

DEVELOPMENTS IN CORPORATE SOCIAL RESPONSIBILITY AND ITS PRACTICE IN DEVELOPING COUNTRIES

Perry Ackon¹

¹(PhD Candidate in International Law, School of Law, Xiamen University, China)

Abstract: *Corporate Social Responsibility has gone through many changes structurally and context wise. The essence of this concept, which is more often than not philanthropically motivated, has however not seen much change as modern companies due to benevolence and obligation under the law have been faithful to the cause of supporting development in their localities and countries. The influence of time and globalization on concepts and theories of humanity has been no different from corporate social responsibility. Over the years we have witnessed how this concept has metamorphosed to suit the changing demands of states especially those categorised as developing countries. This academic piece highlights the developments of corporate social responsibility within legal statutes and also takes a look at current practices of the concept in developing countries within the main regions of Latin America, Asia and Africa. This legal perspective presents a whole new front to enable efficient championing of the corporate social responsibility course.*

Keywords: *Corporate Social Responsibility, Law, Asia, Latin America, Africa*

Research Area: Law

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1. INTRODUCTION

Corporate social responsibility which is henceforth referred to as CSR has over the years played a key role in the development of nations where the government is overburdened with developmental issues. The presence of multinational companies and industries in some localities have been the very reason for the educational, medical and agricultural transformation in those cities. The advent of CSR globally has been to satisfy the growing concerns of countries, governments, societies, individuals and other stakeholders of the concept. This has been the cause of deliberations in both the governmental and academic arena. These growing concerns are highly stipulated in the light of the various practices concerning CSR and what actually drives the practice of the concept. This academic piece hence clearly presents the picture of the developments in CSR and how it is being practiced in developing countries. To clearly ascertain the operation of the concept in developing countries this academic piece highlights the three top regions where the developing countries are situated.

2. DEVELOPMENTS IN CSR THEORIES

In a much-summarized context to the theories of CSR, one can conceive them in the following ways. The classical theory emphasises the profit maximisation from a shareholder's perspective or priority whiles making other important aspects secondary (Friedman, 1962). Secondly, the Agency theory stresses on acquiring the legal recognition or approval to act on behalf of the principal from the manager's or agent's perspective (Salazar & Husted, 2006).

The well-known Stakeholder's theory highlights the stakeholders' rights as the foundation of CSR practice which recognizes that different stakeholder's rights if duly fulfilled leads to full realization of organisational objectives (Donaldson & Preston, 1995). The Instrumental or Strategic theory deals with using CSR commitments as a strategy to achieve competitiveness and customer relationship management (Garriga & Mele, 2004). The Legitimacy theory deals with giving the organisation a sense of belonging and the right to exist and operate within the society in accordance with the law (Suchman, 1995). Though these theories do not give a specific and conclusive approach to CSR as it has no single accepted theory, definition or perspective, these theories give the various aspects from which CSR is viewed from. Needs give rise to solutions. If there are no problems, there would be no need for a solution and that can be the underlining factor as to the link between the theories of CSR and the advancement of the concept. The highlighted areas in this academic piece would view the new strides CSR is making in the sphere of bilateral investment treaties, international investment agreements and international policies.

2.1 Bilateral Investment Treaties (BIT'S)

The 21st century has been an era for the advancement of investment relations. In the bid of nations to properly control the flow of investments between party states, bilateral investment treaties (BIT's) are highly regarded and have been very instrumental in many of the investment relations established. These bilateral treaties were to serve the purpose of promoting and protecting investments. They comprise of clauses that emphasised the treatment of investors, the procedures for expropriation, clear definitions to guide actions and means to dispute settlement. Over the years some of these clauses have been shaped so as to ensure the development of CSR initiatives with the inclusion of certain languages and clauses that actually emphasis certain aspects under the corporate social responsibility initiative. Some of these factors include sustainable development and responsible business conduct (Gordon et al 2014). An example would be the bilateral investment treaty between the government of Japan and the government of the Independent State of Papua New Guinea. The treaty that was signed in 2011 in its preamble states the following;

“Recognising the importance of foreign investment for national development, economic growth and general welfare of the citizens... Recognising that economic development, social development and environmental protection are interdependent and mutually reinforcing pillars of sustainable development and that cooperative efforts of the Contracting Parties to promote investment can play an important role in enhancing sustainable development; Recognising also that these objectives can be achieved without relaxing health, safety and environmental measures of general application;”

The above preamble gives reference to the actions of investors directly ensuring economic growth, national development, the well-being of individuals and betterment of the society which are actions highly regarded under CSR initiatives. These features are gradually being accepted and included in modern bilateral investment treaties. More examples can be sited from both the new and old cycles of BIT's. The China – Singapore BIT includes a clause on “Prohibitions and Restrictions”: “[t]he provisions of this Agreement shall not in any way limit the right of either Contracting Party to apply prohibitions or restrictions of any kind or

take any other action which is directed to the protection of its essential security interests, or to the protection of public health or the prevention of diseases and pests in animals or plants”. The preamble of the Poland-United States BIT reads, “[t]he United States of America and the Republic of Poland [...]; Recognizing that the development of business and economic ties can contribute to the well-being of workers in both countries and promote respect for fundamental worker rights; [...] Agree as follows: [...]”. This will hence indirectly promote the consciousness of CSR within the companies and firms of both countries for the sake of compliance with this statement. Also, some attributions concerning human rights can be seen in the Austria-Malta BIT which as parts of its clauses reads, “Scope, Consultations, Mediation and Conciliation”: “[...] (2) The application of the European Convention on Human Rights shall not be excluded”. Highlighting this gives rise to the adoption of some human right standards which also fall under global CSR standards. The inclusions of these clauses have been belittled to some extent by many as just for the pleasing effect. On the other hand, many can attribute some sort of development in the responsibility of some investors as a result of such inclusions. Their presence in the bilateral investment treaties does not only make them CSR conscious but provide some sort of legal backing for any CSR violations. Furthermore, there is evidence of cases that have ensued between states and investors as a result of negligence to some of these clauses. With regards to its presence in Bilateral Investment Treaties (BITs), a court may highly consider some sort of sanctions and compensations if disputes are filed in court in the wake of any violations.

2.2 International Investment Agreements (IIA)

International investment treaties also are known as IIA provide an international ground to coordinate the actions of stakeholders as to ensure an expected behaviour pattern which will result in the achievement of set goals or objectives. Highlighted in the OECD Global Forum on Responsible Business Conduct Summary Report in June 2013, the inception of codes for responsible business conducts within IIAs has been a collective attempt by firms and organizations along with other key role players to ensure that the business community uphold and put to practice a broader sense of “Ecosystem responsibilities”. Within these broader ecosystems of responsibilities are expectations that lie within the sphere of CSR. Issues that rampantly reoccur in the field of IIAs and can be closely tied and used as instruments for the development of CSR are issues of Human Rights, environment, labour and anti-corruption (Gordon et al 2014). Taking a closer look at why it is expedient for IIAs to contain clauses that encourage sustainable development and responsible business conduct the Organization for Economic Co-Operation and Development (OECD), in their Global Forum on Responsible Business Conduct made a huge statement in their summary report. “All actors – not only enterprises – have a responsibility for building a healthy business environment. Governments cannot abdicate their responsibility for protecting internationally recognized fundamental rights and ensuring good governance, fair regulations, and transparency. Labour and civil society have to engage constructively to ensure accountability and provide a voice for the most disadvantaged”. This statement goes further to restate the need for modern international investment agreements to promote CSR as they strongly engage the same stakeholders within the CSR setting as well. Some of these IIAs are used in conjunction with some laws to ensure the right and expected behaviour is delivered by investors including in the field of CSR. The

OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights are key international investment treaties that have been signed by major top investment countries and provide some sort of guidelines in conjunction with suitable domestic laws like the labour law to curb any actions of investors that may not be in conformity to CSR codes.

2.3 International Policies

The advent of some international policies has called for some reformation and improvement in the legal frameworks of some states to suit the collective goal of attaining some CSR standards. Just like some local policies informing the constituting clauses of some international investment treaties and some bilateral investment treaties, some international policies have the same effect. The legal framework of these public policies if properly communicated rightfully spell out the demands of states and ensure compliance by investors and all within that allocated community. Examples of such policies are the Investment Policy Framework for Sustainable Development (IPFSD) which was created by United Nations Conference on Trade and Development (UNCTAD) to aid governments in the formulation of a sustainable development conscious instrument with regards to international investment agreements. The presence of transparent, accountable and effective international or public policies that include some conditions that ensure compliance directly and indirectly to CSR codes have proven valuable over the years as a good influence for organizations and firms to be involved in CSR initiatives (Gaukrodger & Gordon 2012). An overview of current international policies overseen by some major international organizations reveals some areas of interest that are strongly linked with CSR codes for the betterment of the community, the individuals, the economy and other important stakeholders. These issues include the protection of the environment, the fight against corruption, human rights, health, labour conditions and standards (Gordon et al 2014).

A good review of how these new areas of CSR developed exposes the strong needs that required and demanded some sort of attention. These demands are well highlighted under the stakeholder theory and the instrumental or strategic theory. The reason for the need for an upgrade of a framework or a working document could be as a result of its inability to control and adequately execute its purpose with reference to situations at hand.

3. CSR IN DEVELOPING COUNTRIES

Consistent with the United Nations Developments Program (2006) a developing country as used in this academic piece refers to a country that is less industrialized and has a low per capita income. The passion for the development of CSR in developing countries can be hugely traced to the inception of the UN Millennium Development Goals which seeks “a world with less poverty, hunger and disease, greater survival prospects for mothers and their infants, better-educated children, equal opportunities for women, and a healthier environment”. However, these goals are nowhere near achieved as the developing countries seem to be retrogressing despite some successes chocked in some areas. In looking at CSR in these countries we would focus on the role that firms and companies have played in ensuring the realization of some basic aspects of CSR which can be sited within the millennium development goals of the UN. Chunk if not all of the world’s counties regarded as developing

can be found in either Africa, Asia or Latin America. Hence our main focus will be in these regions to review how the various approaches and theories under CSR have influenced the firms and companies in these regions by means of improving their social, governance, labour, ethical, and environmental conditions. A very analytical approach concerning CSR reveals that in developing countries the concept is not deliberately side lined with no interest but rather advocacy and promotion is lowered in the scale of preference. Though some may be seen in a more oblivious manner others have rather channelled their efforts and resources into other concepts which by their judgement best solves the regions current crisis. Though in such areas CSR may not be mentioned, the broad nature of the concept makes it easily indirectly covered by any other initiative that is geared toward problem-solving even if CSR is not mentioned. Below is a review of how CSR is doing in Asia, Latin America and in Africa.

3.1 Asia

CSR in Asia has taken a huge drift since the inception of the legal requirement in India to make CSR by registered companies and firms mandatory (Grant Thornton 2014). The story is, however, a bit different in other countries like China, Philippines, Bangladesh, Thailand and the other members of the 48 nations in Asia, with CSR more centered on education, infrastructure, health, human rights and employee welfare. Though the activities and initiatives may vary from country to country it is key to note that India and China are on a higher wave length compared to countries like Thailand and the Philippines (Chapple and Moon 2005). It is also important to note that in China much of the CSR activities and initiatives are undertaken by state-owned enterprise (Li-Wen Lin 2010). CSR in Asia is largely enshrined in the cultural practices as signs of the concept are manifest culturally in Indonesia, Thailand, Japan, China and the list goes on. The cultural effect cannot be done away with as it stresses on philanthropy and other ethical response to communal circumstances. The concept similarly to other regions has evolved and is not backed by a host of legislations within that region including some commendable actions from the Philippines as highlighted in a press release by the Public Relations & Information Department of the Philippines House of Representative during their 14th Congress. A number of policies have also been adopted in various countries within Asia. China, one of the Asian power houses, in 2005 passed the China Social Compliance 9000 (CSC 9000T) and in 2006 the Shenzhen Stock Exchange released a set of Social Responsibility Guidelines for Listed Companies all with the objective of boosting the practice within the country (Sharma Bindu 2013). The development of CSR in Asia could see a massive improvement in the coming years. The continent is recording a high flow of direct investments via the opening of its doors to foreign investors and the initiation of some investment policies throughout its constituting nations. With the pace at which the economy is growing in India and China, more contributions can be expected from firms and companies. India stands in a class of their own in the Asian continent as they have been able to move CSR from a more voluntary point to being mandatory. In 2014, India in a bid to make the most of the companies and firms registered in the country passed a mandatory minimum CSR spending law. The law Under Companies Act, 2013, stated that “companies having a net worth of 500 crores or more or a turnover of 1,000 crores or a net profit of 5 crores must spend 2% of their net profits on CSR activities” (Grant Thornton 2014). CSR in Asia could take a huge rise as many governments are building interest in making the most out of the concept to not ensure economic

growth, sustained development and appropriate welfare of all citizens but to also ease the pressure on the governments.

3.2 Latin America

Compared to Asia and Africa, Latin America is the least covered on the issue of CSR (Haslam, 2007). Major reports on how CSR has progressed can be found on countries like Argentina, Mexico and Brazil in previous journals like the Journal of Corporate Citizenship special issue on CSR in Latin America. Due to the construct of the Latin American communities, much of the CSR activities and initiatives can be found in the field of deforestation, inequality, unemployment, health, education and crime. With a strong presence of poverty and vices the ideology of CSR held by many in Latin America constitutes any action that seeks to inspire and restore hope (Schmidheiny 2006). The non-specific nature of CSR in Latin America has made compliance with global standards very difficult. With an entirely different perspective to the concept the presence of many multinational companies in the mining and agricultural sectors, many of the CSR standards fall within the range of eliminating corruption, ensuring respect for human rights and effective healthy conditions for all workers (Haslam, P.A. 2004). With the presence of implicit CSR requirements by law, the standards of CSR within Latin America are supposed to be better than its current situation. However, that is not so, as many of the multinational enterprises and companies present in that region violate many of these rules and regulations which are meant to protect the environment and the citizens of the country (Flores et al 2007). The strong presence of corruption makes it difficult to implore an implicit approach to encouraging CSR as many may actually pay their way out of it to maximize profits. The attitude though of the countries, firms and companies in Latin America do give a cause to be hopeful about the future. It is recorded that over a 1,000 Latin American companies and firms are associates of the hemisphere-wide CSR network, EMPRESA and about 300 are members of the World Business Council for Sustainable Development (De Oliveira, 2006).

3.3 Africa

Africa is a land of many resources and hence has been a target for many investors who establish their firms and companies with the aim of also enjoying the available and vast resources on the continent of Africa. With Africa's growing number of registered companies as a result of foreign direct investment every year, one may think that would hugely account for the eradication of some vices and banes within the health, education, and infrastructural sectors of the continent but that is not the issue. There is a strong conflict concerning economic growth and the benefits of developments as the government may see some significant growth in their economy but not much developmental benefits within the community and nation as a whole to show for. This has resulted in huge demand for CSR activities and initiatives from the private sector of Africa (Ford J. 2014). The leading countries in Africa according to the Country Sustainability Ranking Update by Robecosam in May 2016 on CSR are South Africa, Nigeria, Morocco and Egypt. Taking a closer look at CSR in Africa one may have to agree with Simon Zadek's three-generational claims on the advancement and implementation of CSR in Africa. Zadek who is a researcher in the field of CSR believes that the concept evolves in three generations (Zadek S. 2001). The first generation is where CSR is seen as a form of

philanthropy and passively deals with social issues and developmental problems. The second generation is where it is hugely seen as a professional and systematic initiative which involves targets being set and monitoring of progress and ensures that CSR is integrated into the planning process of the firm or company. The third and final generation sees businesses and corporations actively partnering with other key stakeholders in the society and nation to deal with prominent social problems such as health issues, poverty, infrastructure, human rights issues and environmental sustainability. Many of the CSR activities in Africa are seen purely within the first-generation way of thinking. They are only actions of philanthropy and as a result actions of benevolence to support the community and nation as a whole. However, in South Africa and Mauritius, the story is quite different as some legislations have been put in place to ensure CSR initiatives. Mauritius joined the league of countries to be emulated in the area of CSR when the government passed a financial bill that enforced companies registered in the country to pay 2% of their annual book profit to aid in the development of the country's society and environment which largely fell under corporate social responsibility (Yogan and Ramtohul 2011). This, however, did not propel the country to record high ratings to earn a place in the sustainability rankings by Robecosam which was topped by Sweden. Another country worth noting in the league of countries embarking on legal reforms to encourage CSR initiatives and activities is South Africa. The South African government in 2003 passed The Broad-Based Black Economic Empowerment Act (Act 53 of 2003) which was subsequently gazetted on 9th February 2007 with a set of Codes of Good Practice in the government gazette 29617 and an Interpretive Guide added in June of the same year. The Act which touches on management control, employment, measuring ownership, preferential procurement, enterprise development, skills development, socio-economic development, and qualifying small enterprises was passed to ensure the equal distribution of wealth after the apartheid across the South African society so to prevent the black community from being disadvantaged by any means. In Africa, there is a strong representation of the implicit forms of CSR as the labour laws and some health requirements cover most of the explicit initiatives and activities under CSR standards (Matten and Moon 2008). The trend of CSR in Africa is within the sectors of health, education, environment, human rights, labour, employer welfare and infrastructure. Though the concept is wide spread among the rapidly developing countries of the continent than the less developed countries, the need and demand for stronger values and standards on CSR activities and initiatives are evenly spread across all economies. The reason being the lack of sensitization by major stakeholders in the given regions of the less developed nations. A Tanzanian specialist in CSR was once quoted saying: "Sometimes it is my opinion that instead of having bad intentions, some of our local corporates would not even know the difference between CSR and marketing" (Terence Corrigan 2014). Africa is regarded as having countries with a fast growing economy and if this feat is rightly balanced with standards of CSR, the continent should be on its way strongly sustaining development and moving many of its citizens from the marginalized zones of poor access to health and education, lack of infrastructure and other basics aspects to enhance their well-being.

4. THE REALITY ON THE GROUND

The story of corporate social responsibility as shown on paper may not be farfetched as compared to what is actually going on across the globe. The push for a collective involvement

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in the practice of CSR by major stakeholders is gradually gaining ground as activities and initiatives regarding CSR have shot up over the years. The trends are continuing to change across the globe as CSR is moving from a level of just being regarded as a philanthropic and voluntary initiative under ethical standards to gradually more mandatory requirement under both international and domestic laws. Robecosam is an investment and sustainability analysing organization which was established in 1995 with the vision to encourage more companies into sustainable business practices. In May 2016, the organization released a countries sustainability ranking list based on how the countries had fared concerning developmental and sustainability of its environmental, social and governance factors. With close relations to roles played by investors and governments, the rankings give a rough idea as to how the various countries are doing as per CSR initiatives. The top ten countries of the list were Switzerland, Sweden, Norway, United Kingdom, Denmark, Ireland, New Zealand, Australia, Germany and Luxembourg. The list which was produced after a research and analysis were carried out on 62 countries with a considerable level of change per their score in issues concerning the environment, society and governance which could be directly linked to investors recorded 22 developed countries and 40 emerging markets. Out of the list South Africa, Morocco, Egypt and Nigeria were the only African countries to be present. The statistics still prove that more work has to be done by way of legal frameworks and further education on the part of major stakeholders on the importance of indulging CSR. More sensitization is required in places where the concept is not mandatory and the society, economy, individuals and other stakeholders are at the peril of ethics and good will of the firms or companies actively operating within their vicinities. With major channels of CSR going into health, education, infrastructure and the environment, one of the modern CSR issues that has received a lot of attention over the past years is climate change. The issue of climate and controlling emissions by firms and companies have taken centre stage in the governance, business and academic community.

5. CONCLUSION

In view of looking at the reality of CSR on the ground, it is worth mentioning that the implicit approach to ensure firms and companies comply to approved standards of CSR is more conducive especially in the developing countries. The inclusion of the CSR expected standards as laws within the main streamlines of operation and legal legislation of a country for example in the labour laws, in the environmental protection bills etc. to enhance the compliance by firms and companies within its jurisdiction. On the other hand, the explicit approach is also doing well in the United States and Europe with companies like Google, Samsung and Canon building a brand for themselves. Many have also criticized companies who explicitly involve in CSR as a cover-up to derail the attention of governments who are the main regulatory authorities for these firms and companies from unacceptable or illegal acts, they are involved in.

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