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**SHOULD COMPANIES PURSUE CORPORATE SOCIAL  
RESPONSIBILITY?**

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I do hereby declare that I have read and understood the regulations governing submission of a master of laws dissertation, including those relating to length and plagiarism, as contained in the rules of this university, and that this dissertation conforms to those regulations.

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## Introduction

There has been a long - standing argument on whether or not companies should be socially responsible. This is so because the primary objective of every company is to maximize profit for its shareholders, corporate social responsibility is therefore seen as a distraction. According to the leading proponent of this view Milton Friedman, ‘the social responsibility of business is to increase its profits’<sup>i</sup>, but does society today stand to maximally benefit if the only concern of companies is to make a profit? Supporters of this view posit that companies involvement in projects not directly aimed at maximizing profit for its shareholders like corporate philanthropy and community development are unnecessary. They insist that issues like these should be left to the government and charities.

On the contrary, society’s present expectation of business covers a lot more than profit maximization; companies’ involvement in corporate social responsibility is therefore the only way these expectations could be harnessed. Corporate social responsibility (CSR) is not only about philanthropy as some think, it involves the myriad ways firms integrate social, environmental and economic concerns into the day to day running of their companies.

This essay stresses the need for companies’ involvement in corporate social responsibility; it seeks to show that a socially responsible company does not only bring environmental and social benefits to the society at large, but also attracts financial benefits for the company involved. It goes further to suggest strategies that could be used to make companies more responsive to social needs than they presently are.

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<sup>i</sup> Milton Friedman *The social responsibility of business is to increase its profits* 13 September (1970) New York Times Magazine 32.

The first chapter answers the question, what is corporate social responsibility? Many people and organizations have attempted defining this concept, but more often than not their views do not entirely reflect what corporate social responsibility is about because of the wide spectrum of issues it covers. To some people, corporate social responsibility is all about corporate philanthropy, to others it is more encompassing than that and is closely linked with principles of sustainable development. Although people look at CSR from different perspectives, what is generally agreed by all advocates of corporate social responsibility is that the management of companies should not only consider the interests of shareholders when running the company, but should take into account the welfare of other company stakeholders.

Sustainable Development is defined by the United Nations Brundland Commission as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.<sup>ii</sup> The fact that CSR is voluntary leaves companies with discretion to be socially responsible or not. It is the voluntary nature of CSR that makes some people view CSR as basically corporate philanthropy.

Those who see CSR as broader than philanthropy and linked with the principles of sustainable development argue that while philanthropy is absolutely discretionary, CSR is sustainable. While philanthropy involves how companies’ profits are spent on deserving causes, CSR is concerned with how these profits are made in the first place. Proponents of CSR as an intrinsic part of sustainable development further argue that it is only when social accountability becomes an integral part of corporate conduct rather than a philanthropic add – on, that the economic development of the private sector will move forward within an acceptable framework of public purpose<sup>iii</sup> This is my preferred notion of corporate social responsibility.

Chapter one outlines the various definitions of corporate social responsibility. It looks at the relationship between corporate social responsibility and corporate

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<sup>ii</sup> Our common future: *the world commission on environment and development* (1987) 43.

<sup>iii</sup> Melvin Anshen *Corporate strategy for social performance* (1980)1.

governance and also gives an overview of the background influences of CSR. Chapter two examines the criticisms of corporate social responsibility and counters them. Chapter three presents the business case for corporate social responsibility; it seeks to show that socially responsible companies are not disadvantaged but enjoy numerous financial benefits.

Chapter four suggests strategies that could be used to make companies more responsive to societal needs. Flowing from the fact that CSR is voluntary and some companies remain unresponsive to societal needs, regulation of aspects of CSR that cannot be left at the mercy of companies remains a way socially irresponsible companies would be compelled to comply. This chapter presents the arguments for and against legislation of CSR and suggests a balanced regulatory approach to corporate social responsibility.

## CHAPTER ONE

### WHAT IS CORPORATE SOCIAL RESPONSIBILITY?

Corporate social responsibility (CSR) being an evolving concept does not presently have a universally accepted definition. Different people and organizations have framed a variety of definitions of the term; although they differ in their perceptions of what CSR means, a close look at the various definitions reveals considerable common ground between them.

For instance while some people define CSR as basically corporate philanthropy, others see it as broader than corporate philanthropy and closely linked with the principles of sustainable development. Until recently, the United States sees CSR from the perspective of corporate philanthropy but across Europe it is an integral part of business<sup>1</sup>. European companies are encouraged to move beyond a base of legal compliance to integrating socially responsible behaviour into their core values, in recognition of the sound business benefits in doing so.<sup>2</sup>

According to Ramon Mullerat, CSR is a concept whereby companies voluntarily decide to respect and protect the interests of a broad range of stakeholders while contributing to a cleaner environment and a better society through an active interaction with all.<sup>3</sup> CSR is also defined as the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as the local community and society at large.<sup>4</sup> It is the cooperation with government, civil society and businesses.<sup>5</sup>

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<sup>1</sup> The Green Paper: Commission of the European Communities (2002) 5.

<sup>2</sup> Ibid.

<sup>3</sup> Rayon Mullerat 'et al' *Corporate social responsibility: the corporate governance of the 21<sup>st</sup> century* (2005) 3.

<sup>4</sup> The world business council for sustainable development CSR: meeting changing expectations (1999).

<sup>5</sup> Mullerat (op cit note 3 at 3).

Some definitions of CSR which to a large extent portray it as broader than corporate philanthropy are: CSR is the management of an organization's total impact upon both its immediate stakeholders and upon the society within which it operates. CSR is not simply about whatever funds and expertise companies chose to invest in communities to help resolve social problems ... it is about the integrity with which a company governs itself, fulfils its mission, lives by its values, engages with its stakeholders, measures its impacts and reports on its activities;<sup>6</sup> Corporate social responsibility is understood to be the way firms integrate social, environmental and economic concerns into their values, culture, decision making, strategy and operations in a transparent and accountable manner and thereby establish better practices within the firm, create wealth and improve society;<sup>7</sup> CSR is defined as a way of doing business which contributes to sustainable development, reinforcing competitiveness, social cohesion and environmental protection;<sup>8</sup> CSR is a business firm's obligation, beyond that required by the law and economics, to pursue long – term goals that are good for society.<sup>9</sup> Finally, the European commission on CSR define 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 as they are increasingly aware that responsible behaviour leads to sustainable business success.<sup>10</sup>

Of all the definitions, Professor Archie Carroll's definition of CSR is the broadest and probably the most accepted definition of CSR.<sup>11</sup> Carroll regards CSR as a multi – layered concept, which can be differentiated into four interrelated aspects – economic, legal, ethical and philanthropic responsibilities.<sup>12</sup> Carroll and Buchholtz define CSR as a

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<sup>6</sup> Definition of CSR by the United Kingdom's Department of Trade and Industry. John Hancock *Investing in corporate social responsibility* (2005) 8.

<sup>7</sup> Industry Canada: Corporate Social Responsibility: An Implementation Guide for Canadian Business (2006).

<sup>8</sup> Dominique B'e Foreword to *Corporate social responsibility across Europe* (2005)

<sup>9</sup> D A L Coldwell 'Perceptions and expectations of corporate social responsibility: theoretical issues and empirical findings' (2001) *SAJBM* 32(1) 49.

<sup>10</sup> The Green Paper ( op cit note 1 at 3).

<sup>11</sup> Judith Hennigfeld 'et al' *The ICC handbook on corporate social responsibility* (2006) 5-6.

<sup>12</sup> Hennigfeld (op cit note 11 at 6).

concept which encompasses the economic, legal, ethical and philanthropic expectations placed on organizations by society at a given point in time.<sup>13</sup>

For Professor Carroll, true social responsibility requires the meeting of all four levels of responsibility consecutively.<sup>14</sup> Companies' economic responsibility involves their ensuring that shareholders have a good return on their investments. According to Carroll, every company must satisfy its economic responsibilities; this is its first responsibility and the basis for all other responsibilities.<sup>15</sup> Companies' legal responsibilities demand that they abide by the law and 'play by the rules of the game' in order to keep their license to operate.<sup>16</sup> Companies' ethical responsibility obliges them to do what is right, just and fair even when they are not compelled to do so by the legal framework.<sup>17</sup> Finally, companies' philanthropic responsibility includes all the issues that are within the company's discretion to improve the quality of life of employees, local communities and society in general. Carroll considers corporation's philanthropic responsibilities 'less important than the other three categories' since they are merely desired by corporations but not expected or required.<sup>18</sup>

The beauty in Carroll's model of CSR is in its broadness and balance. First of all, it does not undermine the financial goal of companies but nicely fits CSR into it. Secondly, his inclusion of companies' ethical responsibility which involves doing what is right for the environment and society, promotes sustainable development. Thirdly, Carroll's view on corporation's philanthropic responsibilities buttresses the fact that CSR is not only about philanthropy but wider than that.

Those who define CSR as part of sustainable development insist that charity is not enough, but that CSR is the whole way in which a company, its products and services

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<sup>13</sup> Ibid.

<sup>14</sup> Hennigfeld (op cit note 11 at 6).

<sup>15</sup> Hennigfeld (op cit note 11 at 6 - 7).

<sup>16</sup> Hennigfeld (loc cit note 11 at 7).

<sup>17</sup> Ibid.

<sup>18</sup> Hennigfeld (op cit note 11 at 8).

interact with society.<sup>19</sup> According to Michael Hopkins, while CSR is sustainable, philanthropy is whimsical.<sup>20</sup> Hopkins gives a stakeholder focused definition of CSR thus:

CSR is concerned with treating the stakeholders of the firm ethically or in a socially responsible manner. Stakeholders exist both within a firm and outside. The aim of social responsibility is to create higher and higher standards of living, while preserving the profitability of the corporation'.<sup>21</sup> Stakeholders within the company include the board of directors, shareholders, investors, managers, and employees. Those outside the company include suppliers, customers, the natural environment, Government, and local community.<sup>22</sup>

The King report describes company stakeholders as 'those whose relations to the enterprise cannot be completely contracted for, but upon whose cooperation and creativity it depends for its survival and prosperity.'<sup>23</sup>

Another outstanding issue about CSR hinges on its being left voluntary or regulated. CSR is generally a body of ethical principles which companies chose to incorporate into the management of their companies or not. The way CSR is defined by Ramon Mullerat and the European Green Paper above indicates its voluntary nature. I am of the opinion that the only aspect of CSR that should be left voluntary should be matters that will not adversely affect society, that is matters that could be left to the discretion of companies like philanthropy; but corporate activities which negatively affect sustainable development should be regulated. European countries for instance allow CSR to be voluntary while providing a minimum legal base below which companies are not allowed to go. Currently, there are a lot of campaigns in favour of the regulation of CSR. This will be discussed in detail in chapter four.

However one looks at corporate social responsibility, the message it seeks to convey is that corporations should not only consider the financial implication of their actions but should take all company stakeholders into account when making their decisions. Companies are encouraged to structure their objectives so that social goals are put on a par with economic goals<sup>24</sup>. As earlier mentioned, it is vital that social

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<sup>19</sup> John Hancock *Investing in corporate social responsibility* (2005) 18.

<sup>20</sup> Michael Hopkins *Corporate social responsibility and international development: is business the solution?* (2006) 9.

<sup>21</sup> Michael Hopkins (op cit note 20 at 7).

<sup>22</sup> Mullerat (op cit note 3 at 475).

<sup>23</sup> *King report on corporate governance for South Africa* (2002) 103.

<sup>24</sup> Melvin Anshen *Corporate strategy for social performance* (1980)1.

accountability becomes an integral part of corporate conduct, rather than a philanthropic add – on. Only in that way will the economic development of the private sector move forward within an acceptable framework of public purpose.<sup>25</sup> As put by Mark Walsh and John Lowry:

Amongst other things, CSR principles aim to make today's larger public companies responsible members of the larger community. To ensure that, in addition to complying with the minimum requirements of the law, they conduct their activities in an environmentally sensitive manner, they pay their taxes in full and on time, they respect their employees and pay and treat them fairly wherever they may be based, they source their raw materials from companies that also follow sound labour and environmental practices, and they otherwise act ethically in their dealing with the outside world.<sup>26</sup>

CSR has various aliases: community responsibility, good corporate citizenship, corporate social conscience, corporate sustainability, business reputation, the ethical corporation. There are also various shadings and nuances.<sup>27</sup> The challenge CSR has is that it has numerous facets. Corporations are besieged by many issues under CSR: shareholder demands, environmental issues, issues of sustainability, diversity, labour conditions, ethical investment, philanthropy and others. There is no one agreed paradigm.<sup>28</sup> This is the major criticism of CSR; corporate practitioners often argue that if directors must serve constituencies other than shareholders, the confusion of trying to require directors to balance the interests of various constituencies without according primacy to shareholder interests would be profoundly troubling.<sup>29</sup> It is almost impossible to cater for the needs of all groups of stakeholders who seem limitless and amorphous. The way out seems to be concentrating on specific stakeholder groups whose needs cannot be ignored.

As earlier stated, between the definitions of CSR as voluntary corporate philanthropy and as an intrinsic part of sustainable development, my preferred notion of CSR is that it should be seen as an integral part of sustainable development. Although companies will not be visited with any legal sanctions for refusing to be socially

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<sup>25</sup> Melvin Anshen (op cit note 24 at 2).

<sup>26</sup> Mullerat (op cit note 3 at 38).

<sup>27</sup> Mullerat (op cit note 3 at 97).

<sup>28</sup> Mullerat (op cit note 3 at 97-98).

<sup>29</sup> Thomas W Joo *Corporate Governance: Law theory and Policy* (2004) 42.

responsible, they are advised to integrate social responsibility into their corporate strategies, for it is in their interests to do so. This will be discussed in detail in chapter three.

## CORPORATE SOCIAL RESPONSIBILITY AND CORPORATE GOVERNANCE

CSR is an aspect of corporate governance; it is an offshoot of the stakeholder model of corporate governance. According to Lorenzo Sacconi, CSR is a model of extended corporate governance whereby who runs a firm (entrepreneurs, directors, managers) have responsibilities that range from fulfilment of their fiduciary duties towards the owners to fulfilment of analogous fiduciary duties towards all the firm's stakeholders.<sup>30</sup> Corporate governance on the other hand is defined by the Cadbury Report as the system by which companies are directed and controlled.<sup>31</sup> Adrian Cadbury says

Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The corporate governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society.<sup>32</sup>

The OECD's principles of corporate governance define corporate governance as 'a set of relationships between a company's management, its board, its shareholders and other stakeholders'.<sup>33</sup>

There is hardly any difference between CSR and corporate governance if defined broadly. Although the OECD and many national codes of conduct<sup>34</sup> use the term 'corporate governance' very broadly to refer to a company's responsibilities to all stakeholders, corporate governance is also used more narrowly to refer to the checks and balances adopted by a company to protect the interests of its shareholders.<sup>35</sup> Using our narrow definition, corporate governance is more concerned with the enhancement of shareholder value and the protection of shareholder interests. Corporate governance seeks to ensure, through a variety of oversight mechanisms, that management is encouraged to

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<sup>30</sup> Lorenzo Sacconi *Corporate social responsibility as a model of extended corporate governance: an explanation based on the economic theories of social contract, reputation and reciprocal conformism* (2004) 6.

<sup>31</sup> *Report of the committee on the financial aspects of corporate governance* (1992) Para. 2.5.

<sup>32</sup> Sir Adrian Cadbury *Corporate governance overview: World Bank Report* (1999).

<sup>33</sup> The OECD principles of corporate governance (2004) 11.

<sup>34</sup> *Ibid.*

<sup>35</sup> Mullerat (op cit note 3 at 37-38).

develop the business in the best interests of the shareholders and is not allowed to waste or otherwise divert corporate assets.<sup>36</sup>

There is no single model of corporate governance; corporate governance systems differ from country to country, sector to sector and even in the same corporation, systems differ over time. The United States and United Kingdom's models of corporate governance focus on dispersed controls, but the German and Japanese models reflect a more concentrated ownership structure.<sup>37</sup> Corporate governance principles of different countries are framed based on the country's political, social and economic history.

While corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment,<sup>38</sup> CSR gives support to non business investments (mostly environmental, labour and consumer obligations) of the company. Its primary concern is on treating the stakeholders of the firm ethically or in a socially responsible manner.

Another difference between CSR and corporate governance is in the voluntary nature of CSR. CSR principles often emerge over time through effective lobbying by and debates with interest groups and human rights and public interest lawyers (they are often of a voluntary nature), whereas corporate governance principles are more typically governmentally or shareholder inspired reactions to high profile corporate failures, abuses and other crises that have harmed the investor community and are more often mandatory.<sup>39</sup> As put by Ramon Mullerat, while corporate governance is a binding and enforceable set of rules on management of companies, CSR is a body of ethical rules which are often voluntary and unenforceable.<sup>40</sup> Although it is true that even corporate governance rules have a soft element in the sense that they could be waived if an

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<sup>36</sup> Mullerat (op cit note 3 at 38).

<sup>37</sup> Michael Hopkins: *What, if any is the relationship between corporate governance and corporate social responsibility?* [www.mhcinternational.com](http://www.mhcinternational.com). Com January 2001.

<sup>38</sup> Shleifer and Vishny (1997) *The Journal of Finance* 737.

<sup>39</sup> Mullerat (op cit note 3 at 39).

<sup>40</sup> Mullerat (op cit note 3 at 7).

explanation is given for not complying with them. The fact that corporate governance rules are generally more enforceable remains a distinction between CSR and corporate governance.

There are several theoretical models of corporate governance, but the shareholder and stakeholder models are the most renowned. Proponents of the shareholder model of corporate governance argue that the corporation is best able to create the goods and services that society needs if it focuses on its primary function, which is to maximize gains for its shareholders. To force managers to deal with social considerations is to divert them from this task with a deterioration of results.<sup>41</sup> Professor Milton Friedman, a Nobel laureate in economics condemned the idea 40 years ago:

Few trends would so thoroughly undermine the very foundations of our free society as the acceptance by corporate officials of a social responsibility other than to make as much for their shareholders as possible. This is a fundamentally subversive doctrine.<sup>42</sup>

This is the Anglo – American (Anglo- Saxon) model of corporate governance which is shareholder focused and practiced in countries like The United States, United Kingdom, Canada and Australia.<sup>43</sup> The overriding objective of companies in these countries is the enhancement of corporate profit and shareholder gain; here the company is run strictly for the benefit of shareholders.

Conversely, stakeholder advocates argue that the corporation, deriving special benefits and privileges from the community, for example limited liability of shareholders, legal personality, perpetual existence and access to public capital, must as a result take account of community interests in its decisions.<sup>44</sup> The American scholars Berle and Means wrote 70 years ago:

It is conceivable – indeed it seems almost essential if the corporation system is to survive – that the “control” (i.e. management) of the great corporations should develop into a purely neutral technocracy, balancing a variety of claims by various groups in the community and assigning to each a portion of the income stream on the basis of public policy rather than private cupidity.<sup>45</sup>

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<sup>41</sup> Jeswald W Salacuse ‘Corporate governance in the new century’ (2004) *The Company Lawyer* 25(3) 75.

<sup>42</sup> Milton Friedman *Capitalism and freedom* (1962) 133.

<sup>43</sup> Gerald Acquah – Gaisie ‘Toward more effective corporate governance mechanisms’ 2005 *Australian Journal of Corporate Law* 42.

<sup>44</sup> Salacuse (op cit note 41 at 75).

<sup>45</sup> *Ibid.*

The European model of corporate governance is stakeholder focused, unlike the Anglo – American system; corporations are not run strictly for the benefit of shareholders. They have the objective of advancing the interests of other persons and groups (creditors, employees, suppliers, civil organizations and the community at large) who may have no ownership in the company but are affected by corporate decisions. The European model of corporate governance is clearly more socially responsible than the Anglo – American. In Europe both law and policy recognize to varying degrees that corporations also have the objective of advancing the interests of other persons and groups beyond the narrow category of shareholders.<sup>46</sup>

Using the Germanic (Germany, Netherlands, Switzerland, Sweden, Austria, Denmark, Norway and Finland)<sup>47</sup> and Japanese systems as good examples of corporate governance in Europe; in Germany all big companies have a supervisory tier (Aufsichtsrat), as well as a management board (Vorstand).<sup>48</sup> Corporations are social institutions that accommodate the interests of employees; considerable emphasis is placed on increased disclosure, strengthening of management, and interests of the community and state. Worker participation is achieved through work councils and representation on the supervisory board.<sup>49</sup>

In Japan there appears to be general consensus (which is lacking in some other countries) that although profit is important, the long term preservation and prosperity of the family (which is how companies are viewed) are and should be primarily the aim of all concerned, and not profit maximization or shareholder's immediate values.<sup>50</sup> There is less emphasis on shareholders and more focus on relationships with employees and

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<sup>46</sup> Salacuse (op cit note 41 at 75).

<sup>47</sup> Acquaah – Gaisie (op cit note 43 at 42).

<sup>48</sup> Jonathan P Charkham *Keeping good company: a study of corporate governance in five countries* (1994) 14.

<sup>49</sup> Acquaah – Gaisie (op cit note 43 at 42).

<sup>50</sup> Charkham (op cit note 48 at 74).

customers. The primary enforcement mechanism is social rather than legal. Meetings are often for social purposes leading up to business talk rather than for strict strategizing.<sup>51</sup>

A study on the convergence of corporate governance and corporate social responsibility undertaken by the Canadian Co-operative Association in 2005 revealed a union of CSR and corporate governance at the level of values and at the operational risk level. Those who saw a convergence at the level of values perceive that good governance is becoming more broadly defined to include ethical considerations, a result of a number of significant governance oversight failures.<sup>52</sup> While those who see a convergence at the operational risk level are driven by the view that boards have a fiduciary responsibility to address risks and CSR is fundamentally about risk management.<sup>53</sup> Most people believe that CSR issues will increasingly permeate the board room whether as a risk management issue or as a more fundamental issue pertaining to the nature and purpose of the company.<sup>54</sup>

There is also increasing advocacy of a broader and more inclusive concept of corporate governance that extends to corporate responsibility and accommodates stakeholders more. Ideas like these are reflected in the King Report of South Africa, the Commonwealth principles of business practice and the United Kingdom's Tomorrow's Company.<sup>55</sup>

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<sup>51</sup> Acquah – Gaisie (op cit note 43 at 42).

<sup>52</sup> Coro Strandberg *The convergence of corporate governance and corporate social responsibility* [www.corostrandberg.com](http://www.corostrandberg.com) (2005) 4.

<sup>53</sup> Strandberg (op cit note 52 at 5).

<sup>54</sup> Strandberg (op cit note 52 at 14).

<sup>55</sup> Hopkins (op cit note 37 at 2).

## BACKGROUND INFLUENCES OF CORPORATE SOCIAL RESPONSIBILITY

Some of the factors responsible for companies' recent devotion to CSR include:

- Change in society's expectation of business,
- The influence of pressure groups, governments\intergovernmental bodies and NGOs,
- Globalization and sustainable development,
- The growth of multi – national companies,
- International human rights standards,
- Recent corporate failures.

It is important to note that these background influences of CSR are inter – related; they will be discussed seriatim.

### CHANGE IN SOCIETY'S EXPECTATION OF BUSINESS

In the 1970s and 1980s, a number of scholars questioned several notions: one, that the social responsibility of an enterprise consisted solely of making money for its owners; and two, that human wants could be satisfied through 'the invisible hand,' or free play of market forces.<sup>56</sup> Traditionally, companies enhanced their social role by engaging in charitable acts, and governments and trade unions attempted to regulate corporations through various mechanisms including penalties for non-compliance.<sup>57</sup> Corporations used to be perceived exclusively as economic institutions. Now they are also viewed as social, cultural, and political institutions. This emerging view is the source of the growing demand for revised standards for business behaviour. In effect, perceptions of a malperforming business system, as judged by a newly emerging set of values, are encouraging a new definition of the responsibilities of the enterprise system and new criteria for determining acceptable performance.<sup>58</sup>

Keith Davis puts it thus:

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<sup>56</sup> Jan Aart Scholte and Roland Robertson *Encyclopedia of globalization* (2007) Vol 1 220.

<sup>57</sup> Ibid.

<sup>58</sup> Melvin Anshen *Corporate strategies for social performance* (1980) 9.

The businessman operates under a set of cultural constraints in the same way that any other person in society does. Research shows that these cultural norms are powerful determinants of behaviour. They are as real as technical, legal, and market constraints. Consequently, as society's norms change, the businessman's behaviour will change. If society moves toward norms of social responsibility as it is now doing, then the businessman is subtly and inevitably guided by these same norms. Though his decisions are not fully determined by these norms, his decisions are influenced toward a socially defined behaviour which reflects some sense of social responsibility. In other words, profits are sought and achieved within a particular set of social norms.<sup>59</sup>

Melvin Anshen adds that it is the social will that ultimately determines what business organizations do and how they do it is expressed in a variety of ways: by general and specific legislation, by regulation pursuant to legislative mandate, by judicial review and interpretation of legislation and regulation, and by informal expression of needs, expectations and demands.<sup>60</sup> The process is dynamic. The social will changes through time, responding to perceived evolving needs and desires. Business legitimacy once conferred may be revoked.<sup>61</sup>

He illustrates society's change in expectation of business using the old and new social contracts for business. According to him, under the terms of the old contract, society stipulated that business should operate freely in response to the motivation of profit maximization, subject only to marginal constraints. Economic growth, feeding a rising standard of living, was widely accepted as the source of all progress – social as well as economic. The only significant restriction laid upon business was that it must be competitive, and this rule was not formalized until the later part of the nineteenth century.<sup>62</sup>

Most corporations in the past were run based on Milton Friedman's view of the corporation; that the social responsibility of business is to increase profits.<sup>63</sup> It is safe to assume that Milton Friedman would be bemused by the world's current obsession with CSR – and not just because it is another piece of cumbersome business jargon.<sup>64</sup> Writing

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<sup>59</sup> Keith Davis 'The Case for and against business assumption of social responsibilities' (1973) Vol. 16 No 2 The Academy of Management Journal 312 at 314 – 315.

<sup>60</sup> Anshen (op cit note 58 at 6).

<sup>61</sup> Ibid.

<sup>62</sup> Anshen (op cit note 58 at 7).

<sup>63</sup> *New York Times Magazine*, 13 September (1970) 32.

<sup>64</sup> Hancock (op cit note 19 at 15).

33 years ago, when anti – globalization protests would have been as bizarre a thought as ethical investment, he reflected the commonplace view that the state was still the most effective force when it came to social change. But over time as the state’s role has changed and the number of multinationals grew rapidly, so philanthropic efforts by companies in small communities developed into programmes much broader in scope: what was once ad hoc is now established as an integral part of doing business.<sup>65</sup>

Under the new social contract for business, there is a shift in the perceived relationship between economic and social benefits. We are beginning to be concerned about economic and social burdens not recorded in the accounting records of business organizations and not reflected in their costs and prices. Increasingly, this concern is feeding a popular demand that corporations internalize their social costs, that they make positive contributions to minimizing or removing environmental contamination and dangerous and unhealthy working conditions, that they assure to their customers the quality and safety of their products, and that they act affirmatively to provide equal access to jobs and careers to members of all groups in our society.<sup>66</sup>

Neil H. Jacoby observed that, social (including political) forces are as potent determinants of corporate strategy as are traditional market forces.<sup>67</sup> They help to explain actual business behaviour, provide a valid basis for predicting business behaviour, and delineate the norms for enlightened profit - oriented business decisions.<sup>68</sup>

Dr. Jacoby adds that social forces are susceptible to the same type of cost - benefit analysis that is regularly applied to economic forces and that long - run profit maximization can be accomplished only through a comprehensive approach that merges social and economic considerations.<sup>69</sup>

According to Varney, back at the start, companies engaged with the issues in a philanthropic way, but now the focus is on examining their total impact on society,

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<sup>65</sup> Hancock (op cit note 19 at 15).

<sup>66</sup> Anshen (op cit note 58 at 8-9).

<sup>67</sup> Anshen (op cit note 58 at 11).

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

through the process of measuring and reporting activities across the business.<sup>70</sup> Many of the world's best known companies are already redefining traditional perceptions of the will of the corporation. They are recognizing that every customer is part of the community and its social responsibility is not an optional activity.<sup>71</sup>

Expanding the new thinking, advocates of CSR hold that the corporation must focus not just on shareholders, but on stakeholders as well.<sup>72</sup> One thing we ought to know is that; what the majority of members of a democratic society want, they will ultimately get – even if at a price some might not have been willing to pay had they been aware of its magnitude.<sup>73</sup>

#### THE INFLUENCE OF PRESSURE GROUPS, GOVERNMENTS\INTERGOVERNMENTAL BODIES AND NGOs

When it became apparent to governments that they could not effectively enact rules to govern foreign operations of transnational companies especially with the weak enforcement infrastructure found in developing countries; the will of many national governments to regulate transnational companies declined considerably. CSR came to be seen as an innovative, pragmatic, and flexible way of dealing with transnational companies' management concerns. Demands for greater corporate social responsibility for instance came together at the United Nations Conference on Environment and Development, otherwise known as the "Earth Summit" in Rio de Janeiro in 1992.<sup>74</sup>

Stakeholders, shareholders and consumers, non – governmental organizations and the general public have become more emboldened and powerful when expressing their concerns and expectations vis-à-vis companies. Leading NGO concerns are social

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<sup>70</sup> Hancock (op cit note 19 at 17).

<sup>71</sup> Mullerat (op cit note 3 at 100).

<sup>72</sup> Ibid.

<sup>73</sup> Anshen (op cit note 58 at 10).

<sup>74</sup> Scholte (op cit note 56 at 221).

responsibility and transparency. International NGOs alone at last count were 28,000 worldwide – their visibility and credibility are on the rise.<sup>75</sup>

Pressure groups in recent times have successfully targeted companies that have offended modern norms and standards, particularly with regard to human rights and employment practices. A few examples are the Union Carbide gas leak in Bhopal, India, in 1984, the Exxon-Valdez oil spill in 1989, Shell's activities in the Niger Delta, Nigeria, in the mid-1990s, and the issue of child labour and sweatshops associated with Nike and other apparel and sportswear companies.<sup>76</sup> Campaigns like these increase society's expectation of business. They show the declining faith in the ability of national governments to tackle social and economic problems that spread across geographical borders.<sup>77</sup> It is now no longer appropriate for companies merely to make a profit; the way in which the profit is generated is under the scrutiny of pressure groups and NGOs. Trade policies, employment relations, sources of raw materials, companies working environment and human rights observance are now strictly monitored. If a company was being exploitative in any of these areas, the activists would place pressure on them through the media and other channels, making the issue public in order to force a change of behaviour.<sup>78</sup> A recent study found that Amnesty International, the World Wildlife Fund, and Greenpeace outstripped by a margin of nearly two to one the four highest – rated corporations in Europe.<sup>79</sup>

NGOs assume a leading role in civil regulation initiatives; that is where civil-society organizations play a dominant role in setting standards and influencing corporate behaviour. Some examples of prominent multi-stakeholder or NGO initiatives include; certification schemes associated with the Forest Stewardship Council, International Standards Organization 14001 environmental management standards, and Social Accountability 8000 (SA8000) Labour standards.<sup>80</sup>

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<sup>75</sup> Mullerat (op cit note 3 at 104).

<sup>76</sup> Scholte (op cit note 56 at 221).

<sup>77</sup> Hancock (op cit note 19 at 7).

<sup>78</sup> Ibid Pg 27.

<sup>79</sup> Mullerat (op cit note 3 at 104).

<sup>80</sup> Scholte (op cit note 56 at 222).

Although the codes of conduct and concerns expressed by NGOs, humanitarian bodies and stakeholders are generally not legally binding on corporations, many enterprises, particularly large ones, look for ways of entering into constructive dialogue with these bodies on socially responsible programmes.<sup>81</sup> They realize that if they ignore the concerns of these pressure groups and their businesses are disrupted, they stand to lose more. The spate of recent kidnapping of foreign shell workers in the Niger Delta Region of Nigeria is a good example of what could happen when the government and companies do not reach a compromise with company's stakeholders.

#### THE GROWTH OF MULTI – NATIONAL COMPANIES.

The next external impetus for CSR came with the boom in corporate takeovers during the 1980s. Throughout the world corporations were merging, increasing their power, dominating the international arena and becoming power contenders with government, though without responsibility.<sup>82</sup> In this era of globalization, multinational corporations can be so powerful with both political and economic strength that they cannot be readily controlled by national governments, particularly governments in developing countries. That power facilitates the ability of multinational corporations to further socially responsible programmes if they so choose, but also to be blamed if such programmes do not emerge. In short, with power comes responsibility.<sup>83</sup>

According to the Organization for Economic Co-operation and Development (OECD), of the 100 largest global economies, as measured by GDP, 51 of them are United State corporations, and only 49 are nation states.<sup>84</sup> Multinational companies are well placed to address and manage sustainable development issues, having the resources, experience, capacity and project management competence to define the problem, to develop pragmatic and workable solutions and to implement them.<sup>85</sup> The perceived

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<sup>81</sup> Mullerat (op cit note 3 at 104).

<sup>82</sup> Ibid 99

<sup>83</sup> Ibid 103.

<sup>84</sup> Margarita Tsoutsoura Corporate *social responsibility and financial performance* (2004) 5.

<sup>85</sup> Hancock (op cit note 19 at 50).

power and reach of multinationals also makes them a better target for pressure group campaigners than domestic politicians.<sup>86</sup>

While many deplored the disconnect between corporate power and social needs, CSR became a more frequent discussion topic in corporate and academic circles, but not many corporations acted meaningfully in pursuing CSR.<sup>87</sup> The legitimacy of business is now challenged on the grounds that some of its activities are making our society ugly, dirty, polluted and dangerous, and that business is acting as a powerful institution for perpetuating economic and social inequalities.<sup>88</sup> With increased societal pressure for enterprise accountability, international firms felt exposed to the bad labour practices of their foreign business partners in the commodity or service chain. In some instances, codes were adopted in direct response to incidents attracting negative publicity in relation to labour, human rights or environmental performance. The higher the public profile of a corporation and its products, the greater its vulnerability to adverse publicity and consumer sentiments.<sup>89</sup>

Multinational companies can play a legitimate role in sustainable development. This is best done when they carry out their normal business in a manner that is compatible with sustainable development objectives.<sup>90</sup> Corporations also realise that improving social and economic conditions in under developed countries, can help attract a large untapped consumer market in those countries and be quite profitable for multi – national corporations.<sup>91</sup>

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<sup>86</sup> Hancock (op cit note 19 at 7).

<sup>87</sup> Mullerat (op cit note 3 at 99).

<sup>88</sup> Anshen (op cit note 58 at 9).

<sup>89</sup> Mullerat (op cit note 3 at 107).

<sup>90</sup> Hancock (op cit note 19 at 59).

<sup>91</sup> Mullerat (op cit note 3 at 104).

## GLOBALIZATION AND SUSTAINABLE DEVELOPMENT

According to the 2007 encyclopaedia of globalization, globalization is variously understood to mean internationalization, universalization, and planetarization.<sup>92</sup> It has been defined as the increasing connectivity, integration and interdependence in the economic, social, technological, cultural, political, and ecological spheres.<sup>93</sup> Globalization today is further enhanced by advances in communications technology. With the internet, personal digital assistants and cell phones it is easy to disseminate information about wrongful corporate actions. The interdependence which globalization brings makes the world a global village. It increases the consciousness in people that their actions wherever they are, affect others in different parts of the world. Globalization has also resulted in expanded international trade and foreign direct investments and in short - term capital flow following integration of financial markets. It holds the promise of advanced economic welfare worldwide, increased economic opportunity, technology for the underdeveloped nations and dissipation of hostilities in the world. Globalization raises questions beyond the normal human rights concerns. It includes issues about use of labour, concerns about environmental protection, the need to reduce poverty and the need for sustainable development.<sup>94</sup>

A whole series of summit conferences and reports have developed standards, guidelines, and codes of conduct addressing the social component of globalization. Some of these are the 1995 UN Copenhagen World Summit for Social Development, the UN World Summit on Sustainable Development in Johannesburg in 2002; the ILO's Fundamental Principles and Rights at Work Standards.<sup>95</sup> Many companies now express their commitment to corporate governance principles and CSR by endorsing one or more voluntary codes.<sup>96</sup> Examples of environmental principles contained in voluntary codes which socially responsible companies endorse are: The United Nations Global Compact (Global Compact), the International Chamber of Commerce (ICC) Business Charter for Sustainable Development, the Organization for Economic Co – operation and

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<sup>92</sup> Scholte (op cit note 56 at 527).

<sup>93</sup> Wikipedia the free Encyclopedia – <http://en.wikipedia.org/wiki>.

<sup>94</sup> Mullerat (op cit note 3 at 102).

<sup>95</sup> Ibid 106.

<sup>96</sup> Mullerat (op cit note 3 at 166).

Development (OECD) Guidelines for Multinational Enterprises, and the Coalition for Environmentally Responsible Economies (CERES) Principles.<sup>97</sup>

Although the mere adoption of codes without the seriousness and steadfastness of their implementation by the highest corporate executives is not a guarantee of their implementation,<sup>98</sup> it is impressive that more than 1700 businesses, organizations and countries have signalled their endorsement of the Global Compact principles. The Global Compact is a set of ten principles intended to ‘advance responsible corporate citizenship so that business can be part of the solution to the challenges of globalization.’<sup>99</sup>

Sustainability on the other hand, is a major concern of globalization. The term ‘Sustainable Development’ was first defined in 1987 by the United Nations Brundland Commission as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.<sup>100</sup> Although sustainable development is subject to different definitions, its basic objective is to satisfy daily human needs without jeopardizing the resources on which future generations depend.<sup>101</sup> Another international concern of sustainable development is global warming.

Corporate citizenship is the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life.<sup>102</sup> To successfully achieve the global goal of sustainable development and environmental protection, businesses must play a key role. After all, as noted at the world commission on environment and development, ‘Industry extracts materials from the natural resource base and inserts both products and pollution into the human environment. It has the power to enhance or degrade the

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<sup>97</sup> Ibid 167.

<sup>98</sup> Mullerat (op cit note 3 at 107).

<sup>99</sup> Ibid 167.

<sup>100</sup> Our common future: *the world commission on environment and development* (1987) 43.

<sup>101</sup> Mullerat (op cit note 3 at 103).

<sup>102</sup> Commonwealth Business Council Working Group on Corporate Citizenship (adapted from the work of the World Business Council on Sustainable Development).

environment; it invariably does both'. The pathway to enhancement rather than degradation lies in sustainable environmental performance.<sup>103</sup>

Considerations of image and reputation play an increasingly important role in the business competitive environment, as consumers and NGOs ask for more information about conditions in which products and services are generated and the sustainability impact thereof, and tend to reward, with their business behaviour, socially and environmentally responsible firms.<sup>104</sup> An increasing number of companies now produce 'sustainability' and 'triple bottom line' reporting on social, environmental and financial performance, or engage independent organizations to monitor their activities and certify their compliance with certain standards.<sup>105</sup>

In May 1999 during the 'Millennium Survey' in which questions relating to corporate social responsibility were directed to citizens in over 20 countries, 49% of the respondents indicated that CSR was the item influencing their impressions of individual companies.<sup>106</sup>

#### INTERNATIONAL HUMAN RIGHTS STANDARDS.

Human rights development and protection are a matter of 'joint global responsibility'. The initial legal basis for modern human rights is the 1948 Universal Declaration of Human Rights which calls for 'every individual and every organ of society to promote respect for values, rights and freedoms and to secure a universal and effective recognition'.<sup>107</sup>

Hitherto, human rights focused on civil and political rights, now the field has expanded to include a variety of additional rights like social, economical and cultural rights, worker rights, healthcare and social security. More so, conventional wisdom among corporate leaders was that human rights are an issue for governments and NGOs, not for business. The case is different today; human rights are high on the global agenda

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<sup>103</sup> Mullerat (op cit note 3 at 159).

<sup>104</sup> The Green Paper (op cit note 1 at 6).

<sup>105</sup> Scholte (op cit note 56 at 222).

<sup>106</sup> King Report (op cit note 1 at 99).

<sup>107</sup> Mullerat (op cit note 3 at 100).

and are the subject of numerous treaties which incorporate human rights into the rule of law. Whoever abuses human rights acts antisocially and violates the law.<sup>108</sup>

The truth is that businesses and corporations are part of the entire society, and human rights focuses on the dignity and worth of the human beings who compose social society. Human rights form part of international law and corporations are bound by those laws that are applicable to non – state parties, the same way they are bound by national laws. It is therefore axiomatic that CSR encompasses human rights observance.<sup>109</sup>

Certain trends can be identified as catalysers of the new human rights presence in business discourses and practices and at top- level economic forums.<sup>110</sup> They include:

- The controversial process of economic globalization. Globalization causes economies to resort increasingly to internalization and off shoring in countries with different levels of human rights protection. This made it absolutely necessary for there to be a uniform standard of international human rights' observance to prevent a situation where treatment of people differs in different parts of the world.<sup>111</sup> It is now hardly acceptable to have one set of safety standards for workers in the first world and a different (lower) set of safety standards in the third world. For instance, safety standards applied to workers in the UK handling waste in the 50s and 60s are now being used by the UK courts as the standard by which the overseas operations of UK companies were expected to operate during the same period.<sup>112</sup>
- The emerging network society. Here companies are perceived as not simply economic actors, but as playing their part along with other social actors in interactions with their equivalents in other fields.<sup>113</sup>
- Information and knowledge technologies, which create expectations of greater corporate transparency.<sup>114</sup>

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<sup>108</sup> Mullerat (op cit note 3 at 101).

<sup>109</sup> Ibid.

<sup>110</sup> Mullerat (op cit note 3 at 188).

<sup>111</sup> Ibid 186.

<sup>112</sup> Richard Meerson Companies with nowhere to hide 1 August 2000 The Times London.

<sup>113</sup> Mullerat (op cit note 3 at 186).

<sup>114</sup> Ibid.

- The emerging risk society, company reputation, image and identity are coming under the scrutiny of certain rising values in a civil society that is increasingly informed and mobilized on such issues.<sup>115</sup>
- The increasing persuasiveness of the internet and of a well – informed international human rights community has exposed companies to greater external scrutiny. A number of corporations in recent years have been embarrassed by human rights controversies that they were inadequately equipped to address.<sup>116</sup>

Some international organizations in the 80s and 90s which aimed at giving companies guidance on the incorporation of human rights criteria into their strategies are: Declaration on Fundamental Principles and Rights at Work (ILO), the Tripartite Declaration of Principles concerning Multinational Enterprises and Social policies (ILO) and WHO\UNICEF International Code on Marketing of Breast milk Substitutes).<sup>117</sup>

Other recent instruments in this area including guidelines and statements of principles, and systems of accreditation and accountability include: the United Nations Global Compact which encourages companies to adhere to 10 principles derived from international labour, environmental, human rights, and anti corruption law, Draft Norms on the Responsibilities of Transnational Corporations and other business Enterprises in Regard to Human Rights, (UN Norms), the European Union Green Paper on Corporate Social Responsibility (Green Paper), the OECD Guidelines for Multinational Enterprises (OECD Guidelines), the Ethical Trading Initiative Base Code (ETI Code), Amnesty International's Human Rights Guidelines for Companies (AI Guidelines), Global Sullivan Principles for Corporate Social Responsibility (Sullivan Principles), Social Accountability 8000 (SA8000) and the guidelines of the Global Reporting Initiative (GRI Guidelines).<sup>118</sup>

Corporations that do not observe international human rights standards risk adverse publicity, shareholder protests and lawsuits. Non - governmental organizations among

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<sup>115</sup> Mullerat (op cit note 3 at 186).

<sup>116</sup> Ibid.

<sup>117</sup> Mullerat (op cit note 3 at 187).

<sup>118</sup> Ibid.

others are quick to identify and expose organizations which are open or complicit accessories to human rights abuse. Corporations which operated under apartheid South Africa for instance met with protests, boycotts and calls for disinvestment. Such protests are taken seriously by corporations because they affect sales and profits of the company. Corporations also realize that adherence to human rights boost the morale of employees; it shows compliance with the law and is welcomed by shareholders.<sup>119</sup>

### CORPORATE FAILURES

The spate of recent corporate scandals in the United States, Canada, United Kingdom, Australia, Italy, Japan, Belgium and other nations is another factor strongly influencing the CSR movement.<sup>120</sup> Since the 1990s, corporate collapses have included:

- US: Enron, World.com, Tyco, Polaroid, Qwest, ImClone
- Australia: HIH, Ansett, Lateral Trading, Water Wheel Holdings
- UK: Griffin Trading, Universal Bulk Handling, Marconi\GEC, Polly Peck International, ITV Digital, RailTrack, Powerhouse
- Canada: Phoenix Research & trading, YBM Magnet, Nortel Networks, Teleglobe
- Japan: Lateral Trading, Water Wheel Holdings (Australia), Resona Bank
- Germany: Philip Holzmann AG, Herlitz, Babcock Borsig, Kirk Gruppe
- Belgium: Sabena
- Italy: Parmalat.<sup>121</sup>

Using the collapses of Ansett Airlines and HIH in Australia as an example, although the failures were caused by defective corporate (management) governance, the society and not the directors were worst hit by them. Monies the Australian government would have employed elsewhere were used to bail – out some of the failed companies. The Australian government on behalf of HIH paid 100 cents in the dollar for salary continuance, personal injury claims by

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<sup>119</sup> Mullerat (op cit note 3 at 187).

<sup>120</sup> Mullerat (op cit note 3 at 104).

<sup>121</sup> Acquaah – Gaisie (op cit note 43 at 2).

individuals or small businesses, claims for total loss of home, and claims by non – profit organizations.

During the Ansett collapse, the Australian government underwrote Ansett tickets for 12 weeks and injected further capital in the company.<sup>122</sup> The corporate collapses generally resulted in loss of savings and jobs. People lost out in shares and superannuation – a serious hardship to people planning frugally for retirement. Fifty five year old Peter Yellanda, pilot with Ansett for 32 years was stood down ‘one day he was flying an Airbus jet, the next he was getting work as a landscape gardener and supermarket packer’.<sup>123</sup>

Corporate failures also resulted in price increases and loss of faith in the corporate world and stock market.<sup>124</sup>

Due to the effects of these corporate failures on society, companies are realizing more and more that they must consider not only demands of shareholders but also the demands of stakeholders; after all, the efficient management of companies is the concern of society generally. Companies to a large extent, are now run with due consideration of public expectation that they will accept responsibility for the social impact of their businesses.<sup>125</sup>

The background influences of CSR discussed above are responsible for the recent attention companies give to social and environmental concerns. This is evident in the fact that most corporations today have a policy on CSR. Companies realise that making CSR part of their management strategy has enormous benefits.

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<sup>122</sup> Acquaah – Gaisie (op cit note 43 at 3, 13).

<sup>123</sup> Ibid 12.

<sup>124</sup> Acquaah – Gaisie (op cit note 43 at 13).

<sup>125</sup> Mullerat (op cit note 3 at 104).

## CHAPTER TWO

### CRITICISMS OF CORPORATE SOCIAL RESPONSIBILITY

The legitimacy of CSR has been questioned over the years particularly because CSR addresses issues which were traditionally handled by governments and charities. It is often opined that companies are generally not suited to cater for the wide range of issues covered by CSR. Some of the most renowned criticisms of CSR are:

- The social responsibility of business is to increase profits
- Lack of social skills
- Lack of definition
- Lack of accountability
- CSR dilutes business's primary purpose
- CSR is misleading; a curse rather than a blessing
- Company's latitude to be socially responsible depends on the corporate law of their host country
- CSR is another word for corporate philanthropy
- CSR is a public relations strategy used to deceive the public
- CSR attracts unwarranted costs
- CSR lacks broad support

These challenges of CSR will be discussed respectively.

### THE SOCIAL RESPONSIBILITY OF BUSINESS IS TO INCREASE PROFITS

According to Milton Friedman (1970), in a capitalist economy, 'there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engage in open and free competition without deception or fraud'. Friedman strongly criticizes corporate social responsibility; he makes it clear that the primary target of business is

profit maximization. To him, all companies need to do whilst furthering the interests of shareholders is to obey the law of the state in which they operate. He sums up the entire social responsibility of business as profit maximization and obedience of the law. This approach to management according to him creates the greatest good for the greatest number and the government is not expected to intervene.

Milton Friedman further explained his view thus:

In a free enterprise, private property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom... Insofar as his actions in accord with his 'social responsibility' reduce returns to stockholders, he is spending their money. Insofar as his actions raise the price to customers, he is spending the customers' money. Insofar as his actions lower the wages of some employees, he is spending their money.<sup>126</sup>

Although Milton Friedman's statement above shows he enjoins managers of corporations to comply with rules of society (both those in law and ethical custom), he is uncompromising about the fact that corporate managers decisions should not reduce shareholders' returns. For Friedman, a corporate executive (manager) has a direct responsibility to his or her employers, and that is to conduct business in accordance with their desires. It is intolerable for business executives to allocate corporate resources which ought to be channelled toward furthering the interests of its principal to minority interests; directors of companies are not permitted to put the interests of any other stakeholders above those of its employers.

Supporters of Friedman's view insist that profit maximization is the major drive of business. They contend that shareholders invest their money in a corporation expecting the highest possible risk adjusted return in order to have the best return on their investment. They insist that for corporate social investment to have sustainable or bottom – line benefits, it must enhance corporate profitability. For them, corporate social investment is most effective when there is a direct link to increasing company's profits.

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<sup>126</sup> Davis (op cit note 59 at 318).

By implication, resources applied to CSR projects must have returns as good as the same would have had if applied elsewhere.

Friedman's view that the primary aim of business is to make as much profit as possible is accepted by many, what is disputed is his assertion that profit maximization is the one and only social responsibility of business. His emphasis on profit maximization as the major drive of business which must not be compromised for any reason makes a lot of sense.

At the same time, whilst not undermining company's profit making goals, it is important to state that things have changed. This may be true of companies in the past, but certainly not companies of the 21<sup>st</sup> century. Society's expectation of business has changed. Other reasons for this change were articulated in chapter one, one of which is the growth of multi-national companies. As earlier mentioned, economic power has to a large extent shifted to multi-national companies, some multi-national companies today are even richer than some nation states.<sup>127</sup>

Secondly, placing primary emphasis on companies' profitability and undermining sustainable development is counter productive. Corporate activities that result in environmental degradation go to the roots of societal damage and profitability is not an excuse. If a global concern like climate change for instance is not successfully curbed, no company will survive on earth let alone make profit. More so, company's efforts and investments on drugs to prevent further spread of diseases like HIV/AIDS may be considered frivolous by shareholder-centric advocates, they overlook the fact that continuous spread of terminal diseases which result in the death of majority of the working class would eventually lead to a shortage in the labour force in the near future.

Michael Hopkins gives a justification for the need for companies' involvement in development. He says the failure of governments in many developing countries has provided an empty space which must be filled by another entity and the only one around

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<sup>127</sup> Tsoutsoura (op cit note 84 at 5).

is the private sector and its champions, the large corporations. According to Hopkins, it is relatively easy to argue the obverse that corporations should stick to making profits and leave development for governments, but this is a dance to death. Since the market left purely to profit maximization has been unable to fulfil social roles such as reducing unemployment, creating primary and secondary education for all, tackling the major diseases of the Third World and so on, it should be made to do so.<sup>128</sup> The current power and wealth of multinational corporations is a rationalization for his assertion, companies have the resources to assist society if they choose to do so.

### LACK OF SOCIAL SKILLS

It is said that the outlook of companies is primarily economic and their skills are the same; that companies do not feel at home in social matters. Other questions that have been asked on this subject are: If we are going to depend on someone to work with social problems, why choose a group which is so poorly qualified? Do we really want economic and technical people meddling in social affairs? Will they broaden their outlook and will their skills transfer? Can business really do the job? Is it better equipped than government and other institutions?<sup>129</sup>

The leftists' perception of corporate executives is very far from answering these questions in the affirmative. They believe that businessmen are crass and ignoble people who grasp for every dollar they can and who single – mindedly engage in the pursuit of profit. Businessmen would not hesitate to take advantage of their neighbours wherever a dollar is concerned. They opine that men like these are not to be trusted with programmes which primarily show concern for one's neighbours. To the leftists, businessmen are philosophically and emotionally unfit for the job.

The Leftists views on companies' lack of skills to handle social issues are not untenable. However, companies' current remarkable involvements in advancing socially

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<sup>128</sup> Michael Hopkins *CSR and development part II: the fortune to be gained by CSR* (2005) 3.

<sup>129</sup> Davis (op cit note 59 at 318).

responsible causes prove them wrong. Although the decision to be socially responsible would ultimately be made by corporate executives and their disposition to the issue matters, yet the fact that they can always delegate functions they are not cut out for (CSR for instance) to those who can perform them, leaves them with an alternative. Whatever anyone attaches importance to, the same makes provision for. The benefits social responsibility brings to corporations make it worth providing for.

### LACK OF DEFINITION

As mentioned in chapter one, CSR at present does not have a universally accepted definition; everyone seems to have their own concept or definition of the term.<sup>130</sup> Many of the criticisms of CSR stem from its lack of definition.<sup>131</sup> For instance, some define CSR as a systems approach taking into accounts both internal and external stakeholders, but others define it as purely voluntary.<sup>132</sup> While some define it as an intrinsic part of sustainable development, others see it as basically corporate philanthropy.

The confusion occasioned by the imprecise definition of CSR is responsible for the different terminologies used for the word, for instance; corporate sustainability, corporate citizenship, corporate responsibility, business responsibility, business reputation, the ethical corporation etc.<sup>133</sup> Aside from this, CSR embodies diverse interests spanning from stockholder demands, environmental issues, issues of sustainability, diversity, labour conditions, ethical investment, philanthropy and others. There is no one agreed paradigm.<sup>134</sup>

Business is a stickler for detail; no business starts without exactly knowing the definition of the products they are selling. More so, management concepts are usually manipulated to fit in with some pre – conceived notion that will please the chairman

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<sup>130</sup> Mullerat (op cit note 3 at 474).

<sup>131</sup> Ibid 473.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Mullerat (op cit note 3 at 97).

or some shareholders.<sup>135</sup> The uncertainty around the scope of CSR opens it up for criticisms like allowing the management of companies to do whatever they like and creating room for mismanagement of corporate funds.

The fact that CSR covers a wide variety of issues makes it impossible for a company to satisfy all stakeholders' concerns. The only solution seems to be concentrating on areas that cannot be abandoned.

These diverse perceptions and definitions of corporate social responsibility notwithstanding, people and companies still have a common idea of what corporate social responsibility is about. It is absolutely unacceptable for any company to say it is socially irresponsible because it does not know what social responsibility is about.

#### LACK OF ACCOUNTABILITY

As earlier stated above, the uncertainty around the scope of CSR opens it up to criticisms like allowing the management of companies to do whatever they like and creating room for mismanagement of corporate funds. Strict monitoring and supervision of corporate funds that go into social projects may be difficult; CSR is therefore seen as a means of embezzling corporate funds.

Another angle to this criticism is that businessmen have no line of accountability to the people; therefore it would be unwise to give businessmen responsibility for areas they are not accountable to. It is contended that until society can develop mechanisms which would establish direct lines of social accountability from business to the public, business must stand clear of social activities and pursue only its goal of profit. Besides that, the social needs of the people certainly should not depend on the occasional helping hand of business men.<sup>136</sup>

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<sup>135</sup> Mullerat (op cit note 3 at 97).

<sup>136</sup> Davis (op cit note 59 at 320).

In response to these criticisms, first of all, on the issue of CSR being a medium for misuse of corporate funds, although CSR does not have an agreed standard against which it is measured, funds expended on it can be traced through the perfect accounting methods of the 21<sup>st</sup> century. On the issue of accountability of companies to society, it goes without saying that today's companies are completely accountable to humanity for their actions. Companies also, cannot only focus on profit maximization to the detriment of sustainable development.

#### CSR DILUTES BUSINESS'S PRIMARY PURPOSE.

It is argued that company's involvement in CSR might dilute business's emphasis on economic productivity, divide the interests of its leaders, and weaken business in the market place, with the result that it will poorly accomplish both its economic and social roles. The effect of this will be that society would get less productivity and the economic role of business institutions would become confused in society.<sup>137</sup>

More so, corporate social responsibility makes the management of companies to serve constituencies other than shareholders. It brings directors of companies the confusion of balancing the interests of various constituencies without according primacy to shareholder interests. This is particularly difficult for them, especially where it is necessary for them to act quickly; to divine what is in the best interest of shareholders and the corporation. If directors are required to consider other interests as well, the decision making process will become a balancing act or search for compromise. Directors in this circumstance, do not only have to decide what their duty of loyalty mandates, but also to whom their duty of loyalty runs (and in what proportions); this ultimately brings about poorer decisions.<sup>138</sup>

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<sup>137</sup> Davis (op cit note 59 at 320).

<sup>138</sup> Joo (op cit note 29 at 42).

There is additionally an uneasy feeling that many of the problems stakeholders would assign to business via CSR are not really solvable, which would make business the scapegoat in this social exchange.<sup>139</sup>

Although CSR covers a wide spectrum of issues, companies still effectively integrate social standards into their corporate imperatives. As earlier stated, it may not be possible for a company to satisfy the wide range of needs and concerns covered by CSR, but it could concentrate on meeting those needs of stakeholders that cannot be disregarded.

#### CSR IS MISLEADING; A CURSE RATHER THAN A BLESSING

According to Geoffrey Chandler, ‘the absence of a clear definition of CSR is likely to delay the introduction of a regulatory framework... the shirt of Nessus poisoned those who wore it’. He says the prevalent interpretation of CSR as simply a voluntary add – on is not the total concept of CSR necessary for its success and survival in the 21<sup>st</sup> century.<sup>140</sup>

The curse for him is the continuing diversion of companies from the reality that regulation has throughout corporate history been necessary to get the corporate world to fulfil its non – monetary responsibilities. He criticizes CSR for being used by many to achieve their desires whilst its impact in practice remains diverting attention from what is fundamentally required.<sup>141</sup>

Although Chandler’s outburst makes sense, according to Michael Hopkins, it is strong enough to harm his vision of CSR as a total concept. Also, using strong words like ‘curse’ could make companies avoid CSR – not what any of us want.<sup>142</sup> To my mind, although regulation of CSR has benefits, it is not something that should be done in a

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<sup>139</sup> Davis (op cit note 59 at 319).

<sup>140</sup> Mullerat (op cit note 3 at 477).

<sup>141</sup> Ibid.

<sup>142</sup> Mullerat (op cit note 3 at 477).

hurry since it also has its negative implications. This will be discussed in detail in chapter four.

#### COMPANIES LATITUDE TO BE SOCIALLY RESPONSIBLE DEPENDS ON THE CORPORATE LAW OF THEIR HOST COUNTRY.

Since the operation of companies is usually regulated by the laws of the country in which the company is situated, it goes without saying that the corporate law of a country to a large extent affects the social responsiveness of its companies.

As earlier stated in chapter one, the overriding objective of companies in Anglo - Saxon countries is to enhance corporate profit and shareholder gain; companies here are run strictly for the benefit of shareholders.

The case is the same in South Africa under common law due to the fact that South African Law has its origin from English Law. The directors of South African companies have a common law duty to act in the interest of the company, and the interest of the company is that of its shareholders.<sup>143</sup> This is however changing due to recent legislation and the recommendations of the King Report on Corporate Governance. The Johannesburg Securities Exchange (JSE) gave added impetus to King II recommendations by incorporating them into its listing requirements. South Africa today is a good example of countries with exemplary corporate laws which to a large extent encourage corporate social responsibility.

European corporate law generally encourages companies to be socially responsible. European companies are expected to voluntarily exceed certain minimum legal standards of CSR. Unlike the Anglo – Saxon countries, companies are not run strictly for the benefit of shareholders. They have the objective of advancing the interests of other persons and groups like (creditors, employees, suppliers, civil organizations and the community at large) who may have no ownership in the company but are affected by corporate decisions.

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<sup>143</sup> Hutton v West Cork Railway (1883) 23 Ch D 654.

It is impressive to notice that the trend is changing even in Anglo – Saxon countries, the traditional disposition of companies in these countries notwithstanding, recent laws promulgated in these countries encourage corporate social responsibility. Using the United Kingdom as an example, in 1999 the UK Parliament approved the Pension Disclosure Regulation requiring all trustees of UK occupational pension funds to disclose ‘the extent ( if any ) to which social, environmental or ethical considerations are taken into consideration in the selection, retention and realization of investments’.<sup>144</sup>

More so, the adoption of the enlightened shareholder view through Section 172(1) of the United Kingdom’s Companies Act 2006 is impressive. Section 172(1) of the Act which imposes a duty on company directors to act in good faith and in a way that will most likely promote the interest of the company as a whole, allows company directors while exercising this duty to have regards to the interests of employees, suppliers, customers and other stakeholders. The enlightened shareholder view is preferable to the shareholder centric view because it accommodates the interests of stakeholders more than the shareholder - centric view. While the shareholder – centric ideology gives primacy to the interests of shareholders alone and does not consider the interests of other constituencies in the conduct of companies’ affairs, the enlightened shareholders view although it still gives primacy to the interests of shareholders, permits the consideration of other stakeholders’ interests where this does not adversely affect the company as a whole. Although the extent to which stakeholders are accommodated under the enlightened shareholder value system is quite restrictive, it is still a good move toward encouraging corporate social responsibility in the United Kingdom.

CSR is castigated by its critics as a sham because companies cannot generally be left to self regulate.<sup>145</sup> A country’s corporate law to a large extent affects company’s latitude to be socially responsible. Countries by legislating on aspects of CSR which cannot be left to the discretion of companies for instance, will compel antisocial companies to comply.

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<sup>144</sup> Annemarie Meisling Global Corporate Social Responsibility Disclosure Legislation, (2004).

<sup>145</sup> Mullerat (op cit note 3 at 474).

### CSR IS ANOTHER WORD FOR CORPORATE PHILANTHROPY

Michael Porter expressed the view that CSR is synonymous with philanthropy when he said, ‘Corporate philanthropy – or CSR – is becoming an ever more important field for business. Today’s companies ought to invest in CSR as part of their business strategy to become more competitive’.<sup>146</sup> The Economist in an Article entitled ‘Two Faced Capitalism’ also expressed a similar view about CSR and philanthropy: ‘CSR is philanthropy with a few bits added on. CEOs should ignore this and go back to doing their jobs.’<sup>147</sup>

But is CSR the same as corporate philanthropy? As earlier stated, although philanthropy is an aspect of CSR, it is not all CSR is about. For instance, while CSR is a system – wide concept that touches all the stakeholders of a company, philanthropy concentrates on actions which are ordinarily undertaken by only one stakeholder (the government) although it benefits other stakeholders.<sup>148</sup>

Secondly, while CSR is sustainable, philanthropy is whimsical.<sup>149</sup> Philanthropy does little or nothing to help companies make profit, but CSR actions are linked to improving a company’s bottom line. There are a lot of indications that corporate social investment is itself good business, this will be discussed in detail in chapter three. More so, as earlier mentioned, while philanthropy involves how companies’ profits are spent on deserving causes, CSR is concerned with how these profits are made in the first place

### CSR IS A PUBLIC RELATIONS STRATEGY USED TO DECEIVE THE PUBLIC

Tim Wright is one of those who see CSR as fodder for companies’ public relations departments. In his prize winning essay, he states: ‘The number of public relations companies adding CSR practices or strengthening existing offerings endorses the

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<sup>146</sup> Ibid 476.

<sup>147</sup> Mullerat (op cit note 3 at 476).

<sup>148</sup> Ibid.

<sup>149</sup> Michael Hopkins *CSR: The Development Challenge* (2005) 9.

assertion that corporations desire to seize and dictate the agenda through savvy media management...'.<sup>150</sup>

CSR is criticized for being strong on rhetoric and weak on substance. A new word, 'greenwash' entered the English language to convey the message that CSR often amounted to window - dressing that masks malpractice and the failure to comply with agreed standards. Most corporations that have a good public image of being socially responsible practice selective CSR initiatives while continuing to promote practices that threaten the environment, people's livelihood, human rights, the public policy process, and the development prospects of many small enterprises and poorer countries.<sup>151</sup>

But is there nothing more to CSR than its use by companies to promote their public reputation? According to Michael Hopkins, there is evidence that top companies are becoming more socially responsible over time. This does not mean that all is well with the corporate world but suggests that all the actions, protests; analysis etc... of disparate groups all over the world might be having a positive effect.<sup>152</sup>

Secondly, it is not possible for companies that are not genuinely committed to socially responsible causes to deceive the public by pretending to be committed for too long. This is so because NGOs, local communities and the media keenly watch and publicize fluff in companies.

#### CSR ATTRACTS UNWARRANTED COSTS.

CSR is often criticized for attracting unjustifiable costs which hardly bring commensurate financial returns. Business has very substantial economic resources, but it must husband them wisely because these resources have a high tendency of dwindling into economic impotence if they are not self – renewing. Business can invest small amounts of its

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<sup>150</sup> Scholte (op cit note 56 at 222).

<sup>151</sup> Scholte (op cit note 56 at 222).

<sup>152</sup> Mullerat (op cit note 3 at 476).

resources in social obligations but it cannot commit major economic resources unless these resources will be renewed during the term of the commitment.<sup>153</sup>

Furthermore, if social programmes add to business costs and dilute business's capacity for high productivity, then these costs must be recovered, and generally they will be added to the price of products. If the firms involved compete in international markets with other firms which do not have these social costs added to their products, then firms of such a country would be at a competitive disadvantage. The situation is worst if the goods traded on are available in other countries; because demand for the products in such a country would drop. This negatively affects the economy; it results in the folding up of indigenous companies and brings unemployment.<sup>154</sup>

In response to these criticisms, although CSR more often than not attracts long term profitability, socially responsible companies still have overall advantage over those that are not. This will be discussed in detail in chapter three. The next issue on international competitive advantage of companies may be true, but the fact that CSR attracts international investments and is welcomed by most countries of the world today should not be swept under the carpet.

#### CSR LACKS BROAD SUPPORT.

It is contended that although many persons desire business to become more socially involved, others oppose the idea. There is still a lack of agreement among the general public, among intellectuals, in government and the businessmen themselves on CSR. It is opined that if business becomes socially involved, it will create so much friction among dissident parties that business cannot perform its economic assignment and society will be ripped asunder as it was in the Vietnam War. The divided support for business social

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<sup>153</sup> Davis (op cit note 59 at 318).

<sup>154</sup> Davis (op cit note 59 at 319).

involvement invariably makes business operate in a hostile environment which could cause it to fail in its social mission and cause disastrous side-effects.<sup>155</sup>

Although we still have the likes of Milton Friedman around, the widespread incorporation of basic social standards into most company's business strategies is an overwhelming prove of CSR's popularity. I am of the opinion that there is still a lack of awareness of what CSR is all about. Most people who attack corporate social responsibility do so viewing it strictly from its philanthropic perspective; no sane individual would undermine the sustainability disposition of CSR.

Finally, Bryane Michael criticized CSR for ignoring development economics and its concerns with capitalism and neo – liberalism. He sees CSR as a proxy to introduce socialism through the backdoor.<sup>156</sup>

His assertion may not be untrue, all the same there is no way the cooperation between government, business and civil society (CSR) could introduce socialism through the backdoor especially considering its global concern of sustainable development.

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<sup>155</sup> Davis (op cit note 59 at 321).

<sup>156</sup> Mullerat (op cit note 3 at 477).

## CHAPTER THREE

### THE BUSINESS CASE FOR CORPORATE SOCIAL RESPONSIBILITY

The fact that CSR encourages sustainable development and has a correlation with profitability makes it invaluable to companies. Sustainability as earlier defined in chapter one is ‘meeting the needs of the present without compromising the ability of future generations to meet their own needs.’<sup>157</sup> In a corporate context, ‘Sustainability’ means that each enterprise must balance the need for long - term viability and prosperity of the enterprise itself, the societies and environment upon which it relies for its ability to generate economic value – with the requirement for short – term competitiveness and financial gain. Undermining long – term prospects purely for short term profitability is counter productive.<sup>158</sup> This concept is now universally referred to as the ‘triple - bottom – line’ by the United Kingdom based organization – SustainAbility. The term ‘Triple – bottom – line’ is used to capture the whole set of values, issues and processes that companies must address in order to minimize any harm resulting from their activities and to create economic, social and environmental value.<sup>159</sup>

The assessment of what determines a company’s financial return on socially responsible initiatives is generally difficult. A number of empirical researches have been made since the early 1970s to look into the link between CSR and companies financial performance. Some results revealed a negative correlation, others revealed a neutral correlation but most of them revealed a positive correlation between CSR and companies financial performance.

The results of a few previous researches on this subject will be outlined: Kenneth Aupperle, Archie Carroll and John Hatfield’s research on the relationship between CSR and profitability in 1985 did not find any relationship between social responsibility and

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<sup>157</sup>Our Common Future (op cit note 100 at 43).

<sup>158</sup> King Report (op cit note 23 at 96).

<sup>159</sup> Ibid 97.

profitability<sup>160</sup>. Abigail McWilliams and Donald Siegel's research on CSR and Financial Performance: Correlation or Misspecification in 2000 showed a neutral correlation between CSR and financial performance.<sup>161</sup>

A couple of other researches, revealed a positive correlation between CSR and companies' financial performance. For instance, Philip Cochran and Robert Wood's research on CSR and Financial Performance in 1984 showed a positive correlation between corporate social responsibility and financial performance.<sup>162</sup> Jean McGuire, Alison Sungren and Thomas Schneeweis's researches on CSR and Firm Financial Performance in 1988 showed a reduction of firm risk as an important benefit of social responsibility.<sup>163</sup>

Daniel Turban and Daniel Greening's research on Corporate Social Performance and Organizational Attractiveness to Prospective Employees in 1997 indicated that independent ratings of corporate social performance are related to firm's reputation and attractiveness as employers, suggesting that a firm's corporate social performance may provide a competitive advantage in attracting applicants.<sup>164</sup>

Sandra Waddock and Samuel Graves research on The Corporate Social Performance Link in 1997 revealed empirical linkages between financial performance and social performance. Here corporate social performance (CSP) was found to be positively associated with prior financial performance, supporting the theory that slack resource availability and CSP are positively related. CSP was also found to be positively

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<sup>160</sup> Kenneth Aupperle 'et al' 'An empirical examination of the relationship between corporate social responsibility and profitability' (1985) *Academy of Management Journal*, 28 (2) 446.

<sup>161</sup> Abigail McWilliams and Donald Siegel 'Corporate social responsibility financial performance: Correlation or misspecification' (2002) *Strategic Management Journal* 21(5) 603.

<sup>162</sup> Philip Cochran and Robert Wood 'Corporate social responsibility and financial performance' (1984) *Academy of Management Journal* 27 (1) 42.

<sup>163</sup> Jean McGuire 'et al' 'Corporate social responsibility and firm financial performance' (1988) *Academy of Management Journal* 31 (4) 854.

<sup>164</sup> Daniel Turban and Daniel Greening 'Corporate social performance and organizational attractiveness to prospective employees (1997) *Academy of Management Journal* 40 (3) 658.

associated with future financial performance, supporting the theory that good management and CSP are positively related.<sup>165</sup>

Another study on this subject concluded that about one – half of the average performance of socially responsible companies can be attributed to their social responsibility, while the other half can be attributed to performance of the industry sector.<sup>166</sup> In 1997, DePaul university study in Chicago found that companies with a defined corporate commitment to ethical principles do better financially (based on annual sales\revenue) than companies that don't.<sup>167</sup> An 11 – year Harvard University study found that 'stakeholder – balanced' companies showed four times the growth rate and eight times the employment growth when compared to companies that are shareholder – only focused.<sup>168</sup> A global CEO survey undertaken by PricewaterhouseCoopers\World Economic Forum found that 70 per cent of chief executives globally agreed that CSR is vital to profitability (Fifth global CEO Survey).<sup>169</sup>

Other studies have also demonstrated that enhanced shareholder return is achieved by visionary companies that include social responsibility within their corporate imperatives, and increased shareholder value results from lower risk of environmental or social liability of companies that have embraced social responsibility.<sup>170</sup>

The business case for corporate social responsibility and its overall business return differs from firm to firm depending on the strategic approach of the firm's management, its size, reputation, products, location and suppliers.

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<sup>165</sup> Sandra Waddock and Samuel Graves 'The corporate social performance - financial performance link' (1997) *Strategic Management Journal*, 18(4) 303.

<sup>166</sup> Mullerat (op cit note 3 at 121).

<sup>167</sup> CSR network and Radley Yeldar *The top 10 benefits of engaging in corporate social responsibility: the business case* (2004)1. [www.cipe.org/publications/papers/pdf/IP0410.pdf](http://www.cipe.org/publications/papers/pdf/IP0410.pdf).

<sup>168</sup> Ibid

<sup>169</sup> Hancock (op cit note 19 at 8).

<sup>170</sup> Mullerat (op cit note 3 at 120).

The beauty in CSR is that it brings about a win win situation; where companies make profit and at the same time advance sustainable development. The converse is a win lose situation where companies only focus on profit maximization to the detriment of society's continuous existence. The concept of sustainability is humane; it emphasizes the need to meet present needs without eroding the ability of future generations to meet their own needs.

As earlier stated, corporate activities that result in environmental degradation go to the roots of societal damage and short term profitability is not an excuse. If a global concern like climate change for instance is not successfully curbed, no company will survive on earth let alone make profit. Secondly, company's efforts and investments on drugs to prevent further spread of diseases like HIV/AIDS may be considered frivolous by shareholder – centric advocates, they undermine the fact that the continuous spread of the disease which results in the death of a majority the working class would eventually lead to a shortage of the labour force in the near future.

Sustainability focuses on non – business aspects of corporate practice that in turn influences the enterprise's ability to survive and prosper in the communities within which it operates, and so ensure future value creation.<sup>171</sup> It is becoming more generally recognized that the extent to which a company's stock market or acquisition value exceeds the book value of its shares depends not just on discounted cash flow models that estimate future financial performance. But the value also depends to a large extent on non – financial evaluations of the company's management, perception of the company by its various stakeholders, the company's exposure to litigation and reputation risks and the sustainability of the company's value proposition over time.<sup>172</sup>

Non – business issues - social, ethical and environmental issues can no longer be regarded as secondary to more conventional business imperatives. It should be pointed out that the reference to these issues as “non – financial issues” is for ease of reference.

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<sup>171</sup> King Report (op cit note 23 at 96).

<sup>172</sup> Mullerat (op cit note 3 at 121).

There is no doubt that these so - called non – financial issues have significant financial implication for a company.<sup>173</sup> A Henley Centre report claimed that 60 per cent of institutional investors say that non – financial factors account for between 20 per cent and 50 per cent of their investment decisions.<sup>174</sup>

The business case for social responsibility as a contributor to sustainable growth of business and profits is compelling and has been embraced by a growing number of CEOs. In 2002 the World Economic Forum conducted a survey of over 1, 300 companies on global corporate citizenship. When asked to make the business case for social responsibility, CEOs cited the following four factors as being the most significant: managing reputation and brand equity, attracting, motivating and retaining talented employees, protecting the licence to operate and enhancing competitiveness and market positioning.<sup>175</sup> The effect of these factors and a few others on companies' profitability will be discussed in detail.

- CSR attracts investors and gives companies access to capital.
- CSR enhances brand image and reputation.
- CSR improves companies' competitive advantage and market positioning.
- CSR is good risk management.
- CSR increases companies' ability to attract and retain outstanding employees.
- CSR protects companies' licence to operate.

#### CSR ATTRACTS INVESTORS AND GIVES COMPANIES ACCESS TO CAPITAL.

Due to the increase in socially responsible investing (SRI) indexes, companies that are committed to CSR have access to capital which would not be available to them if they were not socially responsible. Such company's access to finance continues to improve as socially responsible investing becomes more and more important. Examples of globally recognized socially responsible indexes are the FTSE4Good and the Dow Jones sustainability indexes.

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<sup>173</sup> King Report (op cit note 23 at 97).

<sup>174</sup> Hancock (op cit note 19 at 29).

<sup>175</sup> Mullerat (op cit note 3 at 121).

These indexes are increasingly looked at by investors who want to determine a company's level of CSR engagement.<sup>176</sup> Investors look for indicators of effective CSR management when making decisions about where to put in their money. According to a McKinsey Global Investor Opinion Survey, investors claimed that they will pay premiums of between 12 per cent and 14 per cent in North America and Western Europe for companies with high corporate governance standards,<sup>177</sup> and in a survey by CSR Europe and Euronext, 51 per cent of fund managers and 37 per cent of financial analysts said they would put a premium on socially responsible companies.<sup>178</sup>

Socially responsible investing indexes publicly rank the major international companies according to their environmental and social performance; the results when compared to non – SRI indexes have been impressive. For example, from May, 1990 to the end of 2004, on a total return basis the Domini 400 Social Index (DSI) increased by 475%, compared with a 401% increase for the S&P 500; the Dow Sustainability Index has increased by 180 per cent since 1993 compared with 125 per cent for the Dow Jones Global Index over the same period.<sup>179</sup>

Businesses have a responsibility to manage their assets effectively in order to provide investors with a fair competitive return, to disclose relevant information, to respect investor's suggestions and opinions.<sup>180</sup> A company's risk management policy affects investor's decisions and attraction to the company. The scope of the risks a company should manage is widening; risk is no longer solely defined by financial factors, but extends to include environmental and social risks as well. How a company successfully manages this expanded portfolio of risks determines its ability to attract capital and investors.<sup>181</sup>

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<sup>176</sup> Yeldar (op cit note 166at 2).

<sup>177</sup> Hancock (op cit note 19 at 29).

<sup>178</sup> Ibid 11.

<sup>179</sup> Mullerat (op cit note 3 at 120).

<sup>180</sup> *The business case for social responsibility in small and medium – sized enterprises* 7 [www.smekey.org](http://www.smekey.org).

<sup>181</sup> Ibid.

Globally, there is an increasing awareness of the need to measure corporate social responsibility investments. As earlier stated at page 40, it is generally difficult to determine the influence of CSR on company's overall financial returns. It is important that there is an accurate methodology for tracking performance in this area, the introduction of socially responsible investing indexes is quite useful for these purposes. The indexes provide an economic incentive for companies to adopt socially responsible practices and a means to measure comparative investment returns between companies that meet the criteria for social investment funds and those who do not.<sup>182</sup>

The proliferation of mutual funds that specialize in ethical investing, as well as organizations that rate companies based on social responsibility factors, is beginning to have significant impact on corporate priorities and access of companies to the capital markets.<sup>183</sup> Ethical funds are becoming more popular with the increasing public. They provide an additional source of funds which are not available to companies which fail to meet the ethical standards required.<sup>184</sup>

Social responsibility investing recently expanded to Africa with the Johannesburg Securities Exchange (JSE) socially responsible investing index. In 2004, the JSE launched the SRI as a means to identify companies that integrate the triple bottom line into their business activities and to facilitate investment in such companies.<sup>185</sup> Top 160 companies listed on the exchange are invited annually to voluntarily submit details to be assessed against the SRI criteria. Companies must demonstrate that they meet this criterion which reflects widely accepted triple bottom line principles relating to the economy, environment and society. The assessment is designed to measure the integration of best corporate practices into companies' business activities.<sup>186</sup> This index has greatly improved corporate social responsibility in South Africa; its attendant benefits would be obvious soon.

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<sup>182</sup> Mullerat (op cit note 3 at 120).

<sup>183</sup> Ibid 121.

<sup>184</sup> Graham Ward and Fiona Crozier *The economic and commercial benefits of long – term sustainability* 8.

<sup>185</sup> JSE SRI Index: Johannesburg Securities Exchange Annual Report (2005) [www.jse.co.za](http://www.jse.co.za).

<sup>186</sup> Ibid.

There is some subjectivity in the elements which constitute a socially responsible company and this subjectivity hinders the inclusion of some (considerably) socially responsible companies to the index. For example, Coca Cola has demonstrated a commitment to good workplace conditions and environmental safeguards, but has been criticized for using excessive water to manufacture its products. Many tobacco companies and petroleum refiners also make substantial commitments to social and environmental causes, yet generally are not included in SRI funds because their products are considered to be unhealthy or damage the environment.<sup>187</sup> The fact that a company is not included to the socially responsible investing index does not on its own mean that such a company has inferior social responsibility policies or standards. There are many reasons why a company does not feature on the index; firstly it could be because the company applied but could not meet the criteria, and secondly it could be because the company did not consider it important to apply so did not even apply.

Linkages have increased to promote greater consistency of evaluation of companies' social responsibility. Socially responsible investing assessments are a positive step in identifying companies that are making significant efforts to achieve social responsibility.<sup>188</sup> Some studies have demonstrated that increased shareholder value results from lower risk of environmental or social liability of companies that embraced social responsibility.<sup>189</sup>

The business case for CSR cannot be overemphasized; a company that refuses to be socially responsible has more to lose than to gain. In the United States for instance; where environmental regulations are in place and litigation risk is significant, companies which do not have adequate systems in place are completely denied access to capital.<sup>190</sup>

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<sup>187</sup> Mullerat (op cit note 3 at 121).

<sup>188</sup> Ibid 120.

<sup>189</sup> Ibid.

<sup>190</sup> Ward (op cit note 183 at 8).

### CSR ENHANCES BRAND IMAGE AND REPUTATION.

The commercial value of a good business reputation is very high. A company's reputation is an asset; it can attract or repel investors, customers and employees. Especially considering the recent corporate failures discussed in chapter one, corporate reputation is now very difficult to build yet so easy to destroy. It takes a lot for a company to build a reputation of trust which invariably attracts investments from society. People prefer to forego interests and keep their monies than to invest them in companies they do not trust.

According to Oliver Williams, compared to ten years ago, most surveys on trust levels in countries throughout the world show that public trust in business institutions and leadership is at a low level. Perhaps the most comprehensive and widely respected survey is that done under the leadership of the World Economic Forum (WEF), an NGO founded by over 1,000 of the world's most influential corporations. A 2003 WEF reported that in a survey of some 50 countries, the percentage of persons saying that they had 'A Lot' or 'Some Trust' in the executives of multinational companies averaged 33% (www.Weforum.org).<sup>191</sup>

Trustworthiness is conditioned on the perceptions that one has ability, benevolence, and integrity. If these core characteristics are perceived as high in a trustee, then a trustor will allow the personal vulnerability we commonly know as trust.<sup>192</sup>

At root, the lack of trust indicates a growing divide between values of business and society. Good corporate governance enhances trust levels.<sup>193</sup> A 2004 survey conducted by Harris Interactive and Reputation Institute, ranking the corporate reputations of the most visible companies in the United States, concluded that 'the

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<sup>191</sup> Oliver Williams *Restoring public trust in business: the crucial role of good corporate governance* (2005) 3.

<sup>192</sup> *Ibid* 5.

<sup>193</sup> *Ibid* 3, 11.

majority of people (74%) continue to characterize corporate America's reputation as either 'not good' or 'terrible' ([www.harrisinteractive.com](http://www.harrisinteractive.com)).<sup>194</sup>

On the contrary, the 2004 World Economic forum survey on trust levels shows that 63% of South African citizens trust global multinationals operating in the country ([www.weforum.org](http://www.weforum.org)). This represents more than 20% higher than the reported global average trust levels.<sup>195</sup> It goes without saying that South African government's involvement in CSR through its laws and governance codes like the Black Economic Empowerment (BEE), the King Code on Corporate Governance and the Johannesburg Socially Responsible Investing (SRI) Index greatly impact on its citizen's confidence in companies.

Reputation or brand equity is founded on other values such as quality, reliability, credibility and consistency. Having a reputation as a responsible business sets you apart; many customers prefer to buy from ethical businesses. A good corporate reputation boosts business opportunities and makes it easy to recruit employees. Companies which demonstrate real levels of openness, stakeholder engagement and ethical behaviour build trust and attract investments. Consumer confidence fostered through CSR can be a major contributor to a company's economic growth.<sup>196</sup>

Research conducted by Business in the Community (BICIT) and Research International in 2003 found that 86 per cent of consumers agree that, when price and quality are equal, they are more likely to buy a product associated with a 'cause'; 61 per cent agree that they would change retail outlets for the same reason; and 86 per cent of consumers agree that they have a more positive image of a company if they see that it is doing something to make the world a better place.<sup>197</sup>

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<sup>194</sup> Williams (op cit note 191 at 3).

<sup>195</sup> Ibid 11.

<sup>196</sup> The Green Paper (op cit note 1 at 3).

<sup>197</sup> Hancock (op cit note 19 at 11).

Socially irresponsible companies especially those with high – value retail brands are usually targets of the media, activist and consumer pressure. The bad publicity and lawsuits brought against such companies negatively affects their overall business returns. In the United States there is now some evidence that reputable behaviour can have clear financial benefits as the law courts can take into account a company's environmental related internal control policies when considering fines or compensation for environmental damage.<sup>198</sup>

Sometimes, even a commitment to social responsibility will not save the company from reputation damage resulting from faulty products or other factors beyond the company's control. Seven people for instance, died after ingesting tampered Tylenol produced by Johnson & Johnson in 1982. Sales of the product drastically reduced; the company pulled the product from the market and replaced all bottles with tamper- proof caps. By 1986 the company regained its loss and increased its market share, but another death occurred from cyanide laced Tylenol. The company again pulled the product and replaced it with caplets that could not be tampered with. At both times, the company had a choice between actions that would not severely affect its immediate profitability and those that would. But the company chose to suffer enormous immediate loss. By showing absolute responsibility during its trials, the company regained the consumer confidence, rebuilt its market share and substantially enhanced its profits over time.<sup>199</sup>

It is undisputable that both socially responsible and irresponsible companies go through challenges. The difference however is that a company that has developed sound social responsibility may be better able to respond to these issues and preserve franchise value than the one that has not.<sup>200</sup>

The commercial benefits of a good corporate reputation are rife; companies should therefore do all in their power to maintain good corporate business standards.

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<sup>198</sup> Ward (op cit note 183 at 8).

<sup>199</sup> Mullerat (op cit note 3 at 123).

<sup>200</sup> Ibid.

They should be honest about their actions because the media, NGOs and local communities are usually fast to see through fluff.

#### CSR IMPROVES COMPANIES' COMPETITIVE ADVANTAGE AND MARKET POSITIONING.

In a highly saturated business environment, a company's ability to compete effectively with its rivals is necessary for its survival and distinction in the market place. CSR gives a company competitive advantages over its rivals, many companies use it to create competitive differentiation and to open new markets.<sup>201</sup> A firm may for instance become certified to environmental and social standards and thus become a supplier to particular retailers.

CSR attracts customer loyalty. Especially in a market place where customers demand goods and services ethically delivered or produced, it can build loyalty with customers and give such companies a competitive advantage over others. It also helps in building relationships with host governments, communities and other stakeholders; it can be of vital importance should the company encounter future difficulties with regard to its investment decisions.<sup>202</sup> According to Business in the Community (BITC), more than 70 per cent of business leaders believe that integrating responsible business practices makes companies more competitive and profitable.<sup>203</sup>

Communities, groups, local governments and other purchasing and Licensing bodies are more likely to favour socially responsible companies with procurement orders, licenses, business connections and economic opportunities that provide company with enhanced profit potential. These factors make the business case for CSR compelling and convincing.

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<sup>201</sup> Mullerat (op cit note 3 at 126).

<sup>202</sup> Hopkins (op cit note 126 at 3).

<sup>203</sup> Hancock (op cit note 19 at 11).

## CSR IS GOOD RISK MANAGEMENT

Risk management is a vital task for all enterprises; it is a fundamental part of corporate strategy. Bearing in mind the fact that companies today are held accountable for their actions, it is easy for the reputation a company took years to build to be destroyed in an hour through environmental accidents or corruption scandals if not carefully guarded. Corporate scandals draw unbelievable attention of the media, courts, regulators and the government.

As earlier stated, the definition of business risk today is widening; it is no longer limited to economic aspects but includes social, environmental, legal and other risks in an increasingly complex market environment. Better anticipation and management of these risks improves the market stability of companies. Risks also affect a company's reputation, the more vulnerable a company is to risks, the more difficult it is for it to access capital.

Better risk management can be achieved by in depth analysis of relations with external stakeholders. Factors like new technologies, changing societal, regulatory and market expectations, make companies to take broader perspective when analyzing the range of risks they may encounter.<sup>204</sup> Dialogue with stakeholders and business openness helps companies limit risks by establishing good relationships with broader society. Enterprises generally agree that CSR helps them in managing their risk, their intangible assets, their internal processes, and their relations with internal and external stakeholders.<sup>205</sup> The more committed a company is to corporate social responsibility, the less it exposes itself to business risks like bad press, stakeholder's criticisms and others. It has also been argued that opportunities and advantages for enterprises stemming from complying with international, social and environmental conventions, norms or 'soft law' instruments can outweigh costs.<sup>206</sup> To my mind, it is preferable for a company to do all it can to forestall corporate scandals and incidences that would cost it fortunes to stabilize, than to open itself to all sorts of business risks. Corporate social responsibility is a sure

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<sup>204</sup> Hopkins (op cit note 126 at 3).

<sup>205</sup> The Green Paper (op cit note 1 at 3).

<sup>206</sup> Ibid.

safeguard to these occurrences; it keeps companies' futures secure and enhances corporate profitability.

#### CSR INCREASES COMPANIES' ABILITY TO ATTRACT AND RETAIN OUTSTANDING EMPLOYEES

Every corporation desires to be attractive to qualified employees. Particularly within the very competitive graduate student market, CSR is an important aid to recruitment and retention of unique employees. A company with good CSR policy has an advantage over its rivals as recruits are likely to ask questions during an interview about a firm's CSR policy.

Reputation plays a vital role in attracting and retaining qualitative employees. Although good salaries are an incentive, they are not all that exceptional employees look out for in a company. People love to work for a company that operates in accordance with their values and beliefs 'Evidence from the Industrial Society in the UK indicates that 82% of UK professionals would not work for organizations whose values they did not believe in and that nearly 60% chose the company they work for because they believe in what it does or what it stands for'.<sup>207</sup>

Knowledge is invaluable to every organization; besides, a company's key knowledge resides in the people it employs. Companies that attract retain and stimulate talented employees benefit immensely from their pool of knowledge. It has been said that 'Companies that ignore human capital will go the way of the dinosaurs'.<sup>208</sup>

Companies that support employee's further training, equip their staff with transferable skills, avoid discrimination, pay their staff fairly, provide a good and safe working environment, communicate openly and honestly with their employees, respect staff's suggestions and are generally sensitive to labour market problems play an

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<sup>207</sup> Ward (op cit note 183 at 6).

<sup>208</sup> Ibid.

important part in the overall perception of employee's preferred employer.<sup>209</sup> Corporate actions like these boosts the employee's trust in the company, they increase the company's efficiency and levels of innovation.<sup>210</sup>

Employees are not only interested in fair treatment in accordance with minimum legal requirements, but their loyalty is increased if a company is seen as responsive to community needs.<sup>211</sup> A 1999 study by Fleishman – Hilliard found that 87% of European employees would increase their loyalty to a company if it were seen to be involved in activities that improve society.<sup>212</sup>

Companies that show interest and demonstrate equitable treatment of employees subsequently realize significant cost savings related to recruiting new workers, facing workers' strikes and boycotts, defending lawsuits, fraud resulting from employee's unhappiness etc.<sup>213</sup>

A close examination of the issues articulated above, leaves companies with no option but to be socially responsible. It is axiomatic to say the strength of every company lies in its ability to attract, recruit and retain outstanding employees.

#### CSR PROTECTS COMPANIES' LICENCE TO OPERATE.

It is no longer enough to argue that business contributes to society simply by creating jobs and wealth; a company can only sustain its credibility if it has a clear license to operate from the local community.<sup>214</sup> All companies must be able to comply with applicable laws, rules and regulations in order to stay in business. In a global market place, the licence to operate is not only needed from the company's home jurisdiction but from all the places it intends to do business. Multinational companies need to do a lot

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<sup>209</sup> Mullerat (op cit note 3 at 123).

<sup>210</sup> The business case for social responsibility (op cit note 179 at 8).

<sup>211</sup> Mullerat (op cit note 3 at 123).

<sup>212</sup> *Quoted in to whose profit? Building a business case for sustainability wwf and Cable & wireless (2002).*

<sup>213</sup> Mullerat (op cit note 3 at 124).

<sup>214</sup> The business case for social responsibility (op cit note 179 at 8).

more than locally based companies; they have had to develop more decentralized strategies to meet the ever changing needs of its stakeholders.<sup>215</sup> They must prove to be good corporate citizens to stay welcome by their host countries.

King argues that while in the past to obtain a ‘licence to operate’ boards only needed to influence the appropriate government regulator, today a board has to consider a whole host of stakeholders, including customers, ethical pressure groups, investigative media, investors and communities.<sup>216</sup>

Many companies today are viewed as owing special duties to the public, customers and other stakeholders by virtue of their activities.<sup>217</sup> Stakeholder’s understanding of the firm, its activities and goals leads to good stakeholder relations which may transform into more solid and lasting private, public and civil society alliances.

The more a company tries to go beyond legislation, the more considerate governments and regulators may be with the company. Such a company is likely to be given preferential treatment when it needs permits or authorization to do something. If an accident occurs, relevant regulatory authorities are likely to be more gracious to a socially responsible company than they would be to a company considered to be anti social.

It is reasoned that the institution of business exists only because it performs valuable services for society. Society gave business its charter to exist, and that charter could be amended or revoked at any time that business fails to live up to society’s expectations. Therefore if business wishes to retain its present social role and social power, it must respond to society’s needs and give society what it wants. It is stated in the Iron Law of Responsibility that ‘in the long run, those who do not use power in a manner which society considers responsible will tend to loose it’. Although it may take a while,

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<sup>215</sup> Mullerat (op cit note 3 at 124).

<sup>216</sup> King report (op cit note 23 at 103).

<sup>217</sup> Ibid.

history confirms that society ultimately acts to reduce the power of those who have not used it responsibly.<sup>218</sup>

Companies, by being socially responsible also avoid interference in their business through taxation and other regulations. Regulation is costly to business and restricts its flexibility of decision making. From the business man's point of view it is desirable to retain freedom in decision making so that he can maintain the initiative in meeting market and social factors.<sup>219</sup>

Companies by taking major voluntary steps can persuade the wider public and governments that they are taking issues like safety, health, diversity and environmental concerns seriously hence avoid business interruptions. The importance of a company's licence to operate cannot be overemphasized; there is no way a company which is refused permission to do business in a place can be there, let alone make profits.

In conclusion, the issues discussed above present a convincing business case for corporate social responsibility. This chapter shows that socially responsible companies enjoy financial benefits in return for their investments in society. Companies are therefore encouraged to incorporate social and environmental concerns into their corporate strategies, realizing that most of these non business issues have financial implications for a company.

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<sup>218</sup> Davis (op cit note 59 at 314).

<sup>219</sup> Davis (op cit note 59 at 314).

## CHAPTER FOUR

### LEGISLATION OF CORPORATE SOCIAL RESPONSIBILITY

Corporate social responsibility being an aspect of corporate governance has a lot in common with corporate governance. However, the major difference between CSR and corporate governance as already mentioned in chapter one is that while corporate governance is a binding and enforceable set of rules on management of companies, CSR is a body of ethical rules which are often voluntary and unenforceable.<sup>220</sup>

Generally, the corporate laws of each country regulate the operation of companies in that country. Such laws govern the creation, basic structure and primary rules of operation of companies in the country.<sup>221</sup> Using the United States which has a system of Federal Law as an example, each of the 50 states has its own corporate code which regulates the operation of companies in the state.<sup>222</sup> Apart from the corporation laws of a country, judicial decisions by the state courts such as the ‘business judgment rule’ and the duties of care and loyalty of corporate officers and directors develop important legal doctrines governing corporate behaviour.<sup>223</sup>

Furthermore, national rules and regulations with respect to the sale, distribution and trading of securities involving the public regulates the corporate behaviour of a country. The same way rules and decisions of certain private bodies like stock exchanges, professional accounting institutions, industry organizations, accounting rules and practices of professional organizations influence a country’s corporate disposition.<sup>224</sup>

Although corporate social responsibility is a body of ethical rules which are often voluntary and unenforceable, these ethical rules often metamorphose into legal rules. Most of the irregularities committed by the directors of Enron and other corporate

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<sup>220</sup> Mullerat (op cit note 3 at 4).

<sup>221</sup> Salacuse (op cit note 41 at 72).

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid 73.

executives in recent corporate scandals were for instance violations of ethical rules. What the Sarbanes – Oxley Act did was to transform and legally penalize many of the ignored ethical rules.<sup>225</sup> In the same vein, some corporate social responsibility instruments like voluntary codes of conduct might cease to be self – imposed ethical rules and be converted to required and binding duties.<sup>226</sup>

The recent spate of corporate scandals has undoubtedly increased the perception of greed among senior business officials in the corporate world. CSR is important in counteracting allegations of corporate greed. As a result, unlike their prior traditional philanthropic disposition to corporate social responsibility; in the US and UK there has been a shift away from philanthropy in approaches to corporate social responsibility and a movement towards the greater alignment of CSR to business strategy and corporate governance.<sup>227</sup>

Debra Dunn, Vice – President, strategy and corporate operations, Hewlett-Packard, USA explains it thus:

I think (CSR) has evolved significantly over the last year, particularly since Enron. In the US there used to be a big focus on philanthropy and social investment as the manifestation of social responsibility, but I think appropriately the focus is now shifting to more central issues like how you run your business, so ethics and governance have gone up the priority list.<sup>228</sup>

Apart from the United States and the United Kingdom, other countries of the world have legislated on corporate social responsibility. For instance South Africa, Canada, Denmark, Netherlands, Norway, Sweden and France. A brief examination of the current settings around the world begins to show there is a clear momentum towards legislation of corporate social responsibility.<sup>229</sup> In 2002 a United Nation’s survey established that those questioned wanted companies to do more than simply following

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<sup>225</sup> Mullerat (op cit note 3 at 4).

<sup>226</sup> Ibid.

<sup>227</sup> Hancock (op cit note 19 at 13).

<sup>228</sup> Ibid.

<sup>229</sup> Ibid 29.

their traditional role of paying taxes, creating employment, obeying the law and making profits.<sup>230</sup>

Governments wish to be seen to encourage CSR activity but many do not wish to introduce legislation and have no clear idea about what form this legislation would take.<sup>231</sup> Some countries have introduced legislation forcing companies to fulfil certain criteria whereas others are taking a more laissez – faire approach.<sup>232</sup> Activists wishing to ensure that companies adhere to the highest standards are in danger of turning companies off any CSR activity altogether if they continue to attack too vociferously.<sup>233</sup>

According to the United Nation’s Report, a key dependency for CSR efforts is for governments and communities to create an enabling environment that will encourage companies to act in a socially responsible manner and discourage irresponsible behaviour. It sets out the following as the factors which encourage CSR in a country:

transparent legal framework and ‘rule of law’ that provides equivalent treatment for foreign and domestic enterprises; independent judicial and administrative system; laws that prohibit bribery and corruption; government assistance for education, health, training, and social infrastructure efforts; reasonable tax rates and administration; rules that promote market entry and discourage ‘informal’ markets; access to capital markets and financing and rules that protect intellectual and other property rights.<sup>234</sup>

The more host governments are able to minimise elements of the ‘informal economy’ that thrive on corruption, lack of transparency and weak institutional environments, the more such governments will be able to promote responsible investments by reliable companies. More so, socially responsible companies themselves will benefit by reduction in the number of entities that are able to compete on the basis of unfair and socially irresponsible terms.<sup>235</sup>

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<sup>230</sup> David Hawkins *Corporate social responsibility: balancing tomorrow’s sustainability and today’s profitability* (2006) 104.

<sup>231</sup> Hawkins (op cit note 230 at 104).

<sup>232</sup> Hancock (op cit note 19 at 28).

<sup>233</sup> Ibid 29.

<sup>234</sup> Mullerat (op cit note 3 at 133).

<sup>235</sup> Ibid

Company's minimum social responsibility is to comply with applicable laws and regulations. Much debate has centred on the extent to which social responsibility should be mandated by governments or should rely primarily on voluntary efforts.<sup>236</sup> The arguments of proponents of voluntary and mandatory approaches to CSR will be discussed respectively.

#### ARGUMENTS AGAINST LEGISLATION OF CORPORATE SOCIAL RESPONSIBILITY

Ramon Mullerat is of the view that corporate social responsibility should remain a set of voluntary principles of corporate behaviour because legal rules can never wholly replace ethical principles.<sup>237</sup> He suggests that, at most there should be a co – existence of both voluntary and regulatory approach to corporate social responsibility:

'I do not believe in a Manichean solution and think that both voluntary and mandatory rules are necessary and may co – exist to regulate specific matters depending on the different areas or objectives.'<sup>238</sup>

Companies stress the need for voluntariness and flexibility so that social responsibility can fit within the company's overall objectives and financial capability.<sup>239</sup> They believe they are best left to handle this area and that any new government legislation would increase the level of regulation and costs on them.<sup>240</sup>

According to Andrian Henriques, the most common reason given for why new legislation would set CSR back is the lowest common denominator argument. This suggests that if there were legislation on CSR, then companies would deliver what the law requires, but never more. At the moment, voluntary CSR is experiencing a hundred flowers in bloom.<sup>241</sup>

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<sup>236</sup> Mullerat (op cit note 3 at 133).

<sup>237</sup> Mullerat (op cit note 3 at 4).

<sup>238</sup> Ibid.

<sup>239</sup> Ibid 134.

<sup>240</sup> Hancock (op cit note 19 at 34).

<sup>241</sup> Michael Hopkins *CSR and legislation, monthly feature* (2002) [www.mhcinternational](http://www.mhcinternational.com). Com.

Andrian's views on CSR are an admirable amplification of Michael Hopkins's former position on CSR as highlighted in his book 'The Planetary bargain' where he suggested that companies would voluntarily invoke a number of basic principles. That they would then 'shame and name' rogue companies' thereby encouraging limited legislation.<sup>242</sup> Although Hopkins now supports legislation of CSR or at least a co – existence of both approaches, he sees the following as minuses to legislation of CSR:

Additional bureaucracy with rising costs of observance; costs of operation could rise above those required for continued profitability and sustainability; critics already argue that the CSR of companies is simply to make a profit and legislation would increase the vocalization of these concerns; and reporting criteria of CSR varies by company, sector, country and they are constantly in evolution.<sup>243</sup>

One of Matthew Haigh's reasons why he feels regulation of CSR would not be feasible is because to impose aggressive environmental and social regulations on business would require that states enjoy a significant degree of autonomy from corporate and financial capital. Individual states are currently much more dependent on capital than is capital on any individual state. To expect that the state would want to price itself out of markets through application of aggressive regulations attracting negative externalities is unrealistic.<sup>244</sup>

David Hawkins solicits for a balanced approach on regulation of CSR. According to him, although regulation is necessary it can also be a major factor in preventing sustainable development.<sup>245</sup> While agreeing that regulation must be in place to control the criminal performance of organizations, he says the difference between what is legal in different countries creates anomalies. Since regulation of CSR is not consistent globally, it creates competitive advantage for companies that are ready to lower their standards or do not recognise the benefits of best practice.<sup>246</sup> More so, regulation tends to be reactive; responding to crimes and environmental challenges that have already occurred. Thus it is

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<sup>242</sup> Hopkins (op cit note 241).

<sup>243</sup> Ibid.

<sup>244</sup> Matthew Haigh *The drivers of corporate social responsibility: A critical review* [www.ashridge.org.uk](http://www.ashridge.org.uk).

<sup>245</sup> Hawkins (op cit note 230 at 110).

<sup>246</sup> Ibid 103.

frequently running behind the evolution of economic development rather than shaping the future focus.<sup>247</sup>

According to Hawkins, regulation advantages are short term advantages which will ultimately lead to an unsustainable business environment.<sup>248</sup> He summarised his thoughts on regulation of CSR thus:

It is not realistic to assume that we can pass regulatory responsibility on to the business community, but it is equally unrealistic to assume that we can expect business to uphold a sustainable development focus if the majority of its spare resources are focused on ensuring compliance. Regulatory environments will not go away and there should be a wider dialogue around deregulating aspects that are better handled by responsible organizations. It is important to recognise that the more detailed the regulatory requirements, the greater the difficulty in promoting best practice. The more rules you write, the more lawyers and accountants that need to be employed to manage them, deflecting resources from constructive approaches that support business objectives and wealth creation.<sup>249</sup>

Nigel Griffiths is another person in support of a voluntary approach to CSR; his views to a large extent are a reflection of the approach adopted by the European Commission on CSR. He said:

... I remain convinced that the best approach should continue to be voluntary one. CSR must of course start with compliance with the law, and in the UK we have a strong record of regulation on the range of issues relating to corporate activity including health and safety, employment terms and conditions, environmental protection and more recently bribery and corruption. And as standards and expectations change, we need to keep the regulatory framework under review. But the regulatory framework represents the baseline for company behaviour while CSR is what companies do voluntarily to raise their performance beyond minimum legal standards. Our approach is therefore to set decent minimum standards while stimulating companies to raise performance beyond those levels....<sup>250</sup>

European countries are a good example of countries with a voluntary approach to CSR while companies are expected to exceed basic minimum regulatory standards. Some of the European Union legislations and directives on CSR include: The Restriction of Hazardous Substances (ROHS) legislation which became operational throughout the EU in July 2006. The Waste Electrical and Electronic Equipment Act commenced in the EU

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<sup>247</sup> Hawkins (op cit note 230 at 110).

<sup>248</sup> Ibid 110.

<sup>249</sup> Ibid 110 - 111.

<sup>250</sup> Foreword to John Hancock's book: *Investing in Corporate Social Responsibility*.

zone in 2004, mandating the electronic manufacturers to accept and recycle used electrical products. The Registration, Evaluation, Authorization and Restriction of Chemicals directive requires that EU- registered firms register chemicals used in manufacturing processes. The EU rules are generating global repercussions as component suppliers must ensure compliance if their parts end up in products sold in Europe.<sup>251</sup>

The European Union (EU) takes CSR issues very seriously. The European Council met in Lisbon in March 2000 and made a special appeal to companies' sense of social responsibility. In July 2001, the European Commission launched a Green Paper on CSR which was followed by public consultation. A follow – up communication in July 2002 saw the establishment of the European Multi – Stakeholder Forum on CSR, which brings together trade unions, employers' organisations, civil society organizations and business networks to discuss the way forward for CSR.<sup>252</sup>

Before a voluntary approach to CSR and a final definition of 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' was agreed upon, various drafts of its papers indicate the struggle within its walls between legislation or not.<sup>253</sup> The European Union's green paper in July 2001 argued:

Corporate social responsibility should nevertheless not be seen as a substitute to regulation or legislation concerning social rights or environmental standards, including the development of new appropriate legislation. In countries where such regulations do not exist, efforts should focus on putting the proper regulatory or legislative framework in place in order to define a level playing field on the basis of which socially responsible practices can be developed.<sup>254</sup>

However, after consultation, that paragraph was dropped in the European Union's white paper published in July 2002 and CSR was defined as voluntary.<sup>255</sup> The final results and recommendations of the European Multistakeholder Forum on CSR in June 2004 had this to say on its final adoption of a voluntary approach to CSR:

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<sup>251</sup> Haigh (op cit note 244).

<sup>252</sup> Hancock (op cit note 19 at 35).

<sup>253</sup> Hopkins (op cit note 241).

<sup>254</sup> Hopkins (op cit note 241).

<sup>255</sup> Ibid.

The deliberations of the forum have led to an enriched understanding of CSR. Our baseline understanding is: CSR is the voluntary integration of environmental and social considerations into business operations, over and above legal requirements and contractual obligations. CSR is about going beyond these, not replacing or avoiding them.<sup>256</sup>

The European Union's decision to adopt a voluntary approach to CSR as articulated above is not to undermine the role of legislation but to provide a framework in which companies are allowed to exceed the minimum regulatory standards. As earlier stated by Andrian Henriques, if there were legislation on CSR, then companies would deliver what the law requires, but never more.

Five European countries have introduced mandatory reporting requirements – Denmark, the Netherlands, Norway, Sweden and France.<sup>257</sup> Norway and Sweden require some level of environmental reporting to be produced alongside financial accounts, and France has called for mandatory social and environmental reporting, extending its already innovative Bilan Sociale.<sup>258</sup>

Government mandates that provide insufficient room for flexibility can lead to companies deciding to leave the affected market, resulting in job losses and reduction of government's profits from corporate finances. It could also result in failure of community objectives through the companies.<sup>259</sup> As can be seen in the Equator Principles, companies out of self – interest and other motives voluntarily respond to social and environmental concerns that result in an appropriate balance between the company's financial objectives and the needs of the community.<sup>260</sup> The Equator principles are a voluntary set of guidelines for managing environmental and social issues. They were adopted in June 2003 by ten international commercial banks. As of June 2006, 41 banks had adopted the Principles, and it is estimated that they now cover approximately 80 per cent of global project lending.<sup>261</sup>

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<sup>256</sup> *Final results and recommendations: European Multistakeholder Forum on CSR* (2004) 6.

<sup>257</sup> Hancock (op cit note 19 at 35).

<sup>258</sup> Deborah Doane *Why the CORE bill is good for business* (2002) 9.

<sup>259</sup> Mullerat (op cit note 3 at 134).

<sup>260</sup> Ibid.

<sup>261</sup> *International Financial Corporation: Equator principles* [www.ifc.org/equator principles](http://www.ifc.org/equator%20principles).

Many companies have also found it advantageous to join with other companies in the same industry or in different industries to promote social responsibility efforts, this way; chances of companies' involvement in social responsibility are increased.<sup>262</sup>

The arguments canvassed against regulation of CSR make a lot of sense. All the same, due to the fact that certain companies would not be socially responsible if not compelled, I am of the opinion that some regulation will be useful.

#### ARGUMENTS FOR LEGISLATION OF CORPORATE SOCIAL RESPONSIBILITY

The major argument in favour of regulation of CSR hinges on the fact that companies' voluntary approach to social responsibility has not been satisfactory. It is contended that voluntary standards are simply ways for companies to avoid binding regulation that requires adoption of improved standards. As put by Debora Doane:

Improvements in sustainable development since the 1992 Rio Earth Summit have been marginal at best. The new corporate social responsibility agenda that has infiltrated the language of sustainability has seen the establishment of a voluntary pact between business and government, whereby companies agree to improve their behaviour, in exchange for a commitment of non – regulation by government. But CSR strategies have only been taken up where there is a strong business case to do so, and have provided only limited results. There is now a pressing need for both business and government to acknowledge that it is in all of our interests for there to be stronger regulation of corporate behaviour to level the playing field, protect our common assets, and provide accountability more widely to stakeholders....<sup>263</sup>

Unlike non regulation, it is often argued that regulation is cumbersome, leads to increased costs, lost of productivity and reduces competitiveness. According to Doane, it is this instinctive aversion to regulation that is holding us back from achieving real gains towards creating a business environment that would respect and value more than just the

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<sup>262</sup> Equator principles (op cit note 261).

<sup>263</sup> Doane (op cit note 258 at 2).

financial bottom line.<sup>264</sup> The unspoken pact between business and government where if business agrees to act more responsibly, then government would not legislate emerged into a plethora of voluntary initiatives on CSR like the Organization for Economic Co-operation and Development (OECD) Guidelines on Multinational Enterprise, United Nations Global Compact and the Global Reporting Initiative. All these initiatives provide a loose framework for defining what responsible behaviour is, without enforcement or sanction to back them up.<sup>265</sup>

Legislation would enforce certain standards upon all companies, not merely those that choose to engage in CSR. In the UK, an often cited statistic is that three – quarters of the top 350 companies in the UK ignored a challenge set by the Prime Minister Tony Blair, to file environmental reports by the end of 2001.<sup>266</sup> Enforced standards would also prevent ‘greenwash’ mentioned in chapter two where the company’s public relation’s department develops a good corporate image but the real problems are left unresolved.<sup>267</sup> The more companies are seen to act in an unethical way, the more public sympathy and justification activists will have for calling for legislation.<sup>268</sup>

Countries refusal to legislate on CSR made Geoffrey Chandler earlier mentioned to refers to CSR as a curse rather than a blessing: ‘the absence of a clear definition of CSR is likely to delay the introduction of a regulatory framework... the shirt of Nessus poisoned those who wore it’. He says the prevalent interpretation of CSR as simply a voluntary add – on is not the total concept of CSR necessary for its success and survival in the 21<sup>st</sup> century.<sup>269</sup>

The curse for him is the continuing diversion of companies from the reality that regulation has throughout corporate history been necessary to get the corporate world to fulfil its non – monetary responsibilities. He criticized CSR for being used by many to

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<sup>264</sup> Doane (op cit note 258 at 2)..

<sup>265</sup> Ibid.

<sup>266</sup> Hancock (op cit note 19 at 36).

<sup>267</sup> Hancock (op cit note 19 at 36).

<sup>268</sup> Hancock (op cit note 19 at 37).

<sup>269</sup> Mullerat (op cit note 3 at 477).

achieve their desires whilst its impact in practice remains diverting attention from what is fundamentally required (Legislation).<sup>270</sup>

Doane gives three reasons why companies' voluntary approach to CSR has failed: Too many competing codes and standards measuring companies' social performance, many codes contain levels of information that would seem to go well beyond the core business areas. There is now considerable confusion as business struggles to define exactly what society's expectations are. Secondly, there is a lack of enforcement mechanisms. While for instance, the UN Global Compact gives companies its seal of approval by simply asking them to submit two case studies on how they follow one aspect of their code, the OECD Guidelines on Multinational Enterprise, supported by all OECD countries and one of the strongest of the global codes, provides for a National Contact Point that facilitates challenges to corporate behaviour but goes no further. Thirdly, there is a lack of incentives for businesses to be responsible for social and environmental issues to the level that would be necessary to overturn the impacts of their activities. The short term – term incentives of the stock market for instance are not compatible with the long-term investment in sustainability and the rules of the market are yet to be changed to provide these incentives.<sup>271</sup>

Without some government compulsion companies may decline to take any action, and those companies that do would be at a competitive disadvantage.<sup>272</sup> A pro – regulation view comes surprisingly from companies themselves, for instance the BP and the UK's Cooperative Bank. They believe that their existing behaviour exceeds most existing standards and they wish to bring other companies, especially their competitors, up to the same level.<sup>273</sup> Pharmaceutical giant, Glaxo - Smith Kline has set up a multi – million dollar Aid's programme in Africa, going well beyond legislative requirements. Yet others are not following suit, because they see no competitive advantage in doing

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<sup>270</sup> Mullerat (op cit note 3 at 477).

<sup>271</sup> Doane (op cit note 258 at 5).

<sup>272</sup> Mullerat (op cit note 3 at 134).

<sup>273</sup> Hopkins (op cit note 241).

so.<sup>274</sup> Corporate social responsibility should not be only used as a strategy for competitive advantage; legislation would provide a level playing field where all companies would bear the costs and socially responsible companies would not at any point be at a competitive disadvantage.<sup>275</sup>

A survey from the World Bank Group, 'Race to the top: attracting and enabling global sustainable business', of executives in multinational enterprises found that 61 per cent of respondents were seeking strong laws on CSR when seeking partners, and that these had to be rigorously enforced to create a level playing field to discourage corruption. The survey also found that there were differences in which external standard was favoured in different regions of the World. In developing Countries the International Labour Organisation (ILO) standards were favoured but in the US, Canada and Australia the UN Global Compact was favoured.<sup>276</sup>

There have been two high – profile attempts in the United Kingdom to introduce legislation by Linda Perham MP (Labour, Ilford North and Andy King (Labour, Rugby and Kenilworth). Perham and King have also introduced motions into parliament to raise the profile of their calls to force companies to publish reports on the ecological and social impacts of their businesses. Over 100 organizations, including charities, faith- based groups and trade unions, have come together to back these calls under the banner of the Corporate Responsibility Coalition (CORE) and have asked for laws to be introduced requiring companies to report on their social and environmental performance as well as creating a duty of care for company directors similar to current health and safety requirements. Core includes Amnesty International, Christian Aid, Friends of the Earth, the New Economics Foundation, Save the Children, Traidcraft and the Unity Trust Bank.<sup>277</sup>

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<sup>274</sup> Doane (op cit note 258 at 6).

<sup>275</sup> Ibid 9.

<sup>276</sup> Hancock (op cit note 19 at 36).

<sup>277</sup> Hancock (op cit note 19 at 36).

The key elements of the CORE bill include: Companies should produce and publish reports on their social, environmental and economic impacts; Companies should consult with their stakeholders on company activities and impacts, in particular prior to embarking on new projects; Directors of companies should be required to consider the environmental, social and economic impacts of their operations and must take the interests of all stakeholders into account when making decisions on these aspects; Directors should take all reasonable steps to minimise any negative social, environmental or economic effects of their operations; and stakeholders should be able to require companies and directors to meet these obligations.<sup>278</sup>

Deborah Doane in her article ‘Why the CORE Bill is Good for Business’ debunked some of the myths against legislation of corporate social responsibility: One of the arguments put forward against legislation of CSR is that companies would not be able to comply in the short term. Her response was that if business does not have the measure to comply with legislation in place, it would find a way around it. Besides, legislation does not occur overnight, companies would have plenty of time to set CSR procedures in motion, learning where appropriate from those competitors that have already established such systems. Secondly, the myth that regulation of social and environmental issues would stifle innovation does not apply in this case because socially responsible companies outside regulation are not always emulated by socially irresponsible ones especially when they see no competitive advantage in doing so. Another argument against regulation of CSR is that the costs of implementation will outweigh the benefits. But this is unfounded; a study of by the Stockholm Environmental Institute, investigating the costs of implementing environmental regulation in several countries found that business consistently over-estimated the costs of regulation. They also found that ‘forward – looking, receptive and innovative industry increasingly recognises that properly designed regulation need not increase costs and good regulation has often enhanced competitiveness of well-run companies.’<sup>279</sup>

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<sup>278</sup> Doane (op cit note 258 at 9).

<sup>279</sup> Doane (op cit note 258 at 5).

Michael Hopkins in support of regulation of corporate social responsibility said:

I have moved from my 1998 position, stated in my book, when I argued for a voluntary 'Planetary Bargain' for CSR i.e. companies would come to realize that CSR was in their best interest and 'out' rogue companies. More and more companies are already focusing voluntarily on CSR issues but it is clear in the light of the poor corporate governance that resulted in both the Enron and World Com debacles that some further form of legislation is necessary. I now believe that no regulation is out of the question as is full regulation...there is ground somewhere between the two.<sup>280</sup>

He outlines the benefits of regulating CSR thus: It would help to avoid the excessive exploitation of labour, bribery, and corruption; Companies would know what is expected of them thereby promoting a level playing field; Many aspects of CSR behaviour are good for business (reputation, human resources, branding, easier to locate in new communities etc) and legislation could help to improve profitability, growth and sustainability; Some areas, such as downsizing, could help to re – address the balance between companies and their employees; Rogue companies would find it more difficult to compete through lower standards; and the wider community would benefit as companies reach out to the key issues of under- development around the world.<sup>281</sup>

In agreement with Michael Hopkins views on regulation of CSR expressed above, Deborah Doane sees legislation of CSR as a means of ensuring long-term opportunities for market activity. She insists that it is in all of society's interests to ensure there is a sound social and economic climate in which to operate in twenty years time, beyond countries' borders. Sustainable development challenges, including poverty or the environment, represent a conundrum for business. Conversely, companies looking to increase their profit margins can actively seek out countries willing to accept lower wages or looser environmental standards; on the long run these will ultimately create a gap in the market. Poor people by definition have low purchasing power; an environment once stripped of its assets no longer has anything to offer. One of the strongest arguments in favour of regulation is to ensure that the most disadvantaged have a voice and the opportunity to see the benefits of corporate activity felt more widely.<sup>282</sup>

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<sup>280</sup> Hopkins (op cit note 241).

<sup>281</sup> Hopkins (op cit note 241).

<sup>282</sup> Doane (op cit note 258 at 8).

In response to the issues like those raised by David Hawkins at pg 61 on the inconsistency of global regulation of CSR and its resultant effect of companies avoiding countries where there is regulation to invest in those without regulation, Stuart Thomson suggests that activists argue for coherent international and global legislation.<sup>283</sup>

Again, due to the recent corporate scandals, disillusionment about self regulation has grown beyond traditional activists and has seeped firmly into the public's consciousness. Most firms now accept that business needs rules and a framework under which to operate. In spite of businesses realization of the need for regulation of CSR, there has been so much lobbying against it. Just as markets have a viable role to play in wealth creation, so too does regulation have in protecting our future.<sup>284</sup>

Stuart Thomson, an ardent supporter of legislation of CSR had this to say on companies' present disposition to regulation:

... Instead of crying out against legislation, companies should embrace the possibility of rules and regulations that would minimize their risks especially in reputational terms. There is already heavy legislation in the corporate governance area, so it would appear that legislation in CSR is a natural extension....<sup>285</sup>

Real progress on sustainable development demands a new way of looking at regulation and for both business and government to renew their respective roles. While it is the responsibility of business to provide jobs and to sustain economic growth, it remains the role of government to set the rules by which this happens: most importantly, to protect our common assets and ensure a level playing field for all.<sup>286</sup> Currently many governments are still failing to grasp the full implications of CSR and are unsure what, if any, their role should be in this area. The development of legislation can provide that role. If corporate social responsibility is to continue to have a beneficial role in societies, then governments have to move the agenda forward with legislation as a matter of priority.<sup>287</sup>

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<sup>283</sup> Hancock (op cit note 19 at 38).

<sup>284</sup> Doane (op cit note 258 at 9).

<sup>285</sup> Hancock (op cit note 19 at 36).

<sup>286</sup> Doane (op cit note 258 at 3).

<sup>287</sup> Hancock (op cit note 19 at 37).

It is however impressive that some countries already have viable laws on corporate governance and corporate social responsibility. As earlier mentioned, five European Countries: Denmark, Netherlands, Norway, Sweden and France have introduced mandatory reporting requirements.<sup>288</sup> In the UK, a 1999 amendment to the Pensions Act requires trustees of pension funds to declare their positions on ethical, social and environmentally responsible investment in their statement of investment principles.<sup>289</sup> There are other remarkable efforts to regulate CSR in the UK like the introduction of operating and financial reviews (OFR) by the UK Department of Trade as part of the annual report of large companies. Although this initiative has been dropped, this annual report was supposed to contain information on a company's relationship with its stakeholders, its environmental and community impact, corporate governance and risk management.<sup>290</sup>

Other efforts at legislating on CSR in the UK earlier mentioned include the Company Law Review (CLR) on the 'Enlightened shareholder value', and the attempts by Linda Perham and Andy King introduce legislation of the Corporate Responsibility Coalition (CORE).

There are also a number of laws regulating CSR in the United States. For example the Community Reinvestment Act of 1977 which requires the federal regulators of banks to encourage institutions to help meet the credit needs of local communities in which they are chartered. To assess each institution's record in meeting the credit needs of its entire community including low and moderate income neighbourhoods, consistent with safe and sound operations. The Act further directs the agencies to take its records into account in evaluating the institutions' applications for deposit facilities such as a merger with another bank.<sup>291</sup> Secondly, the Foreign Corrupt Practices Act of 1977 which led ultimately to the OECD Anti – Bribery Convention prohibits United State's partnerships, companies and organizations from not only giving payments but also offering or

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<sup>288</sup> Hancock (op cit note 19 at 35).

<sup>289</sup> Ibid.

<sup>290</sup> Hancock (op cit note 19 at 34).

<sup>291</sup> The Community Reinvestment Act of 1977 [www.chicagofed.org/community-development/community\\_development/community\\_reinvestment act](http://www.chicagofed.org/community-development/community_development/community_reinvestment_act).

authorizing payments to foreign officials or political parties with the objective of encouraging or assuring business relationships.<sup>292</sup> Furthermore, there is the Sarbanes Oxley Act of 2002 which was promulgated as a result of recent corporate failures in the United States. Section 406 of the Act deals with companies internal ethics. It requires companies to disclose a written code of ethics adopted by their executive, chief financial officer and chief accountant. According to John Marlin,

Sarbanes – Oxley was far from an expression of Corporate Responsibility, which is a voluntary corporate effort to achieve standards higher than are required by law. On the contrary, Sarbanes – Oxley is a straightforward increase in regulation of public companies. It requires greater power for independent directors. It imposes higher standards for conflicts of interest of outside auditors. It requires greater transparency in reporting.<sup>293</sup>

In Canada, there is a wide range of laws at the Federal, provincial, territorial and local levels of government pertaining to consumers, workers, health and safety, human rights and environmental protection, bribery and corruption, corporate governance and taxation. In Canada, a firm’s CSR approach should ensure compliance with the social, environmental and economic laws already in place. The CSR activities of firms are seen as a proactive method of addressing potentially problematic conduct before it attracts legal attention.<sup>294</sup>

Canada has CSR laws like the Canadian Environmental Protection Act of 1999 which requires businesses to disclose their use of certain toxic substances through the National Pollutant Release Inventory. The Federal Competition Act of 1985 which prohibits false or misleading business practices and the Corruption of Foreign Public Officials Act of 1998 which makes it illegal for Canadian businesses and individuals to bribe foreign officials to obtain or retain business.<sup>295</sup>

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<sup>292</sup> The Foreign Corrupt Practices Act of 1977 [www.enotes.com/business-finance-encyclopedia/foreign-corrupt-practices-act](http://www.enotes.com/business-finance-encyclopedia/foreign-corrupt-practices-act).

<sup>293</sup> Michael Hopkins *CSR and the law: three years later: lessons from Sarbanes-Oxley Monthly Feature* (2005) [www.mhcinternational.com](http://www.mhcinternational.com).

<sup>294</sup> Industry Canada An overview of corporate social responsibility 8 <http://strategis.ic.gc.ca/epic/site/csr-rse.nsf/en/000129e.html>.

<sup>295</sup> Ibid 9.

South Africa is another Country with good laws on CSR. It is a good example of how the government can work with private companies, labour and society at large to develop socially responsible programmes. To reverse the harm caused by apartheid, and to integrate black South Africans into the mainstream of its economic life, the South African government signed the Broad – Based Black Economic Empowerment (BEE) Bill into law on 7 January 2004.<sup>296</sup> The Codes of Good Practice on BEE were gazetted on 9 February 2007. The BEE Act came into operation on 21 April 2004; it defines black people as Africans, Coloureds and Indians.<sup>297</sup>

The BEE Act together with the strategy for Broad-Based Black Economic Empowerment and the Code of Good Practice, form a framework in which government works with private industry groups to promote greater involvement of black people, women and other disadvantaged persons in South African economy.<sup>298</sup>

Section 9 of the BEE Act empowers the Minister of Trade and Industry to issue codes of good practice for various industry sectors that establish targets and scorecards for compliance with black economic empowerment. In order to promote BEE, the government works with various industry sectors to develop charters pursuant to which companies commit to take actions to promote BEE goals and agree to be evaluated on the basis of a specific scorecard.<sup>299</sup> The following are some industry charters which have already been adopted: The South African Petroleum and Liquid Fuels Industry Charter of 2 November 2000 (“the Petroleum charter”); The South African Mining Industry Charter of 11 October 2002 (“the Mining Charter”); The Financial Services Sector Charter of 17 October 2003 (“the Financial Services Charter”); and The Property Sector Transformation Charter (“the Property Charter”).

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<sup>296</sup> Act No 53 of 2003.

<sup>297</sup> The Definition Section, Act No 53 of 2003.

<sup>298</sup> Mullerat (op cit note 3 at 138).

<sup>299</sup> Ibid.

The Financial Charter is instructive as to the implementation of the BEE initiative.<sup>300</sup> Jerome Stestack gives insight into the operation of the BEE Code thus:

The most prominent feature of the Charter is that it establishes a scorecard that measures each company's progress with implementation over time. The scorecard assigns grades based on weighted average scores in meeting the targets. Each adopting financial institution is required to report annually to the Charter Council on its progress by means of an independent audit, which is subject to the review and approval by the Charter Council. Although compliance with the charter is voluntary, the scorecard will affect a company's ability to do business with the government as well as with other firms, since both the government and private firms will consider the scorecard of each firm with which they consider entering into business arrangements. Companies will receive on their own scorecard for doing business with other companies that are either black-owned or have a high scorecard under a BEE Charter.<sup>301</sup>

Although the BEE Act has come under criticism of being potentially burdensome on the private sector, and for providing benefits to only a small segment of the population, it has contributed immensely to the welfare of ordinary South African citizens.<sup>302</sup>

Apart from the BEE Act, other South African legislative enactments that have been instrumental in encouraging CSR include: the Employment Equity Act (No. 55 of 1998), which obliges companies to develop an Employment Equity Plan and to report on progress in achievement of the objectives set out in their plans; the Skills Development Act (No. 97 of 1998) and the Skills Development Levies Act (No. 9 of 1999), which governs the provision of resources for skills development and training by companies; and the Promotion of Access to Information Act (No. 2 of 2000), which provides for access to information held by companies to encourage better transparency.<sup>303</sup>

Finally, although the recommendations of the King's Code on corporate governance in South Africa are still voluntary in nature, their incorporation into the Johannesburg Securities Exchange (JSE) listing requirements makes their enforcement mandatory to all listed companies. This move by the JSE to a large promotes CSR in

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<sup>300</sup> Mullerat (op cit note 3 at 138).

<sup>301</sup> Ibid.

<sup>302</sup> Ibid.

<sup>303</sup> King Report (op cit note 23 at 122).

South Africa since the provisions of the King's code are pro - corporate social responsibility.

To my mind, the different views expressed for and against regulation of CSR are strong. What is noticeable is the fact that advocates of both views come to a compromise, which is that legislation of CSR is necessary. I am of the opinion that regulation of CSR is the only way forward; if complete legislation is not possible, a framework for minimum regulation should be put in place in all countries as it operates among European Countries.

## CONCLUSION

In response to the question this essay answers, should companies pursue corporate social responsibility? The answer is absolutely in the affirmative. Society has a lot to benefit if all companies become conscientious about the way they do business. I am of the opinion that most people who criticize corporate social responsibility do so because they do not have a balanced understanding of what CSR is about. All that comes to the minds of some people when corporate social responsibility is mentioned is philanthropy, other people see CSR as something that attracts costs and is unnecessarily burdensome on companies. But CSR is wider than philanthropy, it involves the myriad ways firms incorporate social, environmental and economic concerns into the day to day running of their companies. CSR promotes sustainable development; it encourages the management of companies to look into the welfare of all company's stakeholders. Society today will only maximally benefit from corporate social responsibility if companies make social responsibility an integral part of corporate conduct.

There has been this misconception that socially responsible companies get nothing in return for their investments on society. This essay makes it obvious that corporate social responsibility is itself good business; society now rewards socially responsible companies with investments and other economic benefits irresponsible companies do not enjoy. Companies are therefore encouraged to give more attention to social, ethical and environmental concerns; although these issues are generally regarded as non business issues, this essay shows they have significant financial implication for a company.

Notwithstanding the strong business case for CSR, corporate social responsibility still has its challenges. The voluntary nature of CSR puts socially responsible companies in countries where social responsibility is not rewarded at a competitive disadvantage. In a situation like this, regulation of CSR becomes the only way social responsibility could be enforced. So much can be done by countries through their laws to encourage companies to be socially responsible. Countries' corporate laws which encourage

companies to practice and report on economic, social and environmental (triple- bottom-line) issues and to consider the interests of constituencies other than shareholders when running their businesses to a large extent affects the country's corporate behaviour. Although it is contended that over regulation of CSR discourages investment, it is also true that some companies would remain unresponsive to society's social and environmental needs if not compelled to comply.

It is therefore my recommendation, that every country should enact laws on corporate social responsibility which encourage sustainable development. If every country regulates the aspects of CSR which cannot be left to the discretion of companies and leaves those which non compliance will not adversely affect the future generation, this will provide a level playing field where socially responsible companies are not discouraged and antisocial ones are forced to conform.

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