a proper mix of balance of responsibilities needs to be struck between businesses' interest and social purposes.¹³⁰ Therefore, in launching pro-CSR laws, the interest of

¹²⁵ Cheers, 'the corporate...' (n24)11

¹²⁶ Vives, 'Corporate...' (n14) 201

¹²⁷ Fox and others, 'Public...' (n31) 20-23

¹²⁸ Ibid 26

¹²⁹ Vive, 'Corporate...' (n14) 211

¹³⁰ Ibid 212

a business need to be fully considered as it enables the primary purpose of businesses to remain intact while they are oriented in a pro-CSR way.¹³¹

The state capacity and cost-effectiveness of enforcing pro-CSR laws is another main theme in crafting the laws; and regulations are advised to be applied restrictively to those areas where laws can be effectively and efficiently implemented.¹³²

The expected effect of the laws on the general goodness of the relevant society should also be fully assessed in enacting pro-CSR laws.¹³³ For example, feasibility study should be done if some environmental deterioration and child labour may be tolerated in cases when the advantages of doing business to improve the general life outweighs.¹³⁴ Also labour conditions may have to be sacrificed to get mandatory participation in social services like education and health etc.¹³⁵

The foreign investment attraction policy needs typical consideration in drawing pro-CSR laws. For example, in developing countries, setting the aim of inspiring a larger foreign private capital inflow while, simultaneously, designing ways to secure the merits of such capital to contribute to the state's growth should be analyzed.¹³⁶ To get the best advantage out of regulation, prioritizing different national interests is also important during CSR regulation.¹³⁷

Other concerns that have to be necessarily considered in proclaiming pro-CSR laws include the social, cultural, economic and political conditions of a country.¹³⁸ Understanding the political-economic institutions is necessary to take the suitable regulatory approaches like incentivizing or

¹³¹ Ibid 219

¹³² Ibid 212

¹³³ Ibid 222

¹³⁴ Ibid

¹³⁵ Ibid

¹³⁶ Gerald M. Meier, 'Legal-Economic Problems of Private Foreign Investment in Developing Countries' [1966]UCLR 476

¹³⁷ Fantaye kassa, 'the status of corporate social responsibility in Ethiopia' [2018] EJBME 4

¹³⁸ Birhanu, 'corporate...(n20) 163

mandating corporate social responsibility.¹³⁹ States should also consider the prevailing national and international laws to avoid conflict of laws and ensure relative certainty across countries.¹⁴⁰

The exploration of different CSR regulations during this study also reveals that the type of business/goods/services subject to regulation is another consideration in enacting pro-CSR law, for example, if the impact the goods/services pose towards the society is high, it may deserve more stringent regulation than other basic goods.

¹³⁹ Gjolberg, 'The Political...' (n50) 68

¹⁴⁰ UN Guiding principle on business and human rights, 2011 s IIA(11) 6 commentary part

CHAPTER THREE

3. CSR IN INTERNATIONAL LEGAL INSTRUMENTS AND INTERNATIONAL GUIDING PRINCIPLES

Despite the fact that most of the international guiding principles are non-binding, they attain international authoritative power in moral weight and stakeholders' demand for compliance.¹⁴¹ Most of these CSR agenda are largely shaped by MNCs, consumers, investors, and governments based in industrial countries.¹⁴² Below are the main international legal instruments which have direct relation with CSR:

3.1. UN Global Compact (UNGC)

A set of basic values in the areas of human rights, labor standards, the environment, and anti-corruption are demanded of businesses by the UNGC.¹⁴³ It is a non-binding document that has gained widespread support and is derived based on the UDHR, the Rio Declaration on Environment and Development, the ILO's Declaration on Fundamental Principles and Rights at Work, and the UNCAC.¹⁴⁴

The first two principles of UNGC are devoted to responsibility of businesses towards human rights. In that businesses are required to support and respect the protection of internationally proclaimed human rights;¹⁴⁵ and make sure that they are not complicit in human rights abuses.¹⁴⁶ It has long been a standard of conduct for all corporations, wherever they may operate, to respect human rights.¹⁴⁷ The compact is also intended to call for extra attention to be taken to protect the

¹⁴¹ Vives, 'corporate...(n14) 215

¹⁴² Fox and others, 'Public... (n31) 25

¹⁴³ The UN Global compact ten principles, available at: https://www.freudenberg.com/fileadmin/downloads/english/The_UN_Global_Compact_principles.pdf (accessed on July 3, 2021)

¹⁴⁴ Ibid

¹⁴⁵ Ibid 1

¹⁴⁶ Ibid 2

¹⁴⁷ UN Guiding...(n140)

rights of vulnerable groups, such as women, children, people with disabilities, indigenous peoples, migrant workers, old people, etc.¹⁴⁸

The compact separately emphasizes labour related responsibilities of businesses. Accordingly, four principles are allocated which require businesses to uphold the freedom of association and effective recognition of the right to collective bargaining;¹⁴⁹ elimination of forced and compulsory labour;¹⁵⁰ abolishment of child labour;¹⁵¹ and elimination of discrimination.¹⁵² In the environmental dimension of CSR, the compact urges businesses to take a precautionary approach to environmental challenges;¹⁵³ undertake initiatives to promote greater environmental responsibility;¹⁵⁴ and encourage the development and diffusion of environmentally-friendly technologies.¹⁵⁵ Finally, under principle ten, the compact states businesses should work against corruption in all its forms. The compact seems to view the concept of responsible businesses broadly including anti-corruption-often less treated theme in CSR.

3.2. OECD Principles of Corporate Governance

The OECD also published non-binding principles of corporate governance.¹⁵⁶ CSR affiliated ideas are summarized as the following:

The principles adhere to the interests of employees, other stakeholders, environment, anti-corruption or ethical concerns.¹⁵⁷ They also focus on labour rights and call for effective legal framework and enforcement to protect creditors.¹⁵⁸ Thus, besides commercial objectives,

¹⁴⁸ UNGC...(n143)

¹⁴⁹ Ibid 3

¹⁵⁰ Ibid 4

¹⁵¹ Ibid 5

¹⁵² Ibid 6

¹⁵³ Ibid 7

¹⁵⁴ Ibid 8

¹⁵⁵ Ibid 9

¹⁵⁶ OECD, *Principles of Corporate Governance* [OECD Publishing, Paris, 2015] 57
available at: <http://dx.doi.org/10.1787/9789264236882-en> (accessed on 20/04/2021)

¹⁵⁷ Ibid

¹⁵⁸ Ibid Principle IV

companies are also encouraged to disclose information, policies and performances relating to business ethics, environment, social, human rights and other public policy commitments.¹⁵⁹

Board members of a company are also required to deal fairly with, stakeholder interests including those of employees, creditors, customers, suppliers and local communities and observe environmental and social standards.¹⁶⁰ Companies are also well advised to comply with applicable laws, regulations, and standards, including statutes criminalizing the bribery of public officials, as required under the OECD Anti-Bribery Convention, laws on securities, competition and work and safety conditions, taxation, human rights, the environment, fraud, and money laundering.¹⁶¹

3.3. OECD Guidelines for Multinational Enterprises

The guidelines intend to provide non-binding principles and standards for responsible business conduct in a global context consistent with internationally recognized standards.¹⁶² They aim to promote pro-active and constructive contributions of enterprises by fulfilling their duties in the areas of human rights, employment relationships, environment, anti-corruption, consumer interests, competition, science and technology and taxation.¹⁶³

This document incorporated detailed and comprehensive CSR-akin points.¹⁶⁴ Accordingly, a company is expected to positively contribute to economic, environmental, human rights and social progress with a view to achieving sustainable development in the areas of its operations.¹⁶⁵ The guideline also requires companies to build local capacity through close co-operation with the local community, and act in sound commercial manner.¹⁶⁶ Creating employment opportunities and facilitating training opportunities for employees;¹⁶⁷ refraining from looking for or gaining

¹⁵⁹ Ibid Principle V

¹⁶⁰ Ibid Principle VI

¹⁶¹ Ibid

¹⁶² OECD, *OECD Guidelines for Multinational Enterprises*, [OECD Publishing 2011]

¹⁶³ Ibid 4

¹⁶⁴ Ibid 19

¹⁶⁵ Ibid s I(A)(2)

¹⁶⁶ Ibid s I(A)(3)

¹⁶⁷ Ibid s I(A)(4)

illegal exemptions are also required from the companies.¹⁶⁸ In addition, companies expected to manage themselves in a way that promotes confidence and mutual trust with the societies in which they operate.¹⁶⁹ Engaging and supporting multi-stakeholder initiatives and social dialogue on responsible supply chain management while ensuring that these initiatives consider the social and economic effects on developing countries is charged against MNCs.¹⁷⁰

3.4. Human Rights Laws

Businesses have an obligation to respect all internationally recognized human rights since they can have an impact on them.¹⁷¹ Enterprises should uphold human rights always and everywhere, regardless of their size, industry, operational setting, ownership, or organizational structure and states' inability or unwillingness to uphold human rights duties does not absolve businesses of this duty.¹⁷²

In all cases, businesses are required to refer to the internationally recognized human rights expressed in the International Bill of Human Rights, consisting of the UDHR, ICCPR, ICESCR, and the principles concerning fundamental rights set out in ILO Declaration on Fundamental Principles and Rights at Work etc.¹⁷³ Businesses may need to take into account additional requirements for particular groups that need special consideration, such as the rights of indigenous peoples, women, nationalities, and members of minority religious and linguistic communities, as well as children and people with disabilities.¹⁷⁴

3.5. Environmental laws

Businesses should also take into account the need to safeguard the environment, public health, and safety, as well as the general requirement to conduct their operations in a way that supports the broader objective of sustainable development.¹⁷⁵ To this end, they are advised to act within

¹⁶⁸Ibid s I(A)(5)

¹⁶⁹Ibid s I(A)(7)

¹⁷⁰Ibid s I (B)(2)

¹⁷¹ UN Guiding...(n140) commentary part

¹⁷² *OECD Guidelines...*(n162) 31-32 see also UN Guiding...(n140)s II (A) (11)

¹⁷³ *OECD Guidelines...*(n162) 32 commentary part

¹⁷⁴ Ibid 12-14

¹⁷⁵ *OECD Guidelines...*(n162) s VI

the framework of domestic laws, regulations and administrative practices of the host country and should consider the relevant international agreements, principles, objectives, and standards.¹⁷⁶ The principles and objectives are contained in the Rio Declaration on Environment and Development, Agenda 21 and the Aarhus Convention on Access to Information, public participation in decision-making, and ISO standards on environmental management systems.¹⁷⁷

3.6. ILO Declaration on Fundamental Principles and Rights at Work

The ILO is a competent organization with a constitutional duty to establish global labor standards, and everyone abides by them.¹⁷⁸ Like the UNGC and international human right conventions, it declares that all nations should uphold the principles concerning the fundamental rights related to the freedom of association and the effective recognition of the right to collective bargaining; eliminate all forms of forced and compulsory labour; effectively abolish child labour; and eliminate discrimination in employment and occupation.¹⁷⁹ The declaration calls for special attention to be given to the problems of persons with special needs.¹⁸⁰

3.7. ISO 26000

The ISO 26000 standards, which were released in 2010 by the International Organization for Standardization, also lay out the tenets and regulations of CSR.¹⁸¹ These standards also offer guidance on implementation methods for companies in a socially responsible way so that companies with ISO certification are expected to act ethically, transparently, and contribute to the societal welfare.¹⁸² The standard deals with seven core issues i.e. standards related to organizational governance, human rights, labour practice, environmental responsibility, the fairness of organizational practices, consumer protection issues and involvement in community development.¹⁸³

¹⁷⁶ Ibid

¹⁷⁷ Ibid commentary part

¹⁷⁸ ILO declaration on fundamental principles and rights at work 1998 preamble

¹⁷⁹ Ibid article 2.

¹⁸⁰ Ibid preamble.

¹⁸¹ ISO, ISO standards and CSR – definition, available at: <https://youmatter.world/en/definition/definitions-iso-26000-standards-csr-definition/> (accessed on July 5/2021).

¹⁸² Ibid.

¹⁸³ Ibid.

CHAPTER FOUR

4. CORPORATE SOCIAL RESPONSIBILITY IN ETHIOPIA: POLICY, LAW, INSTITUTIONS, LEGAL GROUNDS TO PROTECT PUBLIC INTEREST AND THE PRACTICE

4.1. General Background

Ethiopia has made clear in some documents that she has adopted free-market economic policy.¹⁸⁴ But, the country also has a policy and legal ground that the government is justified to intervene in the economy.¹⁸⁵ In some documents, like GTP II, democratic-developmental state is declared as the ideology of the country which justifies direct state involvement in the economy.¹⁸⁶ Some policy and legal justifications to intervene may be attributed to counter irresponsible business conduct in the society.

In this chapter, the thesis critically characterizes Ethiopian law in light of international legal frameworks and guiding principles. The legislative development of pro-CSR laws of Ethiopia with institutional framework to implement such laws will be pursued.

4.2. CSR Under the FDRE Constitution

The FDRE constitution in its preamble declares its strong commitment to advance Ethiopians social development.¹⁸⁷ Under Article 43, it guarantees Ethiopians the right to advanced living standards and sustainable development to enhance citizens' capacity for development. The right to a clean and healthy environment is also enshrined.¹⁸⁸ However, the Constitution doesn't clearly impose any such social obligation on businesses. Rather, it is the state that is imposed with the obligation of furnishing public health, education, and other social services.¹⁸⁹ Allocation

¹⁸⁴Trade Competition and Consumer Protection Proclamation, Proclamation No. 813/2013, Federal Negarit Gazzeta, 20th year, No. 28, Article 3 and preamble & ማስታወቂያ ማኔ ስቴር, የአፈዳሪ የኢንዱስትሪ ልማት እስትራቴጂ, (1994 ዓ.ም) 5

¹⁸⁵ Ibid 44-46

¹⁸⁶ The Growth and Transformation Plan II from 2015/16-2019/20, National Planning Commission, [2015] 1.1.2

¹⁸⁷ FDRE constitution, proclamation No. 1/1995, 1st year, No. 1, preamble.

¹⁸⁸ Ibid, Article 44

¹⁸⁹ Ibid

of means to assist the disabled, aged, children left without parents and increasing gainful job opportunities for citizens is also the duty of the state under the constitution.¹⁹⁰ It is the government who is obliged to respect, protect and enforce basic human rights and freedoms.¹⁹¹ The constitution doesn't demonstrate strong Social Contract theory among business and citizens rather it is state-centric in aligning social responsibilities.

However, some Claw-back clauses limiting some rights like property, freedom of the press, etc. for public interests purposes (for want of responsible exercise) can serve CSR purposes. In addition, Article 93 of the constitution allows the government to derogate the rights of businesses in emergency cases in favour of CSR. For example, the Emergency Proclamation to counter the spread of Corona Virus Proclamation No. 3/2020 and its implementing regulation under article 4 enables the government to take any property from any business or oblige any manufacturer to manufacture what is ordered by the government to curb the epidemic.¹⁹² Also, during this period, businesses were mandated to resume their employment contract while they were in great economic depression.¹⁹³

4.3. CSR under Ethiopian Commercial Code

It is not doubtful that the primary purpose of business in Ethiopia is profit. Article 5 of the old Commercial Code is clear that it is the person who professionally and *for profit* undertakes the listed activities that would be called a trader. Business organizations in their Memorandum of Association and Articles of Association are expected to state their business purposes, the powers of directors and/or managers,¹⁹⁴ which revolves around the commercial activities under article 5. The writer interviewed an official in MoTI if there had ever been inclusion of CSR ideas in such

¹⁹⁰ Ibid

¹⁹¹ Ibid, Article 13

¹⁹² State of emergency proclamation enacted to counter and control the spread of COVID-19 and mitigates its impact proclamation No. 3/2020 and its implementing CoM regulation (2020).

¹⁹³ CoM, extraordinary meeting press release, April 24/2020.

¹⁹⁴ The Commercial code of Ethiopia, proclamation No. 166/1960, Negarete Gazeta Extra-ordinary, 19th year, No. 3, Articles 314 (4), 517 (c)

documents and found they don't look into details on this matter as it is not their concern.¹⁹⁵ However, they should have checked when ensuring that the business objective is legal.

It is argued that there is little space for the participation of stakeholders in company's decision-making in Ethiopia.¹⁹⁶ As per articles 435, 436 and 437 of Commercial Code of Ethiopia, it is only *creditors who* are recognized to have a say on affairs failing company by calling a general meeting of creditors for the effective enforcement of their right. Under articles 364 and 366, the code also provides that directors are liable to the company and *its creditors* excluding other stakeholders. In addition, during bankruptcy, the creditors' rights are the main concerns of the provisions of the code and creditors are allowed to take part through their committee.¹⁹⁷ Thus, next to shareholders, creditors (as stakeholders) have got a better legal standing than other stakeholders to secure their interest against businesses under Ethiopian company law.

Structurally, the code reserves the position of directorship solely to company shareholders.¹⁹⁸ Based on this, Zelalem Fikadu concluded that the shareholders' model of corporate governance is embraced under Ethiopian company law.¹⁹⁹ Besides, CSR is not clearly stated and directors are not empowered to exercise CSR purposes by their own initiations unless empowered in the MoA/AoA and/or ensure consequent shareholders' approval.²⁰⁰

In United Kingdom, only businesses-case CSR activities which are related to business operation recognized as legitimate expenses and any expense incurred outside the business's establishment purpose is *ultra-vires*.²⁰¹ The possibility to involve in CSR thus requires managers to persuade that it is allied to the company's purpose.²⁰² Exercising CSR is challenged by auditing procedure,

¹⁹⁵ Interview with Emebet Asefa, trade registration and licensing coordinator, MoTI, (Addis Ababa, July 2021).

¹⁹⁶ Zelalem Fekadu, shareholder... (n19) 58

¹⁹⁷ Tewodros Miheret, 'an appraisal of Ethiopian bankruptcy regime, [2017] DJLR 111, 125.

¹⁹⁸ Commercial code ... (n194) Article 347.

¹⁹⁹ Zelalem Fekadu, 'shareholder... (n19) 60

²⁰⁰ Alemayehu Yismaw, 'towards effective models and enforcement of corporate social responsibility in Ethiopia' [2020] MLR276, 291

²⁰¹ Simon Goulding, *company law*, (2nd ed. Cavendish publishing limited, Sydney&London, 1999), 157

²⁰² Vives, 'corporate...' (n14) 221

which balances current in-and-out items, disregarding future prospect of the firm.²⁰³ This would hold back managers to pursue CSR fearing accountability for deficit.²⁰⁴ In this respect, legally provided CSRs are objective standards as they constitute legitimate defense for the cost so incurred.

Turning to Ethiopian case, as there is no clear empowerment to directors/managers to expend for CSR in the 1965 Commercial Code, they may be hesitant to involve in CSR as auditors may not recognize the costs as legitimate expenses. The Financial Reporting Proclamation NO. 847/2008 has put it clear that the main purpose of auditing is to reduce *financial crisis, corporate failure and associated economic impacts*.²⁰⁵ Similarly, only financial auditing is required as per Trade Registration and Licensing Proclamation No. 980/2016 article 26 for share companies and private limited companies.²⁰⁶ An interviewee in MoTI replied that they require for financial performance audit just to check whether more than ¼ of its capital is available by observing profit/loss balance.²⁰⁷

A bird's eye view of CSR can be conceived in the Financial Reporting Proclamation No. 847/2008 in that public interest companies defined as 'an entity that is of significant public relevance because of the nature of its business, its size or number of employees, in particular, a company whose securities are admitted to trading in financial institutions and public enterprises'.²⁰⁸ Such companies are subject to auditing mandatorily. This shows that private companies are not essentially private, and are sometimes subject to public scrutiny to protect the employees, creditors and the overall economy in Ethiopia. Besides, this proclamation generally imposes on professional accountancy to discharge these public interest obligations.²⁰⁹ However, there is no express reference to CSR as legitimate cost in this proclamation.

²⁰³ Ibid 205

²⁰⁴ Ibid 204

²⁰⁵ Financial reporting proclamation, Proclamation No. 847/2014, federal negarete gazete, 20th year, No. 84 preamble.

²⁰⁶ Trade Registration and Licensing Proclamation No. 980/2016, Federal Negarit Gazette, 22nd Year, No. 101

²⁰⁷ Interview with Emebet Asafa...(n195)

²⁰⁸ Financial Reporting Proclamation...(n205), Article 2(17)

²⁰⁹ Ibid 27

A better accommodation of CSR is made in the new 2021 Commercial Code as directors are empowered with the discretion to consider the long-term interest of the company, rights of employees, interests of creditors, the impact of their activities on the local community and the environment.²¹⁰ The law seems to have widened the discretion of directors to exercise CSR activities as the newly added considerations are comprehensive enough-fitting CSR themes. Its limitation is argued as exercising CSR is still dependent up on the free will of firms.²¹¹ Yet it is a great departure from its predecessor as it dispels the hesitation towards accountancy of non-profitable acts paving the way for pro-CSR corporate governance.

In addition, observing environmental, health, and quality duties are obligatory during business operation and in specific situations competence assurance is required as prerequisite to register for license under article 26 of the Trade Registration and License Proclamation No. 980/2016. It is observed that 52 kinds of licenses are identified by MoTI as requiring competence assurance from different competence assuring government bodies and license to operate would not be granted unless such assurance is secured.²¹² Such precautions are good steps for proactive CSR strategy from the regulator.

4.4. CSR under Labour and Related Social Protection Laws

Under Ethiopian social protection policy, the government recognizes its obligations under the constitution and international conventions to provide social protection to the vulnerable citizens.²¹³ The policy also aims at different levels of society, civil society and beneficiaries to involve in the process.²¹⁴ However, it doesn't adequately recognize businesses' role in such social protection effort. Thus, it can be safely argued that, like the Constitution, the social protection policy doesn't pay due consideration to the responsibility of businesses in the social protection process. It rather underlines the fact that unemployment and underemployment is a

²¹⁰ New FDRE commercial Code proclamation No. 1243/2021, 27th Year, No. 23, Art. 316

²¹¹ Alemayehu Yigzaw, 'towards...' (n220) 292

²¹² Interview with Emebet Asefa...(n195)

²¹³ MOLSA, 'National social protection policy of Ethiopia final draft' (2012)13 available at: [file:///D:/CSR%20thesis/Ethiopia_National_Social_Protection%20\(1\).pdf](file:///D:/CSR%20thesis/Ethiopia_National_Social_Protection%20(1).pdf) (accessed on July 7/202)

²¹⁴ Ibid.

major concern for Ethiopia.²¹⁵ MoLSA argued that the policy is hesitant to place much burden on businesses through employee treatment in the face of giant unemployment vis-a-vis infant private sector.²¹⁶

The FDRE industrial policy aspires social issues like *private pension* system clearly, as opposed to social protection policy.²¹⁷ GTP II also sought quality social development.²¹⁸ The Constitution, without levying business responsibility, guaranteed some labour rights that may be used to shape business conduct like freedom of association and collective bargaining.²¹⁹ Also, slavery and forced labour are out-rightly outlawed while women's right to affirmative action is proposed.²²⁰

However, when the policy and constitutional aspirations are crystallized in to binding laws, businesses are found dumped with much of these social responsibilities better clearly. The labour and related socially protective laws extended these CSR-ideas which are also provided in UNGC, Human Rights Conventions, ILO and OECD guiding principles etc.

4.4.1. The Labour Proclamation

The current Ethiopian employment law took a stand that any favourable condition to which the worker is entitled may be claimed as of right and doesn't wait for the voluntary initiation from the employer.²²¹ The law sympathizes with employees' protection by ruling out with less favourable work conditions than those provided by law, collective agreement or work rule.²²² The Federal Supreme Court Cassation bench confirmed this by its binding pro-CSR interpretation whereby it dismissed a cassation application which sought the bench for the reversal of a decision entitling the employee for further legally provided entitlements while he

²¹⁵ Ibid.

²¹⁶ Interview with Mesfin yilma, labour conditions, occupational safety and health regulation directorate director, MoLSA, (Addis Ababa, 23/08/2021).

²¹⁷ የ ኢ.ፌ.ዲ.ሪ የ ኢንዱስትሪ ልማት እስትራቴጂ... (n184) 117

²¹⁸ GTP II...(n200) 3

²¹⁹ FDRE constitution ...(n187), Articles 31,42

²²⁰ Ibid, Articles 18,35

²²¹ Labour proclamation, proclamation No. 1156/11, Federal Negarit Gazeta, 25th year, No. 89, Article 4

²²² Ibid.

took the admitted part of benefits from his employer and who agreed not to ask any more payments.²²³ Legally integrated labour-related CSR rules are strongly provided in Ethiopia and even can't be disregarded by agreement with employee and influential employers in Ethiopia.

The employer is duty bound to respect workers' human dignity; take all necessary safety and health measures and to be abide by the standards set.²²⁴ It is prohibited to discriminate women workers in matters of remuneration.²²⁵ The proclamation also provided for an order of workers reduction the last one being employees with disability, those who sustained employment injury, workers' representatives, expectant mothers and mothers within four months of post-natal.²²⁶ It may be contrary to the interest of the employer to carry such burdensome order in business terms because all such group of workers are not fulltime attendants of work or need further accommodation costs. Such accommodated workers without being at work are clearly social responsibility schemes the law outsourced to be borne by businesses. Fairly, it is pro-CSR law that provides for such benefits to workers.

Wage is determined based agreement without legal minimum benchmark which leading to low payments.²²⁷ For example, in 2018, private garment factory workers receive the lowest in the similar worldwide sectors.²²⁸ The 2020 employment law has thus come up with reform and empowered the CoM to establish a Wage Board that determines minimum wages.²²⁹ However, a director in MoLSA informed the researcher that such regulation has not yet been issued.²³⁰ Thus, the government is not effectively enforcing the proclamation on wage issue.

²²³ China Highway Group VS Wubshet Engidaw, (federal supreme court Cassation division, File no 92410 Tir29/2006 E.C.), volume 16, p.76.

²²⁴ Labour proclamation...(n221), Article 12(4-6)

²²⁵ Ibid.

²²⁶ Ibid, Article 29 (3)

²²⁷ Solomon Abay, *Financial market development, policy and regulation: The International*

Experience and Ethiopia's Need For Further Reform, (University of Amsterdam, 2011) 264

²²⁸ Mondiaal FNV, 'Ethiopia Labour market profile 2020' [Danish trade union development agency 2020]10 https://www.ulandssekretariatet.dk/wp-content/uploads/2020/03/Etiopien_imp_2020.pdf accessed on 14/08/2021

²²⁹ Labour proclamation,...(n221), Article 55 (2)

²³⁰ Interview with Mesfin Yilma,...(n216)

The labour proclamation also set minimum standards on working hours not to exceed 8 hours/day.²³¹ The law protects a worker not to be compelled to work overtime unless s/he agreed with additional payment.²³² Workers are also entitled to a weekly rest period, paid public holidays, annual leave, special leaves for social life like marriage, family mourning, paternity, leave for trade union leaders with payment, who are watch dogs to the rights of the workers, a sick leave up to six months per year.²³³ This is important to ensure decent working and leisure conditions avoiding over-exploitation of employees. The law also regulates especially the working conditions of women and young workers and consequently it is prohibited to employ a person younger than 15 years of age.²³⁴

The proclamation dedicated part seven to occupational safety, health and working environment whereby employers are bound to take the necessary measure to protect the health and safety of workers. In 2005, a directive was issued by MoLSA to establish and guide occupational health and safety committees in private organizations.²³⁵ Under part eight, the law guaranteed workers with rights to form trade unions, association and enter into collective bargaining. Such unions increase workers' capabilities to carry out collective bargaining to hold the business into a responsible behavior towards the employees. Until 2018, there are 1,714 registered trade unions, 9 federations and 1 confederation which is said to be low constituting only 10 % of the target due to MOLSA's inaccessibility and limited enforcement.²³⁶ Also the rights are not fully enforced in practice because majority of the workforce operates in the informal economy with insufficient awareness of their rights.²³⁷

²³¹ Labour proclamation,...(n221), Art. 61(2) & 62

²³² Ibid, Article 68

²³³ Ibid, 85

²³⁴ Ibid, Part six

²³⁵ MoTI, 'Environmental and social impact assessment for design, construction, and operation of NMIE laboratories, offices, and customer property stores,' [final report, 2020] 65

²³⁶ Mondiaal FNV,...(n228)1

²³⁷ Ibid 6

The MoLSA has the responsibility to inspect labour administration, particularly labour conditions. One of MoLSA directorates is labour conditions regulation, occupational safety and health directorate. According to the Director of this directorate, Mesfin Yilma, the Ministry is ambitiously striving to implement the rights of employees as provided in the law in coordination with labour unions, employees' and employers' federations and confederations.²³⁸ According to him, due to MoLSA's effort, the number trade union members have been growing by 40 % from 2011-2018.²³⁹ Studies show that companies engage in serious efforts to crush the collective voice of workers.²⁴⁰ In collaboration with Regional Labour-Bureaus, the Ministry has deployed 537 inspectors to supervise the observance of labour conditions all over the country.²⁴¹ This is close to one inspector per 100,000 worker which is lower than ILO recommendation i.e. one per 40,000 workers for developing countries.²⁴²

Mesfin also regrets that compared to what is needed MoLSA is still not accessible. Neither is MoLSA in capacity and emphasis for enforcement of the law as instances of unreported injuries, overtime, hazardous and exploitative working conditions revealed in construction, agricultural and industrial sectors.²⁴³ Despite the legal prohibition of child labour, the law not implemented effectively as children are often abused by their employers.²⁴⁴

Mesfin replied that the main challenges they face to implement the law include low level of safety culture and attitude, limited awareness of the law and collective agreement by all sides; little cooperation from the academic and public interest litigants.²⁴⁵ Most businessmen seem ignorant of such labour rights focusing on profit and tend to leave it to their lawyers to defend

²³⁸ Interview with Mesfin Yilma,...(n216)

²³⁹ Mondiaal FNV,...(n228)4

²⁴⁰ Ibid

²⁴¹ Interview with Mesfin Yilma,...(n216)

²⁴² Mondiaal FNV,...(n228)10

²⁴³ Ibid 11

²⁴⁴ Ibid 18

²⁴⁵ Interview with Mesfin Yilma,...(n216)

when cases arise.²⁴⁶ He argued the companies' self-initiation to comply with the law is very low.²⁴⁷

Besides inspection, the Ministry receives complaints from employees and tries to settle amicably. If it is found grave, the Ministry gives directions to the employer to correct the failures, failing which the Inspector would institute court case representing the general interest of the concerned employees.²⁴⁸ The Ministry delegates Federal and Regional public prosecutors to handle the court cases.²⁴⁹ The employee or a trade union is not also expected to pay court fee to initiate labour cases against his employer as per 162 (2) of the proclamation. The researcher has made personal observation that Federal First Instance Courts in 10 sub-city divisions and court fee is not required from the employee side.

4.4.2. The Disabilities Employment Proclamation

The employment of disabled persons is specifically proclaimed imposing some additional social responsibilities on businesses. These include providing appropriate working and training conditions, materials, reasonable accommodations; assigning an assistant to a person with disability to perform his work; protecting women with disability from sexual violence.²⁵⁰ All these have additional costs and may not really be in the interest of the business. The employer is obliged to prefer the candidate with disability if the latter scores equal or close to the other candidate.²⁵¹ Discrimination created as absence of providing reasonable accommodation by the employer is also outlawed.²⁵² The glaring difference of this law to that of its predecessor is that the latter doesn't recognize the right to reasonable accommodation and fail to provide simple procedural rules that enable disable persons to prove discriminations in employment.²⁵³

²⁴⁶ Ibid

²⁴⁷ Ibid

²⁴⁸ Ibid

²⁴⁹ Ibid

²⁵⁰ Right of employment of persons with disability proclamation, Proclamation No. 568/2008, 14th year, No. 20, Article 6

²⁵¹ Ibid, Article 4(2)

²⁵² Ibid, Article 5(3)

²⁵³ Ibid preamble.

4.4.3. The Social Health Insurance Proclamation

The Social Health Insurance Proclamation of Ethiopia also imposed binding social responsibility on businesses. Consequently, the employer is obliged to contribute equal percentage of contribution to that of the employee, i.e. the beneficiary,²⁵⁴ which is 3 % of the gross salary of the employee.²⁵⁵

Ethiopian Health Insurance Agency is established to enforce the Proclamation by Proclamation No. 191/2010. Preparatory activities were finalized to commence implementation of Social Health Insurance in Ethiopia. However, though the law is still operational, its implementation is officially stopped due to resistance from business community and the workers themselves who argued by justifying its infeasibility.²⁵⁶ A high level advisor, Roman, informed the writer, in the agency's effort to create awareness, employers and workers used to complain that different contribution schemes take almost half of their salary and they are intolerant of more deductions.²⁵⁷ She said even the attempt to implement get futile as most have health insurance coverage in other laws and employment packages and were not ready to utilize social insurance redundantly. The Agency after receiving such feed-backs dropped this scheme but community based health insurance (CBHI), where businesses are not involved, is now operational. This law is a good example for over regulation for social purposes.

4.4.4. The Private Employees' Pension Proclamation

Until 2011, Ethiopia didn't have full-fledged social security for private employees except provident fund scheme.²⁵⁸ The social security concern for the former privately employed oldies has been left only for the NGOs and the government and their private employer were not duty bound to this social responsibility.²⁵⁹ Studies show that even members of the private sector have

²⁵⁴ Social health insurance proclamation, Proclamation No. 690/2010, Federal Negaret Gazeta, 16th year, No.50, Article 9

²⁵⁵ Social Health Insurance Scheme Council of Ministers Regulation, Regulation No. 271/2010, Federal Negarit Gazeta, 19th year, No.3, article 4

²⁵⁶ Interview with Roman Gebreyes, senior advisor for members registration and contribution, Social health insurance Agency, (Addis Ababa, 17/08/2021).

²⁵⁷ Ibid

²⁵⁸ Solomon Abay, 'Financial...' (n227) 255

²⁵⁹ Ibid

reacted against the inception of private pension scheme.²⁶⁰ This implies that businesses were not ready to assume this social responsibility. AA's Regional Director of PESSA upholds this idea as businesses were not ready to assume the responsibility had it not been required by the law and by now businessmen have taken the position that they would observe it because it is a law.²⁶¹

However, the country has undertaken social policy reform by compelling the participation of businesses in the private social security system which in effect pushes social responsibility to the employer.²⁶² This requires private organizations to contribute 11% of the employee's salary.²⁶³ This law injected mandatory pension contribution and it is expected to serve social justice²⁶⁴-the core purpose of CSR.

The PESSA is established to implement the Private Pension System. By now the pension contribution is being collected by the tax collecting body of the government through delegation.²⁶⁵ Regarding accessibility, the AA's Regional Director of PESSA stated that the Agency at AA level is doing its best to implement the law. 14 employees are assigned to knock door to door of business places to take employees' data. In addition, during tax payment seasons, the Agency allocates its employees in tax offices to promote and reach unregistered employees so that they check if the tax payer has employees.²⁶⁶ According to him, wide and complex nature of employment relationships, limited man power and financial capacity of the agency, lack of awareness and deliberate avoidance of the law on the side of businesses made the implementation incomplete.

²⁶⁰ Ibid

²⁶¹ Interview with Tamru Rufie, AA regional director, PESSA, (Addis Ababa, 12/08/2021).

²⁶² Private Organization Employees Pension Proclamation, Proclamation No. 715/2011, federal Negarit Gazeta, 17th year, No. 79 preamble (as amended by proclamation No. 908/2015, 21st year, No. 62).

²⁶³ Ibid, Article 10

²⁶⁴ Ibid Preamble

²⁶⁵ Interview with Tamru Rufie...(n261)

²⁶⁶ Ibid

Some businesses tend to report reducing the number of their employees while others totally disregard reporting.²⁶⁷ The Agency is bestowed with power to order deduction of any such pension payment on the account of the business and seize any business property to satisfy the unpaid contribution.²⁶⁸ Other problems that made implementation difficult include workers would be on-off in employment span and the businesses itself would be on-off in its very existence.²⁶⁹ This is exemplified by 41% worker turnover rate in Ethiopian private sector and high level of informal sector accounting 39 % of employment.²⁷⁰

So far, persisting the implementation, the Agency collected more than 46.6 billion ETB from more than 206,000 companies and 1.8 million workers whose ratio of contribution is 11:7 respectively. 32,730 total beneficiaries are entitled to more than 1.9 billion ETB.²⁷¹ This is estimated to be a bit more than 25 % of private workers.²⁷²

Though the typical socially protective pro-CSR laws are discussed above, a total of 164 national labour, social security and human rights-related legislations have been issued as of August 2019.²⁷³ Regarding Ethiopia's ratification of international labour standards, a total of 23 ILO Conventions are ratified, of which 21 are in force.²⁷⁴ In sum, stronger and more burdensome social responsibilities are being imposed on businesses from time to time through mandatory laws than as provided in the policies and the constitution.

²⁶⁷ Ibid

²⁶⁸ Private Employees Proclamation...(n262), Article 11 and Interview with Tamru Rufie...(n261)

²⁶⁹ Interview with Girma Lema, Director-Legal Affairs Directorate, PESSA, (Addis Ababa, 13/08/2021).

²⁷⁰ Mans Soderbom and others, 'Worker turnover and job flows in the formal sector of Ethiopia' [2020] available at: <https://www.theigc.org/blog/worker-turnover-and-job-flows-in-the-formal-private-sector-of-ethiopia/> accessed on 14/08/2021 and *also see* Mondiaal FNV,...(n228)

²⁷¹ Gemechu Woyuma, director-general, PESSA, *message in bulletin for 10th year anniversary*, (Addis Ababa, 2020)

²⁷² Mondiaal FNV,...(n228)

²⁷³ Ibid 7

²⁷⁴ Ibid

4.5. CSR Under Environmental Laws of Ethiopia

The 1989 Conservation Strategy of Ethiopia marked the first attempt to regulate environmental concerns in Ethiopia.²⁷⁵ Though the constitution under article 44 (1) affirmed the right to a clean and healthy environment, the responsibility of businesses is not expressly signaled out. Only article 92 of the constitution generally provides every one's duty to protect the environment. In 1997, the environmental policy was launched with some CSR towards the environment.²⁷⁶ Under this policy, strengthening state regulation is provided special intention.²⁷⁷ Accordingly, more comprehensive legal frameworks were developed in 2002, with the coming of the EIA Proclamation²⁷⁸ and Environmental Pollution Control Proclamation²⁷⁹ carrying most ideas in the policy.

The EIA Proclamation requires any person before commencing the implementation of a project likely to produce negative impact on environment to secure the authorization of EPA.²⁸⁰ A business should undertake EIA of his project that is likely to produce an impact in consultation with the communities likely to be affected at its own cost.²⁸¹ EPA is also required to ensure the community comments are incorporated and consider the comments to decide on the implementation of the project.²⁸²

The law requires businesses undertaking an EIA, to identify adverse impacts of the project, the means of prevention, contingency plan, self-auditing arrangements and monitoring during

²⁷⁵ Ministry of water, irrigation and electricity, 'ENVIRONMENTAL AND SOCIAL MANAGEMENT FRAMEWORK,'[2020] 19 <file:///D:/CSR%20thesis/Environmental-and-Social-Management-Framework.pdf> (accessed 30/07/2021)

²⁷⁶ EPA, 'Environmental Policy,' 1997

²⁷⁷ Ibid 13

²⁷⁸ Environmental Impact Assessment Proclamation, Proclamation No. 299/2002, Federal Negarit Gazeta, 9th year, No. 11

²⁷⁹ Environmental Pollution Control Proclamation, Proclamation No. 300/2002, Federal Negarit Gazeta, 9th year No. 12

²⁸⁰ EIA Proclamation...(n278) Article 3 (1)

²⁸¹ Ibid, Articles 6(2) & 7(3)

²⁸² Ibid, Art. 9 (2) cum. Art. 15

implementation in advance.²⁸³ In addition, approval of an environmental impact study report doesn't relieve the business from liability for damage based on polluter pays principle.²⁸⁴ Most of these ideas incorporated in this law were inspired by the above Policy.²⁸⁵ Thus the Policy and EIA Proclamation adopted proactive strategy of CSR. There are also some guidelines and directives to ensure that development projects integrate environmental considerations in the planning process as a precondition for their approval.²⁸⁶

EFCCC, formerly known as EPA, is currently empowered to ensure that the communities likely to be affected have been consulted and their views incorporated.²⁸⁷ Some of its power is currently delegated to 6 governmental bodies.²⁸⁸ Business themselves can't undertake their own EIA as around 117 EIA consultants are licensed by the commission to study EIA in Ethiopia.²⁸⁹ The commission crosschecks the result of EIA study by its own workers and then approves, modify, reject or license with conditions as the case may be.²⁹⁰

EFCCC is empowered to follow up authorized projects to evaluate compliance with commitments made by the business during authorization.²⁹¹ However, the commission has never follow up whether the conditions are being fulfilled for projects granted with license on conditions and no report has been issued to it by businesses themselves.²⁹² The commission lets the business unchecked after license unless complaint comes from anybody. Regarding, the initiation of businesses to undertake EIA by their own, they had no inclination unless required by the law and enforced by the regulator. There are problems on the side of consultants and

²⁸³ Ibid, Articles 8 (2) & 7 (h) (i)

²⁸⁴ Ibid, Article 3(4)

²⁸⁵ EPA, Environmental Policy...(n276) 23

²⁸⁶ Interview with Mulugeta Alemu, Environmental and Community Impact Assessment Expert, EFCCC, (Addis Ababa, 24/08/2021)

²⁸⁷ EIA proclamation...(n278) Article 6(3)

²⁸⁸ Interview with Mulugeta Alemu...(n286)

²⁸⁹ Ibid, the researcher observed 105 listed on notice board of the commission as of 18/12/2013 E.C.

²⁹⁰ Ibid

²⁹¹ EIA proclamation...(n278), Article 12 (1)

²⁹² Interview with Mulugeta Alemu...(n286)

businesses as they copy-paste previous studies, corruption, political intervention to exonerate affiliated businesses, collusion and legal ignorance.²⁹³ For example, the commission has taken a shutdown measure on one ceramic factory in Dukem which released dust particle, sulfur, and cause air pollution which affects human health and proved reduction of *teff* productivity.²⁹⁴ Finally, the company was forced to adopt latest technology that prevents the identified pollution problems which costs it millions, for which the company was not ready from the beginnings.²⁹⁵

Though EIA is addressed by the Constitution, Proclamation, directive and guidelines, EFCCC does not have the resources to involve itself strongly in all projects in the regions that require public consultation as part of EIA process.²⁹⁶ The limitedness in experience and capacity obliges it to rely on regional and local authorities to organize and document public consultation on its behalf.²⁹⁷ EFCCC has communication gap with investment commission and Industrial parks have their own environmental units out of EFCCC but are supposed to work with it.²⁹⁸

Concerning the EIA requirements before business license issuance, there is contradictory response between two government bodies. On the side of MoTI, there are 52 codes of trade which require competency assurance from different bodies like EFCCC, Ministry of Agriculture, Tourism and Culture, Science and Technology, Ministry of Health etc. and license would not be issued until competence assurance is secured from the concerned body.²⁹⁹ On the contrary an official in EFCCC said they have never sent EIA assurance to MoTI for those that have undertaken EIA.³⁰⁰

²⁹³ Ibid

²⁹⁴ Ibid

²⁹⁵ Ibid

²⁹⁶ Ministry of Water, Irrigation and Electricity, 'ENVIRONMENTAL ...' (n275) 37

²⁹⁷ Ibid, according to the interview with Ato Mulugeta, ... (n286), EFCCC has only 5 environmental auditors

²⁹⁸ Ibid

²⁹⁹ Interview with Emebet Asefa... (n195)

³⁰⁰ Interview with Mulugeta Alemu... (n286)

The other challenge during enforcement includes the tension between MoTI and EFCCC and regional agencies is power of suspension and cancellation of business license when businesses fail to discharge EIA obligations. EIA proclamation empowered EFCCC, as a regulator, under article 12(3) to cancel the authorization. MOTI is empowered as per Trade Registration and Licensing Proclamation No. 980/2017 Article 29 to cancel business license for the same cause. MoTI argued it is only the Ministry who can cancel the trade license and EFCCC can't cancel but it can only write a letter that the authorization is cancelled.³⁰¹ EFCCC thought as they can suspend or cancel business license.³⁰² By the Pollution Control Proclamation, EFCCC/REA can take any necessary measure up to the closure or relocation of any enterprise to prevent harm to human health or the environment.³⁰³ From the close reading of the laws, MOTI's position holds water in the eyes of the laws as it is the body empowered to cancel business license and EFCCC has power only to withdraw from its EIA authorization or administrative measures less of business license cancellation.

During operation, the Pollution Control Proclamation prohibited the pollution of the environment by violating the relevant environmental standard.³⁰⁴ Regulation No. 159/2008 was issued to ensure compatibility of industrial development with environmental obligations for industrial operators. Factories are explicitly required by the regulation to submit annual compliance reports with the provisions of the regulation. Incentives for the introduction of methods that enable the prevention of pollution into an existing undertaking are designed by exemption from custom duty.³⁰⁵ However, the power to give any tax incentive, from Ginbot 1/2013 E.C onwards, is reserved to Ministry of Finance by circular letter issued by the later dated on Ginbot 6/2013 Ref. No. 4/1522/13.

³⁰¹ Interview with Emebet Asefa...(n195)

³⁰² Interview with Mulugeta Alemu...(n286)

³⁰³ Environmental Pollution Control Proclamation,...(n279) Article 3(5)

³⁰⁴ Ibid Article 3 (1)

³⁰⁵ Ibid Article 10

EFCCC is also assigned with the power to formulate practicable environmental standards based on scientific and environmental principles.³⁰⁶ Accordingly, general standards on air, water, soil and underground and noise standards and effluent standards for specified industrial sectors are issued in 2003.³⁰⁷

According to the Pollution Control Proclamation, any person engaged in any field of activity which is likely to cause pollution should install a sound technology that avoids or reduces, to the required minimum, the generation of waste and apply methods for waste recycling.³⁰⁸ The polluter pays principle is included in the law as any person who causes any pollution is required to pay the cost of cleaning up of the polluted environment.³⁰⁹ This principle is also envisaged in the policy.³¹⁰ The Civil Code in its part dealing with extra-contractual liability advanced the principle into civil liability. The Proclamation also provides criminal penalty for violation of the same.³¹¹

The generation/keeping/storage/transportation/treatment/disposal of hazardous waste without a permit from the EPA//REA is prohibited.³¹² This prohibition is confirmed by the Federal Supreme Court Cassation Bench which give a binding decision in a case between ATO ABAS IBRAHIM VS HARAR BEER S.C. in relation to discharge of costic soda and hydrolic acid to the applicant's farm.³¹³ The court reasoned that the company's liability would not be escaped even if the victim (applicant) allows the effluents to be applied to his farm. It increases business

³⁰⁶ Ibid

³⁰⁷The Environmental Protection Authority and UNIDO, 'GUIDLINE AMBIENT ENVIRONMENT STANDARDS FOR ETHIOPIA' (Ecologically Sustainable Industrial Development (ESID) Project US/ETH/99/068/ETHIOPIA ADDIS ABABA, August 2003), and EFCCC, Environmental Standards for Industrial Pollution Control in Ethiopia. [in file with the author.]

³⁰⁸ Environmental Pollution Control Proclamation...(n279), Article 3(3)

³⁰⁹ Ibid, Article 3(4)

³¹⁰ Environmental policy...(n276) 5

³¹¹ Environmental Pollution Control Proclamation...(n279) Article 17

³¹² Ibid, Article 4(1)

³¹³ Abas Ibrahim Vs Harar Beer S.C., Federal Supreme Court Cassation Bench, Cassation File No. 104512, sep. 24, 2008 E.C., (vol. 19)

social responsibility beyond the conventional tort case mitigation due to the victim's consent under article 2098 of the Civil Code. In its decision the court reasoned that the power to authorize the generation, keeping, storage, transportation, treatment or disposal of any hazardous waste vests in the power of the concerned environmental body not in individual persons. And thus the court rejected the defense by Harar beer S.C. as it applied by the request of the applicant victim. The decision can be taken as bold step to interpret the law in a pro-CSR manner.

Businesses with premise to which the public has access should always have adequate and suitable toilets and facilities for the disposal of wastes.³¹⁴ This has been envisioned in the environmental policy as private entrepreneurs are supposed to undertake latrine emptying, waste collection and disposal services.³¹⁵ The Municipalities are taking this responsibility and businesses that generate waste are only required to pay with water bills.³¹⁶ There is a legal framework prohibiting pollution; and the gap seems in implementation.

World Health Organization also recommends that universal access to hand hygiene facilities, toilets facilities with water and soaps should be provided in front of all private buildings by the managers of the buildings.³¹⁷ This is observed during the 2019/2020 Covid-19 epidemic as it was mandated by the emergency regulation. All employers are also mandated to do so in work place by COVID-19 workplace response protocol of MOLSA issued on March 2020.³¹⁸ The Public Health Law³¹⁹ also has come up with labour, consumer and environmentally protective provisions which conversely impose corresponding obligations on businesses.

³¹⁴ Environmental Pollution Control Proclamation... (n279) Article 5(3)

³¹⁵ Environmental Policy... (n276) s 15, 3.7 (i)

³¹⁶ Interview with Wasihun Alemu, Solid Wastes Expert, EFCCC, (Addis Ababa, August 24,2021)

³¹⁷ Ministry of Water, Irrigation and Electricity, 'ENVIRONMENTAL ...' (n275) 56

³¹⁸ MoLSA, covid-19 workplace response protocol, (March 2020), available at: https://www.investethiopia.gov.et/images/Covid-19Response/Covid-19Resources/MOLSA_COVID-19-Workplace-Response-Protocol.pdf (accessed on 24/08/2021)

³¹⁹ Public Health Proclamation, Proclamation No. 200/2000, Federal Negarit Gazeta, 6th year, No. 28.

The Advertisement Proclamation prohibits causing sound pollution.³²⁰ In 2018, Ethiopia also issued a proclamation that imposed on generators of hazardous waste to collect, segregate and dispose.³²¹ In 2019, the law to prevent and control of adverse effects to human and animals health as well as environment safety that may arise from mismanagement of industrial chemicals is enacted.³²² Radiation and Nuclear protection law is also issued to protect individuals, the society, and the environment as well as current and future generations from radiation hazards.³²³ Despite domestic laws and policies, Ethiopia also ratified many international conventions targeting environmental protection and imposing corresponding CSR. A Legal Expert in EFCCC accepted this and went on saying putting these legislative commitments into practice has remained a challenge.³²⁴

EFCCC has a directorate to control pollution with 30 inspectors only for solid waste disposal compliance directorate.³²⁵ An expert responded to an interview question by saying that they involve in creating legal awareness, and training and coordinating municipalities, providing them with water, noise, air measurement instruments so that they can discharge their legal enforcement duties.³²⁶ Accordingly, 150 cities and towns are reached and there seems an improvement in their implementation.³²⁷ Businesses are required to clean their environment upto 50 meter radius. The execution differs based on cities' level of development and self-disposal is obliged in small cities as common disposal system is not developed.³²⁸ Laws are amended, Efforts continue to efficiently regulate and there is a process to deploy inspectors in each

³²⁰ Advertisement Proclamation, Proclamation No. 759/2012, Federal Negarit Gazeta, 18th year, No. 59, Article 7

³²¹ Hazardous Waste Management and Disposal Control Proclamation, Proclamation No.1090/2018, Federal Negarit Gazeta, 24th year, No. 58

³²² Industrial Chemical Registration and Administration Proclamation, Proclamation No. 1075/2019, Federal Negarit Gazeta, 24th year, No. 40

³²³ Radiation and Nuclear Protection Proclamation, Proclamation No.1025/2017, Federal Negarit Gazeta, 23rd year, No.27

³²⁴ Yohannes Jeilu, Policy Development Expert, EFCCC, (email communication with the researcher, 24 August, 2021)

³²⁵ Interview with Wasihun...(n316)

³²⁶ Ibid

³²⁷ Ibid

³²⁸ Ibid

industrial parks.³²⁹ MoTI also involves in this enforcement duty and said the leather industries in Modjo are on process of common effluent disposal system.³³⁰

Though public health and pollution control regulations are in place, there is no appropriate mechanism and institutional capacity to enforce due to lack of technical capacity and appropriate budget for implementation.³³¹ For example, the two key regulatory bodies in relation to public health and pollution control proclamations are the EFCCC and the FMHCACA, whose enforcement is found very low and they often do not support each other with consequent duplication of efforts.³³² MoTI has also a directorate promoting green manufacturing focusing at industry level whose role is limited to support, finance, training and promotion to discharge safe environmental manufacturing.³³³ The Energy Proclamation also recalls compliance with the environmental protection laws, and safety, quality and performance standards as determined by Energy Authority.³³⁴ If it is Energy Authority who determine environmental standards, mandate overlap may occur with the Commission.

4.6. CSR Under Mining Operations Proclamation

The most noteworthy pro-CSR law in Ethiopia is the Mining Proclamation No. 678/2010 and its subsidiary legislation.³³⁵ Though the term CSR is not expressly used in, its constituents are directly and mandatorily provided both in labour, environment and community development dimensions. The Proclamation states that its objective is promoting employment and advancing the *socio-economic welfare of all Ethiopians*.³³⁶ To this end, the Government took the ownership, on behalf of the people, of all minerals in natural state to benefit all Ethiopians.³³⁷

³²⁹ Ibid

³³⁰ Sheger radio, interview with Teka Asfaw, minister deta'a, MoTI, (Addis Ababa, August 2021)

³³¹ Ministry of Water, Irrigation and Electricity, 'ENVIRONMENTAL ...' (n275)18-19

³³² Ibid

³³³ Interview with Gebremikael Gebrekidan, Directorate Director, MoTI, (Addis Ababa, 24/08/2021)

³³⁴ Energy Proclamation, Proclamation No. 810/2013, Federal Negarit Gazeta, 20th year, No. 12, Article 10(2)

³³⁵ Mining Operations Proclamation, Proclamation No. 678/2010, Federal Negarit Gazeta, 16th year, No. 45 and Regulation No. 423/2018

³³⁶ Ibid, Article 4(3)

³³⁷ Ibid Article 5

This approach seems to be inspired by the socialist and developmental state philosophy which is too suspicious towards the private sector and promotes CSR through government ownership to serve public purposes.

In the environmental dimension, any business can't be licensed for mining exploration if EIA is not approved, and allocate funds for rehabilitation.³³⁸ Any operator is required to carry out mining operations in accordance with the appropriate laws, technology and good mining practices;³³⁹ to ensure the health and safety of all persons, and comply with the applicable laws pertaining to environmental protection; cooperate and contribute financially in the construction and maintenance of infrastructure to be used jointly with persons within the license area freely. The licensee is also required to permit other persons or the government to use his infrastructure during emergency and give preference Ethiopian employment and local goods and services if they have the required qualifications.³⁴⁰ These all duties are also provided in the investment proclamation discussed below.

Mineral and Exploration Licensees should participate in community development plan of the license area by allocating money.³⁴¹ Thus, from the operation cost of development a lump sum of 1% for construction or industry minerals, 0.2% for precious or semi-precious minerals, 0.1% for iron or potash or metallic minerals and 0.7% coal is mandated for CSR purposes.³⁴² Also, 2% of net profit is also expected to be expended during mining period.³⁴³ Companies are also required to keep record and report all the above CSR activities.³⁴⁴ While incentive is designed for some responsible mining operations,³⁴⁵ non-compliance is followed by administrative, civil and criminal sanctions.³⁴⁶ These CSR contents are all in line with most international guidelines.

³³⁸ Ibid Article 18(1)c, 27, 28, 60(1),(2)

³³⁹ Ibid Article 34(1)a

³⁴⁰ Ibid

³⁴¹ Ibid Art 60(3)

³⁴² Regulation No. 423/2018, Article 41

³⁴³ Ibid

³⁴⁴ Ibid Articles 42 (4) d & Art 42 (6) d

³⁴⁵ Ibid Art. 75

³⁴⁶ Ibid Article 44

The Ministry of Mining, Petroleum and Natural Gas is bestowed with regulatory powers of the community development duties. According to the sample-based study on the contributions of 16 companies to CSR, till 2018, a total of 1,575,850,988.22 ETB is contributed by these companies as part of their legal duty.³⁴⁷

4.7. CSR under Trade Competition and Consumer Protection Proclamation

Consumer protection and fair trade laws are typical instruments to govern business behavior towards consumers and fellow traders. Apart from few articles in the Commercial Code, it was in 2003 that Competition law of Ethiopia was proclaimed. The 2010 Trade Practice and Consumers Protection Proclamation No. 685/2010 was better than its 2003 predecessor in addressing CSR issues. The proclamation is further refined by Proclamation No. 813/2013.

This latest law provides that its objective is to protect fellow businessmen from unfair market practice and consumers from misleading market products and preventing goods and services that endanger the health and wellbeing of consumers and to ensure consumers get quality goods and services at fair prices.³⁴⁸ To achieve such general objectives the law prohibits the act of abuse of market dominance;³⁴⁹ anti-competitive acts that harm consumers through conspiracy and setting minimum selling price by giving detail instances constituting the acts.³⁵⁰

This law also entitles consumers with the right to get sufficient information about quality and type of goods and services; be received humbly and treated respectfully by businesses and to be protected from any acts of insult, threat and frustration; claim compensation for damages.³⁵¹ Like

³⁴⁷ Ethiopian extractive industries transparency initiative, ‘Contribution of extractive companies to local community development and environmental protection: case study of 16 extractive companies in Ethiopia,’ until 2010 E.C, final report,(2018) available at:
(file:///D:/CSR%20thesis/contributions_of_extractives_companies_to_community_development_and_environmental_protection.pdf) (accessed on 30/08/2021)

³⁴⁸Trade Competition and Consumer Protection Proclamation ... (n184) Preamble and Article 3

³⁴⁹ Ibid Article 5

³⁵⁰ Ibid Article 6

³⁵¹ Ibid Article 14

employment law, waiver of these rights by agreement is prohibited.³⁵² Under article 22, the Proclamation prohibited furnishing false information, delivering a service below standard recognized in the business, selling goods which are dangerous to human health, selling goods or services above the price affixed and discrimination among consumers. Though the law doesn't necessarily use the expression "CSR", it is qualitatively doing not any less than deploying the term.

The same messages are underscored under the advertisement law in the course of advertisement.³⁵³ Ethiopia also enacted a proclamation to restrict and sometimes prohibit the sale, advertisement, production, labeling etc. of alcoholic beverage and tobacco based on age, place and time.³⁵⁴ This law also put strong regulation to ensure food quality.³⁵⁵ This aligns Ethiopian law with OECD guideline to MNEs which require corporations to act in accordance with fair business, marketing and advertising practices and ensure the quality and reliability of the goods and services they provide to consumers.³⁵⁶ To tackle man-made inflation, business persons also cannot hoard goods valuing more than 25% of the capital.³⁵⁷ The failure to comply with these duties and infringement of rights are attached to administrative, civil and criminal sanctions.³⁵⁸

ETPCPA is established and empowered to enforce the proclamation with the power of adjudicative tribunal.³⁵⁹ The authority focuses on awareness creation and consumer rights enforcement than ensuring fair competition.³⁶⁰ The law also provides regional counter parts to

³⁵² Ibid Article 21

³⁵³ Advertisement Proclamation,...(n320) Article 6(1)(a-e)

³⁵⁴ Food and Medicine Administration Proclamation, Proclamation No. 1112/2019, Federal Negarit Gazeta, 25th Year, No.39, Articles 18,55,60

³⁵⁵ Ibid

³⁵⁶ *OECD Guidelines...(n162) s VIII.*

³⁵⁷ Trade Competition Consumer Protection Proclamation...(n184) Article 24

³⁵⁸ Ibid Articles 14, 42-43

³⁵⁹ Ibid part III

³⁶⁰ Mohammed kebie, 'A Critical Appraisal of the Institution Controlling Competition in Ethiopia: Analysis of the Law and the Practice,' [unpublished LLM thesis, AAU, 2014] 94

investigate, prosecute and adjudicate and to watch the rights of consumers and enforce the responsibilities of businesses.³⁶¹ The authority has administrative powers to discipline businesses by applying penalty and more than 6 million Birr is collected from administrative fines in 2013 E.C.³⁶²

The director of ETPCPA felt that cases investigated and presented to court are not commensurate with the problem on the ground.³⁶³ This is due to lack of awareness, inaccessibility of the Authority to the consumers, very complex nature of enforcement requiring highly trained man power while they have few and meagerly paid force; and opportunistic behavior of businesses in taking advantages of the market.³⁶⁴ ETPCPA usually arrange out of court settlements for complaints of consumers.³⁶⁵ The law is said to be comprehensive and responsive enough to respond the prevailing issues but there is a weakness in enforcement.³⁶⁶ Due to this reason the Authority follows reactive approach to implement the law.³⁶⁷

On the other hand, MoTI is empowered to determine the conditions of distribution, sale, and movement of basic goods and services by the proclamation.³⁶⁸ According to an interview with MoTI, the government used to extend subsidy, e.g. bread wheat flour and other basic goods to help businesses act responsibly towards consumers, and even direct procurement/ownership and distribution by the state and cooperatives.³⁶⁹ By Now, the government has stopped subsidizing

³⁶¹ Trade Competition Consumer Protection Proclamation...(n184) part four.

³⁶² Etv, enderasie program, Interview with Getnet Ashenafi, director, Trade Competition and Consumers Protection Authority, (Addis Ababa, 07/08/2021.)

³⁶³ Ibid

³⁶⁴ Ibid

³⁶⁵ Ibid

³⁶⁶ Ibid

³⁶⁷ Mohammed, 'A Critical...' (n360)

³⁶⁸ Trade Competition Consumer Protection Proclamation...(n184) Article 26.

³⁶⁹ Interview with Kassahun Mulat, Director, Trade Goods Research and Monitoring, MoTI, (Addis Ababa 18/12/2013 E.C.)

bakeries with wheat flour, sugar and edible oil so that the consumer is ultimately bearing the high prices of these basic goods; and only subsidy of fuel cost is active as of august 2021.³⁷⁰

The MoTI can also regulate the price of basic goods and services and selling beyond the fixed price is prohibited.³⁷¹ Ethiopia now, 2021, is hit by soaring inflation and economic sabotage like hoarding which the State Minister attributed to irresponsible business behavior.³⁷² The state minister said 195 businessmen are being indicted, 73,000 being given warning and more than 7 billion birr worth iron bar hoarded to create artificial market shortage was found and confiscated by the State.³⁷³ As a solution, the State Minister of MoTI stated that strengthening law enforcement and providing subsidized and state-controlled distribution of basic goods has been underway.³⁷⁴ Besides, as inflation was aggravated, the Government took incentive approach as the Ministry of Finance declared the exemption of tax on some import items and local production of those good beginning from 28/12/2013 E.C.³⁷⁵

For the enforcement of legally provided CSR in the Proclamation, the MoTI and AA and DD Cities Trade Bureaus are empowered to inspect quality of products and ban distribution of goods and services that do not fulfill the standards of health and safety.³⁷⁶ MoTI also inspects and regulates markets and factories to ensure quality goods by post-license market and factory servilience in one directorate composed of 46 experts.³⁷⁷ Accordingly, products and factories are classified as green, yellow and red representing low, medium and high risk respectively to the consumer and do sudden supervision especially for the red labeled ones.³⁷⁸

³⁷⁰ Ibid

³⁷¹ Trade Competition Consumer Protection Proclamation...(n184) Article 25(2)

³⁷² Fana Radio News Hours Interview with Eshete Asfaw, Minster Deta'a, MOTI, (Addis Ababa, 24/08/2021)

³⁷³ Ibid

³⁷⁴ Elias Tegegn, Interview with Kassahun Mulat, 'Ministry to Sale Hoarded Items,' *the Reporter*, (28 August,2021)

³⁷⁵ Ministry of Finance, 'tax exemption circular letter' Reference NO. ሠ/30/7/1431 on 28/12/2013 E.C.

³⁷⁶ Trade Competition Consumer Protection Proclamation...(n184) Article 23(1)

³⁷⁷ Interview with Teketel Geto, Market and Factory Inspection and Regulatory Directorate Director, MoTI, (Addis Ababa 17/12/2013 E.C.)

³⁷⁸ Ibid

MoTI also has staffs at all customs' gates in Ethiopia to control quality of imported goods.³⁷⁹ To discharge their function, they use international standards and Ethiopian Standards Agency criteria. But, for local products, there is no standard. e.g. *shiro*, *berberie*, *tej* etc.³⁸⁰ In such cases, they found it difficult to hold the businessmen liable and there are court cases where adulterated food is acquitted as there was no hard and fast standard rule.³⁸¹ The court framed the issue of whether it is hazardous to health or not? And it was found difficult that banana mixed with animal butter would not be normally hazardous to human health, but it is not quality butter.³⁸²

According to Teketel, though there are 273 compulsory standards and 11,292 voluntary standards in Ethiopia, sensitive products like milk are not mandated to satisfy certain standard. Thus, MoTI regulates those mandatory and promote the voluntary standards to be assumed by the businesses.³⁸³ For example, any standard mandated product cannot be introduced into market without product labeling of Ethiopian Standard Agency emblem, 'ESA'.³⁸⁴

Regarding the quality of products, a source in MOTI told the researcher that MoTI, FMHCACA, ETPCPA, Minister of Agriculture, Construction Minister etc. are bestowed with regulatory powers, though MoTI is the general regulator of trading goods in markets.³⁸⁵ The MoTI works in collaboration with regional counterpart Agencies and AA and DD City Administration and different Federal Ministries and Agencies.³⁸⁶ However, it is pointed out that though there is huge collaboration, there are cases of confusions and overlap of mandate especially between MOTI and EFMHCACA.³⁸⁷ Teketel argued that, as a trade good, it is MoTI's mandate to control quality of goods for example cement, nail and tin, salt etc. and other Ministries' mandate should be limited in setting at the factory stage and should not be extended to regulation in market

³⁷⁹ Interview with Eyasu Simeon, Import and Export Goods Quality Control Directorate Director- MOTI, (Addis Ababa, 17/12/2013 E.C.)

³⁸⁰ Ibid

³⁸¹ Ibid

³⁸² Ibid

³⁸³ Interview with Teketel...(n377)

³⁸⁴ Ibid

³⁸⁵ Interview with Eyasu...(n379)

³⁸⁶ Ibid

³⁸⁷ Ibid

circulation.³⁸⁸ Such comparable empowerments are also bestowed to different Ministries and Agencies under the proclamation defining the power and duties of FDRE executive organs.³⁸⁹

4.8. CSR under the Investment Proclamation

Investment promotes development, technological diffusion, innovation and advancement of human rights.³⁹⁰ But, to attain all such corporate benefits optimally and fairly, the business operation must be ordered responsibly by the law.³⁹¹ Ethiopia has issued an Investment Proclamation which prohibited investment contrary to the law, moral, public health or security.³⁹²

The Investment Proclamation provides the investment objective of Ethiopia is to improve the living standard of its people by realizing rapid, inclusive and sustainable economic and social development by encouraging and mandating socially and environmentally responsible investment.³⁹³ This law cross-refers the environmental and social standards discussed so far to be observed by businesses.

Article 5 (2) of the Investment Proclamation provides creating more and better employment opportunity for Ethiopians and advance the transfer of knowledge, skills and technology is required for the development of the country. Therefore, priority of Ethiopian employees for job and replacement of foreigners, if any, by training local labour forces is required by this law.³⁹⁴ It is in line with the OECD guideline for MNCs in that the latter are mandated to be complying with the science and technology plans of the country.³⁹⁵ Ethiopian investment law also requires foreign businesses to enter into technological transferring agreement.³⁹⁶ Thus the law includes

³⁸⁸ Interviewed with Teketel... (n377)

³⁸⁹ Proclamation Defining the Powers and Duties of Executive Bodies of FDRE, Proclamation No. 1097/2018, Federal Negarit Gazeta, 25th year, No. 8

³⁹⁰ puvimanasinghe, 'Foreign...' (n 3)16

³⁹¹ Ibid 43

³⁹² Investment proclamation, proclamation No. 1180/2020, federal negarit gazeta, 26th year, No. Article 4

³⁹³ Ibid articles 5(8)&54(2)

³⁹⁴ Ibid articles 22(4)

³⁹⁵ *OECD Guidelines...* (n162) s 55

³⁹⁶ Investment proclamation... (n392) Article 15

general concerns of the society and the environment applicable to domestic and foreign investors while specifically some burdensome regulations are imposed on foreign investors. Ethiopian Investment Commission in collaboration with MoTI and MOLSA, is authorized to follow up all CSR related duties in relation to investment.³⁹⁷

Pro-CSR laws may also orient businesses to contribute to the national development effort by encouraging foreign exchange generation, foreign-local and inter-sectoral linkages. This idea of CSR is set under the industrial policy of Ethiopia launched in 1994 E.C to take advantage of capital and technology deployment and global marketing,³⁹⁸ which is confirmed in GTP II.³⁹⁹ This duty is crystalized in Ethiopian investment law.⁴⁰⁰ It has to be called that all these objectives have come up with extra-costs to the investors. For instance, to increase foreign exchange earnings, Ethiopia has issued a Coffee Marketing and Quality Control Proclamation, which prohibited selling of export standard coffee locally.⁴⁰¹ This law came up with very strict regulatory intervention in each stage of coffee production, preparation and transaction which totally disregards the business flexibility and interest of traders. A high official in MoTI informed the researcher that it is disadvantageous for the exporter as he is going to sell aboard at \$3/kg which is far below the local price, and this is even before the inclusion of expenses relating to export.⁴⁰² The informer added that that's why the law enforcer and the trader are always in friction to trace each bean of coffee through audit. In relation to this, there have been many court cases in which traders are found convicted of selling export coffee locally forfeiting foreign currency.⁴⁰³ In 2018, the Federal Police Investigation Department received, investigated, and

³⁹⁷Ibid, Article 22

³⁹⁸ ማከታወቂያ ማኔ ስቴር፡ የ ኢንዱስትሪ ልማት ስትራቴጂ ፖሊሲ...(n184) 33-34

³⁹⁹ GTP II,...(n186)17

⁴⁰⁰ Investment proclamation...(n392) Articles 5(3)&(7)

⁴⁰¹ Coffee Marketing and Quality Control Proclamation, Proclamation No. 1051/2017, Federal Negarit Gazeta, 23rd Year. No.... Article 19 (4)

⁴⁰² A discussion with Ato Getahun Bikora, director-coffee transaction control directorate, MoTI, (Addis Ababa, Feb. 2018)

⁴⁰³ Federal attorney General Vs Eskindir Fikru et. Al, Federal High Court, File No. 192313, (October, 2019)

transferred to prosecution an audit result for not-exporting and eliminating export coffee amounting to more than 4 billion ETB by more than 50 exporters.⁴⁰⁴

To attract socially responsible business, the government also introduced incentivizing and facilitative approaches in different pieces of laws. It enacted regulation to provide investment incentives for businesses that take courage to invest in less profitable but socially vital, foreign exchange generating ventures and investment in marginalized areas.⁴⁰⁵ The Industrial Parks establishment can also be taken as a great step towards a facilitative approach of the law in return of which the law has CSR objectives like contributing to the country's technological development, encouraging the private sector participation in manufacturing, and creating ample job opportunity.⁴⁰⁶ To further the facilitative approach, the Investment Commission is expected to provide one-stop shop service by bringing concerned organs within the industrial parks.⁴⁰⁷ Also The Industrial Parks Proclamation introduced CSR elements to enhance export promotion, comply with social and environmental protection legislation and other applicable laws [like labour and anti-corruption]; and replace expatriate personnel by Ethiopians by transferring required knowledge and skills through specialized trainings.⁴⁰⁸

Recently, Ethiopia has also enacted a Public-Private Partnership Proclamation whereby the private sector is recognized as an essential partner to realize the country's development objective by establishing a favourable legislative framework to promote and facilitate the implementation of privately financed infrastructure projects.⁴⁰⁹

⁴⁰⁴ Ibid, audit report part of the case.

⁴⁰⁵ Investment Incentives and Investment Areas Reserved for Domestic Investors Regulation, Regulation No. 270/2012, 19th year, No. 4.

⁴⁰⁶ Industrial Parks Proclamation, Proclamation No. 886/2015, Federal Negarit Gazeta, 21st year, No. 39, Article 4

⁴⁰⁷ Ibid Article 27

⁴⁰⁸ Ibid Articles 6, 8 and 10

⁴⁰⁹ Public-Private Partnership Proclamation, Proclamation No. 1076/2018, Federal Negarit Gazeta, 24th year, No. 28 preamble

4.9 CSR under Anti-Corruption, Procurement, Tax, Lawyering Laws and Public Loan Policy

As discussed in chapter three, the UNGC, OECD promotes a corruption-free society in private institutions. Ethiopia, in its industrial policy, used to categorize the private sector as rent-seeker and developmental, the latter one being sought as responsible business.⁴¹⁰ Ethiopia revised its Anti-corruption laws typically for the aim of inclusion of the private sector to be accountable and conform to the UNCAC.⁴¹¹

Ethiopian Procurement Proclamation and the directive issued thereunder have nothing to say on the issue of incentivizing socially responsible business. As of July 2021, the Procurement Agency has listed 40,156 business suppliers in all sectors on its website.⁴¹² It has a mechanism of uploading the debarred/black-listed companies which are found irresponsible in its web-page. As of July, 24/2021, 55 companies are debarred for different periods from government procurement out of which 14 companies are due to document forgery which is one of corruption crimes in Ethiopia under article 23 of the Anti-Corruption Proclamation.

The Federal Public Procurement directive under article 9 (1) requires the public body to identify that the procurement is environmental-friendly.⁴¹³ Preference margin up to 25 % is granted in any procurement to locally produced goods, to small and micro enterprises and to local construction and consultancy companies.⁴¹⁴ However, analogous incentive margins are not available for businesses exhibiting socially and environmentally responsible behavior in the procurement law. But, there is a draft law that tries to include margins for environmentally

⁴¹⁰ Industrial policy--- (n184)90, part III etc.

⁴¹¹ Corruption crimes proclamation, proclamation No. 881/2015, Federal Negarit Gazeta, 21st year, No. 34, preamble

⁴¹²The Federal Procurement and Property Administration Agency, 'debarred suppliers list' available at: http://www.ppa.gov.et/index.php?option=com_ppa&c=supplier&view=supplier&layout=supplierslist&itemdid=116&limitstart=2007 (accessed on 24/7/2021)

⁴¹³ Ministry of Finance and Economic development, Federal Public Procurement Directive, June 2010.

⁴¹⁴ Ibid Article 40.16.1.

friendly businesses.⁴¹⁵ Also there is no CSR fulfillment criterion for the inclusion of a certain business in the suppliers' list.⁴¹⁶ Thus, the trend in the law and the practice in the Agency is a reactive approach towards CSR.

In contrast, the state-owned Development Bank of Ethiopia by far includes CSR criteria to extend its loan. The Bank extends credit to creditworthy borrowers that have received a thorough appraisal and found to be socially desirable in terms of environment protection, employment opportunity creation and other social benefit.⁴¹⁷ EIA and socioeconomic study report is also required in the proposal to be presented for loan.⁴¹⁸ Similarly, National Lottery issued a directive adopting proactive CSR by setting criteria to get a sports betting license. Thus to join and continue as such it must, at entrance, produce guarantee that it would allocate 20 % of its net profit for common social goals or charitable activities or sport clubs of Sport Commission.⁴¹⁹

The voluntary concept of CSR is incorporated in the Income Tax Proclamation which incentivizes charitable donations as deductible expenses if they are made in specified conditions.⁴²⁰ However, this deduction is qualified not to exceed 10 % of the taxable income.⁴²¹ On the contrary to discourage traders of goods and services that are believed to be luxury, hazardous to health, cause social problems excise tax is imposed and continues to be revisited to include more items.⁴²²

⁴¹⁵ Interview with Tadesse kebede, e-procurement project coordinator, federal procurement and property administration agency, (Addis Ababa, 20/08/2021)

⁴¹⁶ Ibid

⁴¹⁷ Development Bank of Ethiopia, a short guide to access DBE's loan, P. 4 available at: <https://www.dbe.com.et/BusinessPromotion/Policy/DBENewPolicyEng.pdf> (accessed on 28/07/2021)

⁴¹⁸ Ibid 11

⁴¹⁹ Ethiopian Revenue and Customs Authority, National Lottery directive no. 83/2005 E.C., article 14 (on file with the author).

⁴²⁰ Federal Income Tax Proclamation, Proclamation No. 979/2016, Federal Negarit Gazette 22nd year, no. 104, Addis Ababa, August, 2016, Article 24

⁴²¹ Ibid Article 24 (2)

⁴²² The Excise Tax Proclamation, Proclamation No. 1186/2020, 26th Year, No. 25

Federal advocacy businesses, as professional businesses, are expected to dedicate 50 hours/year to free legal service to the needy.⁴²³ This is going well in practice as the Attorney General orders every licensee to handle at least one case upon completion of which s/he is expected to report; then to await turn for another.⁴²⁴ In 2013 E.C. about 719 cases are referred to the advocates estimated to value 4 million ETB. Also any Federal Advocacy Licensee can involve in public interest litigation against irresponsible businesses behavior by notifying to the Attorney General or take special license to protect the general interest.⁴²⁵ However, advocacy of public interest by lawyers and law firms is found nill in Ethiopia as there is only one advocate who notified his initiation to litigate public interest to the Attorney General.⁴²⁶ The researcher consulted Melkamu Ogo, the founder of *stand for environment*, who sued AA Abattoirs Enterprise, Gulele sub city and AAU for polluting the environment.⁴²⁷ Melkamu brought cases against governmental bodies and public enterprise but not yet against private business organization who are found irresponsible towards the environment. This signals that the lawyers' voluntary initiation to defend socially irresponsible business, unless mandated and enforced, is weak in Ethiopia.

4.10. Analysis of the Hypothesis in Light of Findings

As it can be evident from comparison of chapter 3 and 4, the research found out that there is no basic contradiction or legal gap between pro-CSR International Legal Frameworks and Guiding Principles and the Ethiopian law on the subject. Especially, Ethiopian pro-CSR legal development is getting stronger and stronger as the laws are amended to include more and more social and environmental responsibilities in line with international standards besides the adoption of international conventions and declarations which would be an integral part of the domestic legal system as per article 9(4) of the constitution. Therefore, the laws to protect public interest against irresponsible business conduct exist; consequently quite contrary to prevailing conclusions, the study found out that Ethiopian CSR is fundamentally regulated. This will rule

⁴²³ Federal Court's Advocates Code of Conduct Regulation, COM, no. 57/1999, 6th year, no. 1, Federal Negaret Gazete, 24th sep, 1999, art. 49.

⁴²⁴ Interview with Fekadu Demisie, advocates licensing and registration directorate director, federal attorney general, (Addis Ababa, august, 2021)

⁴²⁵ Federal Courts Advocates Licensing and Registration Proclamation No. 199/2000, 6th year No. 27, Article 10(2)

⁴²⁶ Interview with Ato Fekadu...(n 424)

⁴²⁷ Interview with Melkamu Ago, attorney and consultant at law, private, (Addis Ababa, 16/08/2021).

out scenario 4 of the thesis Hypothesis. Though there are redundancies, duplications and confusions, all these laws are assigned with regulatory bodies to enforce which rules out scenario 3 of the hypothesis. The findings reveal that there are inherent limitations to implement pro-CSR laws which rules out scenario 1 of the hypothesis, and leads us to assert scenario 2 of the proposed hypothesis i.e. the availability of adequate legal framework in line with International Legal Framework and Guiding Principles with institutional setup but poor implementation due to various reasons.

CHAPTER FIVE

5. CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

The Ethiopian commercial code, as amended in 2021, accompanied by the trade registration and licensing proclamation and other social and environmental regulations, fundamentally covers the regulation of CSR themes in Ethiopia and this leads to the assertion that the current legal development reveals a shift from shareholders' view to stakeholders' view.

At policy and constitutional level, the social dimension of CSR is provided less attention compared to the environmental dimension. However, CSR is strongly provided in different areas of laws when the policy and constitution is reduced into binding laws. In that the government is reactionary in regulating CSR especially in the social protection area. The reactionary approach is witnessed as the next amendment of the laws came up with stronger CSR than its corresponding predecessor.

The legislative development of the social dimension of CSR is getting more and more stringent conforming to the international standard due to continuous amendment of the laws favouring values of CSR and enactment of new laws and adoption of international conventions, standards and protocols. Even there seems overregulation in the Social Health Insurance which faces resistance during its implementation. From the implementing bodies' point of view, companies in Ethiopia are reactionary and defensive as they act only when mandated by the law and enforcement.

The trend of environmental legislative development grows exponentially from the constitution onwards. By now, the constitution, national laws, policies, environmental standards, coupled with huge international conventions which are domesticized by Art. 9 (4) of the Constitution implies that the Environmental Dimension of CSR is also adequately regulated in the country.

The CSR regulation in Ethiopia is found to be generally in line with international legal frameworks and accepted guiding principles. Institutionally, though there is mandate overlap, corresponding institutions to implement the laws are assigned to enforce the laws.

The findings imply that Ethiopia even resembles strong interventionist country resembling developmental state and socialist by involving in the distribution of basic goods and owning some economic sectors for basic reasons of fearing irresponsible behavior of businesses and want of overall economic development and for the common good of the overall society through state investment as adopted in mining sector. But, in the environmental dimension of CSR, Ethiopia resembles western regulatory states.

Generally a mixture of ownership, mandatory, facilitative, incentive, and recognition to some extent are approached to make businesses responsible by establishing Industrial Parks with basic facilities, one-stop service, tax incentive, naming and shaming on websites, awards, recognition, partnering etc. It is also characterized by qualitative approach in that the legal shaping of corporate behavior is circumscribed by assigning different burdensome requirements and procedures costing businesses than mandating allocation of fixing a lump sum from net profit of businesses, except in some sectors like mining, tax and sports betting. So, CSR allocation in Ethiopia is designed in a way to ensure that businesses integrate social costs and internalize their impacts into their operational costs.

Though there is a legal ground, litigation of the general public interest is found nil and untouched in Ethiopia, unless they touch specific individual or group interests, which may lead to impunity of businesses affecting general interest.

The Ethiopian regulation of CSR is characterized by scattered and redundant both legally and institutional empowerment that end with complicating the enforcement. There are redundancies of legal coverage of a particular issue in different laws and institutional mandate duplication among the implementing bodies like MoLSA, MoTI, FMHCACA, ETPCPA, EFCCC, City Municipalities, Investment Commission, Mining Petroleum and Natural Gas Ministry, Industrial Parks, MoH, Health Bureaus and in some points among Regional and Federal bodies etc. Besides, the practice of the implementation process is tackled by various limitations rendering enforcement weak.

From the implementing bodies' point of view, companies in Ethiopia are reactionary and defensive as they act only when mandated by the law as tested in areas of EIA, pension, consumers' protection, litigation of public interest etc. Thus, the implication of the pro -CSR

laws in Ethiopia is found to be in the positive to CSR culture in that businesses are unlikely to be responsible had it not been for the laws and fear of legal consequences and enforcement.

5.2. Recommendations

From the research journey, the following recommendations are thought to be supportive for the betterment of CSR regulation and enforcement in Ethiopia.

- Amend the procurement law, to include CSR-preference margin, and Article 24 of the tax proclamation, to incentivize voluntary compliance of pro-CSR laws, to ensure easy and less costly enforcement.
- Avoid mandate overlap and miscommunication, through amendment of the laws and mutual executive understandings, among implementing bodies like MoLSA, MoTI, FMHCACA, ETPCPA, EFCCC, City Municipalities, Investment Commission, Mining Petroleum and Natural Gas Ministry, Industrial Parks, MoH, Health Bureaus and in some points among Regional and Federal bodies in enforcing pro-CSR laws.
- Build the capacity of regulatory bodies in technique, finance and manpower to reach the target of the regulations sought by the pro-CSR laws.
- Follow up and ensure institutional accountability on the side of implementing bodies who fail to discharge their implementing functions and increase political commitment to this effect.
- Enforce the criminal, civil and administrative sanctions, as provided in different pro-CSR laws, in line with the appropriate intention in the laws.
- Strengthen advocating businesses, through civil societies and concerned government bodies, that due compliance of pro-CSR laws pays them back.
- Promote public interest litigation, to support the enforcement, in ensuring rule of pro-CSR laws by holding irresponsible business behavior accountable.
- Reconsider social health insurance proclamation to be voluntary-based by attaching incentives to those complying.
- enact the minimum wage law as intended by the labour proclamation as soon as possible.

Bibliography

Books, Journals, reports, magazines etc.

- Kell George and Ruggie John, ‘Global Markets and Social Legitimacy: The Case of the Global Compact’
- Milton Friedman, ‘the social responsibility of business is to increase its profit’ NY TIMES MAG,(Newyork 13 september 1970)
- puvimanasinghe SF, *Foreign investment, human rights, and the environment: a perspective from south Asia on the role of public international law for development*, (maritus nijhoff publishers, leiden Boston, 2007)
- Renitha Rampersad and Chris Skinner, ‘examining the practice of corporate social responsibility in sub-saharan africa’ [2014] VI 723 available at:file:///C:/Users/hello/Downloads/Examining_the_practice_of_corporate_social_respons.pdf
- Kenneth D. Walters, ‘Corporate Social Responsibility and political ideology’ [1977] CMR
- Alan Brejnholt, and others, ‘The State and Corporate Social Responsibility: Theorizing the Relationship’ [2020] available at:[file:///C:/Users/hello/Downloads/TheStateandCSRaccepted_2%20\(2\).pdf](file:///C:/Users/hello/Downloads/TheStateandCSRaccepted_2%20(2).pdf)
- Antonio Vives, ‘Corporate Social Responsibility: The Role law and markets and the case of Developing Countries’ [2008] CKLR
- Tesfaye Fentaw, ‘corporate social responsibility for social dimension of human development in Ethiopia: conceptual paper’ [2018] JCSD
- Kefale Aschale, ‘corporate governance regulation in Ethiopia and its impact on Ethiopia’s global doing business standing’[blogged 2019] <<https://addisababa.academia.edu/KefaleAschalew>
- Zelalem Fekadu, ‘shareholder or stakeholder model of corporate governance; which one should Ethiopia choose?’ [unpublished, LLM thesis in AAU school of law, 2016]
- Birhanu Moltot, ‘corporate social responsibility practices, determinants and challenges: theoretical and empirical lesson for effective and successful engagement’ [2018] JIM

- Tasew Abteu, ‘approaches to regulating corporate social Responsibility in Ethiopia: the case of manufacturing industries’ [unpublished, LLM thesis, AAU school of law, 2021]
- Tom Fox and others, ‘public sector roles in strengthening corporate social responsibility: A baseline study’ [2002] IIED
- Zachary Cheers, ‘The Corporate Social Responsibility Debate’ [A senior thesis, Liberty University, 2011]
- AB. Carroll, ‘A three-dimensional conceptual model of corporate social performance’ [1979] AMR available at: <https://scholar.google.com/citations?user=qMaUAcAAAAJ&hl=en>
- Richards Holmes and Philip watts, ‘corporate social responsibility: making good business sense’ [2000] Geneva, WBCSD, www.wbcsd.org/includes
- Isabel Dreveborn and others, ‘corporate social responsibility: the legal frame work for CSR’ [bachelor’s thesis, Jonkoping university 2010]
- Marie-Lawrie Djelic and Helen Etchanchu, ‘contextualizing corporate political responsibilities: Neoliberal CSR in historical perspectives’ [---] JoBE available at: <DOI10.1007/s10551-015-2879-7> (accessed on 29/9/2020)
- S.O Idowu, & S Vertigans (Eds), ‘Stages of Corporate Social Responsibility: From Ideas to Impacts,’ (as cited in MA Camilleri, ‘Corporate Social Responsibility: Theoretical Underpinnings and Conceptual Developments Heidelberg, Germany [2016] available at: https://link.springer.com/chapter/10.1007/978-3-319-43536-7_5
- Maria Gjolberg, ‘the political economy of corporate social responsibility,’ [ISSN 1504-3991 dissertation for phd in political science, 2011]
- Kolis Karel and Kubicek Ales, ‘Role of Customers in Stakeholders: Approach in Company Corporate Governance”, [2012] WASET
- Guosong Shao, ‘Toward a Stakeholder Model of Corporate Governance: Evidence from U.S Media Companies, [Unpublished, University of Alabama, Alabama 2009]
- Sintayehu Tilaye, ‘The Current Practice of Corporate Social Responsibility in Ethiopia On Hilton hotel’ [2019] IJSW
- Fuming Jiang and others, ‘Mapping the relationship between political ideology, CSR mindset, and CSR strategy: A contingency perspective applied to Chinese managers’ [2015] JBE

- Rawls J, *A Theory of Justice*, (Clarendon Press, Oxford, 1972) 3 & J. Rawls, *Justice as Fairness:(A Restatement*, Belknap Press, Massachusetts, 2001) 10 available at: <file:///D:/CSR%20thesis/references/RAWL-%20theory%20of%20justice.pdf>
- kant's *imperative theory* is also available at: <https://plato.stanford.edu/entries/kant-moral/>
- Sen Amartya, *Development as Freedom*, (Anchor Books, New York, 2000)
- Jeans-Jaques Raussaou, *the social contract*, (penguin publishers, 2006), first published in 1672,
- Adam smith, *an inquiry into the nature and wealths of nations*, S.M. Soares (eds), (metalibri lausane 2007)
- Tineke Lambooy, 'Legal Aspects of Corporate Social Responsibility' [2014] UJIEL
- Gerald M. Meier, 'Legal-Economic Problems of Private Foreign Investment in Developing Countries' [1966]UCLR
- Fantaye kassa, 'the status of corporate social responsibility in Ethiopia' [2018] EJBME
- Forstater M., and others, 'Corporate social responsibility in African Development (Working Paper of the Corporate Social Responsibility Initiative' Working Paper No. 60, 2010)
- Alemayehu Yismaw, 'towards effective models and enforcement of corporate social responsibility in Ethiopia' [2020] MLR
- Simon Goulding, *company law*, (2nd ed. Cavendish publishing limited, Sydney&London, 1999),
- Abay Yimer S., '*Financial market development, policy and regulation: The International Experience and Ethiopia's Need For Further Reform*, (University of Amsterdam, 2011).
- Mondiaal FNV, 'Ethiopia Labour market profile 2020' [Danish trade union development agency 2020]10 https://www.ulandssekretariatet.dk/wp-content/uploads/2020/03/Etiopien_imp_2020.pdf.
- MoTI, 'Environmental and social impact assessment for design, construction, and operation of NMIE laboratories, offices, and customer property stores,' [final report, 2020]
- Mans Soderbom and others, 'Worker turnover and job flows in the formal sector of Ethiopia' [2020] available at: <https://www.theigc.org/blog/worker-turnover-and-job-flows-in-the-formal-private-sector-of-ethiopia/>

- Ministry of water, irrigation and electricity, ‘ENVIRONMENTAL AND SOCIAL MANAGEMENT FRAMEWORK,’[2020] 19 <file:///D:/CSR%20thesis/Environmental-and-Social-Management-Framework.pdf>
- PESSA, *bulletin for 10th year anniversary*, (Addis Ababa, 2020)
- Ethiopian extractive industries transparency initiative, ‘Contribution of extractive companies to local community development and environmental protection: case study of 16 extractive companies in Ethiopia,’ until 2010 E.C, final report,(2018) available at: [file:///D:/CSR%20thesis/contributions of extractives companies to community development and environmental protection.pdf](file:///D:/CSR%20thesis/contributions%20of%20extractives%20companies%20to%20community%20development%20and%20environmental%20protection.pdf) (accessed on 30/08/2021)
- Mohammed kebie, ‘a critical appraisal of the institution controlling competition in Ethiopia: analysis of the law and the practice,’ [unpublished LLM thesis, AAU, 2014]

International/Foreign laws

- The UN Global Compact ten principles,
- UN Guiding principle on business and human rights, 2011
- OECD, *Principles of Corporate Governance* [OECD Publishing, Paris, 2015]
- OECD, *OECD Guidelines for Multinational Enterprises*, [OECD Publishing 2011]
- ILO declaration on Fundamental Principles and Rights at Work 1998
- ISO, ISO Standards and CSR – definition, available at: <https://youmatter.world/en/definition/definitions-iso-26000-standards-csr-definition/>
- Declaration on Democracy, Political, Economic and Corporate Governance 2002 available at: <www.nepad.org>
- European Commission, ‘a renewed EU strategy 2011-14 for corporate social responsibility,’ [COM 2011] 681 final
- Commission of the European Communities, ‘Implementing the partnership for growth and jobs: Making Europe a pole of excellence on corporate social responsibility, [2006] 2 available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0136:FIN:en:PDF>

Domestic Laws, Policies, Circulars, Binding Press Statements

- FDRE constitution, proclamation No. 1/1995, 1st year, No. 1

- Labour proclamation, proclamation No. 1156/11, Federal Negarit Gazeta, 25th year, No. 89
- The Commercial code of Ethiopia, proclamation No. 166/1960, Negarete GAzzete Extra-ordinary, 19th year, No. 3,
- Financial reporting proclamation, Proclamation No. 847/2014, federal negarete gazete, 20th year, No. 84
- trade registration and licensing proclamation no. 980/2016
- New FDRE commercial Code proclamation No. 1243/2021, art. 316
- Right of employment of persons with disability proclamation, Proclamation No. 568/2008, 14th year, No. 20
- Social health insurance proclamation, Proclamation No. 690/2010, federal negaret gazeta, 16th year, No.50, Article 9
- Social health insurance scheme council of ministers Regulation, Regulation No. 271/2010, federal negarit gazeta, 19thyear, No.3,
- Private organization employees pension proclamation, Proclamation No. 715/2011, federal Negarit Gazeta, 17th year, No. 79 preamble (as amended by proclamation No. 908/2015, 21st year, No. 62
- Environmental Impact assessment proclamation, procl. No. 299/2002, federal negarit gazeta, 9th year, No. 11
- Environmental pollution control proclamation, proclamation No. 300/2002, federal negarit gazeta, 9th year No. 12
- Trade Competition and Consumer Protection Proclamation, Proclamation No. 813/2013, Federal Negarit Gazzeta, 20th year, No. 28.
- Public health proclamation, proclamation No. 200/2000, federal negarit gazeta, 6th year, No. 28.
- Advertisement Proclamation, proclamation No. 759/2012, federal negarit gazeta, 18th year, No. 59,
- Hazardous waste management and disposal control proclamation, Proclamation No.1090/2018, federal negarit gazeta, 24th year, No. 58

- Industrial chemical registration and administration proclamation, Proclamation No. 1075/2019, federal negarit gazeta, 24th year, No. 40
- Radiation and nuclear protection proclamation, Proclamation No.1025/2017, federal negarit gazeta, 23rd year, No.27
- Energy proclamation, Proclamation No. 810/2013, federal negarit gazeta, 20th year, No. 12, article 10(2)
- Mining operations proclamation, proclamation No. 678/2010, federal negarit gazeta, 16th year, No. 45 and regulation 423/2018
- Food and medicine administration proclamation, Proclamation No. 1112/2019, federal negarit gazeta, 25th year, No.39
- Proclamation defining the powers and duties of executive bodies of FDRE, proclamation No. 1097/2018, federal negarit gazeta, 25th year, No. 8
- Investment proclamation, proclamation No. 1180/2020, federal negarit gazeta, 26th year, No.
- Coffee marketing and quality control proclamation, Proclamation No. 1051/2017, federal negarit gazeta, 23rd year. No...
- Investment incentives and investment areas reserved for domestic investors regulation, Regulation No. 270/2012, 19th year, No. 4.
- Industrial parks proclamation, proclamation No. 886/2015, federal negarit gazeta, 21st year, No. 39.
- Public private partnership proclamation, Proclamation No. 1076/2018, federal negarit gazeta, 24th year, No. 28.
- Corruption crimes proclamation, proclamation No. 881/2015, federal negarit gazeta, 21st year, No. 34.
- Federal income tax proclamation, Proclamation No. 979/2016, federal negarit gazette 22nd year, no. 104, addis ababa, august, 2016, article 24
- Federal court's advocates code of conduct regulation, COM, no. 57/1999, 6th year, no. 1, federal negaret gazete, 24th sep, 1999.
- Federal Courts Advocates Licensing and Registration Proclamation No. 199/2000, 6th year No. 27.

- State of emergency proclamation enacted to counter and control the spread of COVID-19 and mitigates its impact proclamation No. 3/2020 and its implementing CoM regulation (2020).
- CoM, extraordinary meeting press release, April 24/2020.
- CoM, extraordinary meeting press release, April 24/2020 and its implementing circular letter from Ministry of Finance to ministry of revenue, ref. ገ/አ/1/2/101 dated 28 ሚያዝያ 2012 E.C.
- ማህበራዊና ማህበራዊ ጥበቃ ስልጠና, የ ኢ.ፌ.ዲ.ሪ የ ኢንዱስትሪ ልማት እና ጥራት-ቴክኖሎጂ, (1994 ዓ.ም) ገ ፅ 44-46
- The Growth and Transformation Plan II from 2015/16-2019/20, National Planning Commission, [2015]
- Ministry of Finance, ‘tax exemption circular letter’ Reference ማህ 30/7/1431 on 28/12/2013 E.C.
- MOLSA, ‘National social protection policy of Ethiopia final draft’ (2012)13 available at: [file:///D:/CSR%20thesis/Ethiopia National Social Protection%20\(1\).pdf](file:///D:/CSR%20thesis/Ethiopia%20National%20Social%20Protection%20(1).pdf)
- The Environmental Protection Authority and UNIDO, ‘GUIDLINE AMBIENT ENVIRONMENT STANDARDS FOR ETHIOPIA’ (Ecologically Sustainable Industrial Development (ESID) Project US/ETH/99/068/ETHIOPIA ADDIS ABABA August 2003), [in file with the author.]
- EFCCC, environmental standards for industrial pollution control in Ethiopia. [in file with the author.]
- MoLSA, covid-19 workplace response protocol, (March 2020), available at: https://www.investethiopia.gov.et/images/Covid-19Response/Covid-19Resources/MOLSA_COVID-19-Workplace-Response-Protocol.pdf
- Ministry of Finance and economic development, Federal public procurement directive, June 2010.
- Ethiopian Revenue and Customs authority, National lottery directive no. 83/2005 E.C., article 14 (on file with the author).

Cases

- China Highway Group VS Wubshet Engidaw, (federal supreme court Cassation division, File no 92410 tir29/2006 E.C.), volume 16,
- Dereje chernet Vs Hiwot Yehualashet, (federal supreme court, Cassation File no. 45735, megabit 21/2002 E.C.), CASSATION DECISIONS, volume 10
- Abas Ibrahim Vs Harar Beer S.C., Federal Supreme court cassation bench, cassation File No. 104512, sep. 24, 2008 E.C., (vol. 19)
- Federal attorney General Vs Eskindir Fikru et. Al, federal high court, file No. 192313, (October, 2019)
- APAP v. EPA, Federal High Court, File No. 51052, 12th of June 2008. And APAP v. EPA, Federal Supreme Court Cassation division, File No.39779, Decision of 3 December 2008

Websites

- The federal procurement and property administration agency, ‘debarred suppliers list’ http://www.ppa.gov.et/index.php?option=com_ppa&c=supplier&view=supplier&layout=supplierslist&itemdid=116&limitstart=2007
- Development Bank of Ethiopia, a short guide to access DBE’s loan, P. 4 available at: <https://www.dbe.com.et/BusinessPromotion/Policy/DBENewPolicyEng.pdf>

Interviewees

- Ato Teketel Geto, Market and Factory Inspection and Regulatory Directorate Director, MoTI,
- Ato Eyasu Simeon, Import and Export Goods Quality Control Directorate Director-MOTI,
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- Ato Fekadu Demisie, advocates licensing and registration directorate director, federal attorney general.
- Interview with Melkamu Ogo, attorney and consultant at law.
- Ato Tadesse kebede, e-procurement project coordinator, federal procurement and property administration agency.