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ADDIS ABABA UNIVERSITY
POST GRADUATE STUDIES COLLEGE OF LAW AND
GOVERNANCE STUDIES SCHOOL OF LAW

Corporate Social Responsibility in Selected Enterprises: The Case of
Ethiopian Agricultural Business Corporation

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By

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Declaration

I, Daniel Yared, hereby declare that this research entitled ‘Corporate Social Responsibility under the Ethiopia Agricultural business Corporation’ is my original work and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

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It's custom to write an acknowledgment at the beginning of the paper and why I would be the first to breach this! Most of all I thank the almighty and his mother St. Mary for all bounty towards me. My deepest gratitude goes to my advisor Dr. Mehari Redae for his unreserved commitment and willingness to support me even the time I showed my reluctance for various reasons. His invaluable corrections and suggestions were very helpful. Thank you.

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Acronyms

BITs	Bilateral Investment Treaties
CEO	Chief Executive Officer
CSR	Corporate Social Responsibility
EABC	Ethiopian Agricultural Business Corporation (EABC)
FDRE	Federal Democratic Republic of Ethiopia
ILO	International Labor Union
MNCs	Multinational Corporations
NGOs	Nongovernmental Organizations
UK	United Kingdom
UN	United Nation
VAT	Value Added Tax

Key terms: Corporate Social Responsibility, Self-compliance, Ethiopian Agricultural Business Corporation, Ethiopian legal framework, Constitution, Revised Commercial Code, Value Added Tax,

CHAPTER ONE

1.1. Background of the Study

The term corporate social responsibility (herein referred to as CSR) is a term known for its various nomenclatures like corporate accountability, corporate ethics, corporate citizenship, corporate stewardship, corporate responsibility, and entrepreneurship.¹

As the very term and mixture of the concepts in its name quite vary in different contexts, different writers, practitioners and business dictionaries, declarations of international organizations, and other related documents define the term CSR by using different terms.² The term CSR is ever revolving still evolving concept and hence, there are various definitions in the literature and other documents. Because of this, there is no universally accepted single definition for the term that can be used as one size fit all instance for corporations, international organizations, or national government bodies' legislation.

For instance, the European Commission defined the term as “a concept whereby companies integrate social and environmental concerns in their business operations and their interaction with their stakeholders voluntarily.”³

On the other hand, World Business defines the term as “the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community, and society are large to improve their quality of life.”⁴ As per this definition, socially responsible is conduct which recognizes that a corporation has a relationship with and impacts, not only the shareholders or stakeholders but also others the like employees, their families, business partners, suppliers, creditors, consumers, local communities, and hence include the broader meaning of community.⁵

¹ See for instance, Michael Hopkins, Corporate social Responsibility an Issue Paper, Working Paper No. 27 (2004)

² This is further discussed below

³ European Commission

⁴ Halina Ward, Public Sector Roles in Strengthening Corporate Social Responsibilities: Taking Stock, World Bank (2004) at 3

⁵ Philip Lynch, Human Rights and Corporate Social Responsibility: An Australian Perspective, Human Rights and Corporate Social Responsibility (2005) at 205

One of the dominant economies in the world, China, on the other hand, defines the term as “the concrete action was taken by Chinese companies to implement the political aspiration of the new communist party collective leadership putting people’s^{1st} to create a harmonious society.”⁶

Needless to say, various scholars also try to define the term CSR. For instance, Pavel Franc and his colleague defined the term as a “concept within the scope of which corporations are expected to behave responsibly during everyday business decisions and during the creation of their strategy concerning employees, suppliers, clients, shareholders, and other stakeholders that include the environment.”⁷

On the other hand, Hopkins defines the terms as:

CSR is concerned with treating the stakeholders of the firm ethically or responsibly. ‘Ethically or responsible’ means treating stakeholders in a manner deemed acceptable in civilized societies. Social includes economic responsibility. Stakeholders exist both within a firm and outside. The natural environment is a stakeholder. The wider aim of social responsibility is to create higher and higher standards of living, while preserving the profitability of the corporation, for peoples both within and outside the corporation.”⁸

Historically, the concept of CSR can be traced back to the United States of America some century back which was the result of social and political response to the fast progression of capitalism a half-century after the American civil war. Before the notion of CSR emerged in its true and contemporary sense, the initial initiatives of the private sector involved in assisting the community at large were primarily carried out by charities and Churches, particularly, Catholic Church was associated with such initiatives. It was only in the late 19th and early 20th that corporate philanthropy started to emerge, in ways of charity and contribution to social projects in different forms.⁹

⁶ Reuters, A Chinese Definition of CSR, September 15, 2005. The full version of this news is available at <https://www.reutersevents.com/sustainability/content/chinese-definition-csr> (last accessed on October 1, 2021)

⁷Pavel Franc and others, Taking Corporate social Responsibly Seriously: CSR for NGOs and Other Stakeholders Environmental Law Service (2006) at 7

⁸ Michael Hopkins, *supra* note 1 at 1

⁹ Al Lyons, GBS as Philanthropist and Social Entrepreneur Bridging Nineteenth-Century Charity and Twenty-First-Century Social Innovation, Vol. 36, No. 1, Special Issue: Shaw and Money (2016) at 110

At its inception, the concept of CSR was related to corporate philanthropy in the form of the provision of charities and support for planned projects of the society. In the late 18th and early 19th, social movements and activities by non-governmental organizations (NGOs) started to pressure corporations to develop a more sophisticated approach to CSR, commonly known for ‘enlightened self-interest’.¹⁰ In line with this, the chemical industry in Canada developed the ‘responsible care’ program in the mid-80s, and participation in the program became a requirement for membership in the Chemical Industries Association.¹¹ In 1988, the program was also taken up by the US Chemical Manufacturers Association (commonly known for its short name CMA) and the UK Chemical Industries.¹²

Late 19th Century they were also required to work closely with customers, transporters, suppliers, distributors, and communities to triumph effective environmental management of processes and products. Most commonly, the Responsible Care program was taken as an essential entity to improve performance in businesses by increasing public image, providing wider benefits to the wider society, and improving the environmental and social impact of the processes and products.¹³

CSR began to be used in scholarly texts in the 1950s when Howard R. Bowen used the term CSR in his famous book titled “Social Responsibilities of the Businessman”. Accordingly, it has created a foundation for business executives and academics to consider the subjects as elements of strategic planning and managerial decision-making processes.¹⁴ Many writers in the field afterward believe it to be a seminal book on CSR. For this contribution, Mr. Bowen is known as the father of CSR.¹⁵ However, Bowen only defined CSR from the perspective of businessmen.¹⁶ These days CSR is not only the issue of business-making corporations but also for governmental bodies, universities, public enterprises, and other relevant entities. For instance, higher education institutions, mainly universities, worldwide have begun to cuddle sustainability concerns and

¹⁰Sylvaine Port, Corporate- NGO partnerships in CSR activities: why and how? Working Paper (2014) at 1

¹¹ Jean Belanger and others, Responsible Care: History and Development (2014)

¹² Ibid

¹³ Ibid

¹⁴ B Carroll, Corporate Social Responsibility, Evolution of a Definitional Construct, Business and Society, Vol. 38 No.3 (1999) at 269

¹⁵ Ibid at 270

¹⁶ Ibid

engage their campuses and communities in such efforts which have in return led to the development of integrity and ethical values in these organizations and their relationships with stakeholders.¹⁷ It has provided for the inclusion of social concerns into the operation of universities. In light of this, the thinking that the government is the only responsible body to address all the issues of the society has totally changed and the notion of CSR has now gained the recognition of citizens, international organizations, governments, and more importantly by the business itself, throughout the world.¹⁸ Hence, CSR is not a movement anymore reserved for a particular part of the world or business, but it has become a joint venture of all organizations that are concerned to address issues in society.¹⁹

Various business entities in Ethiopia included CSR in their guideline one of which is Ethiopia Agricultural Business Corporation but to what extent it is living up to its expectation is the main question this research will try to address.

1.2. Purpose of the Study

The purpose of the study is mainly to assess the legal and institutional framework set up to regulate CSR in Ethiopia focusing on Ethiopia Agricultural Business Corporation. It is the purpose of the research to come up with alternative plans and suggestions as to the way forward for better and effective utilization of CSR in Ethiopia.

1.3. Significance of the Study

Among other things, the research will have the following major significance. First and foremost, the study will critically examine the existing legal and institutional framework for the operation of CSR in Ethiopia focusing on Ethiopia Agricultural and Business Corporation. Thus, the result would be a good input for policymakers and negotiators which could serve as a good guideline as to how in best effective mechanism the CSR could be implemented in Ethiopia. The second

¹⁷ See Livingstone Ddungu and Ritah N. Edopu, Social Responsibility of Public and Private Universities in Uganda, *Journal of East Africa School of Higher Education Studies and Development*, Vol. 8 No.1 (2016)

¹⁸ Anna Zueva and Jenny Fairbrass, Politicizing Government Engagement with Corporate Social Responsibility: “CSR” as an Empty Signifier, *Journal of Business Ethics* (2021) at 638

¹⁹ Andreas Georg Scherer and Guido Palazzo, Toward a Political Conception of Corporate Responsibility: Business and Society Seen from a Habermasian Perspective, *The Academy of Management Review*, Vol. 32, No. 4 (2007) at 1098

significance is that no research output examines its implementation and application in Ethiopia focusing on Ethiopia Agricultural and Business Corporation. To be more specific, there is barely enough literature on the matter and hence, this research will serve as a stepping stone for further study in this area.

1.4. Research Methodology

This research makes use of the doctrinal and non-doctrinal methods of research. The research employs both primary and secondary sources extensively. The research also extensively consults the literature on CSR. To exhibit contemporary concerns, comparative studies are made. Although the works of literature on Ethiopia's CSR is next to none, the highest effort is deployed to consult any available materials. Primary sources particularly commercial Code, investment proclamation, environment legislation, bilateral investment treaties to which Ethiopia is party, and other relevant bylaws are examined in more detail and critical manner. Moreover, the key informative interview would be conducted to examine the practical application of the area.

1.5. Research Questions

Although CSR for the good parts of its definition is a soft law having no binding effect on the company if it's properly applied and implemented it would positively impact the workers, the environment, the company, and the community at large. Within this broader framework, the research tries to address the following questions:

- a) What is the historical background for the rise and development of CSR?
- b) What are the legal and institutional frameworks put in place for CSR?
- c) Is the CSR properly applied and implemented in Ethiopia?
- d) What are the gaps in the existing legal framework and its application?
- e) What should be done to have an effective CSR in Ethiopia?
- f) How and to what extent the Agricultural Business Corporation incorporates and addresses the issue of CSR?

1.6. Limitations of The Study

The lack of adequate literature on CSR in Ethiopia has significantly and adversely affected the research. It will not be overstating to say there is a dearth of literature on Ethiopia's CSR in general. Inaccessibility of guidelines concerning CSR would be another problem. While remarking on other legal systems somewhere it has been said that 'it is today extremely difficult for anyone without special training to discover what the law is on any given topic.' To make things worse, in Ethiopia even for a specialized and well-known lawyer, it is quite difficult to find out guideline which is considered internal document. While even for those available guidelines in some instances, there is the problem of language as it exists in Amharic, and having a proper translation would be at times very painstaking and a daunting task.

1.7. Literature Review

While CSR was widely discussed in the last fifty years of the twentieth century, the idea that business has societal obligations was evident at least as early as the 19th Century.²⁰ The concept of CSR constantly adapts to the needs of global business.²¹ The concept is being discussed globally. CSR is a concept of integrating environmental and social interests into the business strategy and everyday practice of an organization. Sapkauskiene and Leitoniene define CSR as:²²

“[...] activity policy and practice of organizations (and individuals) when the companies voluntarily integrate social and environmental matters into their business and combine them harmoniously with economic interests, and the relationships with all stakeholders are based on the valuable principles of respect for the individual, society, and the environment.”

It is therefore important for a business to continue in its commitment to behave ethically and contribute to economic development while enhancing the quality of life of the employees and the surrounding community.²³ This can be achieved through the various CSR activities that the

²⁰ Please see the Historical part on this

²¹ S Pour and Others, Corporate Social Responsibility: A literature Review, African Journal of Business Management, Vol. 8 No. 7 (2014) at 228

²² A Sapkauskiene and S Laitunine, Corporate social Responsibility Research Methods Analysis, European Scientific Journal (2014) Special Edition at 237

²³ S. Soundarya, Corporate Social Responsibility: A Contemporary Approach Towards Sustainable Development, ISOR Journal of Business and Management at 40

business chooses to engage in for the benefit of its various stakeholders. Companies perceived to have a strong CSR commitment would receive a positive response in their business which can result in higher sales.²⁴ Besides, the business often has an increased ability to attract and retain employees, which leads to reduced turnover, recruitment, and training costs. Despite this, adopting the CSR concepts involves short-term or long-term expenditures.²⁵ The costs might involve the purchase of new environmentally-friendly equipment, the change of management structures, or the implementation of stricter quality controls. These practices are costly, but the increased productivity of the workers and improved quality of the products can generate optimistic cash flows that cover the collateral costs.²⁶ Thus, a business may benefit from socially responsible actions in terms of employee morale and productivity.

Since Bowen publicized the social responsibilities of the businessman's seminal piece on social responsibility inaugurated the modern thinking period²⁷ on CSR, there has been debate on the nature of the topic that has been developed in academic literature. Nevertheless, both the academics and practitioners seem to have renewed their interest in the topic appealing a plethora of theories, perspectives, and terminology, which sometimes trigger uncertainty when attempting to deeply understand the notion.²⁸ Within a bibliometric analysis of them which makes for 30 years of research²⁹ on CSR developed and applied a specific methodology based on content analysis seeking to clarify the direction of CSR.³⁰

Even when their results allowed them to discard that the epistemological evolutionary sense of CSR had a normative positioning, they were not able to differentiate which of the two remaining

²⁴YitbarekAbrha and others, Examining the Relationship Corporate Social Responsibility and Financial Performance of Manufacturing Companies in Tigray Regional State, Ethiopia, Eurasian Journal of Business and Economics, Vol. 5 No.2 (2015) at 258

²⁵ C Branco and L Rodeigues, Corporate Social Responsibility and Reasoned- Based Perspectives, Journal of Ethics, Vol. 69 No. 2 (2006) at 122

²⁶ M Tsoursource, Corporate Social Responsibility and Financial Performance, Haas School of Business, University of California (Dissertation) (unpublished) (2004) at 7

²⁷ B Caroll, A Three-Dimensional Conceptual Model of Corporate Performance, Academic of Management Review Vol. 4 No. 4 (1979) at 497

²⁸ M Marrewit, European Corporate Sustainability Framework from Managing complexity and corporate transformation, International Journal of Business Performance Management (2003)

²⁹ Encompass from 1972- 2002

³⁰ D Bakker and others, A Bibliometric Analysis of 30 Years of Research ad theory on corporate Social Responsibility and Corporate Social Performance, Business society (2005) at 293

possible perspectives: progressive or variegation prevailed over the other.³¹ A modern concept of CSR has evolved since the 1950s, formalized in the 1960s, and proliferated in the 1970s.³²

Throughout the past several decades, numerous aspects of CSR have been the subject of investigation in academic and business literature, economic, legal, and ethical domains can be epitomized as the most common components of CSR.³³ One aspect of CSR interesting to many financial economists is the economic domain: the financial impact of CSR on profit-seeking corporations. Regarding the relationship between companies' CSR activities and their performances³⁴, the literature presents three assertions.³⁵

The first group of researchers has found a negative co-relationship between CSR activities and financial performance as measured by, for example, stock price changes, excess return, or analysts' earnings per share forecasts.³⁶ The leading figure in this camp, Mr. Friedman, argued that managements are selected by the stockholders as agents and their sole responsibility is acting on behalf of the principals' best interests.³⁷ From Friedman's perspective, the only social responsibility of a business is to use its resources and engage in activities designed to increase the profits and wealth of owners. Any other activities disturbing the optimal allocation of scarce resources to alternative uses exert an adverse influence on business performance.³⁸

The second group argued for positive co-relationship of companies' CSR activities on financial performance. This group asserts, based on the stakeholder model, and suggests that businesses expand the scope of consideration in their decision-making and activities beyond shareholders to several other constituencies with interests, such as customers, employees, suppliers, and

³¹ C Croker, Epistemological Development of Corporate Social Responsibility: The Evolution of Continues, *Social Responsibility Journal*, Volume 13 No.2 (2017) at 279

³² B Carroll, *A History of Corporate Social Responsibility: Concepts and Practices* (2008) at 22

³³ G. Adda and Others, Business Ethics and Corporate Social Responsibility for Business Success and Growth, *European Journal of Business and Innovation Research*, Vo. 4 No. 6 (2016) at 30

³⁴ Particularly financial performance

³⁵ S Cherian and Others, Does Corporate Social Responsibility Affect the Financial Performance of the Manufacturing Sector? Evidence from an Emerging Economy (2019) pp. 3-4

³⁶ H Kang, Impacts of Positive and Negative Corporate Social Responsibility Activities on Company Performance in the Hospital Industry, *International Journal of Hospitality Management* (2010) at 73

³⁷ Ibid

³⁸ Ibid

communities.³⁹ The second group asserts that CSR activities, which encompass all legitimate stakeholders' implicit claims as stakeholder theory suggests, can improve business value by immediate cost saving, enhancement of business reputation, and dissuasion of future action by regulatory bodies including governments which might impose significant costs on the business.⁴⁰

A third group has supported no particular relationship between CSR activities and financial performance, partially arguing for the existence of too many confounding factors for researchers to uncover a particular impact of CSR on business performance. Seemingly contradictory themes between Friedman's viewpoint and the stakeholder theory arise from the assumption that CSR, which considers the interests of a broad spectrum of stakeholders⁴¹, is detrimental to the value maximization activities of the business.⁴² However, attempts to reconcile the potential conflict between these two viewpoints by proposing enlightened stakeholder theory, which asserts that a business cannot maximize its long-term value if it ignores the interests of diverse stakeholders.⁴³ A business's capacity that generates sustainable wealth over time and its long-term value are determined by the relationship with both internal and external stakeholders. CSR, if it contributes to enhancing business value, can be an appropriate corporate strategy as the stakeholder theory suggests, not exploitation of shareholders' wealth to benefit other parties.

Although there are many ways to implement CSR, three CSR initiatives that businesses commonly use are sponsorship, cause-related marketing, and philanthropy.⁴⁴ The current study enhances knowledge about CSR initiatives by investigating the relative contribution of three types of CSR initiatives, sponsorship, CRM, and philanthropy, to consumers' ability to identify with a company.⁴⁵

³⁹FarzadEavani and other, The Investigation of the Relationship between Corporate Social Responsibility Activities and Company Financial Performance, *Elixir Financial Management* Vol. 54 (2013) at 12221

⁴⁰ M Garving, An Evaluation of the Effectiveness of Corporate Social Responsibility on Achieving Sustainable Business Growth: A case of Mutare Urban, Bindura University of Science Education, Faculty of Commerce (2016) pp. 24-25

⁴¹ Which is suggested by stakeholder theory

⁴² Asserted by Friedman

⁴³ C Jensen, Value Maximisation, Stakeholder Theory, and the Corporate Objective Function, *European Finance Management*, Vol. 7 No. 3 (2001) pp. 300-301

⁴⁴ R Varadarajan and A Menon, Cause- related Marketing: a coalignment of Marketing Strategy and Corporate Philanthropy, *Journal of Marketing*, *Journal of Marketing*, Volume 52 No. 3 (1988) pp. 57-58

⁴⁵ Ibid

CHAPTER TWO

Corporate Social Responsibility in Comparative Perspectives: The Case of United States, United Kingdom, And South Africa

In this section, an attempt will be made to examine the legal and institutional framework in various jurisdictions. The main criteria to pick USA and United Kingdom is because these countries have one of the strongest legal regimes and public opinion about CSR whereas the inclusion of South Africa is just to include an African country. This section also briefly discusses the main principles and benefits that a business could acquire by implementing CSR.

2.1. CSR in a Comparative Perspective

2.1.1. CSR in the United Kingdom

The concept of CSR in the UK can be traced back to the history of company law. Before 1948 UK company law was always understood to be shareholder centric. The law required that directors' decisions be oriented towards the interests of the company. This was also well reflected in their case jurisprudence. In this instance, for instance, in one famous case, the court held that "the law does not say that there are to be no cakes and ale, but there are to be no cakes and ale except such as are required for the benefit of the company."⁴⁶ (Underline mine)

The concept of interest of the company was understood to mean the commercial interest of the shareholders rather than the interest of other stakeholders. In this notion, the wider social responsibilities of management were never provided under the law. Even though the board of directors has a legal and contractual obligation to work towards the interest of the company and its ultimate owners i.e., the shareholders if broadly interpreted the notion could accommodate the social aspect of responsibility the company has towards the society.⁴⁷

⁴⁶ Dictum per Bowen L.J. in Hutton's case at 672 as quoted in A. AKinjide, A Conceptual Framework for Effective Corporate Social Responsibility for Companies in the Nigerian Extractive Industry, LLM Thesis (2007), University of Lagos, Unpublished at 86

⁴⁷ Thomas Donaldson, The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications, The Academy of Management Review, Vol. 20 No.1 (1995) at 85

Because of this lacuna in the law, in 1943 Committee on Company Law Amendment, also known as the Cohen Committee, named after its chairperson, was tasked to review the UK's system of company law.⁴⁸ The Cohen Committee was asked to consider and report what major amendments are desirable in the Companies Act of 1929, and, in particular, to review the requirements prescribed concerning the formation and affairs of companies and the safeguards afforded for investors and the public interest.⁴⁹ (Underline mine). Very unfortunately, the Committee gave prior attention to the protection of shareholders, and hence, there was no clear incorporation of mechanisms to safeguard the interests of the general public in the corporate structure.⁵⁰

Then the political pressure in the late 19th Century, for industrial democracy forced the legal regime at least to adopt toothless requirements and “moral obligation” so to say, to consider the interest of the community. In 2006, a review process by Company Law Review Steering Group (CLRSG) led to visible changes. The CLRSG began from the side that, under the existing law, companies are formed and managed for the benefit of shareholders, subject to safeguards for creditors, and with public disclosure of information operating for the benefit of the community as a whole.⁵¹

2.1.2. CSR under United States Legal System

In the contemporary United States, individual member states of the federating unit are primarily responsible for delineating the obligation and rights of businesses that opted to incorporate within their jurisdiction. This simply means that there is no federal business corporation statute in the United States. This issue in some instances leads to a “race to the bottom” between and among member states whereby one state lowers its requirement for sake of incorporating into a particular state.⁵²

⁴⁸ E Murphy, Revision of British Company Law, Minnesota Law Review

⁴⁹ Ibid

⁵⁰ Report of the Company Law Reform Committee (1958) at 40

⁵¹ Luca Cerioni, The Success of the Company in s. 172(1) of the UK Companies Act 2006: towards an ‘enlightened directors’ primacy, OLR Vol. 4 No.1 (2008) pp. 2-3

⁵² Mark Anthony Camilleri, Corporate Social Responsibility Policy in the United States of America (2017)

A vast body of corporate judicial precedent that serves as a law exhibits that, the USA all often used enabling board of directors' model which gives management a high level of flexibility in running the affairs of a corporation. The Board of Directors is considered the ultimate responsibility for overseeing the affairs of the company and owes fiduciary duty toward the company and its shareholders.⁵³

The permissive statutes vary in the amount of discretion granted to boards to consider non-shareholder interests. Some limit the discretion to situations involving changes of control and substantial sales of corporate assets while others grant the discretion within the general duties of a director. For example, the Indiana constituency statute states that:

“A director may, in considering the best interests of a corporation, consider the effects of any action on shareholders, employees, suppliers, and customers of the corporation, and communities in which offices or other facilities of the corporation are located, and any other factors the director considers pertinent”.

The enactment of constituency statutes in the United States can therefore be regarded as a departure from the shareholder wealth maximization norm. Whether the development of constituency statutes adequately protects non-shareholder constituents, however, is questionable.⁵⁴

These statutes are criticized as ineffective or counterproductive for the advancement of non-shareholder interests for the following main reasons. First and foremost, the permissive nature of the permissive statutes means that the consideration of stakeholder interests is discretionary. Consequently, directors can easily ignore their interests.

Second, these statutes are not enforceable. There is no remedy for a failure to consider stakeholder interests. Third, the term “stakeholder” is not clearly defined. General terms such as “customers” or “community” are ambiguous and there is no guidance to define them.

⁵³Brammer S, Pavelin, Corporate community contributions in the United Kingdom and the United States, *Journal of Business Ethics*, Volume 56 No.1 at 20

⁵⁴Stefan J. Padfield, Citizens United, Concession Theory and Corporate Social Responsibility (CSR), 62 *UCLA L. Rev. Discourse* 84 (2014)

Fourth, these statutes may be abused by boards seeking to entrench themselves. Directors may hide behind vague duties to conflicting groups to serve their interests; too much discretion is conferred without assigning any corresponding responsibility. Almost any corporate action can be justified as in the interest of some constituency.

Fifth, the legislation does not explain why directors should have responsibilities to various constituencies, nor does it provide standards for assigning relative weights to the constituents. It is clear that constituency statutes have succeeded in rekindling the corporate social responsibility debate. Advocates for corporate social responsibility would argue that these statutes assuredly do have the potential for providing a measure of relief for some stakeholders. They may be used as a basis for judicial intervention on the theory that because they “alter the basic foundations of corporate law ... provide courts with the inherent legitimacy of legislative approval by explicitly acknowledging non-shareholder interests in the corporation... and signify a broad social consensus to acknowledge the non-contractual expectations of various non-shareholder constituents.”⁵⁵

Although constituency statutes may indeed at first glance suggest a new direction for the corporation, they have not succeeded in eradicating the traditional shareholder wealth maximization norm in the United States. They have failed to change the corporate law framework into one that mandates legally enforceable stakeholder interests in corporate decision-making. In the 1990s, the concept of corporate welfare in the United States received widespread publicity and as a result, the concept of corporate social responsibility was again a subject of debate. “Corporate welfare” has been defined as “any action by local, state, or federal government that gives a corporation or an entire industry a benefit not offered to others” to create jobs.⁵⁶ Examples of benefits are subsidies, grants, loans, tax breaks, or government service. The proliferation of corporate welfare has given the judiciary another opportunity to prioritize the interest of shareholders and stakeholders.

⁵⁵Marleen A. O'Connor, Restructuring the Corporation's Nexus of Contracts: Recognizing a Fiduciary Duty to Protect Displaced Workers, *North Carolina Law Review*, Volume 69 No. 4

⁵⁶E. Dawkins, Corporate Welfare, Corporate Citizenship and the Question of Accountability, *Business and Society* (2002) at 271

2.1.3. CSR under South Africa Law

The history of corporate social responsibility in South Africa is perhaps a recent phenomenon. In 1992, the Institute of Directors formed the King Committee in South Africa. The Committee published the King Report on Corporate Governance in 1994 which applied to listed companies, state-owned companies, and banks.⁵⁷ The King Report contained a set of voluntary principles and guidelines for good governance including issues that resemble corporate social responsibility. This committee incorporated the issue of corporate social responsibility released in 2002.⁵⁸

King II encouraged a triple context which includes environmental, social, and economic, and advised against the single bottom line which is profit maximization when running a company. A third King report proved necessary after the enactment of the Companies Act of 2008 and the constant change in governance regulation.⁵⁹ King III applies to all business forms, whether incorporated, listed, or not. This report specifically provided for the “apply or explain” principle that had to be applied by directors when acting on behalf of the company.⁶⁰

Directors were required to act in good faith, in that they had to be honest, act in the best interests of the company, not receive secret profits, and had to promote the purpose for which the company was established. Following the developments post-King III and the Companies Act of 2008, the drafting of King IV was necessitated by the changing role of business and society in the Twenty-first Century. King IV states that “in the execution of its governance role and responsibilities, the governance body should adopt a stakeholder-inclusive approach that balances the needs, interests, and expectations of material stakeholders in the best interest of the organization over time.”⁶¹ King IV is a voluntary code of good corporate governance; however, the Johannesburg Stock Exchange (JSE) regards as mandatory the King IV report's principles

⁵⁷Rossow and Others, Corporate Governance in South Africa, *Journal of Business Ethics*, Vol. 37 No.3 (2002) at 289

⁵⁸ S Eccles, Mandatory Corporate Social Responsibility Assurance Practices” *Journal of Accounting, Auditing and Accountability*, Vol. 28 Issue 4 (2015) at 516

⁵⁹ Institution of Directors South Africa, King Report on Governance for South Africa (2019) at 22

⁶⁰ Botha, The Role and Duties of Directors in the Promotion of Corporate governance: A South Africa Perspective at 708

⁶¹ Principle 16 of the King Report Volume Iv. The full version of the report is available at https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA_King_IV_Report_-_WebVersion.pdf (last accessed on November 10, 2021)

for all listed companies as per its listing requirements.⁶² Failure to comply can lead to a suspension of the listing. While this is a good enforcement measure, it applies only to large public companies listed on the JSE and not all corporations.

The South African courts have given legitimacy to King's reports and codes on corporate governance. Hussain J then seemed to address the second issue without linking same to the first issue of resignation. He points out that the King Committee correctly stressed that “one of the characteristics of good corporate governance is social responsibility”. In this regard, Delport submits that the court in Stilfontein referred to principles of good governance and said:⁶³

“It would appear that these principles, which are not contained in legislation, or which are not mere restatements of common law principles, are not always mere recommendations. Instead, directors may have to adhere to these recommendations to prevent liability for breaching their legal duties”.

In South Africa, directors have a fiduciary duty to act in the best interests of the company.⁶⁴ The word company is nowhere defined in the Act and the common law meaning refers to the collective body of shareholders. Directors cannot legally take the interest of any other stakeholders therefore environment, employees, and anybody directly or indirectly impacted by the company’s decisions into account unless it is in the interests of the shareholders.⁶⁵ Although the Companies Act does not specifically refer to CSR, an indirect reference to CSR can be found

⁶² A Corvino and others, *Corporate Governance Integrate Reporting and Environmental Disclosure: Evidence from the South Africa Context, Sustainability* (2020) pp. 3-4

⁶³ Delport “The duty of care, skill and diligence: The King Report and the 2008 Act” 2011 THRHR 449 as quoted in M Botha, *Towards a Hybrid Approach to Corporate Social Report in South Africa: Lesson from India* (2020) at 587

⁶⁴ Under the King III report it’s indicated that “it is the legal duty of directors to act in the best interests of the company. In following the ‘apply or explain’ approach, the board of directors, in its collective decision-making, could conclude that to follow a recommendation would not, in the particular circumstances, be in the best interests of the company. The board could decide to apply the recommendation differently or apply another practice and still achieve the objective of the overarching corporate governance principles of fairness, accountability, responsibility and transparency.” *The Duty of Care, Skill and Diligence: The King Report and the 2008 Company Act, Antekeninge*, at 450

⁶⁵ Irene-Marie Esser, *Shareholder Interests and Good Corporate Governance in South Africa*, 77 THRHR 38 (2014) at 46

in the Act. It should be noted that there is no legal obligation or mandate on South African companies to act socially responsible when making business decisions.⁶⁶

2.2. Principle of Corporate Social Responsibility

Three principles of CSR have been identified and these can be used to integrate CSR into organizational culture. These principles include sustainability, accountability, and transparency. Contemporary business organizations consider these principles as part of their core values. This section will briefly discuss these triple principles in CSR.

The first and foremost principle is the principle of Sustainability. Sustainability refers to the ability of the business organization to sustain its functions and business in a given scarcity of resources.⁶⁷ Some Business organizations make use of resources in their process of doing business which can become depleted and make it difficult to sustain the operations.⁶⁸ In such instances, business organizations are urged to use resources sparingly and engage in practices that are designed to renew the source base. It is evident that some businesses have to spend more money on research and development to find methods of conserving and developing alternative sources in finding the best possible options.

The second core principle is accountability. Accountability is concerned with the recognition that the company's actions affect the external environment and engagement with society at large. Thus, as per this principle, a business entity should act responsibly.⁶⁹ It is supposed to report to stakeholders those actions which have the potential to affect the environment and the society at large and the actions proposed to mitigate or minimize such negative impacts, if possible, to overturn to positive output that even helps the business.⁷⁰

⁶⁶ Miles and Jones, The Prospect for Corporate Governance Operating as a Vehicle for Social Change in South Africa, *Deakin Law Review*, Vol. 14 No.1 (2009)

⁶⁷ It is a common knowledge that resources are scarce. This is especially true in a modern world whereby the demand for everything is increasing.

⁶⁸ E Emensh and Ondotimi, CSR, Human Rights Abuse and Sustainable Report Accountability, *International Journal of Law and Management*, Vol. 56 No. 2 (2014) at 137

⁶⁹ Prince UcheAmadi, Corporate Social Responsibility (CSR) and Human Rights Accountability in Nigerian Petroleum Industry: From Voluntarism to Legal Positivism, *US-China Law Review*, Vol. 7 No. 6 (2020) at 256

⁷⁰ We will see below the main benefits of implementing CSR

The last yet still important principle is that of transparency. The principle of transparency, in the context of CSR, means that the outside influence of the actions of the business entity can be established from that organization's reporting and relevant facts are not disguised within that reporting.⁷¹ Business or board of directors should be aware that all stakeholders, including those external to the business, are entitled to know through reports all the effects of the organizations' acts and transactions, especially as it affects them and their surroundings. Society may want to know, for instance, what the business has done to alleviate adverse impacts from its operations and the positive steps it has taken to ensure the benefit of the community at large from the business.

2.3. The Significance of Implementing CSR for Business Per Se

Needless to say, several academic works of literature, studies, and survey underscore the reasons for CSR implementation. There are many reasons for and benefits to implement CSR for business.

It is not easy to determine the conditions by which a business obtains benefits from the introduction of socially responsible activities and which are necessary to maximize these benefits. Experts agree and point to the same or similar group benefits. The benefits of CSR strategies are usually difficult to measure because, in most cases, they are benefits of intangible nature that are not readily quantifiable. There are numerous international studies dealing with CSR that confirm its positive impacts and benefits for business.⁷² One research involving 251 companies in the manufacturing and construction industry showed that the most common reasons for adopting CSR were the visibility and image of the company, improved promotion of positive events, building trustworthy relationships, promoting beneficial and useful services in connection with advertising, and sense of responsibility and promotion of the "right and important things"

⁷¹ Stephen Kim Park, Targeted Social Transparency as Global Corporate Strategy, *Northwestern University School of Law Northwestern Journal of International Law & Business*, Vol. 35 No.1 (2014)

⁷²YohannesWorkeferahu, Adoption of corporate social responsibility in least developed countries-comparative case studies research in the Ethiopian brewery sector, *Center for Economic Research* (2017) at 26

with reference to moral principles.⁷³ In summary, the ratio of marketing and ethical reasons for the adoption of CSR among companies is well balanced.

The first and foremost benefit is to avoid government intervention. Companies should set their structure and agenda of behavior than to accept regulation from the outside. This implies that and gives freedom to the company for self-regulation of business in response to growing economic power.⁷⁴ Huge companies through their actions can provide standards for smaller firms to emulate. This in turn positively affects the public perception of the business. Consumers, particularly in Western Europe, are increasingly interested in the background of the manufactured product they intend to purchase and are forevermore seeking accessible information before they decide on their purchase or conversely, propose a consumer boycott.⁷⁵

The second benefit of implementing CSR properly is an increase in attractiveness to investors and the long-term sustainability of the company.⁷⁶ This, in turn, increases the profit growth, company's value, access to capital, greater transparency, and enhanced trust and corporate culture. In terms of manufacturing, they include creating new job chances, especially for members of the local community and attracting and retaining workers, enhancing workers' loyalty to the leadership, increasing their productivity, and creating an environment that enables employees to develop their full potential.⁷⁷

The third benefit is from a marketing perspective, therefore, building a reputation and the resulting strong position in the market and gaining a competitive advantage and greater original brand resolution by the consumer.⁷⁸ Because CSR increases positive image of the business, sales growth, and customer loyalty, value of intangible assets like goodwill, value of brand, quality of

⁷³ Jacqueline Boysselle, The influence of CSR (Corporate Social Responsibility) communication on brand perceived value and trust: The case of SME in the food industry, Université Montpellier (2015)

⁷⁴ Gunningham and J Ress, Industry Self-Regulation: An industrial Perspective, Law and Policy, Vol. 19 No. 4 (1997) at 367

⁷⁵ P Warren, Competition Law and Voluntary Codes of Self-Regulation: An Individual Assessment of What Has Happened to Date, University of New South Wales Law Journal, Volume 13 No.2 (1990) at 220

⁷⁶ As the company increase its sustainability investors will be more interested to invest their capital

⁷⁷ Witold Henisz, Tim Koller, and Robin Nuttall, Five ways that ESG creates value Getting your environmental, social, and governance (ESG) proposition right links to higher value creation, McKinsey Quarterly

⁷⁸ Min Zhang, Brand Reputation in International Marketing: Case of Mobile Telephone Companies, Master's Degree Certificate

products, and direct savings resulting from the quality of products and services.⁷⁹ Moreover, it helps improve the ability to attract and build effective and efficient supply chain relationships, an opportunity for innovation and increasing efficiency, building of political capital, decreasing costs of risk management, and direct financial savings associated with environmentally friendly practices.⁸⁰

In a summary of the results of the CSR economic benefits analysis, Ernst and Young Global Limited, one of the leading Auditing Firms globally, provided the following main conclusion.⁸¹ As per the result, most corporate which undertake CSR initiatives result-oriented generated a positive return on investment and hence, secure the highest economic return.

⁷⁹WenjunXie, How does CSR Influence a Firm's Profitability? A case study of Sandvik (2013) Thesis Unpublished

⁸⁰BSR, The Business Case for Supply Chain Sustainability: a Brief for Business Leader (2010)

⁸¹Anna Križanová and LubicaGajanová, The Importance of CSR Implementation, CBU International Conference on Innovations in Science and Education (2016) at 516

CHAPTER THREE

NORMATIVE FRAMEWORK FOR CORPORATE SOCIAL RESPONSIBILITY IN ETHIOPIA

3.1. Introduction

Ethiopia is one of the oldest yet least developed countries in the world which have been suffered from widespread political instability, the polarization of ethnicity, and bad governance.⁸² With the view to alleviate these and other related problems, the supreme law of the land, the FDRE Constitution, incorporated general policy direction on economic and social aspects.⁸³

Concerning economic policy direction, for instance, the Constitution stated that the government has to formulate policies to ensure that all of Ethiopia should benefit from the material and intellectual resources the country has and provide equal opportunities to improve their economic status.⁸⁴ On top of this, the government has a legal obligation to protect and promote the health, welfare, and living standard of the working sector of the society.⁸⁵ On the social aspect, the government should promote and fulfill, to the extent possible and to the extent the country's economy permitted, policies that aim at providing access to public health, clean water, education, housing, social security, and food.⁸⁶ Despite the government enacting various policies and laws, none of these laws are designed in a manner integrating CSR as a mechanism to achieve their goals and objectives.

Under the existing Ethiopian legal framework, there is no specific law and policy as such that directly incorporate and integrate CSR *per se*. However, there are provisions and concepts incorporated under various Ethiopian laws that resemble CSR. In this section, an attempt will be made to examine these laws.

⁸²BekeluAtnafu, Ethnic Federalism and Conflict of in Ethiopia. This piece is available at <https://www.accord.org.za/ajcr-issues/ethnic-federalism-conflict-ethiopia/>

⁸³ See Article 89- 93 of the FDRE Constitution

⁸⁴ Article 89 (1) of the FDRE Constitution

⁸⁵ Article 89(3) of the FDRE Constitution

⁸⁶ Article 90(1) of the FDRE Constitution

3.2. CSR under the FDRE Constitution

Constitution stands superior to all laws of the land and it's supreme in the sense that subsidiary acts or laws shall be in line with the general framework it lays down.⁸⁷ As the supreme law of the land, it manifests the will of the citizens of a state. Any subsidiary legislation or any other acts shall sustain the life of applicability only and in so far as their repugnance to the supreme law is not established.⁸⁸ It is, therefore, a mandatory requirement that acts or laws should not come in contradiction with the Constitution. Transcending a constitutional provision that either authorizes or forbids a certain activity won't be, as one may imagine, without sanction. Countries enshrine in their constitution that repugnance to the highest authority from which every subsequent act erects its existence would lead to invalidation of the act in question.⁸⁹

The FDRE Constitution is a supreme and basic source of law in Ethiopia.⁹⁰ It is supreme law of the land and overrides all other subsidiary legislation and practices, as indicated above. The Ethiopian constitution with its overriding effect on other legislation and practices has many environment-related stipulations that serve as a source of corporate environmental accountability.⁹¹ The Constitution enshrined the right to sustainable development.⁹² The lawmaking power of the federal government and administration power of the States should oversee the right to rights of the citizen in terms of CSR.⁹³ The FDRE Constitution imposes the duty of implementation of its provisions in general including the realization of protection of the environment, social and other aspects of the citizen should be overseen and protected by every member of the community which includes non-state actors the likes of business entities. To this effect, the FDRE Constitution provides that all citizens, organs of state, political organizations, **other associations** as well as their officials have to ensure observance of the constitution and obey it.⁹⁴ (Underline supplied)

⁸⁷ Article 9(1) of the FDRE Constitution

⁸⁸ Ibid

⁸⁹ This feature of the Constitution that make it grand norm as per Kelson theory

⁹⁰ Article 9(1) of the FDRE Constitution

⁹¹ Article 9(2), 43(3), 44, 51, 52 and 92 of the FDRE Constitution

⁹² Article 42 of the FDRE Constitution

⁹³ Article 51 and Article 52 of the FDRE Constitution

⁹⁴ Article 9(2) o the FDRE Constitution

The term ‘other associations’ in this phase is broad enough that capture investment corporations whether foreign or domestic big, small, medium, or large business entities.

Thus, the supreme law of the land seems imposed on corporations whether public enterprise or private sector to observe its stipulations and ensure adherence by others. The Constitution being supreme law of the land nullifies all acts and practices contravening its declarations and hence the constitutional prescriptions regarding the environment, social and other activities as an investment have an overriding effect over other sub-legislation and practices. Therefore, it is the supreme source of law in Ethiopia relating to corporate environmental and social accountability too, and hence, corporations are made duty-bound in the social responsibility protection to take measures to ensure the constitutional environmental stipulations in this regard.

All in all, the cumulative reading of Article 9 (1) and 89-92 of the grand law of the land imply that they are encumbered with both duties of observing protection and taking environmental protection measures to ensure environmental objectives. They are accordingly bound by constitutional corporate social responsibility accountability.

3.3. CSR under International Law to Which Ethiopia is a Party

3.3.1. CSR under Bilateral Investment Treaties (BITs)

BITs are agreements concluded between sovereign countries with the prime objective of promoting investment and protection of the investor.⁹⁵ BITs regulate investment relations between party States. Recently, however, there have been trends to include environmental protection provisions in the BITs.⁹⁶ Especially, BITs between developed countries used to contain a sustainable development provision in their content or urge environmental, labor and human-related side agreements to be developed between parties.⁹⁷

⁹⁵ Grabowski ‘The definition of investment under the ICSID Convention: A defense of Salini’ Chicago journal of international law, Volume 15 (2014)

⁹⁶ O’Connor ‘The International Law of expropriation of foreign-owned property: the compensation requirement and the role of the taking state, Loyola of Los Angeles International and comparative Law Review (1983) Volume 6

⁹⁷ Oniyinde and E Ayo, The protection of energy investors under umbrella clauses in bilateral investment treaties: a myth or a reality? Journal of Law, Policy and Globalization, Volume 61 (2017)

Ethiopia so far concluded around 34 BITs both with the developing and developed countries.⁹⁸ However, out of these BITs, only 23 of these BITs are enforceable and ratified.⁹⁹

Unlike the previous model of freedom of investment, which built on the essential assumption that all investments are good for the economic development of the host state, the current and the dominant model is an investment for sustainable development, which in turn based on the fundamental pragmatic believe that even though FDI coming through BITs benefit the host state, the benefit is not automatic and taken for granted.¹⁰⁰ In a sustainable development approach, the investment and investor should contribute among other things to the protection of human rights, labor, and environmental rights.¹⁰¹

One aspect of CSR is the human rights aspect of doing business. With the advent of globalization, there is a high level of openness amongst states, which facilitates the free flow of the three factors of production: labor, capital, goods, and services.¹⁰² This spectacle leads to the creation of huge Multinational Companies (MNCs) which function in different parts of the world. The world's top 100 MNCs account for 4.3% of the global economic activities.¹⁰³ These MNCs are also contributing 2.7 trillion dollars to the world's gross product in total. Thus, the influence and significance of these business entities are very evident.

One of the main policy justifications for developing countries to conclude BITs is to enhance FDI.¹⁰⁴ Sustainable development requires both FDI and protection of the social and community interest. Even though the foreign investors' presence in developing countries is an engine for economic development, they are, at times, also engaged in gross violation of human rights. The drastic impact of MNCs on human rights violations is well manifested in Shell's oil production

⁹⁸ The full version of these lists is treatment is now available at <https://investmentpolicy.unctad.org/international-investment-agreements/countries/67/ethiopia>

⁹⁹ These BITs are with Egypt, Finland, Sweden, Austria, Libya, Germany, Nigeria, Israel, Iran, French, Netherland, Algeria, Denmark, Tunisia, Turkey, Sudan, Yemen, Malaysia, Switzerland, China, Kuwait, Italy and Germany.

¹⁰⁰ Speech delivered by the Minister of Trade and Industry Dr Rob Davies at the South African launch of the United Nations Conference on Trade and Development (UNCTAD) Investment Policy Framework for sustainable development at the University of The Witwatersrand available at https://unctad.org/meetings/en/Miscellaneous%20Documents/South-Africa-Investment-statement_Rob_Davies.pdf(accessed 4 August 2019).

¹⁰¹ Ibid

¹⁰² Eddy Lee and Marco Vivarelli, *The Social Impact of Globalization in the Developing Countries*, Discussion Paper No. 1925 (2006)

¹⁰³ United Nations, *World Economic Situation Prospect* (2020)

¹⁰⁴ This usually explicitly indicated in the preamble of various BITs

in the Niger delta and the Rana Plaza incident. On top of being the violator of human rights, they might also hinder human rights protection and promotion by the government.

Except for one BIT, under Ethiopia's BITs in nowhere, it is indicated that the investor should protect human rights. The main reason behind this is that invoking human rights obligations under BITs means giving recognition to the regulatory organ to interfere with investors' investment activities whenever there is an allegation of human rights, and this might be a pushing factor for FDI.¹⁰⁵ However, under Ethiopia and Brazil BIT, it is stated that "respect the internationally recognized human right of those involved in the investors' activities."¹⁰⁶

The other CSR aspect in connection with BITs Ethiopia conclude is the environmental aspect. The term environment can be defined as¹⁰⁷ the complex of physical, chemical, and biotic factors (such as climate, soil, and living things) that act upon an organism or an ecological community and ultimately determine its form and survival.

Most of the BITs Ethiopia concluded don't contain environmental obligations towards the investors. However, there is an instance where Ethiopia BITs recognize the obligation of foreign investors towards the home state. Article 5 of the BIT Ethiopia concluded with Luxembourg Economic Union states the following:

- (1) Recognizing the right of each Contracting Party to establish its levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental legislation, each Contracting Party shall strive to ensure that its legislation provides for high levels of environmental protection and shall strive to continue to improve this legislation. (Underline added)
- (2) The Contracting Parties recognize that it is inappropriate to encourage investment by relaxing domestic environmental legislation. Accordingly, each Contracting Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such legislation as an encouragement for the establishment, maintenance, or expansion in its territory of an investment. (Underline mine)

¹⁰⁵ UNCTAD Series on International Investment Policies for Development, The Role of International Investment Agreements in Attracting Foreign Direct Investment to Developing Countries (2009)

¹⁰⁶ Article 14(b) of the BIT between Ethiopia and Egypt

¹⁰⁷ Britannica online Dictionary available at <https://www.britannica.com/science/environment>

- (3) The Contracting Parties reaffirm their commitments under the international environmental agreements, which they have accepted. They shall strive to ensure that such commitments are fully recognized and implemented by their domestic legislation. (Underline Supplied)
- (4) The Contracting Parties recognize that cooperation between them provides enhanced opportunities to improve environmental protection standards. Upon request by either Contracting Party, the other Contracting Party shall accept to hold expert consultations on any matter falling under the purpose of this Article. (Underline added)

The BIT Ethiopia has concluded with Brazil has also indicated that:¹⁰⁸

The Contracting Parties recognize that it is inappropriate to encourage investment by lowering the standards of their labor and environmental legislation or measures of health. Therefore, each Contracting Party guarantees it shall not amend or repeal, nor offer the amendment or repeal of such legislation to encourage the establishment, maintenance, or expansion of an investment in its territory, to the extent that such amendment or repeal involves decreasing their labor, environmental or health standards. If a Contracting Party considers that another Contracting Party has offered such an encouragement, the Contracting Parties will address the issue through consultations. (Emphasis supplied)

The other aspect of CSR in BITs is the issue of labor. It is quite evident that there is an increase in FDI in developing countries. Because classic sources of comparative advantages like market size are not agreeable for brief-term policy manipulation, developing countries enter into a race to the bottom by conceding another malleable determinate factor like that of tax laws and labor regulation and law. Generally, investors prefer lower labor standard countries over countries that have tighter and higher labor standards since it will lead to lower labor costs which in turn means a lower cost of production.¹⁰⁹

Foreign investors assemble in developing countries to engage in ‘nasty industry’ by exploiting the scarce natural resource and cheap labor costs. This is especially evident if the type of investment is low-technology and labor-intensive. To mention a few instances, an Adidas

¹⁰⁸ Article 16(2) of the BIT between

¹⁰⁹ ILO, Non-standard Employment Around the World: understanding challenges, shaping prospect (2016)

sweatshop scandal exposes the manufacturing process in the two Indonesian factories are using forced labor, sexual harassment, and child labor with extremely low wages i.e., below \$60 per month, and in a clear contradiction with core ILO Conventions.¹¹⁰

Like the case of environmental issues and human rights issues the concern of labor hasn't gotten enough attention under Ethiopian BITs except for BITs Ethiopia concluded with Luxembourg Economic Union and Brazil.¹¹¹

3.3.2. Environmental Pacts

Ethiopia is a state party to many international and regional environmental agreements. It has also ratified most of the agreements that it has signed. Among others, the following could be mentioned in this respect: the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilization¹¹², the Vienna Convention for the Preservation of the Ozone Layer, and the Montreal Protocol on Substance that Depletes the Ozone layer¹¹³, United Nations Convention to Combat Desertification in those Countries experiencing Serious drought and-or Desertification particularly in Africa¹¹⁴, Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and their Disposal¹¹⁵, the International Treaty on Plant Genetic Resources for food and medicine¹¹⁶ and others. Under these treaties, each ratifying country including Ethiopia must develop a strategy for its implementation and enforcement of environmental law.

As discussed above, the Constitution of Ethiopia accords treaties ratified by the Ethiopian government's status of domestic laws.¹¹⁷ Once ratified, treaties are for all purposes considered as part of the laws of the land and the provisions shall be enforced in the country. Thus, agreements on whatsoever subject matter they are concluded are constitutionally required to comply with the sustainability principle. Sustainability, as mentioned in different literature, contains economic,

¹¹⁰ Child Labor Scandal Hits Adidas, The Guardian the full version of this news is available at <https://www.theguardian.com/uk/2000/nov/19/jasonburke.theobserver>

¹¹¹ Article 6 and 5 of the BITs between these countries

¹¹² Which is concluded in 2010 ratified in Ethiopia by 2012

¹¹³ Which Ethiopia ratified in 2009

¹¹⁴ Which Ethiopia ratified in 1997

¹¹⁵ Which is ratified by Ethiopia 2000

¹¹⁶ Ratified by Ethiopia in 2003

¹¹⁷ Article 9(1) of the FDRE Constitution

social, and environmental aspects and the balance of them has to be maintained. This in turn implies that business entities in that they are accountable to the environmental treaty commands that Ethiopia has ever ratified.

3.4. The Revised Commercial Code of Ethiopia

The HoPR has unanimously passed the revised Commercial Code after it was first put in place over six decades ago. Even though the old Commercial Code was far ahead of Ethiopia's state of development much has changed since then necessitating an amendment.¹¹⁸

Like its predecessor, the revised Commercial Code doesn't contain an explicit provision concerning CSR. The overall reading of the provisions of the revised Commercial Code exhibits that it adopts a traditional shareholders-centric approach to corporate governance and by doing that it disregards the interests and involvement of other stakeholders.¹¹⁹

Under the revised Commercial Code companies obtain legal personality, which is distinct from their members, upon registration before the concerned body.¹²⁰ (Although upon its establishment, the company will have a legal personality that entitled it to sue, sued, own property, enter into various transactions, and have its name and trademark¹²¹, in effect any company is led by the general assembly of shareholders who ultimately transfer their power to the Board of Directors and finally, to the CEO or Manager.¹²²

The general meeting of shareholders, which is the ultimate supreme organ of the company, among others, has significant power in connection to the appointment of the Board of Directors, listening to their report, approval, or amendment of the memorandum of Association.¹²³ This implies that the Board of Directors, which are considered to be the legal representatives of the shareholders, can perform and implement only the task and mandate indicated under the Memorandum of Association and thing that is decided in the resolution. Thus, the company

¹¹⁸ See the preamble of the Revised Commercial Code

¹¹⁹ The core principle of the code is vote as per the number of shares held with the exception of protection of minority shareholders in rare instances.

¹²⁰ Article 99 of the Revised Commercial Code

¹²¹ As these are the main attribution of legal personality

¹²² This is typical structure of any business especially share company

¹²³ Article 394 of the Revised Commercial Code

Board of Directors can pursue CSR as far as it's indicated in the Memorandum of Association or/ and decided by way of resolution.¹²⁴

Thus, this agency and principal relationship between the Company and the Board of Directors seems to limit the role and significance of CSR in a corporate setup. Thus, in such type of arrangement one of the most recurring problems in contemporary corporate governance is the issue of agency – the principal relationship between shareholders as real owners of the company and the board of directors as a representative of shareholders.¹²⁵ This agency problem may arise in three different instances. It could be between the management and the shareholders, or majority and minority shareholder, or between the controllers of the company, either managers or majority shareholders of the company, and non-shareholder stakeholders, such as employees and debenture holders.¹²⁶ In the separation of ownership and management, the most prominent structural characteristic of the board of directors is whether it is a one-tier or two-tier institution. Ethiopia's previous Commercial Code did not even recognize the latter.¹²⁷

The revised Commercial Code brought many changes one of which is the introduction of a two-tier board structure and hence, permitting the incorporation of a two-tier Board of Directors. But unlike the one-tier board structure, in two-tier boards, executive directors, the management board, are responsible for the daily operations of the company while non-executive directors, the supervisory board, are responsible for the supervision and monitoring of executive directors.¹²⁸ However, the members of the supervisory board can only be shareholders.¹²⁹ Despite this, it's believed that this gives them chance and opportunity to think and reflect “other than profit activities.” However, the major problem of the revised Commercial Code in this regard is that

¹²⁴ Article 315 of the Revised Commercial Code indicated that directors shall be responsible for exercising duties imposed on them by law, memorandum of association, and resolutions of general meetings of shareholders.

¹²⁵ Fikadu Petros, Emerging separation of ownership and control in Ethiopian share companies: legal and policy implications, *Mizan Law Review*, Volume 4 No.1 (2010)

¹²⁶ Gebeyaw Simachew Bekele, A Critical Analysis of the Ethiopian Commercial Code in Light of OECD Principles of Corporate Governance, LLM Thesis, International Corporate Governance, Financial Regulation and Economic Law (2012) Unpublished

¹²⁷ The repealed code was typically one tier board structure

¹²⁸ Paul L Davies, *The Board of Directors: Composition, Structure, Duties and Powers*, Company Law Reform in OECD Countries a Comparative Outlook of Current Trends (2000)

¹²⁹ Article 331(4) of the Revised Commercial Code

it's absolutely within the freedom of the company whether to embody a supervisory board or not. Thus, the voluntary nature of this institution makes very little hope for CSR a leap of faith.¹³⁰

3.5. CSR under Tax Law

Even though there are no obvious and specified fiscal incentives targeting the promotion of CSR in the legal system, the Income Tax Proclamation incorporated exemption provisions for a business entity. As per Article 24 of the cited provision, donations and gifts provided by business entities shall be considered deductible expenses provided that if the donation or gift is made to Ethiopia charities and Ethiopia societies and/ or in response to a call for development or an emergency call issued by the government to defend the sovereignty and territorial integrity of the country, to prevent or provide relief about the man-made or natural disasters or an epidemic or for any other similar cause.¹³¹

The regulation which was enacted after the parent Proclamation extended deductions to be claimed by the taxpayer for expenses incurred in the management of its/his/her charitable activities in support of education, health, environmental protection, or provided in the form of humanitarian aid other than for the taxpayer's employees.¹³²

On top of this, the VAT Proclamation imposed an obligation to pay a 15% VAT rate when any individual buys goods and services from a VAT-registered entity.¹³³ However, the Proclamation provided exemption transactions from which VAT will not be imposed.¹³⁴ Among others, if the proposed transaction is “the supply of goods and rendering of services in the form of humanitarian aid, as well as the import of goods transferred to state agencies of Ethiopia and public organizations for rehabilitation after natural disasters, industrial accidents, and catastrophes” the transaction will not be subjected to VAT.¹³⁵ Thus, by doing so somehow the tax regimes, i.e., VAT and Income Tax, encouraged businesses to engage in CSR activities.

¹³⁰ Article 331(1) of the Revised Commercial Code

¹³¹ Article 24 of the Income Tax Proclamation No. 979/2016

¹³² Article 33 of the Income Tax Regulation No. 410/2017

¹³³ Article 7(1) of the Proclamation No. 285/2002

¹³⁴ Ibid, Article 7 of the Proclamation

¹³⁵ Ibid, Article 8(2)(h) of the Proclamation

3.6. CSR under the Investment Law

The newly enacted Investment Proclamation which replaced its immediate precedent Proclamation enacted in 2012, indicated states that it shall “encourage socially and environmentally responsible investments” as one of its objectives.¹³⁶ Towards this objective requires “all investors to give due regard to social and environmental sustainability values including environmental protection standards, and social inclusion objectives while they are carrying out their investment projects.”¹³⁷

These two provisions have imposed a social and environmental obligation on the corporation to comply with all laws of the country either proclamation, regulation, or directive, international treaties to which Ethiopia is a party, and other legal documents relating to social and environmental obligation. Although the inclusion of these provisions in the legislation is praiseworthy as it is, the very wording of this cited provision seems that companies are not strictly obliged to incorporate and follow up CSR while implementing their projects. Just to put in other words, these provisions are more of a moral obligation with soft law status rather than mandatory requirements.

3.7. CSR under the Environment Law

Under Ethiopia's environmental law, the term environment is defined as:¹³⁸

The totality of all materials whether in their natural state or modified or changed by humans, their external spaces, and the interactions which affect their quality or quantity and the welfare of human or other living beings, including but not restricted to, land, atmosphere, weather and climate, water, living things, sound, odor, taste, social factors, and aesthetics.

The term environment is defined very broadly which includes almost all the natural resources and their interaction. Thus, if the law is a set of rules regulating conduct by inference,

¹³⁶ Article 5 (8) of the Investment Proclamation No. 1180/ 2020

¹³⁷ Ibid, Article 54(1)

¹³⁸ Article 2(6) of environmental Pollution Control Proclamation, Proclamation No. 300/2002. The Environmental Impact Assessment Proclamation under Article 2(2) defined the term in the same way.

environmental law is considered a broad category of law to regulate these elements mentioned in the definition section.

It is comprehensive enough to encompass the rule regulating the totality of all resources in either natural or altered form plus their interaction, or the external space affecting either quality or quantity including the wellbeing of human and other living things that may include land, water, atmosphere, weather, climate, living things, sound, odor, taste, social factors, and aesthetics. Hence, the legal framework of the environment in Ethiopia may not be restricted to certain specified legislation and has to be understood the broad spectrum of rules with effect directly or indirectly on the environment as defined in the cited provision above.

The legal framework of business entities' liability in Ethiopia may emanate from rules of the different legal categories whose application may affect those elements of the environment in the definition therefore for this study environmental law may refer to all the laws that are set forth corporate environmental liability in Ethiopia. Among others, it may include international agreements, the constitution¹³⁹, the criminal law¹⁴⁰, the investment law¹⁴¹, and international treaties to which Ethiopia is a party.¹⁴²

The law among other things obliged businesses to do an environmental impact assessment of the project before securing the license and commencing its operation.¹⁴³

CSR under the Public Enterprise Proclamation

A public corporation is a legal hybrid of the departmental enterprise and the public company. It has its distinguishing features. It's formed when its formation is publicized either in statutes, proclamations, regulations, or other acts legal acts. When it's published, legal personality is conferred on it to carry our activities in its name. People working for the corporation are not treated as civil servants but as employees. Moreover, it gets finance generated from its commercial activities rather than from the government. The capital of a corporation is not divided into shares and allotted to different governmental organs. The purpose behind the public

¹³⁹ As discussed above

¹⁴⁰ As we see next

¹⁴¹ As discussed above

¹⁴² As discussed above

¹⁴³ Environment Impact Assessment Proclamation, Proclamation No. 299/ 2002

enterprise is for effective governance of public-owned property. As per Robson, well explain this when he said:¹⁴⁴

The public corporation is in my judgment by far the best organ so far devised in this or any other country for administering nationalized industries or undertakings. Allowing for some technical troubles which are still not entirely cured, the public corporation which we have evolved is an outstanding contribution to public administration in a new and visually important sphere. It's for better than the joint-stock company owned and controlled by the state or than government department engaged in business activity or than state administrations set up to manage commercial or industrial undertaking, such as those existing in the Netherlands, India France, and other countries.

The public enterprise proclamation is regulated by the public enterprise proclamation.¹⁴⁵ As we have discussed, the separation board of directors and the supervisory board plays a crucial role.¹⁴⁶ Under the Ethiopian legal system, the management committee and board of management are two different bodies that exist in companies and public enterprises with different responsibilities. A board of management for public enterprises is a statutorily recognized organ whose powers, duties, and responsibilities are explicitly indicated in the law. The management committee is a team that consists of those persons who are in charge of the operation of the different departments of the enterprise. One of the notable differences between the board of directors and the management committee is their accountability, legal responsibility, and members' relations with the enterprise. The management committee is accountable to the general manager of the enterprise whereas the board is the supervisory authority. This separation of the board and the management committee having different accountability authorities enable the latter to come up with ideas “other than immediate profit activities.”

It is important to note the fact that a managerial body whose functions are restricted mostly to lay general policy determinations. In any enterprise, there are wide classes of decisions that are not directly related to any particular function. These residual functions are reserved for the general

¹⁴⁴ W. A. Robson, Nationalized Industry and Ownership as quoted in Organization, Management and Supervision of Public Enterprise in Developing Countries, (1974) at 13

¹⁴⁵ Public Enterprise Proclamation, Proclamation No. 25/1992

¹⁴⁶ See the discussion above

manager. These powers among other things include planning and target setting, major policy decisions, and changes. Almost all power vested in the board of directors can be broadly classified into either decision-making power or supervision power. Thus, the management committee may use this power to introduce CSR.

The law also permits other stakeholders to participate in the management process of the corporation.¹⁴⁷ While the term work seems to resemble the definition of an employee given under the labor proclamation. Accordingly, worker means a contract of employment shall be deemed formed where a natural person agrees directly or indirectly to perform work for and under the authority of an employer for a definite or indefinite period or piece of work in consideration for a wage.¹⁴⁸

The inclusion of workers in the management of the corporation may be for the reason of their economic participation. The workers are the working bin of the corporation and are a critical aspect of the corporation. Thus, their inclusion of them in the corporation is to give the board of directors a worker perspective in the decision-making process. However, how and to what extent the workers will have meaningful and impactful participation in the board of directors is far from clear. Despite the magnitude being small or big they could air the corporation to include and engage in CSR.

¹⁴⁷ Article 12(9) of the Public Enterprise Proclamation

¹⁴⁸ Article 4(1) of the Labor Proclamation, Proclamation No. 1156/2019

CHAPTER FOUR

AN ASSESSMENT OF THE CSR UNDER THE ETHIOPIAN AGRICULTURAL BUSINESS CORPORATION

4.1. Introduction Public Enterprise and EABC

Given the growing reliance of the community on what the government can produce and provide, the role of public enterprises, with no exaggeration, has become a decisive and critical institution. The degree of employment by public enterprises in various sectors of the socio-economic life of the society has correspondingly increased as they are no more restricted to their traditional domain of the public utilities.

Traditionally, the state's fundamental responsibility has been to keep society in a state of peace and order. The state is meant to be a police state, with its primary responsibility being to maintain internal peace while also fending off threats to its territorial integrity and the safety of its citizens. But leaving the market to the private sector and restricting its function to merely maintaining order has proven insufficient because there is a market failure that calls for market intervention. As a result, the state started to control the market and participate in the economy to address the market failure.

This promotional function of the state is mainly evident in less developing countries the likes of Ethiopia whereby their number of private actors and investments are quite a few.

Public enterprise accomplishes, among other things, several economic goals. The importance of public enterprise lies largely, although not exclusively, in their role in the economic system. Of the various economic ends state enterprises are seeking to achieve the most prominent one is the procurement of financial profits to the government. This activity of the state is comparable to that of private enterprises which are to conduct business lines. In this regard a prominent author in the area state that¹⁴⁹

¹⁴⁹ N. Corley and Robert L. Black, *The Legal Environment of Business*, 3rd (1973) at 483

Business is a prerequisite to national strength. The states of the world which are purely agricultural are weak. Although national strength may not be precisely proportionally to a state's ranking in business activity, there is an obvious correlation between them. Public policy should favor business prosperity to secure that national strength that only business could provide.

Ethiopian Agricultural Business Corporation (EABC) is the Public Enterprise established on 22nd December 2015 by the Council of Ministers according to Article 5 of the Definition of Powers and Duties of the Executive Organ of the Federal Democratic Republic of Ethiopia Proclamation No. 916/2015 and Article 47/1 of the Public Enterprises' Proclamation No. 25/1992 and its implementation Regulation No. 368/ 2016. The Corporation was established with the authorized capital of the Corporation is Birr 2,440,000,000 billion (Two Billion Four Hundred Forty Million) of which Birr 610,000,000 (Six Hundred Ten Million) is paid up in cash and in-kind.

4.2. An Overview of the Main Purposes of the Corporation

The Corporation is established aiming, among other things, to provide selected agricultural, industrial and basic commodities upon being competitive against foreign and domestic institutions by abiding by the system of modern marketing and trade agreements, to create good marketing opportunities for both farmers and manufacturers so that they can distribute their products to customers, to undertake agent and commission activities with governmental and nongovernmental firms, to provide consultancy and training services in connection to marketing activities, to stabilize domestic marketing and to play a significant role to the economic development of the country.¹⁵⁰

The corporation is established, among other things, to buy from domestic and international markets and supply agricultural inputs, process same; undertake agricultural inputs market price stabilization activities, to render agricultural mechanization services, agricultural and construction equipment repair services and provide rental services of agricultural machineries and transport vehicle, to buy from domestic and international markets and supply agricultural machineries and spare parts, construction equipment and agrochemicals, to provide necessary education for the promotion of the use of modern agricultural machineries; provide consultancy

¹⁵⁰This is accessible at https://etbc-ethiopia.com/images/docs/Ethiopian_Trading_Businesses_Corporations_Profile.pdf

service in handling and use of agricultural machineries and provide on the job technical trainings, to harvest, buy, value add to and process natural gum, produce other forest products, and supply to domestic and international markets, to undertake agricultural land development studies and preparation of designs, agricultural land surveying, clearing, leveling, drainage and irrigation activities as well as other activities related to agricultural land development, to cause undertaking of feasibility studies, design preparation, technology selection and negotiation, erection and commissioning of new and expansion projects as well as for research activities, to cause the local designing and manufacturing of agricultural machineries and spare parts in partnership with capable local and foreign companies, to work in cooperation with the concerned educational research and training institutions in producing trained manpower in such fields, numbers and quality as required by the sector and to undertake studies, based on direction given to it by the Ministry of Public Enterprises, for the acquisition of financial, technological and modern governance inputs (including attracting investments or participating in investments) that can help it become competitive, both locally and globally, and profitable and implement same upon approval.

4.3. The Corporation's Corporate Social Responsibility

Even though, the corporation is a public enterprise mainly targeting profit, there is also a public aspect of it, as it is government-owned. The relationship between government authorities and state business enterprises could not be stipulated in any generalized formula. This being the fact, the different legal system has desired to strike an equilibrium between governmental control which is aimed at giving guarantee to the public interest and fund entrusted to these government entrepreneurial institutions on the one hand, and the commercial autonomy intended to furnish the enterprise with organizational and operational independence necessary to fulfill their various purposes guided by profitability on the other. This poses serious difficulties to the efficient and effective viability of public enterprises.

The main purpose of the CSR's directive is that assist the corporation's efforts to fulfill its corporate social responsibility to fulfill its legal mandate and help the corporation to achieve the purpose for which it was established. While facilitating the corporation in carrying out its corporate social responsibilities in a transparent, accountable, cost-effective, efficient, and consistent manner and assessing the capacity and current status of the corporation to ensure the

sustainability and reliability of the corporation's work by making the corporation a well-known institution that fulfills its social responsibility.¹⁵¹ The main principles in the implementation of CSR are understanding the importance of corporate social responsibility in the corporation and in the community in which it operates, for the corporation to fulfill its legal mandate and ensure that its operations are sustainable. With the view to care out the work, it is necessary to carry out the work economically and to ensure the efficiency and effectiveness of the CSR. Moreover, the CSR we follow must be transparent and accountable, the capacity for full accountability must be strengthened and decisions about any corporate social responsibility must be made clear to all parties promptly.¹⁵²

The Policy has four principles: economic, legal, ethical, and philanthropical responsibilities. The first pillar is the economic pillar. There are the economic responsibilities of the organization. It may seem strange to call economic responsibility social responsibility, but this is a true statement. This means that the company should focus on producing and preparing the goods and services that the community needs and should sell these services at the price that the community considers appropriate, i.e., at a fair price, so that the investors can get the proper benefits and invest in the company.

When it comes to social responsibility, organizations implement several management concepts that focus on financial efficiency. With a focus on revenue, expenditure, and strategic decision-making, many organizations are working to strengthen and increase their financial positioning over the long term. In the mid-2000s, the global competitiveness of trade was reflected in the economic responsibilities of corporations. But economic responsibility alone is not enough.

The second pillar is the legal responsibility pillar. Considering the above-mentioned productive role, to fulfill a partial social contract, the community also sets out the basic rules and regulations that organizations must follow when carrying out their work. Social Responsibility reflects the community's perspective on the "Code of Conduct" and the basic principles of justice enacted by our legislators. Thus, the corporation has a social responsibility to be guided by these laws.

¹⁵¹ Article 4 of the Directive

¹⁵² Article 7 of the Directive

The third pillar is ethical responsibility. Although laws are important, they alone are not enough, ethical responsibilities include conditions and actions that should or should not be performed by members of the community and should be added as either a compliment or standalone principles. Ethical responsibilities include the full range of procedures, requirements, and conditions that customers, employees, shareholders, and the community believe will be fair, and just, and protect the moral rights of stakeholders.

Needless to say, changes in morals or values occur before legislation, primarily because they are the forces behind the enactment of laws or regulations. For example, civil rights, environmental protection, and consumer activism reflect fundamental changes in the value of society, and these issues may be considered pioneers in enacting legislation in the future.

The issues raised in these ethical contexts, arising from community and stakeholder groups, point to the need for greater moral ethics, such as justice, rights, and service providers.

The fourth pillar is philanthropic Responsibility. The last yet another core principle is that there are voluntary or charitable responsibilities that an organization does. These conditions are considered to be the responsibility of the people because they reflect the conditions that are expected of the organization. These activities are carried out by the organization at its discretion, even when it is not required by law and without obligation, and are not considered ethical in general. However, since the community expects organizations to be involved in charitable activities, this category is considered part of the social contract between the organizations and the community.

These activities may include donations from the organization, product or service donations, volunteer services, partnering with the local government and other organizations, and voluntary service to the community and other stakeholders by the organization and its employees. There is a lot of work to be done to show that organizations are doing a good job of “doing good” to the community per se.

Accordingly, the Ethiopian Agricultural Business Corporation (EABC) has done little in the way of the four social responsibilities, but the fourth social responsibility, Philanthropic Responsibility, has not done much. Therefore, the corporation should be able to conduct various

charitable activities in the community around the next workplace in a well-planned and planned manner.

4.4. The Overall Assessment of Corporate Social Responsibility under the Ethiopian Agricultural Business Corporation (EABC)

It doesn't take more than a (common sense for a business to be profitable for it to engage in the non-profitable activities. When an organization is profitable, it will not lack the financial resources to carry out its planned activities, including corporate social responsibility. Doing so contributes to greater profitability and ensures sustainability. Therefore, it is important to work hard for the benefit of the community. It should be considered that unprofitable social responsibility is difficult to fulfill. In this regard, the corporation is doing very well.

When corporate social responsibility works around solving a community's problem, it is important to know who solves the problem. In this regard, we will be more effective in our work if we focus on the issues of the masses, even if we are trying to solve the problems of the community. Therefore, it is important to look at this strategic framework to prioritize what is a problem for many.

The ultimate goal of corporate social responsibility is to make the community think that the organization doing this work is my organization. This attitude is important not only for the organization but also for its success. The community has a positive attitude by supporting the organization and helping to expand its market share and make it more sustainable. Therefore, when evaluating the results of corporate social responsibility, this situation is an important criterion and should be considered as a strategic framework. This demonstrated the fact that CSR is not merely corporate philanthropy or something beyond the compliance of legal responsibilities rather, it includes additional responsibilities which benefit the corporation itself by ensuring its long-term sustainability as well as other stakeholders through creating job opportunities, availing products, behaving ethically, and participating in solving social problems.

The corporation has established a council fully dedicated to overseeing corporate social responsibility. The Council, among other things, supervises and coordinates programs to implement the strategy, provides a detailed study of the underlying problems of the workplace

community and potential employment opportunities and livelihoods for the community, and identifies the corporate social responsibility tasks that must be performed by the corporation, ensures that social responsibility issues are aligned with strategies and programs, provides detailed work plan and budget for specific corporate social responsibility activities to be implemented and approved.

4.5. The Type of Corporate Social Responsibility Provided by the Corporation

The corporation has so far been engaged in several corporate social responsibility. Last year alone, the following are some of the notable CSRs:

- ✓ Agricultural Development Clinic for residents in the vicinity of the farm Medical, prenatal care
- ✓ When there is no ambulance for parents and other emergency services provide service
- ✓ Birr 2,000,000.00 for High School Construction Support given
- ✓ 20 young people as tractor operators at a cost of Birr 223,000.00 coached and graduated
- ✓ Quintals of best seed for local farmers with a 5% discount until the agricultural development distributed more products Accordingly, in monetary term Birr 142, 443. 75 were discounted from wheat District to prevent the Covid-19 outbreak Birr 50,000.00 has been donated to support his efforts
- ✓ Previously clean water to residents living near the farm housing camp water supply was being provided and now the water is running low it dug a reservoir for them.
- ✓ Job creation particularly field protection, weeding, and garage jobs, and agricultural development all-year-round large numbers from the area for operations which employs day laborers (\
- ✓ The farm surplus is sold more than ETB 500,000 a year. The product was sold by five young men organized into twenty-five to use it and organize themselves into other jobs. In this case, the purpose of the support is to provide support to the youth of the branch office. Not only to protect them but also to support themselves organize them into other jobs and let them go it is.
- ✓ Birr 3,000.00 for notebooks and pens for children with disabilities bought

4.6. Gaps in the existing application of CSR in the Corporation

The very concept of CSR is indeed at its beginning stage in Ethiopia in general and the Corporation in particular. Lack of comprehensive law and national wide contribute a lot to the lack of awareness from most of the stakeholders. This leaves corporate social responsibility completely up to the discretion of the corporation to do or not to do, CSR. Leaders of the corporation think that despite there being a CSR directive, it is an absolute discretion of the corporation whether to do it or not.¹⁵³

Because the issue of self-regulation is a willingly adopted normative rule developed by companies in the form of obvious formal rules like a code of conduct to reap long-term benefits through greater customer loyalty, higher employee motivation, and fewer risks for investors, and others benefits as discussed under the pillars section above. Because of this issue, most of the beneficiaries think that they got the benefit because of their extra-commitment and pressure rather than from the directive initiative from the corporation itself.

There are also perspectives basis that the corporate responsibilities were given because of the current political responsibilities in the country rather than from the self-driven obligation of the corporation. It's a year since the start of the conflict between the Ethiopian and Tigray Liberation Front. The conflict has a range of effects and has the human toll is devastating and the cost of the agricultural products is immense. This effect of the war has been worsening because of the novel covid-19 impact on the health and its spillover effect on the country at large. The COVID-19 pandemic is projected to considerably affect the Ethiopian economy directly and indirectly due to global shock waves and the different restrictive preventative measures, the country is taking including Ethiopia. Thus, because the corporation is one wing of the government, it is one obligation of the government to mitigate the effect of the ongoing war on the agricultural products and their people depending on the sector.

This perception of society is somehow bought by the top leaders of the corporation. While answering the question of what motivates the corporation to do CSR, state the following “it's

¹⁵³ Interview with Tensay Mecha, CEO of the Corporation and Tiro Birru, Human Resource Manager, conducted on December 01, 2021

largely a security issue. We need the surrounding people and the administrative offices to have a good thought and belongingness for us. Morality is a secondary issue.¹⁵⁴

Some employees alleged that the corporation is not giving enough attention to occupational safety, health, and working conditions. Indeed, the human, social and economic costs of occupational accidents, damages and illnesses, and major industrial disasters have long been causing interest at all levels from the individual workplace to the local, national, and international levels. Procedures and approaches designed to manage, reduce, or eliminate occupational hazards have been developed and applied continuously over the years to keep pace with technological and economic changes.¹⁵⁵ Despite continuous and slow improvements, occupational accidents and diseases are still too frequent and their cost in terms of human pain and economic responsibility continues to be substantial. However, there is serious concern that the corporation is not living up to this standard.¹⁵⁶

There are some trends in discouraging the formation of and participation in the labor union. Furthermore, a minimal salary that doesn't affect the current economic situation and inflation of the country has posed a serious threat to the perceptual basis of the corporation.

Despite the scope of the application of CSR being varied from business to business, CSR has a wider application and scope. Despite the corporation having engaged in various economical activities, its CSR has not been implemented across all the sectors and regions. The asymmetry of the CSR of the corporation can be classified regional and sector-wise.

For instance, last year alone despite the corporation engaged in various CSR tasks that positively impact the lives of various people, it has neglected the right of the employee to get safety and measures. On top of this, sector asymmetry, there is also the regional asymmetry of CSR. Take, for instance, the last year's CSR of the corporation, there is no nothing done in its Gibe Agricultural branch.¹⁵⁷ In the corporation CSR it's indicated that CSR should apply to the corporate social responsibility of the corporation at all levels, and it should be done in

¹⁵⁴ Interview with Tesfaye Feyesa, Procurement and Property Administration Management, conducted on December 01, 2021

¹⁵⁵ O. Alli, *Fundamental Principles of Occupational Health and Safety* (2nd edition) (2008) at 1

¹⁵⁶ Interview with Kifle W/ Mariam, Chief Executive Officer, Conducted on December 01, 2021

¹⁵⁷ Ethiopia Agricultural Businesses Corporation, *A Brief Study Report on Corporate Social Responsibility* (2020)

collaboration with partners or humanitarian institutions.¹⁵⁸ However, the existing practice of the corporation is in a clear contradiction with the corporation's directive. This is not only in a contradiction with the directive but also in a clear contradiction with the aim and objective of the corporation for introducing CSR. The main reason for introducing CSR under the corporation is stated in the directive preamble when it said:

Corporate Social Responsibility over the last 30 year in doing businesses around the world have been under intense scrutiny by the community. Among the many criticisms of the investigation were the lack of attention paid by the business community to the consumer community, indifference to the deteriorating social order, lack of acceptable moral attitudes, problems with the poor, and neglect of the environment, among other issues. It can be said that he developed a sense of responsibility. (Underline supplied)

Thus, the CSR contemplated under the Directive is aiming to apply to all sectors in which the corporation has engaged and to all of its geographical scopes. This inconsistency of the social services provided by the various offices of the corporation has caused problems both from the recipient of the benefit and from the office employees which some regard as a waste of time and resources.

The last still one of the significant bottlenecks for proper implementation of CSR in the corporation is a lack of proper understanding of the very concept and nature of CSR. For instance, Asfaw Legesse, a team leader in the corporation, believes that "it's about operating in a way that makes the society (dwellers) around the main office or branch offices of the corporate beneficiary. It is about positive contribution to the people who live nearby."¹⁵⁹ However, the CSR as we saw in the preceding chapters is now far more than this. On top of this, there is no accountability for not discharging the CSR.¹⁶⁰

It's true that because CSR is a voluntary initiative by its very nature, how it is possible to bring accountability is one of the main concerns. As we have hinted above, there is a public interest

¹⁵⁸ Article 6

¹⁵⁹ Interview with AsfawLegesse, Team Leader at the Corporation, the interview was conducted on December 01, 2021

¹⁶⁰ Interview with AlemayehuSisaye, Audit and Risk Administration Service Head Office, the interview was conducted on December 1, 2021

aspect of public enterprise as it's owned by the government. Public accountability explains the logic of the relationship between the state and the enterprise. The entrepreneurial character of the public enterprise should not lead us to believe that the state leaves the enterprise unchecked to its destiny.

The enterprise shall focus not only on profits that could be obtained, sometimes, even without serving the public interest and property but also on the efficient utilization of resources in the general public interest. Unlike the private sector, in public enterprise, it's quite difficult to say profit is the ultimate indication of efficiency. Thus, there is government constant control and supervision of the enterprise to make sure that it is functioning to meet expectations in the required manner.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

As we learned in the preceding discussion, modern corporate governance involves corporate social responsibility to deal with the interests of various stakeholders including employees, suppliers, customers, banks and other lenders, regulators, the environment, and the community at large. The concept of CSR has received substantial attention since the 1950s in both business and academic arenas. Since then, CSR has undergone a vast development and got wide acceptance due to its chain benefits to both shareholders and stakeholders. Despite this, there is no single universally accepted definition for the term.

Late 19th Century they were also required to work closely with customers, transporters, suppliers, distributors, and communities to triumph effective environmental management of processes and products. Most commonly, the Responsible Care program was taken as an essential entity to improve performance in businesses by increasing public image, providing wider benefits to the wider society, and improving the environmental and social impact of the processes and products.

Various countries try to regulate the matter differently. In the United Kingdom, the concept of CSR in the UK can be traced back to the history of company law. Before 1948 UK company law was constantly understood to incline towards shareholders therefore it was shareholders-centric. The law required that directors' decisions be oriented towards the interests of the company.

In this legal system, the concept of interest of the company was understood to mean the commercial interest of the shareholders rather than the interest of other entities likes as labor and others. In this notion, the wider social responsibilities of management were never provided under the law. Even though the board of directors has a legal and contractual obligation to work toward the interest of the company and its ultimate owners i.e., the shareholders if broadly interpreted the notion could accommodate the social aspect of responsibility the company has towards the society. The subsequent legal reform proves that the company has also an obligation to safeguard afforded for investors and the public interest.

Although constituency statutes may indeed at first glance suggest a new direction for the corporation, they have not succeeded in eradicating the traditional shareholder wealth maximization norm in the United States. They have failed to change the corporate law framework into one that mandates legally enforceable stakeholder interests in corporate decision-making. In the 1990s, the concept of corporate welfare in the United States received widespread publicity and as a result, the concept of corporate social responsibility was again a subject of debate. “Corporate welfare” has been defined as “any action by local, state, or federal government that gives a corporation or an entire industry a benefit not offered to others” to create jobs.

Directors were required to act in good faith, in that they had to be honest, act in the best interests of the company, not receive secret profits, and had to promote the purpose for which the company was established. In South Africa, directors have a fiduciary duty to act in the best interests of the company. The word company is nowhere defined in the Act and the common law meaning refers to the collective body of shareholders. Directors cannot legally take the interest of any other stakeholders therefore environment, employees, and anybody directly or indirectly impacted by the company’s decisions into account unless it is in the interests of the shareholders. Although the Companies Act does not specifically refer to CSR, an indirect reference to CSR can be found in the Act. It should be noted that there is no legal obligation or mandate on South African companies to act socially responsible when making business decisions.

Under the existing Ethiopian legal framework, there is no specific law and policy as such that directly incorporate and integrate CSR *per se*. However, there are provisions and concepts incorporated under various Ethiopian laws that resemble CSR.

One of the sweeping provisions of the FDRE Constitution, Article 13(2), imposed the duty of implementation of its provisions in general including the realization of protection of the environment, social and other aspects of the citizen should be overseen and protected by ever members of the community which include non-state actors the likes of business entities when it said all citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the constitution and to obey it. The word other association, among others, includes the body corporates.

Ethiopia has concluded several Bilateral Investment Treaties (BITs). Despite the focus of BITs being the protection of the investors coming from the home state, they have environmental, labor, and human rights. However, most of the BITs Ethiopia has concluded with both developing and developed nations failed to contain such types of treaties. The main reason for that is that if there is more inclusion of such obligations on the incoming investor, they may opt for other countries with lower standards.

The revised commercial code of Ethiopia like its predecessor doesn't contain an explicit provision concerning CSR. The overall reading of the provisions of the revised Commercial Code exhibits that it adopts a traditional shareholders-centric approach to corporate governance and by doing that it disregards the interests and involvement of other stakeholders.

Despite legally, companies obtain legal personality, which is distinct from their members, upon registration before the concerned body, in effect any company is led by the general shareholders who ultimately transfer their power to the Board of Directors and finally, to the CEO or Manager. Thus, this blurred separation of the ownership between the majority shareholders or the shareholder, as there is one man company now, the company is run by the board, which is elected by the shareholders, and hence, they are more inclined to profit than engaging in CSR. The revised commercial code missed one of the biggest chances for effective governance of corporate social responsibility by making the supervisory board optional and only shareholders can participate on the board. Had it permitted the incorporation of other non-shareholders from being a member of the supervisory board, it could have had a positive effect.

The tax regime seems indirectly incentivized by permitting deduction if the corporation engaged in donations and gifts provided that the donation or gift is made to Ethiopia charities and Ethiopia societies and/ or in response to a call for development or an emergency call issued by the government to defend the sovereignty and territorial integrity of the country, to prevent or provide relief about man-made or natural disasters or an epidemic or for any other similar cause. Similar incentives are there in connection with investment law and environmental law. Ethiopian Agricultural Business Corporation (EABC) is the Public Enterprise established on 22nd December 2015 by the Council of Ministers according to Article 5 of the Definition of Powers and Duties of the Executive Organ of the Federal Democratic Republic of Ethiopia Proclamation No.

916/2015 and Article 47/1 of the Public Enterprises' Proclamation No. 25/1992 and its implementation regulation No. 368/ 2016.

The Corporation has engaged in several cases that can be considered corporate social responsibility, among others, the agricultural Development Clinic for residents in the vicinity of the farm medical, prenatal care, providing an ambulance for parents and other emergency services provides service, high school construction support, selling of the local farmers agricultural products with a discounted rate, assisting the community in the outbreak of Covid-19 pandemic. However, the absence of a legal framework for the proper operation of CSR has created a gap in the existing structure of the company. Lack of awareness between and among the responsible entities was also another problem.

Because the corporation is a public enterprise, there is an inclination from the general public that the doing of corporate social responsibility by the corporation is a politically motivated thing.

Recommendation

There is indeed no unified CSR under the Ethiopian legal system. As thing stands now, corporate social responsibility is voluntary. The voluntary approach has been widely criticized for the impracticality of sanctioning damaging practices and the lack of transparency and credibility of CSR reports. By following and adopting the voluntary approach, corporations are given too much leeway in implementing CSR practices, and they are not even compelled to make periodical reports on CSR implementation.

The voluntary nature of CSR under the existing Ethiopian legal system outdates the current corporate behavior. Even though some corporations make direct and visible efforts to be socially responsible towards society, most of them are focused on obtaining maximizing shareholders divided as that is what they have established.

The voluntary CSR approach results outdated regarding the current MNC's behavior. Even though some companies make efforts to be socially responsible and contribute to social welfare, most of them are focused on obtaining profits and maximizing shareholder value. This idea has been classically represented by Friedman, who expressed that the only social responsibility of

businesses is to increase their profit. Thus, there needs to be comprehensive CSR legislation to avoid such a gap.

As we have discussed even though the corporation is trying its best in providing CSR, there is still a way behind its proper implementation.

The first problem is the asymmetry of the corporation's CSR implementation. The asymmetry in the existing CSR is both geographical and business coverage. There are instances whereby the corporation only focused on other corporate social responsibility and neglects some of the critical aspects like making accessible safety for the employees. Thus, the corporation should introduce uniform and symmetry implementation of CSR. This symmetry should be extended to all forms of business the corporation is doing and the geographical application should also be taken into account.

There is an existing low level of awareness among the key stakeholders of the corporation. There is a tendency to see CSR as a wastage of resources and money. Therefore, there should be an awareness creation program at the high level, to incentivize the responsible person to make use of the possibility of integrating CSR into their daily decision and policy-making process. Any training on the awareness creation of such kind should be focusing on:

1. To enable top-level management to collaborate with the concerned people trade organization to have access to the corporation and address their practical needs.
2. To collaborate with regional institutions for possible areas of working together with the view to include CSD in all information material and activities.
3. To promote CSR activities with an international scope and guiding principles.
4. To enable them to have specific CSR topics.

The training should also be incorporating the society and other stakeholders. Even though there is the corporation has a CSR directive and specific unit, it needs to have a study section that enables them to couple the current and up-to-date CSR principles and scope. Organize a CSR study center to identify the potential and determine which corporate behavior is best regulated by the corporation considering the social, economic, cultural, and political condition of the country and the society, should be established.

Further to this, there are not enough CSR regulatory personnel and expertise in the corporation. Thus, to ensure the existence of adequate regulatory and policy-making expertise well-functioning policy-making process and transparency should be set in place.

These are some of the recommendations for this study for the corporation to have an effective and efficient CSR implementation and normative framework.

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Interviews

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Interview with AlemayehuSisaye, Audit and Risk Administration Service Head Office, the interview was conducted on December 1, 2021

Interview with TensayMecha, CEO of the Corporation and TiroBirru, Human Resource Manager, conducted on December 01, 2021

Interview with TesfayeFeyesa, Procurement and Property Administration Management, conducted on December 01, 2021

Interview with Kifle W/ Mariam, Chief Executive Officer, Conducted on December 01, 2021