

# **REGULATION OF CORPORATE SOCIAL RESPONSIBILITY IN THE EAST AFRICAN COMMUNITY: LEGISLATIVE DEVELOPMENTS IN KENYA, SOUTH SUDAN AND TANZANIA\***

*Daniel A. M. Shayo\*\**

## **Abstract**

The practice of companies in the East African Community (EAC) region to engage in Corporate Social Responsibility (CSR) programmes by developing their own CSR policies or by adopting existing CSR instruments developed by national or international Non-governmental Organisations (NGOs) and Civil Society Organisations (CSOs) requires an examination of its legal foundations. Relevance of this article revolves around the role played by law in promotion of meaningful and credible CSR agenda in the EAC region. In particular, it examines the laws on CSR found in the Partner States of Kenya, South Sudan and Tanzania with a view of establishing the best forms of legal regulation appropriate to the EAC region at the EAC regional level. It is concluded that although law can be used to promote meaningful and credible CSR in the EAC region, the practice of imposing a legal obligation on companies to adopt CSR policies raises many legal issues, an aspect, which makes it an unfavorable option when compared with the practice of imposing a legal duty on companies to report on CSR in the EAC region.

---

\* This article is the outcome of a research conducted within the African Multiple Cluster of Excellence at the University of Bayreuth, funded by the Deutsche Forschungsgemeinschaft (DFG, German Research Foundation) under the Germany's Excellence Strategy – EXC2052/1 – 390713894.

\*\* LL.B (Hons), LL.M. (Dar), LL.M., Dr. iur.(Konstanz) Lecturer and Head of Department of Economic Law, University of Dar es Salaam School of Law and Advocate of the High Court. The author may be contacted at [dmsafiri1@yahoo.com](mailto:dmsafiri1@yahoo.com)

**Key terms (phrases):** *CSR and the law in the EAC, CSR reporting practices in the EAC, compulsory CSR in the EAC, CSR legislations in the EAC.*

## 1. INTRODUCTION AND OVERVIEW

In the EAC<sup>1</sup> region, companies engage themselves in CSR activities, basically on voluntary basis as a way of taking into account interests of their various stakeholders. Worldwide, CSR is recognized as part and parcel of business policies. However, not all companies have embraced the idea of CSR. In the EAC region, big companies have more formal CSR practices compared to small and medium-sized companies, which have more informal and *ad-hoc* CSR practices.<sup>2</sup> In Tanzania, for a long time, mining companies have been in the forefront in adoption of CSR policies. The driver of this practice has been the desire for mining companies to meet international standards for sustainability.<sup>3</sup> Apart from the mining companies, companies involved in provision of telecommunication services have been active in adopting CSR policies. In some big companies, CSR has evolved from being *ad-hoc* engagement, characterized by charities and donations, to CSR foundations.<sup>4</sup>

---

<sup>1</sup> Compare Bos, B., et al. *Country Scan CSR in Uganda*, Kampala, 2016, p. 2. A Report Published Online at: <https://mvonederland.nl/sites/default/files/media/CSR%20Country%20Scan%20Uganda%202016.pdf>. Accessed on 20.08.2018.

<sup>2</sup> It is argued, in Uganda, for example, that CSR practices exist in high profile national and multinational companies, especially those with recognized international brands or those aspiring to a global status. Comprehensive on this see Bos, B., et al. *ibid.* p. 6.

<sup>3</sup> See LHRC, *Human Rights and Business Report 2017*, p. 105.

<sup>4</sup> Vodacom (T) Ltd, for instance, has established a special foundation for the purposes of dealing with issues of the society as part of their CSR programme. With its motto: Giving back to the communities/ delivering social value, Vodacom Group, a telecommunication company with subsidiaries in more than 32 African countries (among which in the EAC countries are Tanzania, Rwanda,

Behind CSR practices there are initiatives mainly, from the private sector, which aim at promotion of CSR. Concerning CSR at the EAC regional level, there have been various initiatives from the private sector to publicize voluntary CSR in the region. For instance, in 2010, the “Bank M East African CSR Awards” were launched for the first time. The awards were a result of collaboration between Bank M and the East African Business Council (EABC). The name “Bank M East African CSR Awards” was preferred because Bank M was the lead sponsor. The awards aimed at recognition of companies, which had good CSR practices. Such awards were also issued in 2012. Various companies from within the EAC region participated in the event.<sup>5</sup>

Furthermore, the East Africa Business Council (EABC)<sup>6</sup> launched the EABC Business Excellence Awards (EABC-BEAs) on 10<sup>th</sup>

---

Kenya and Uganda) has established foundations in these countries. In Tanzania, Vodacom Foundation was established in 2006, with a mission of enriching lives of communities through caring partnerships in education, health, economic empowerment and social welfare. Furthermore, the Kenya Commercial Bank Group Ltd has established a foundation, which aims at bridging the employment gap for the youth through the famous 2jijiri programme. See The Star, KCB Bank leads in CSR in Kenya, available in the Internet at [https://www.the-star.co.ke/news/2017/07/10/kcb-bank-leads-in-corporate-social-responsibility-in-kenya-ea\\_c1593607](https://www.the-star.co.ke/news/2017/07/10/kcb-bank-leads-in-corporate-social-responsibility-in-kenya-ea_c1593607). Accessed on 20.09.2018. Safaricom Ltd. established the Safaricom Foundation in 2003, with the aim of transforming lives and building communities through funding of sustainable projects in areas of education, health, economic empowerment, environment, disaster and emergency interventions, see Safaricom Foundation, The Foundation’s Purpose, available in the Internet: [https://www.safaricomfoundation.org/who\\_we\\_are](https://www.safaricomfoundation.org/who_we_are). Accessed on 15.07.2018.

<sup>5</sup> Comprehensive on this see Mader, K. “Corporate Social Responsibility in Tanzania: An Overview.” Available in the Internet at: <https://csroverviewtanzania.files.wordpress.com/2012/08/csr-overview-tanzania3.pdf>. Accessed on 21 July, 2018.

<sup>6</sup> The East African Business Council (EABC) is the highest private sector body and corporate from the six EAC Partner States, which was established in 1997, with the aim of fostering the interests of the private sector in the integration process of the EAC. As a representative of private sector associations in the

January, 2018 as one of the series of events organized to celebrate its 20<sup>th</sup> anniversary. The aim was to compliment companies which had *inter-alia*, good CSR policies in place. In particular, the awards were to be made to companies which had gone beyond the profit motive to become socially responsible. They did so by providing social services to communities around their areas of operation by taking environmental issues beyond compliance with the law and by supporting broader social issues in the EAC as part of their CSR.<sup>7</sup> The EABC-BEAs were announced on the 23<sup>rd</sup> March 2018 and out of 109 companies as well as organizations which had participated in the event, the Equity Holdings Plc<sup>8</sup> emerged as the overall best regional company, followed by Mabati Rolling Mills Ltd<sup>9</sup> and Chandaria

---

region, the EABC occupies an observer status in organs and activities of the EAC.

<sup>7</sup> See EABC, "Corporate Social Responsibility: Best EAC Corporate Social Responsibility." Available in the Internet: <http://eabc-online.com/awards/best-east-african-company-corporate-social-responsibility/>. Accessed on 20th August, 2018.

<sup>8</sup> Equity Group Holdings Plc has developed many projects aimed at championing socio-economic prosperity of the people of Africa. It has partnered with the government of Kenya to execute social protection programmes, social insurance schemes and safety net programmes to vulnerable groups such as orphans and vulnerable children. Through the Hunger Safety Net Programme a number of households benefited, while the orphans and vulnerable children project also benefited many extremely poor households caring for orphans and vulnerable children. Comprehensively see Equity Group Holdings Plc, Our Projects, available in the Internet: <https://www.equitybankgroup.com/our-projects>. Accessed on 20th August, 2018.

<sup>9</sup> Mabati Rolling Mills Ltd. has developed a systematic and structured approach to Corporate Social Investment (CSI), which focus on shelter, education, health and the environment, comprehensive see Mabati Rolling Mills, Corporate Social Investment, available in the Internet: <http://mabati.com/home/index.php/about-us/corporate-social-responsibility>. Accessed on 20th August, 2018.

Industries Ltd<sup>10</sup> as the first and second runner up respectively.<sup>11</sup> Interestingly, all the three winners are Kenyan companies.

It has been argued that launching of the EABC-BEAs emphasizes on the role of private sector in attainment of sustainable growth and development of the EAC region. This has been linked with Article 7 of the EAC Treaty<sup>12</sup> that provides for an integration process which is based on market-driven cooperation.<sup>13</sup> From this argument, three points may be implied. Firstly, CSR is for undertakings in the private sector rather than those in the public sector. Secondly, CSR is conceived to be a key to sustainable growth and development. Thirdly, CSR is significant in the market. In relation to significance of CSR in the market, it is important to note that for a long-time, CSR reporting and compliance have been envisaged to be among means of adding value to the company's image.<sup>14</sup>

Apart from these CSR initiatives at the EAC regional level, there have been various *ad-hoc* and event-related CSR awards at

---

<sup>10</sup> Chandaria Industries Ltd practices CSR through donations of various sanitary items to different vulnerable groups such as orphans, prisoners, the poor and to institutions such as children's homes, disabled people's homes, the Red Cross, etc., comprehensive see Chandaria Industries Ltd., Corporate Social Responsibility, available in the Internet: <http://www.chandaria.com/corporate-social-responsibility?limitstart=0>. Accessed on 20th August, 2018.

<sup>11</sup> See EABC, EABC Business Excellence Awards 2018 Winners Announced, available in the Internet: <http://eabc-online.com/index.php?/highlights/view/eabc-business-excellence-awards-2018-winners-announced>. Accessed on 20th August, 2018.

<sup>12</sup> See the Treaty for Establishment of the East African Community, signed on 30th November, 1999 and came into force on 7th July 2000.

<sup>13</sup> See EABC, (note 7) *supra*.

<sup>14</sup> Scholars have used various phrases to describe this. These include "instrumental CSR," "value driven CSR," "stakeholder driven CSR," and "performance driven CSR." Comprehensive on this see Horrigan, B. Corporate Social Responsibility in the 21st Century: Debates, Models and Practices Across Government, Law and Business, Edward Elgar Publishing Limited, Cheltenham, 2010, pp. 35-36.

national level organized and funded by private institutions and national, international non-governmental as well as civil-society organizations. Examples include the Presidential Environment Excellence Award held in Tanzania in 2001,<sup>15</sup> the Presidential Award on Extractive Industry CSR and Empowerment Award held in Tanzania in 2012,<sup>16</sup> Center for Social Responsibility and Accountability (CESRA)<sup>17</sup> Awards held in Kenya in 2016,<sup>18</sup> the Uganda CSR Awards organized by Uganda Manufacturers Association (UMA)<sup>19</sup> in 2016<sup>20</sup> and Rwanda Business Excellence Awards<sup>21</sup> held in Rwanda in 2018.

However, despite the popularity of CSR portrayed by companies in the EAC region, issues of credibility and promotion of CSR are far from being settled. As contribution to these issues, this article

---

<sup>15</sup> The aim of these awards was to recognize companies with not only good environmental reputation, but also social-economic impacts on surrounding communities and the quality of process management.

<sup>16</sup> These awards aimed at achieving sustainability in the extractive sector.

<sup>17</sup> CESRA is a community of CSR accredited practitioners and accredited charitable organisations aimed at attracting a team of members who would work together for a common good. For more information see CESRA Connected Communities, *CESRA Kenya*, available in the Internet: <https://cesrakenya.org>. Accessed on 12.04.2019.

<sup>18</sup> The aim was the improvement of the social responsibility of member organizations and enabling them to support and strengthen communities in areas where they operate.

<sup>19</sup> UMA stands for Uganda Manufacturers Association.

<sup>20</sup> The aim was to encourage private and public sector, and non-profit organizations in Uganda to develop sustainable activities. For more information on this see, Uganda Investment Authority, *2<sup>nd</sup> Uganda CSR Conference and Awards*, Available in the Internet: <https://www.ugandainvest.go.ug/csrawards2016/>. Accessed on 12.04.2019.

<sup>21</sup> The 2018 Rwanda Business Excellence Award was the 5th Edition. It was hosted by Rwanda Development Board (RDB) with the aim of promoting sustainable development in Rwanda. Comprehensively, see Remarkable Rwanda, *Rwanda Business Excellence Awards*, available in the Internet: <http://rwandatourism.com/rwanda-business-excellence-awards/>. Accessed on 12.04.2019.

explores the role played by law in promotion of meaningful and credible CSR in the EAC region.

## **2. CSR AND LEGAL DISCOURSE IN EAC REGION**

### **2.1 Legislation and Soft Law as Sources of CSR in EAC**

There are two main sources of CSR policies of companies throughout the EAC region. These are companies' self-regulations and legislation. Self-regulations, regarded as soft law, are a set of rules, standards or practices, which are developed by companies themselves or adopted from other institutions<sup>22</sup> on a voluntary basis. For the purposes of clarity, these sources are discussed at regional and domestic levels.

#### *2.1.1 At the EAC Regional Level: Soft Law/Self-Regulation*

Two main forms of regulations are distinguishable in today's corporate world. These are regulations by the State and self-regulation. However, some scholars have gone beyond the two categories, and talk of multi-order regulation. This concept or latter category is said to embrace State-based regulation, self-regulation, co-regulation and meta-regulation.<sup>23</sup> For the purposes

---

<sup>22</sup> Both national and international NGOs and CSOs have developed CSR instruments to be adopted voluntarily by companies. Good examples include the Ten Principles of the UN Global Compact 2000, the UN Guiding Principles on Business and Human Rights, 2011, the ISO Guidance Standard on Social Responsibility (ISO 26000), the OECD Guiding Principles for Multinational Enterprises 2011, and the Tripartite Declaration of Principles Concerning MNEs and Social Policy, among others. There are also CSR reporting initiatives such as the Global Reporting Initiative (GRI), the Publish What You Pay (PWYP) and the Extractive Industries Transparency Initiative (EITI), comprehensive on this see Shayo, D. *Die Behandlung von Massnahmen der Corporate Social Responsibility im deutschen und tansanischen Gesellschafts- und Wettbewerbsrecht*, Verlag Dr. Kovac GmbH, Hamburg, 2017, pp. 51 et seq.

<sup>23</sup> See Horigan, B. *Corporate Social Responsibility in the 21st Century: Debates, Models and Practices Across Government, Law and Business*, Edward Elgar Publishing Limited, Cheltenham, 2010, pp. 59 et seq.

of this study, it is opined that since the binding nature of all other forms of regulation, apart from the State regulation, depends on some self-adoption/development/acceptance, they all fit into the category of self-regulation.

Examination of CSR at the EAC regional level reveals that CSR is a voluntary matter. This is because, although there are various policy instruments, at the regional level which can be interpreted to promote CSR, until now there are no legal instruments for the same. It means at regional level, CSR is purely an aspect of private/self-regulation. It should be noted that the earliest adoptions of CSR policies toward the EAC region came with the Multinational Corporations (MNCs). Such adoptions were not and have never been directly associated with the law. The MNCs came with CSR as added obligations which were not provided for in laws of host countries. Indeed, these companies went beyond the requirements under the law by adopting CSR as a private/self-regulation mechanism.

Self-regulation may be simply described as an aspect of voluntary adoption of regulations by an organization. Self-regulation may occur in any of the three ways, namely, (1.) through development of own regulations by a company, or (2.) through adoption of an already existing CSR standard or (3.) through adoption of a mixture of both (1.) and (2.). Development of own regulations by a company takes place when a company makes its own CSR-policies, plans and programmes. Adoption of already existing CSR policies is made possible due to the fact that some institutions such as local and international Non-Governmental Organisations (NGOs), Civil-Society Organizations (CSOs), Community-Based Organisations (CBOs) and international organizations have developed CSR standards, which may be adopted by companies



on a voluntary basis.<sup>24</sup> At the same time, some companies have adopted CSR Standards from other institutions and in addition thereto, developed their own CSR instruments.

Underlying the instrument of self-regulation is the principle of voluntarism. This means that the company binds itself to such regulations on its own. Therefore, such regulations are not legally enforceable, although they may have been developed in furtherance of certain legal rights. For this reason, CSR has been defined to capture activities of companies, which go beyond those mandated in the law.

The practice of self-regulation has been described as leading to “private governance” or privatization of the law-making process.<sup>25</sup> Consequently, self-regulation is also known as private regulation. Grounds for adoption of private regulation are said to be complexity of the subject matter to be regulated in terms of what should be contained in the law and territorial boundaries of State-made laws.<sup>26</sup> Based on the first argument, it is observed that development of science and economies has made understanding of certain matters to be very limited from outside, in terms of their contents, logic and control mechanisms. Therefore, these matters can hardly be regulated by the state. This being the case private regulation becomes useful. The second argument is linked with globalization of the economy which has led to loss of state power of regulating economic entities. For example, the state cannot make a law that will operate outside its boundaries. This is true for multinational companies. However, through self-regulation,

---

<sup>24</sup> See note 20 above.

<sup>25</sup> Comprehensive on this, see Glinski, C. *Die rechtliche Bedeutung der privaten Regulierung globaler Produktionsstandards*, Nomos, Baden-Baden 2011, p. 25.

<sup>26</sup> *Ibid*, p. 25 et seq.

regulation outside boundaries of the state can be achieved.<sup>27</sup> Noteworthy is the fact that self-regulation, in this case, comes as an integral part of CSR because it constitutes an act of a company imposing on itself obligations which go beyond demands of the law made by the state.

Self-regulations are also known as soft laws. In this sense the term soft law refers to a particular CSR instrument, which is adopted or developed voluntarily and which, unlike legal rules, is not legally enforceable.<sup>28</sup> “Soft law” covers international CSR instruments such as the Ten Principles of the UN Global Compact of 2000,<sup>29</sup> the ILO Tri-partite Declaration of Principles Concerning Multinational Enterprises and Social Policy of 1977 and the UN-Guiding Principles for Business and Human Rights of 2011. Infringement of such instruments can only be sanctioned by owner organizations themselves and not by laws of the state.<sup>30</sup> Broader definitions of soft law have included agreements between Multinational Enterprises (MNEs) and civil-society stakeholders, guideline texts of individual firms as well as declarations of any sector associations adopted voluntarily.<sup>31</sup> On the basis of voluntarism in adoption and absence of robust enforcement, all CSR commitments are referred to as soft laws.<sup>32</sup> It is argued that

---

<sup>27</sup> Ibid, p. 28.

<sup>28</sup> For more discussion on this, see Talbot, L. *Great Debates in Company Law*, Palgrave Macmillan, London, 2014, p. 156.

<sup>29</sup> UN Global Compact 2000 has three Local Networks in the EAC region: Kenya (UN Global Compact Kenya, established 2005), Tanzania (UNGlobal Compact Tanzania, 2016) and Uganda (UN Global Compact Uganda, 2010).

<sup>30</sup> See Henning-Bodewig, F. TRIPS and CSR: Unethical Equals Unfair Business Practices, in: Hoesch, U. et al (Ed(s).), *TRIPS plus 20: From Trade Rules to Market Principles*, p. 705.

<sup>31</sup> See for instance, Herberg, M. *Globalisierung und private Selbstregulierung: Umweltschutz in multinationalen Unternehmen*, 2007, p. 69.

<sup>32</sup> Compare Cottier, T. and Wermelinger, G. “Implementing and Enforcing Corporate Social Responsibility: The Potential of Unfair Competition Rules in International Law,” in: Hilty/Henning-Bodewig,(Ed(s).) *CSR, Verbindliche*

the rationale for adopting soft laws is an aspect of considering development goals of host countries where they operate while preserving their integrity.<sup>33</sup>

The fact that CSR brings soft-law has also been associated with attainment of flexible regulation. For instance, it is argued that at some point in time, companies in the United States of America (USA) adopted CSR to avoid negative effects of over-regulation.<sup>34</sup>

Many companies in EAC have developed their own CSR strategies, policies and plans. Others have, in addition to their own CSR policies, adopted existing CSR standards developed by other institutions such as NGOs, CSOs and other initiatives as already explained.

Like in many other jurisdictions, CSR at the EAC regional level from the beginning has been associated with public relations offices of particular companies and it is in the domain of discretions of management of companies. Association of CSR with public relations makes CSR to be a marketing tool<sup>35</sup> and at the same time it enables the company to obtain the so-called “social license to operate.”<sup>36</sup> Therefore, at regional level,

---

*Standards des Wettbewerbsrechts?* pp. 81 et seq.; compare also *Henning-Bodewig*, F. TRIPS and CSR: Unethical Equals Unfair Business Practices, in: *Hoesch, U. et al.* (Ed(s).), TRIPS plus 20: From Trade Rules to Market Principles, p. 705.

<sup>33</sup> See Kuuya, V. and Adjepong-Boateng, K. “The Debate on Corporate Responsibility under International Investment Law: The SKB Asante Contribution,” in: Opong, R. and Agyebeng, K. (Eds.) *A Commitment to Law, Development and Public Policy: A Festschrift in Honour of Nana Dr. SKB Asante*, Wildy, Simmonds and Hill Publishing, London 2016, pp. 77 et seq.

<sup>34</sup> See Tschopp, D. *Corporate Social Responsibility and Environmental Management* 2005, p. 57.

<sup>35</sup> Comprehensive on this see Tschopp, D. *Ibid.* pp. 55-59.

<sup>36</sup> See Roussouw G. “Business Ethics and Corporate Governance in Africa,” *Business & Society* 2005, Vol. 44 No. 1, p. 98. See also Wieland, J. & Conradi, W. *Corporate Citizenship: Gesellschaftliches Engagement – Unternehmerischer Nutzen*, Marburg, Metropolis, p. 15.

companies adopt CSR policies voluntarily and also publish CSR reports voluntarily.

### *2.1.2 At the Domestic Level: Mixture of Self-regulations/Soft Law and Legislation*

Examination of national policies and laws of EAC Partner States reveals two sources of CSR. On the one hand, there are companies' self-regulations and on the other, there are state legislation. As far as self-regulations are concerned, some national policies of the governments in relation to certain sectors have, in addition to NGOs and CSOs, encouraged companies to adopt CSR.<sup>37</sup>

As far as law is concerned, it has been observed that some national governments also have used law to create an environment within which meaningful CSR may take place. Common contents of legal provisions include those requiring reporting on CSR matters and matters having connection to CSR as well as those requiring companies to develop CSR plans. In this respect, law becomes the source of CSR.

## **3. LEGISLATIVE DEVELOPMENTS AND CSR IN THE EAC REGION**

### **3.1 Legislated Definition of CSR**

In the past twenty years CSR has gained a significant importance in many jurisdictions as a result of global economic and financial

---

<sup>37</sup> See for Tanzania, for instance, the Mining Policy 2009, the National Strategy for Growth and Reduction of Poverty (NSGRP), Vice Presidents Office, June 2005, p. 32 and National Strategy for Growth and Reduction of Poverty II (NSGRP II), Ministry of Finance and Economic Affairs, Dar es Salaam, 2010, p. 82; See also Mining and Mineral Policy for Uganda 2018, p. 25 f.

crises.<sup>38</sup> Despite its prominence in other disciplines such as social sciences and humanities, CSR is still a fresh concept in legal scholarship. The issue of how CSR relates to law is far from being settled. However, it may be argued that the issue marks a sharp contrast between developed countries and developing countries. While the prevailing view in developed countries is that CSR comprises an engagement of a company, which is based on voluntariness and goes beyond requirements of the law<sup>39</sup> the growing trend in some developing countries shows that the duty to adopt CSR policies may be imposed on companies by law.<sup>40</sup> However, this is not the case because, even within these two blocks, there are contrasting views on the real relationship between law and CSR.

For instance, in all developing countries where mandatory CSR has been introduced, voluntary CSR has not been abolished; it continues to exist, albeit, as a practice for both, companies, which are bound by the mandatory CSR and companies not bound by mandatory CSR. Existence of contradictions on this point manifests itself in the European Union (EU) region following change of the 2001 CSR definition in 2011, which avoided use of the word “voluntary.”<sup>41</sup>

---

<sup>38</sup> See Rühmkorf, A. *Corporate Social Responsibility, Private Law and Global Supply Chains*, Edward Elgar Publishing, Cheltenham 2015, p. 1.

<sup>39</sup> That is to say, anything mandated by the law does not amount to CSR by companies, because, obedience to law is a mandatory duty of every person.

<sup>40</sup> In this case, therefore, it is not the law which defines CSR but nature of activities to be performed by companies, as mandated by the law, which defines CSR.

<sup>41</sup> In 2001 the EU Commission defined CSR as a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis, see *European Commission*, Green Paper of the Commission of 18.7.2001, Promoting a European Framework for Corporate Social Responsibility, COM(2001) 366, mn. 20. In 2011, EU adopted a new definition of CSR whereby, CSR was defined to mean a responsibility of enterprises for their impacts on the society, see

Indeed, the CSR concept has its legal basis in the common concept of private autonomy in private law. Equally significant is also the fact that CSR discourse in developing countries differs from one obtained in developed countries in terms of types of programmes, significance and modes of adoption.

Historically, for the EAC companies, CSR was mainly concerned with *ad-hoc* donations to various disadvantaged groups in society such as the orphans, the poor as well as the hunger-stricken communities by sponsoring diverse activities like construction and renovation of hospitals, schools, infrastructure including sponsoring of social and sport activities, among others. Thus, Visser, for instance, defines CSR of emerging economies (developing countries) as:

the formal and informal ways in which business makes a contribution to improving the governance, social, labour and environmental conditions of the emerging economies in which they operate, while remaining sensitive to prevailing religious, historical and cultural contexts.<sup>42</sup>

This rather localized definition is important in the process of analyzing CSR within the EAC region because the EAC countries lie in the category of emerging economies. Thus, although the mentioned areas, namely, governance, social, ethical, labour and

---

*European Commission*, "A Renewed EU Strategy 2011-14 for Corporate Social Responsibility," Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 25.10.2011Com (2011) 681, p. 6.

<sup>42</sup> See Visser, W. "Developing Countries," in: Visser, W. et al. (Eds.) *The A to Z of Corporate Social Responsibility*. Wiley, London 2007, pp. 154-157; cited also in: Bos, B. et al. (Ed.) *Country Scan CSR in Uganda*, Kampala, 2016, p. 4.

environment are similar to those in the developed economies, the application differs sharply.

Based on the aspect of mixture of informality and formality, today, some companies in the EAC region have gone as far as utilizing the instrument of self-regulation whereby they make CSR policies or adopt policies, which have been developed by various institutions such as national and international NGOs, CBOs and UN-Agencies. In addition, others have formed special foundations to take-over all CSR-related activities of the company.<sup>43</sup> Common to all such development is the aspect of voluntarism, which underlines application of the concept of private autonomy of private law.

However, based on the aspect of formality, emergence of mandatory requirements to adopt CSR policies and to report on CSR in some of the EAC countries creates a relationship between CSR and law. This is because failure to abide by legal provisions is enforceable by law under punishment.

Furthermore, the issue of how CSR relates to law does not end with the debate on mandatory and voluntary CSR. This is because even in absence of mandatory CSR, there are many issues of law that concern CSR. For instance, the question “what are the legal justifications, mandates and limits for a company to engage in voluntary CSR” requires clear answers. To borrow the words of Horrigan, “CSR is fundamentally affected by how law and other forms of regulation treat it.”<sup>44</sup>

In relation to definition of CSR, as it is the case worldwide, CSR does not have a definition which is unanimously accepted in the EAC region. Many interpretations have been made, but they differ

---

<sup>43</sup> Examples of companies with foundations in the EAC include the Vodacom Tanzania and Safaricom Kenya.

<sup>44</sup> Horrigan, B. op. cit. p. 25.

depending on focus, context, approach and expectations of stakeholders. Writing on the Kenyan environment, Cheruiyot and Tarus state that:

CSR is organizations' long-term commitment to social, economic, legal and environmental rights and responsible outcomes for the sustainability of humanity.<sup>45</sup>

Although this interpretation is in line with many definitions of CSR by different scholars, it is not far from criticism, especially on mentioning of commitment to legal and environmental rights when one looks at the perception and practice in many companies in the EAC region. For majority of companies in the EAC region, fulfillment of legal and environmental duties is obligatory and not an engagement.<sup>46</sup> However, introduction of mandatory CSR in Tanzania and in South Sudan for some companies, may, therefore, find justification in this definition, although one may need to identify and differentiate obedience to law generally, not amounting to CSR, from obedience of law, which imposes CSR because it is not obedience to every law that may amount to CSR.

Furthermore, although CSR is not a legal terminology, it is expected that given its novelty and multifarious interpretations, a legal definition should be included in the law, which purports to impose the duty to adopt CSR. On the contrary, most jurisdictions, which have introduced mandatory CSR have not defined CSR.

---

<sup>45</sup> In relation to social studies in the EAC on CSR, see Cheruiyot. T. and Tarus, D. "Corporate Social Responsibility in Kenya: Blessing, Curse or Necessary Evil?" In: Idowu S. et al. (Eds.) *Corporate Social Responsibility in Times of Crisis. CSR, Sustainability, Ethics & Governance*. Springer, 2017, pp. 169-170.

<sup>46</sup> See McWilliams, A. and Siegel, D. "Corporate Social Responsibility: A Theory of the Firm Perspective." *Academy of Management Review* 2001, p. 126.



Beginning with practice in countries outside the EAC region, which have imposed mandatory CSR, it has been observed that CSR is neither defined under the Indian Companies Act of 2013 nor under laws imposing mandatory CSR in Indonesia.<sup>47</sup> Nevertheless, it should be noted that Elucidation on Investment Law Number 25 of 2007 of Indonesia contains a definition of the phrase “a company’s social liability.” Accordingly, the phrase is defined as:

the responsibility adhered to by any investment companies in creating a harmonious, balance relationship in accordance with the environment, values, norms and culture of the local community.<sup>48</sup>

This definition may be helpful in understanding the motive behind CSR. Nevertheless, there is a distinction between “liability” and “responsibility.” In addition, Law Number 40 of Indonesia defines the phrase “environmental and social responsibility” to mean:

company’s commitment to taking part in sustainable economic development in order to improve the quality of life and environment, which will be beneficial to the company itself, the local community and the society in general.<sup>49</sup>

This definition could be regarded as following very closely many existing CSR definitions. However, like many CSR definitions, it remains to be very narrow in scope because it centers on environment, local community and society, leaving out other stakeholders such as employees, suppliers, creditors as well as

---

<sup>47</sup> Neither does the Indonesian Limited Liability Companies’ Law No. 40 of 2007, nor the Indonesian Investment Law No. 25 of 2007 contain a definition of CSR.

<sup>48</sup> For details, see Elucidation on Law of the Republic of Indonesia Number 25 of 2007 Concerning Investment, p. 16.

<sup>49</sup> See Article 1, item no. 3 of Law No. 40 of Indonesia.

other areas of CSR such as anti-corruption and respect for human rights.

In the EAC, likewise, laws which impose compulsory CSR in Tanzania like the Petroleum Act of 2015 and the Mining Act 2010 as amended in 2017, also do not provide legal definition of CSR. Thus, absence of a statutory or legal definition of CSR in the EAC region is discernible. This *lacuna* does not mean that the legal definition of CSR is unnecessary. The normative character of CSR is something that no one can reasonably avoid. To emphasize its significance, we may borrow the words of Horrigan. He says that:

... no legislator, policy maker, law reformer, official regulator, corporate executive, business adviser or community partner who is confronted with CSR issues at work can completely escape the need to engage with their normative justifications ...<sup>50</sup>

This means that normative justifications of CSR are inescapable. For that matter, it is not only laws, which impose compulsory CSR but also those providing for CSR reporting are expected to contain definition of the term CSR. This would at best help to clear the clouded understanding of the term and, additionally, bring the debate between voluntary and mandatory CSR to an end.

### **3.2 Legislated Duty to Adopt CSR Plans/Policies in the EAC Region**

#### *3.2.1 Theoretical Underpinnings*

Due to its binding and obligatory nature law is regarded as an instrument which is used to execute public policy. Like in many other situations, it is argued here that law may be used to promote

---

<sup>50</sup> Horrigan, op. cit. p. 35.

CSR directly or indirectly. Already in the EAC region, there have been various calls from scholars and activists for establishment of CSR legal frameworks.

Discussing weaknesses of the CSR agenda in Kenya, Cheruiyot and Tarus advocate for establishment of a legal and institutional framework for CSR in order to enable it to respond to various social, economic, environmental and other crises existing in society.<sup>51</sup> Also, Muthuri and Gilbert attribute absence of CSR conducive environment in Kenya to government failure to impose CSR regulatory and institutional frameworks.<sup>52</sup> Again, Abuya has vehemently advocated for the need to enact a legislation for regulation of CSR in the Kenya's mining industry.<sup>53</sup>

In 2015, at a conference on the Tanzanian mining sector, stakeholders urged the Tanzanian government to cooperate with other stakeholders and establish a legal framework for CSR in order to ensure effective implementation as well as compliance in the mining sector. They pointed out that CSR practices under the Tanzanian Mining Policy of 2009<sup>54</sup> were fragmented and that the Policy lacked focus on how to ensure protection of interests of Tanzanians and business communities.<sup>55</sup> At the said forum,

---

<sup>51</sup> Cheruiyot, T. and Tarus, D. op. cit. p. 187.

<sup>52</sup> See Muthuri, J. and Gilbert, V. "An Institutional Analysis of Corporate Social Responsibility in Kenya," *Journal of Business Ethics* 2011, vol. 98, pp. 469, 478.

<sup>53</sup> Abuya, W. „Mining Conflicts and Corporate Social Responsibility in Kenya's Nascent Mining Industry: A Call for Legislation“, an Open Access Peer Reviewed Chapter published in April 2018. Available in the Internet: <https://www.intechopen.com/books/social-responsibility/mining-conflicts-and-corporate-social-responsibility-in-kenya-s-nascent-mining-industry-a-call-for-l>. Accessed on 30th October 2019.

<sup>54</sup> Promotion of CSR in the mining industry in Tanzania came for the first time in 2009 by inclusion of policy statements in the Mining Policy 2009. Since this was a mere policy, the implementation required a legislation. The legislation came later in 2017.

<sup>55</sup> See Policy forum, Corporate Social Responsibility in Tanzania Mining Sector: An Option or Obligation? Available in the Internet: <https://www.policyforum->

stakeholders argued further that establishment of the legal framework would strengthen ethical and moral conduct of business as a result of a collaborative awareness platform involving the government and the private sector whose existence would depend on its availability. NGOs and CSOs including the Legal and Human Rights Centre (LHRC) argued that low compliance with the CSR is attributable to absence of a legal framework to regulate CSR.<sup>56</sup>

The above arguments are anchored in the perception that direct promotion of CSR through law can be easily achieved by mandatory CSR. Consequently, reasons for mandating CSR include ineffectiveness of voluntary CSR (not structured, arbitrary, uncoordinated), reluctance of some companies to engage in CSR and abuses of voluntary CSR through blue/green washing (false reporting), among others.<sup>57</sup> Mandatory CSR comes in to cure these mischiefs because of the following reasons. First, if CSR were made mandatory, companies which have been reluctant to engage in CSR activities would be netted. All companies qualifying under the law would have to adopt CSR policies. Secondly, problems of inefficiency, lack of coordination and lack of funds would be resolved because mandatory CSR would only be based on obligatory plans and programmes. In addition, experience from some countries such as Indonesia shows that mandatory CSR must be budgeted for. Thirdly, mandatory CSR comes to cure problems of green/blue washing as a result of

---

tz.org/corporate-social-responsibility-tanzania-mining-sector-option-or-obligation. Accessed on 20.07.2018.

<sup>56</sup> See LHRC, *Human Rights and Business Report*, 2017, p. 105.

<sup>57</sup> A research conducted by the LHRC in 2017 indicated that even in the mining industry, where mining companies had engaged in CSR, the majority of community members were dissatisfied with the CSR practices of companies in their areas, see LHRC, *Human Rights and Business Report* 2017, p. 116.

voluntary reporting. With mandatory CSR, there would normally be a mandatory duty to report regularly on CSR and report contents would be prescribed. Above all, consequences of failure to report and false reporting would also be dealt with by the law.

Moreover, in favour of mandatory CSR, critics of voluntary CSR argue that the company's management does not have an automatic mandate to engage in CSR because it involves going beyond the legal obligation, and this amounts to breach of management duties.<sup>58</sup> Furthermore, it is argued that compulsory CSR makes sense in situations where companies are either not used to have no culture of adopting voluntary CSR or are not willing to adopt voluntary CSR or are skeptical about benefits which come with adoption of CSR.<sup>59</sup>

As a result of what has been stated above today, CSR is a legal obligation in some jurisdictions, albeit for specific companies. In practice, mandatory CSR is imposed on certain companies based on particular criteria such as size, annual turnover and annual profits of the company<sup>60</sup> or particular sector of the economy.<sup>61</sup> For

---

<sup>58</sup> Engaging in CSR is said to amount to the breach of legal and fiduciary duties, see McBarnet, D. "Corporate Social Responsibility beyond the Law, through the Law, for the Law: The New Corporate Accountability in : McBarnet, D. et al. (Eds.), *The New Corporate Accountability: Corporate Social Responsibility and the Law*, Cambridge University Press, New York, 2007, p. 23.

<sup>59</sup> This is one of the reasons advanced in favour of compulsory CSR in India, compare Gautam, R. Integrating CSR into the Corporate Governance Framework: The Current State of Indian Law and Signposts for the Way Ahead, p. 327, available at: [http://www.nseindia.com/research/dynaContent/CG\\_12.pdf](http://www.nseindia.com/research/dynaContent/CG_12.pdf). Accessed on 06.07.2018.

<sup>60</sup> This mode applies in India under s. 135 Indian Companies Act of 2013, which imposes the duty to formulate CSR policies and spend on it at least 2% of its average net profits made during the three preceding years, every financial year. According to s. 135 (5) of this law this duty applies to all companies having a net worth of rupees 5000 million (about 83.6 million USD) or more, or

some proponents of mandatory CSR, this is not enough. Therefore, they advocate for enactment of a law to require all business sectors in Tanzania to comply with CSR as a legal requirement.<sup>62</sup>

Generally, therefore, with mandatory CSR, the companies' CSR engagement is assumed to grow in terms of budget, plans, programmes, regularity, equality and scale. Furthermore, the State has direct control of where it wants more CSR activities by prescribing areas for mandatory CSR based on its priorities.<sup>63</sup> Proponents of compulsory CSR are opposed to using CSR as a marketing strategy. They argue for integration of CSR in development plans of the central as well as local government authorities and reversal of the practice of using CSR as a branding and a marketing strategy.<sup>64</sup> In this configuration, the State can use mandatory CSR to steer up economic development by tasking the private sector to participate directly in the process in addition to collection of taxes from it.

### *3.2.2 Concretization: The Mining Act of 2010 and Petroleum Act of 2015 (Tanzania)*

Unlike voluntary CSR, mandatory CSR is a still new concept in the EAC region. In the EAC Partner States. It is only found in South

---

a turnover of rupees 1000 million (about 16.7 million USD) or more, or a net profit of rupees 50 million (about 0.8 million USD) or more.

<sup>61</sup> This mode applies in Indonesia, in which Art. 5 of Government Regulation No. 47 of 2012 requires companies in the natural resources sector to prepare a social responsibility plan and budget.

<sup>62</sup> See LHRC, *Human Rights and Business Report*, 2017, p. 106.

<sup>63</sup> Take an example of section 135 read together with Schedule VII of the Indian Companies Act, 2013.

<sup>64</sup> See Policy forum, *Corporate Social Responsibility in Tanzania Mining Sector: An Option or Obligation?* Available in the Internet: <https://www.policyforum-tz.org/corporate-social-responsibility-tanzania-mining-sector-option-or-obligation>. Accessed on 20.07.2018.

Sudan and in Tanzania. In South Sudan mandatory CSR was introduced through the Mining Act in 2012.<sup>65</sup> Accordingly, section 128 (1) of this law requires the mining companies to assist in the development of communities near or affected by its operations to promote the general welfare and enhance the quality of life of the inhabitants living there. It goes on further to state that development of community shall include but not be restricted to provision of schools, clean drinking water, health centers, police stations and other services in accordance with best CSR practice. On the modality of carrying out the CSR, section 128(2) provides that the CSR programme shall be in conformity with the Mining Cadastre Office guidelines or in the absence of such guidelines, in accordance with best international practice. Furthermore, section 198(2)(c) of this law empowers the Minister<sup>66</sup> to issue regulations prescribing guidelines for Corporate Social Responsibility, for effective implementation of the provisions of the same.

In Tanzania, this legal obligation came in 2015 and it does not apply to all companies across the board, but only those engaged in petroleum and mining activities. The laws governing this type of CSR are the Mining Act of 2010 (hereinafter, MA) as amended by the Written Laws (Miscellaneous Amendments) Act of 2017 and the Petroleum Act of 2015 (hereinafter, PA).<sup>67</sup> In particular, the duty to adopt CSR is found in Part VIII of the Mining Act of 2010 entitled 'Local Content, Corporate Social Responsibility and Integrity Pledge.'<sup>68</sup> Of importance for the purposes of this discourse are sections 105 and 106 of MA. Section 105 of MA

---

<sup>65</sup> See Laws of South Sudan, Mining Act, Act no. 36 of 2012.

<sup>66</sup> According to section 5 of the South Sudan Mining Act, the term Minister refers to the Minister charged with the responsibility for regulating the development and exploitation of Mineral Resources.

<sup>67</sup> Petroleum Act, no. 8 of 2015.

<sup>68</sup> See also the comments and description, in LHRC, *Human Rights and Business Report*, 2017, p. 106.

imposes a duty on companies to prepare CSR plans annually. It further provides for procedures of preparing and approving credible CSR-plans, which involve joint-efforts of the company and the Local Authority as well as consultations with the Minister responsible for Local Government Authorities (LGAs) and the Minister responsible for Finance and Planning. It also provides for oversight functions of the LGAs [(s. 104 (4) (b) MA)] to ensure implementation of the CSR Plan.

Likewise, section 222 of PA requires a license holder and a contractor jointly to prepare a credible CSR plan. This is to be jointly agreed upon by the LGA. The process has to be done on annual basis. At the same time, such CSR plan has to be approved by the LGA.

### *3.2.3 Inborn conflicts of legislated duty to adopt CSR*

In the developed countries (western nations) and throughout the genesis of modern CSR concept, voluntarism has been considered to be at the core. This accounts for traditional definitions of CSR, which describe CSR to encompass activities of companies that go beyond their legal obligation.<sup>69</sup> Thus, CSR has been considered to begin at the point where the legal obligation ends so that fulfillment of the legal obligation is regarded as CSR at level zero.<sup>70</sup> Furthermore, some scholars have observed that the practice of mandating CSR masks the voluntary CSR of

---

<sup>69</sup> See for instance, Brown, D. and Knudsen, J. "From Self-Regulation to Government Programs: CSR in European Welfare States," paper presented to the CES Conference 23 March, 2012, ; compare McBarnet, D. op. cit. pp. 11-12.

<sup>70</sup> See Schneider, A. "Reifegradmodell CSR – eine Begriffsklaerung und – abgrenzung," in: Scheider, A. and Schmidpeter, R. (Eds.) *Corporate Social Responsibility: Verantwortungsvolle Unternehmensfuehrung in Theorie und Praxis*, 2. Ergaenzte und erweiterte Auflage, Berlin und Heidelberg, Springer, pp. 32 et seq. See also Shayo, D. "Corporate Social Responsibility and the Law in Tanzania: A Critical Examination of its Mandatory Nature," *Zanzibar Year Book of Law* 2017, Vol. 7, pp. 119-120.



companies by regulations.<sup>71</sup> Therefore, it becomes impossible to distinguish CSR from fulfillment of legal obligation. Moreover, companies are likely to oppose such practice because mandatory CSR does not offer the same benefits, which are said to be obtained from voluntary CSR. For instance, the business case for CSR is premised on enhancement of the image of the company by doing more than what other companies can do on its own volition. Under the voluntary CSR, companies also intend to attain self-regulations/private regulations/soft laws by adopting CSR.

Obedience to law is in itself rewarding to the company's image in the sense that it avoids the punishment that follows breach of the law.<sup>72</sup> However, this is very little for a company, which engages in CSR.<sup>73</sup> At best, such company wants to distinguish itself from others in order to attract more customers and better employees as well as to have good relationship with society and environment, to mention but a few. To understand the premises discussed in this paper, we may need to borrow the concept of meta-regulation explained by Parker.<sup>74</sup> The concept of a meta-regulating law assumes that there is a law somewhere, which makes companies to recognize that the main goal of a company is both to act socially responsibly and provide return to its investors, employees and managers.<sup>75</sup> This law does not only depend on command and control but also on other techniques in regulation of the behaviour of corporations. It generates forces which make companies to

---

<sup>71</sup> See Matten, D. and Moon, J. "Implicit and Explicit" CSR: A Conceptual Framework for a Comparative Understanding of Corporate Social Responsibility." *Academy of Management Review* 2008, Vol. 33, p. 410.

<sup>72</sup> Compare Horrigan, B. op cit pp. 61-62.

<sup>73</sup> It is argued that in an ideal corporate world, corporations are transformed to deal with a world of, among others, regulation beyond law and responsibility beyond state sanctions. Comprehensive on this see Horrigan, *ibid.* p. 342.

<sup>74</sup> Parker, C., "Meta-regulation: Legal Accountability for Corporate Social Responsibility." In: McBarnet, D. op. cit. pp. 207 et seq.

<sup>75</sup> See Horrigan, B. op. cit. p. 61.

develop internal governance structures, management practices and corporate cultures, leading to attainment of responsibility.<sup>76</sup> Horrigan argues that, “for CSR to be fully effective the notion of responsibility associated with CSR must be embraced as an idealistic rather than formalistic one.”<sup>77</sup> Meta regulation law brings self-awareness to the company, which then commits itself to “ethic of responsibility” that allows it to engage beyond the company, distinct from legal compliance that is simply based on avoidance of legal sanctions.<sup>78</sup>

On the contrary, mandatory CSR cannot be said to differentiate one company from the others, in this context. At best, mandatory CSR can be said to foster co-regulation in contrast to self-regulation. Co-regulation is a result of CSR policies and plans, which under the law, are required to be made by the companies and be approved by state organs.<sup>79</sup>

It is also argued that some countries avoid the practice of mandating CSR because of fear of discouraging domestic investments. In the EAC region, this argument has been expressed by Kenyan scholars in respect of reluctance of the Kenyan government to introduce mandatory CSR regulations.<sup>80</sup> In

---

<sup>76</sup> See Horrigan, B. *ibid.*

<sup>77</sup> See Horrigan, B. *ibid.*

<sup>78</sup> Compare Horrigan, B. *ibid.* pp. 61-62.

<sup>79</sup> See for instance, the requirements of Local Government Approval of the CSR plans under section 222 (3) Petroleum Act, 2015. However, in other countries such as India and Indonesia, there is no involvement of the state authorities in the approval of the CSR policies. In India, CSR policies made under section 135 should be prepared by the CSR Committee of the Board and approved by the Board of Directors of the Company. In Indonesia, article 4 of Government Regulation No. 47 of Indonesia requires the CSR plans to be prepared by the Board of Directors and be approved by the Board of Commissioners of the company.

<sup>80</sup> See Muthuri, J. and Gilbert, V. “An Institutional Analysis of Corporate Social Responsibility in Kenya,” *Journal of Business Ethics* 2011, Vol. 98, p. 469.

addition, the Kenyan authors, Cheruiyot and Taurus argue that CSR should be less regulated because it is a voluntary engagement, which by nature is philanthropic.<sup>81</sup> Even in Tanzania, where compulsory CSR has been introduced for companies in the mining and extractive industry, it is submitted that majority of companies still understand CSR in connection with philanthropy.<sup>82</sup>

Furthermore, the mandatory CSR forms in Tanzania and South Sudan<sup>83</sup> may not be considered to achieve all the intended benefits, which come with the concept. At the very least, unlike the requirement of companies to have CSR budgets (as is the case in Indonesia)<sup>84</sup> or the prescription of the minimum percentage of the profits to be dedicated to CSR (as is the case in India),<sup>85</sup> these laws prescribe neither the requirement for CSR budgets, nor the percentage of the company's profits to be allocated for CSR. Under such circumstances, the amount to be spent by companies on mandatory CSR is totally incalculable. The fact that these laws do not set minimum allocations for mandatory CSR makes them unreliable. Again, it is argued that mandatory CSR leads to multiplicity of legislation, discrimination of companies, pre-emption of government duties and unresolved taxation issues.<sup>86</sup> Above all, the laws imposing CSR do not provide for proper mechanisms of monitoring, evaluation or even sanction on companies which

---

<sup>81</sup> See Cheruiyot, T. and Taurus, D. op. cit. pp. 169-189.

<sup>82</sup> See LHRC, *Human Rights and Business Report*, 2017, pp. 104 et seq.

<sup>83</sup> See The Tanzanian Mining Act, No. 14 of 2010 and the South Sudan Mining Act, No.36 of 2012.

<sup>84</sup> See Art. 5 of Government Regulation No. 47 of 2012 of Indonesia.

<sup>85</sup> S. 135(5) of the Indian Companies Act 2013 requires companies bound by compulsory CSR to spend, at least 2% of its average net profits made during the three preceding financial years. In case of failure to do so the board of directors must account for the reasons of the failure in its annual reports sent to the general meeting.

<sup>86</sup> See Shayo, D. "Corporate Social Responsibility and the Law in Tanzania: A Critical Examination of its Mandatory Nature," *Zanzibar Year Book of Law* 2017, Vol. 7, pp. 148 et seq.

refuse or fail to prepare CSR plans.<sup>87</sup> This problem has been observed also in the mandatory CSR scheme of India.<sup>88</sup>

### 3.3 Legislation relating to duty to report on CSR

#### 3.3.1 Theoretical Underpinnings

In various parts of the world, following the attempt to deal with problems associated with voluntary CSR reporting, there has been development of reporting and verification tools both by the State and non-state initiatives.<sup>89</sup> This has led to an evolution of CSR from pure voluntary CSR to CSR which is partly voluntary (as far as adoption is concerned) and partly mandatory (as far as reporting is concerned). The legal aspects target at eradication or minimization of abuses of CSR reporting. They include issuance of misleading and false CSR reports by companies.<sup>90</sup> Perpetrators of such misleading and false CSR reports are said to be companies, which obtained bad reputation due to abuse of human rights, corruption or environmental pollution<sup>91</sup> and resorted to publication of CSR reports as a marketing strategy only.<sup>92</sup> Before

---

<sup>87</sup> Shayo, D. Ibid. pp. 141-142.

<sup>88</sup> See Kumar, A. and Tayal, P. "Corporate Social Responsibility and Companies Act 2013: A Critical Analysis, *The Companies Lawyer*, Vol. 36, No. 12, pp. 384 et seq.

<sup>89</sup> See Horrigan, B. Op. Cit. p. 64

<sup>90</sup> The practices of false reporting became rampant in 1970s and above. Before the coming of legal rules, the NGOs and CSOs at the both national and international level started to make reporting initiatives to win the credibility of voluntary CSR reports from companies.

<sup>91</sup> For instance, Shell Group Company adopted the UN Human Rights Charta and a code of conduct and reported on the same following public allegations of human rights violations and corruption, compare Jones, G. *Multinationals and Global Capitalism: From the Nineteenth to Twenty-first Century*, Oxford University Press, 2005, p. 223.

<sup>92</sup> See Tschopp, D. "Corporate Social Responsibility: A Comparison between the United States and the European Union," *Corporate Social Responsibility and Environmental Management* 2005, Vol. 12, pp. 55-56; compare Aras, G. and

coming of reporting pieces of legislation both local and international NGOs, CSOs and the UN Organizations had come up with reporting initiatives<sup>93</sup> with the aim of re-assuring credibility to CSR reports.

Responding to these malpractices, the EU region came up with the requirement of compulsory reporting on non-financial matters,<sup>94</sup> which bear a big similarity with CSR subject matter

---

Crowther, D. "Corporate Governance and Corporate Social Responsibility in Context," in: Aras, G. and Crowther, D. (Eds.), *Global Perspectives on Corporate Governance and CSR* 2009, Farnham and Burlington: Gower Publishing, p. 25; compare also Amstutz, M. "Die soziale Verantwortung von Unternehmen im europäischen Recht," in: Zentrum für Europäisches Wirtschaftsrecht (ed.) *Vorträge und Berichte* Nr. 183/2010, Bonn, p. 2; see also Emel, J. et al. "Problems with Reporting and Evaluating Mining Industry Community Development Projects: A Case Study from Tanzania." *Sustainability* 2012. Vol. 4, p. 264; compare GIZ, *Shaping Corporate Social Responsibility in sub-Saharan Africa: Guidance Notes from a Mapping Survey*, Bonn, 2013, p. 206, available at <http://www.business-humanrights.org/media/documents/shaping-csr-in-sub-saharan-africa-giz-report-dec-2012.pdf>. Accessed: 24.09. 2018.

<sup>93</sup> Ever since, the practice of developing initiatives by NGOs and CSOs has continued to grow. The most famous initiatives include the OECD Guiding Principles for Multinational Enterprises, the Ten Principles of UN Global Compact, the ISO 26000 Guidance Standard on Social Responsibility, the ILO Tri-partite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the UN-Guiding Principles for Business and Human Rights, ISO 26000 and the Global Reporting Initiative, among others.

<sup>94</sup> This practice has been adopted in the EU through the EU directives. Comprehensive on this see Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003, amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of specific types of companies, banks and other financial institutions and insurance undertakings, available in the Internet: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:178:0016:0022:en:PD>. Accessed on 05.07.2018. See also *European Union*, Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, available in the Internet: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0095>. Accessed: 05.08.2018.

under the voluntary CSR.<sup>95</sup> The EU Member States have incorporated requirements of Communications and Directives of the EU governing organs into their laws already.<sup>96</sup> In contrast with mandatory CSR, the act of adopting CSR is voluntary and non-adoption of CSR does not constitute breach of the law. Such practice of promoting CSR indirectly through law has been viewed by some scholars as proof of the fact that CSR is partly the law.<sup>97</sup> Furthermore, the practice of imposition of mandatory CSR reporting is said to have led to evolution of a new type of voluntary CSR, partially regulated voluntary CSR.<sup>98</sup>

The practice of promoting CSR through mandatory reporting has also found its way into the EAC region. Although, at regional level, there are no legislative developments, to date, there are already legislative measures at the country level which require certain companies to report on their CSR activities. This practice is evidenced by a variety of CSR mandatory reporting regimes, which include the regime under the Tanzania Extractive Industries

---

<sup>95</sup> In UK for example, s. 417 UK Companies Act 2006 (amended later in 2013 to be s. 414A) demanded the release of business review (later strategic reports), whose contents (upon scrutiny) to a large extent resemble the CSR issues. Likewise, the provisions of §§ 289 III and 315 I German Commercial Code (HGB) require disclosure of non-financial information in their operating reports, the contents of which resemble the CSR checklist.

<sup>96</sup> See for instance, § 289 III and 315 I of the German Commercial Code (HGB) which require big and group companies respectively to disclose their non-financial information in their operating reports (Lageberichte); See also ss. 414 A and 414C UK Companies Act 2006 as amended, which require the board of directors of listed companies to issue strategic reports with information on environmental, employment, social, human rights and diversity of the board matters.

<sup>97</sup> Comprehensive on this, see Rühmkorf, A. *Corporate Social Responsibility, Private Law and Global Supply Chains*, Edward Elgar Publishing, Cheltenham 2015, pp. 25-26.

<sup>98</sup> Comprehensive on this, see Shayo, D. "Corporate Social Responsibility and the Law in Tanzania: A Critical Examination of its Mandatory Nature," *Zanzibar Year Book of Law* 2017, Vol. 7, pp. 145-146.

(Transparency and Accountability) Act, (TEITA); and regimes under company laws in Kenya and South Sudan.

### *3.3.2 Concretization I: The Tanzania Extractive Industries (Transparency and Accountability) Act of 2015*

The Tanzania Extractive Industries (Transparency and Accountability) Act (hereinafter, TEITA Act)<sup>99</sup> under its section 4 establishes the Tanzania Extractive Industries (Transparency and Accountability) Committee (TEITA Committee) as an independent government entity. TEITA Committee has the function of promoting and enhancing transparency as well as accountability in the extractive industry. Section 10(1) of TEITA Act provides that TEITA Committee is responsible for ensuring that benefits of extractive industry are verified, duly accounted for and prudently utilized for benefits of citizens of Tanzania. Therefore, in performing this role, TEITA Committee is required to reconcile amounts of revenues paid by companies in the extractive industry with that received by statutory recipients. The TEITA Committee is required under section 14 to set a threshold for the purposes of identifying extractive industry companies, which qualify for reconciliation on payments made and revenues received by the Government. The TEITA Act requires the TEITA Committee to prepare annual reconciliation reports after receiving reports from the companies in the extractive industry.<sup>100</sup>

In relation to CSR, it may be argued that a typical practice of mandatory CSR reporting in Tanzania is provided for under the TEITA Act. Section 15(1) of the TEITA Act requires companies in

---

<sup>99</sup> Act No. 23 of 2015 which came into force on 25th September 2015, see The Tanzania Extractive Industries (Transparency and Accountability) (Date of Commencement) Notice 2015, Government Notice No. 455 published on 16, October 2015.

<sup>100</sup> See section 14(2) and section 14(3) TEITA Act.

the extractive industry to submit to the TEITA Committee annual reports with information on local content and CSR. This requirement applies also to statutory recipients of revenues from such companies. Analysis of this provision reveals that CSR information will form part and parcel of the report submitted to the TEITA Committee. This provision is not advocating for a separate CSR reporting but rather integrated reporting. Furthermore, the reporting is not comprehensive in terms of specific CSR information. In Tanzania, it is not unusual to find such broad and unspecific provisions in the parent legislation. However, in practice, general provisions are usually supplemented by provisions of subsidiary legislation, which normally are very specific, for they aim at effective implementation of the laws made by Parliament. We now turn to examination of subsidiary pieces of legislation made under this law.

Up to the time of writing this article, there was only one subsidiary legislation, which could be identified in this regard, namely, the Tanzania Extractive Industries (Transparency and Accountability) (General) Regulations 2019 [hereinafter, TEITA (G) Regulations].<sup>101</sup> Regulation 6 of the TEITA (G) Regulations mentions data and information required to prepare reconciliation report. This data include information and data on CSR payments (Regulation 6 (i)) and adherence to the local content law (Regulation 6(j)). These Regulations provide further that such reports should be in a prescribed reporting template.<sup>102</sup> It is worth noting that apart from this mention, the Regulation is silent on

---

<sup>101</sup> Government Notice No. 141, published on 8<sup>th</sup> February 2019. They were made by the Minister responsible for mining, oil and natural gas under Section 25 of the TEITA Act of 2015.

<sup>102</sup> Regulation 2 of TEITA Regulations of 2019 defines this as a special form designed to be filled in with all information and data by the extractive industry companies and statutory recipients for the purposes of reconciliation and disclosure of beneficial ownership.



other aspects such as CSR budgeting and CSR themes. Thus, although the Regulation is specific in as far as it mentions CSR payments; it is vague on particular items, which may be paid for to qualify as CSR payments. This would have worked very smoothly if there was a definition of CSR in this law. Absence of such definition makes the provision vague. For this matter, although this legislation mandates CSR reporting, it is not specific and therefore, it may not help in promoting CSR at all.

### *3.3.3 Concretization II: The Kenya Companies Act of 2010 and the South Sudan Companies Act of 2012*

There has been growing tendency of incorporating reporting provisions into the companies laws, which have the effect of promoting CSR. Although such provisions do not expressly mention CSR, they end up promoting CSR because they incorporate items which, essentially, are a subject matter of CSR. This practice can easily be traced in the UK Companies Act of 2006. However, this practice has found its way to the EAC region whereby some Partner States' companies laws carry provisions, which may be considered to promote CSR. Partner States with such laws are Kenya and South Sudan. For the rest of the EAC Partner States, the companies laws are still silent, despite some being recently enacted.

In Kenya, reporting on CSR has been introduced in the Kenyan company legislation Section 655(4)(b) of the Kenyan Companies Act (KCA) of 2015 requires directors of quoted companies to specify certain matters in their business review. Under the provisions of section 655 (1) of KCA, a business review is part of the directors' report for all companies except small companies.<sup>103</sup>

---

<sup>103</sup> According to Section 624(3) KCA a small company is a company, which satisfies any two of the following conditions: (a) it has a turnover of not more than fifty million Kenyan Shillings; (b) the value of its net assets as shown in its

The business review aims at informing and assisting members of companies to assess performance of directors in their duty to promote success of the companies provided under section 144 of KCA. According to section 655(4) of KCA, the business review of a quoted company must specify the main trends and factors likely to affect future development, performance or position of the business of the company. It must also contain information about environmental matters (including the impact of the business of the company on the environment) and company employees. In addition, it must inform on social and community issues, including information on any policies of the company in relation to those matters and effectiveness of those policies.

In South Sudan, likewise, the CSR reporting practice is supported by the companies law. Thus, Table E of the South Sudan Companies Act (SSCA) of 2012<sup>104</sup> provides an avenue for CSR reporting. Table E, made under section 17 of SSCA provides for a Code of Corporate Governance (hereinafter, the Code). Like the common practice in many jurisdictions, the Code does not bind private companies; but it does bind public companies. Consequently, section 17(1) of SSCA requires public companies to incorporate all or any part of the provisions of this Code into its articles of association. However, private companies may adopt this Code in total or in part at their own discretion (S. 17(2) SSCA).

Provisions concerning sustainability on reporting are found in the Code. Specifically, this type of reporting is provided for in item 15 (1) of the Code, which requires a company to report on its policies, procedures and systems including commitments to social, ethical,

---

balance sheet as at the end of the year is not more than twenty million Kenyan Shillings and (c) it does not have more than fifty (50) employees.

<sup>104</sup> The Companies Act, 2012 repealed and replaced the Companies Act, 2003.

safety, health and environment aspects. This type of sustainability reporting is called integrated sustainability reporting or stakeholder reporting. This provision comes with three levels of reporting. The first-level reporting covers matters arising from the documents, while the second-level reporting covers implementation of practices and steps taken to implement. The third-level reporting is on demonstrated benefits of changes.<sup>105</sup> Matters to be considered by the board of directors and matters which require specific considerations in the integrated sustainability reporting are mentioned in item 15(4) of the Code. They include safety and occupational health objectives issues, together with Human-Immunodeficiency Virus/Acquired Immune Deficiency Disease (HIV/AIDS), environmental reporting and following an option with the least impact on the environment and human capital development including the number of staff and training.

The important point to underline from the practice in Kenya and South Sudan is that CSR reporting is mandatory for public companies. However, the manner of reporting is different. Thus, while in Kenya, reporting is done in the business review, in South Sudan, it is done by way of Integrated Sustainability Reporting. Moreover, while filing a business review is an aspect of companies legislation in Kenya [Section 655(4) KCA], integrated sustainability reporting in South Sudan is part and parcel of the South Sudan Corporate Governance Code's requirements. Under normal practices, it could be argued that the distinction affects the binding nature of the reporting duty because a corporate governance code is considered to be soft law. Nevertheless, this distinction is of less significance given the fact that the South Sudan Corporate Governance Code is found in Table E of the SSCA in which public companies are mandatorily required to

---

<sup>105</sup> See item 15(2) of the South Sudan Corporate Governance Code.

incorporate the whole of it or part of it into their articles of association.

### *3.3.4 Questionable Legislative Developments on CSR Reporting*

Given the significance of CSR reporting in development of the company and society together with the need to regulate CSR with a view of obtaining meaningful and credible CSR, it may be expected that States would direct more legislation into this area. However, this has not been the case in some of the EAC Partner States. It is interesting to observe that companies' legislation in Burundi, Rwanda (The Law Governing Companies (LCA)), Tanzania (Tanzanian Companies Act (TCA)) and Uganda (Ugandan Companies Act (UCA)) are still silent on this matter. While it may be justifiable for the TCA to be silent given its age and the level of development of CSR by the time it was enacted, the UCA's silence on CSR is hardly justifiable, for it was enacted at the time when CSR was a talk of the day in many jurisdictions. In addition, Uganda being a Common Wealth Country, is strongly bound by the tendency of enacting uniform laws based on developments in other Common Wealth Countries, especially the UK. Therefore, the total silence on these issues in the UCA does not have a strong limb to stand on.

Likewise and, despite its modernity and many provisions, the Burundi's Companies Act does not contain a single provision on sustainability, business review or integrated reporting.<sup>106</sup> Remarkably, and worse still, the most-recent Companies Act in the EAC region, namely, the Rwanda Companies Act (LGC),<sup>107</sup> is

---

<sup>106</sup> This law is cited as Law No. 1/09 of May 30<sup>th</sup> 2011 on the Code of Private Companies and of Public Participation (Company Act). It has 617 provisions (articles).

<sup>107</sup> This law is cited as Law No. 17/2018 of 13/04/2018 on Law Governing Companies (hereinafter: LGC).

also silent on issues of sustainability, business review and integrated reporting.

Furthermore, as already pointed out, CSR reporting is regarded as part and parcel of mandatory CSR in countries where mandatory CSR has been imposed. The assumption is that companies with the legal obligation to adopt CSR would also be obliged under the provisions of the law to report on their CSR activities. Is this reflected in the laws of EAC Countries with mandatory CSR for some companies? In the EAC region, the study of the the Tanzanian Mining Act (MA) and Petroleum Act (PA), and the South Sudan Mining Act (SSMA) may provide some answers to this issue.

As already explained, section 105 of MA 2010 as amended by section 28 of the Written Laws (Miscellaneous Amendments) Act of 2017 requires mineral right holders, on annual basis, to prepare credible CSR plans to be approved by the local government. A similar provision is found in section 222 of PA of 2015. It may be argued that in such situations, monitoring and control of compulsory CSR would have been already made in advance through the planning process before implementation (an *ex-ante* action), in contrast to monitoring and control done by reporting after implementation (an *ex-post* action). Consequently, it may be argued that if there is a requirement of reporting under the law or if reporting is done on the voluntary basis, in such circumstances, it is an additional monitoring and control mechanism. If that were the case, reporting under such conditions would be regarded as superfluous. Can this be considered to be the true assessment of significance of reporting? The answer is no.

This answer is based on the fact that the plan may or may not materialize generally or in some aspects. Thus, it becomes important to provide information, even if the company had a plan,

in order to assess the extent of achievement of a particular plan. In this way, a report provides feedback on the execution or implementation of the plan, previously adopted. In addition, although the CSR plans will be known to people as a result of involvement of the local government, the CSR report ought to reach more members of the community, society and the public at large; reports are normally made consciously for common consumption. On this ground, reports are disseminated through various private and public media channels. Furthermore, reports are precise and may be digested and, therefore, more efficient in informing members of the public.<sup>108</sup> It is on these premises that reporting makes sense even for companies with the legal obligation to adopt CSR. Although reporting may be left to a company itself to decide (voluntarily) whether to report or not, an inclusion of a mandatory reporting provision brings more sense in circumstances where CSR is made compulsory because it provides an effective way of monitoring achievements and commitments associated with compulsory CSR.

However, a careful study of the laws imposing compulsory CSR in Tanzania and South Sudan reveals the contrary. Neither the Mining Act of 2010 (as amended), nor the Petroleum Act of 2015, nor the South Sudan Mining Act 2012 contains provisions requiring mining companies to report on CSR. Does this affect monitoring and control of the CSR plans? It is difficult to say yes or no at this juncture. This is because section 105(4) of MA 2010

---

<sup>108</sup> In his speech delivered on the 2nd April 2019 at the Climate-Related Financial Reporting Conference, held at Cambridge University in UK, Hoogervorst (the Chairperson of the International Accounting Standard Board (IASB) argued that “CSR/Sustainability reporting is oriented towards the public good and views society at large as the audience of reporting”. See IFRS, Speech: IASB Chair on what sustainability reporting can and cannot achieve. Available in the Internet: <https://www.ifrs.org/news-and-events/2019/04/speech-iasb-chair-on-sustainability-reporting/>. Accessed on 12th May, 2019.

(as amended) as well as section 222 (4) of PA require the Local Government Authorities (LGAs) to (a) prepare guidelines for CSR within their localities; (b) oversee implementation of the CSR plan; and (c) provide awareness to the public on projects within their areas. With these powers and functions of the LGAs on CSR of companies, it is possible to overcome some of the negative effects, which may come with lack of reporting provisions under the law. At the same time, by using powers to prepare guidelines for CSR, the LGAs may require companies to provide annual reports. This will ease their function of overseeing implementation of the CSR plans and that of providing awareness to the public. Therefore, such reporting will fall within precincts of mandatory reporting. The challenge, which comes with this provision is that it creates the possibility of having many different types of CSR guidelines and monitoring mechanisms because they are dependent on the particular LGA. This challenge could be dealt with by establishment of a central regulatory authority to oversee harmonization of CSR guidelines of the LGAs.

The South Sudan Mining Act 2012 also does not contain provisions on the CSR reporting. However, there are two avenues within which this duty may be imposed. On one hand, the reporting duty may be included in the guidelines developed by the Mining Cadastre Office under section 128(2) of the South Sudan Mining Act or in the regulations issued by the Minister under section 198(2)(c) of the same law.<sup>109</sup> On the other hand, in absence of such guidelines or regulations, the reporting duty may be construed as already imposed under section 128(2) as part of the best international practice. The only problem of the later option is that, it is too general because there are many best CSR

---

<sup>109</sup> This study has been able to identify neither the Guidelines, nor the Ministerial Regulations for reporting on CSR in force in South Sudan. This matter is left to a subject of another research.

international practices based on many CSR initiatives including, purely CSR reporting initiatives such as the Global Reporting Initiative (GRI), and they differ substantially. At the same time none of the international CSR initiatives make CSR reporting mandatory in real sense of the word. In this way, the concretization can only be assumed under section 128(2) of the South Sudan Mining Act. If this option is chosen, such a vague identification of the international best practices is likely to result in multifarious reporting mechanisms which may complicate the whole process of monitoring and evaluation through reporting.

## **4. CONCLUSION AND RECOMMENDATIONS**

### **4.1 Conclusion**

Based on the foregoing discussion, the study concludes that:

- 4.1.1 The practice of adopting CSR policies by many EAC companies is based on both self-regulation and legislative requirements. While self-regulation is based on the concept of private autonomy whereby a company seeks to use CSR as a business policy, legislative requirements are based on the desire of the State to promote meaningful CSR and to ensure credible CSR reporting.
- 4.1.2 In the EAC, the practice of promoting CSR and regulating CSR through legislative measures is only found at the Partner State's level. There are no legislative measures in this regard at the regional level.
- 4.1.3 The legislative measures designed by the EAC Partner States to promote CSR are of two types: Those requiring certain companies to adopt CSR



policies/plans (mandatory CSR as is the case with mining companies in Tanzania and in South Sudan) and those requiring certain companies to report on matters, which have a bearing to CSR like mandatory sustainability reporting in South Sudan, and mandatory business review in Kenya. Interestingly, although the laws on obligatory sustainability reporting and obligatory business review do not mention CSR directly, matters to be reported on are, by implication, the common features of CSR. Thus, they promote meaningful CSR and ensure credible CSR reporting.

- 4.1.4 Absence of legislative measures for promoting CSR at regional level is a blow to development of meaningful and credible CSR in the EAC region. This is because not every Partner State has enacted a law to that effect. Moreover, even where national pieces of legislation exist, the legislation differ from one another materially. In some Partner States, there is no mandatory CSR reporting requirement of any kind, for example, Burundi, Rwanda and Uganda. Moreover, it has been shown that companies laws, mining laws and laws on transparency and accountability have been used to promote CSR practices in some EAC Partner States. Since laws which impose the duty to adopt CSR policies in Tanzania and South Sudan fall short of the provisions on CSR reporting they can, admittedly, be said to be incomplete.

## **4.2 Recommendations**

- 4.2.1 Inconsistencies and legislative gaps at the Partner State's level emphasize on the need for a common legislative measure at regional level to purposely

promote meaningful CSR and ensure availability of credible CSR reports in the region.

4.2.2 As to what kinds of legislative measures should be adopted the study has clearly demonstrated that mandatory CSR and purely voluntary CSR are problematic. Thus, while mandatory CSR is confronted with legal issues such as selectivity of sectors, size or type of the company, unresolved taxation issues and problems of distinction between CSR and fulfillment of law, on one hand; a purely voluntary CSR is also unreliable for being discretionary in all its aspects, including whether and how and what to engage in and report on. Scholars such as Horrigan have suggested a midway in which a mixture of legislative measures of State and voluntary engagement of the companies will be combined.<sup>110</sup> It is upon these lines that it is recommended that legislative measures should be directed towards imposition of mandatory CSR reporting duty to companies.

4.2.3 It is important to reemphasize the point that rules on mandatory CSR reporting should focus on investors and the impact of CSR issues on development of the company in contrast to focusing only on the company's contribution to society. This is, indeed, significant for public companies because CSR

---

<sup>110</sup> Horrigan argues that "the law's interaction with CSR can embrace a minimum position of legal compliance and harm avoidance where the law is lacking, a mid-way position of facilitating corporate contributions to sustainable development and other forms of community investment where the business case warrants it, and a more expansive position of active alignment of internal business goals with externally set societal goals." See Horrigan, B. op. cit. p. 26.

sensitive investors are more likely to invest in companies with a good CSR rapport and at the same time the impact of CSR issues on the long-term benefits will bring a bigger impact on investors and the company generally.