

Corporate Responsibility in Ghana: An Overview of Aspects of the Regulatory Regime

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Abstract

This paper examines some aspects of the regulatory regime affecting corporate social responsibility (CSR) in Ghana. It seeks to assess the relationship between law and the actions of corporate organisations and its implications for corporate responsibility in Ghana. Corporations are critical actors in the political, economic, -social and cultural development of all countries. Besides providing goods and services, they are a source of livelihood for many and contribute to government revenue through the payment of taxes. They also impact on the physical and socio-economic environment of a nation. CSR has over the years changed from voluntary practice to more obligatory policies due to pressure from external stakeholders and the law. In recent times, various laws and legal standards seem to play a vital role in the development, implementation and enforcement of CSR. The law serves CSR by providing a means for CSR to adhere to some very essential practices for instance the protection of the rights of employees among others while at the same time allowing organisations to make their own decisions concerning how to give back to the community.

It suggests that even though CSR is to a large extent influenced by various regulatory regimes in Ghana, its efficiency is often adversely affected by deficiencies in the enforcement of the relevant laws. It is thus suggested that the enforcement agencies should be empowered to ensure compliance with the laws to enable an effective delivery of CSR in Ghana.

Keywords: Corporate Responsibility, CSR, Ghana, Regulatory regime

1. Introduction

Corporations are critical actors in the political, economic, social and cultural development of all countries. Besides providing goods and services, they are a source of livelihood for many, they pay taxes effectively, enabling governments to operate, and have an impact on the physical and social environment (Atuguba et al., 2000). Nonetheless, firms do grapple with various challenges in the course of conducting their business as well as fulfilling their corporate obligations. Some of these challenges included how to achieve high social performance given the increasingly complex environment within which they operate. These challenges according to Nasi, et. al., (1997) often arises from the existence of a wide variety of stakeholders, many of whom vary from issue to issue. These identifiable challenges (social and environmental) will continue to play critical roles in the survival of businesses or corporations given the ever-changing expectations of stakeholders (Husted, 2000). Business corporations thus, have duty towards society, and more specifically towards identified constituents (stakeholders), especially when society's expectations have dramatically changed or increased (Carroll, 1999; Lantos, 2001). Historically, CSR has been perceived as a means through which companies or organizations fulfilled their side of a supposed social contract between themselves and the communities within which they operate. While some theorists perceived CSR as actions taken by organizations to better the communities or environments they operate in, some defined CSR "as integrating social, environmental, ethical and human rights concerns into business operations and core strategy in close collaboration with stakeholders on a voluntary basis; commitment to behaving ethically and contributing to improving quality of life in the society in general; and organisation's obligation to maximise its impact on stakeholders and minimise its negative impact" (E.U Commission, 2002; Ferrell et al., 2004). In other words, organizations owe a moral obligation to society.

In Ghana the need for businesses to be responsible has become relevant given the gradual shift towards privatization and deregulation. This trend can strengthen the role of the private sector in complementing the public sector efforts thereby creating new hopes and responsibilities for businesses (Husted, 2000). Largely, most corporate bodies exist to make profits or satisfy shareholders value, in achieving this many may engage in illegal activities at the expense of stakeholders or shareholders of the company. In most instances these unregulated activities results in adverse effects on the environment, e.g. large companies in the mining sector might ignored the dangerous conditions under which their employees work; resulting in high incidents of physical impairment, poisoning, cardiovascular and respiratory diseases and death amongst workers. These events raises the legitimate question of whether corporations can of their own be responsible without the existence or enforcement of Law? McBarnet (2009) opines that engaging in CSR was no longer a voluntary act on the part of businesses but rather companies must practice CSR because there is legal pressure and enforcement.

Although presently, the notion of corporate social responsibility (CSR) is linked with ethical and moral issues concerning corporate decision-making and behaviour; their activities vary per the dimensions they cover and their mode of implementation. These dimensions include the legal dimension which demands that companies adhere to laws that pertain to their various areas of operation. This notwithstanding many governing bodies including the EU Commission (2002) have insisted that CSR should be voluntary if companies are expected to do more than the law dictates that is, an informal type of law (Buhmann, 2006). However, in as much as firms need to be profitable, legal responsibilities requires them to carry out their activities within the confines of the society's legal structure, derived from its agreed jurisdictions (Helmer and Ståhl, 2009). Again, the primary difficulty associated with dealing with the legal aspects of corporate social responsibility (CSR) is the lack of an identifiable and acceptable definition of the concept of CSR. Consequently, although its role in the corporate world and the business world at large cannot be denied, the contents, dimensions, and nature, of the concept remain unclear. Therefore most often companies find themselves at the wrong side of the laws because, they are not aware of the various legal provisions in relations to good corporate responsibility.

Ghana has a very diverse corporate environment. There are limited liability companies; companies limited by guarantee; non-Ghanaian companies registered in Ghana as external companies; and state-owned corporations created by statute. There are also a whole lot of associations such as partnerships and co-operatives that have corporate personality. Then there are unincorporated businesses, such as sole proprietorships, that act more or less like corporations. All these corporate and "quasi-corporate" forms are subject to varying degrees, to principles of CSR. Even though at the global level there is a proliferation of initiatives to promote CSR in the face of public concerns about the political, economic, social and environmental impact of the activities of corporations in societies in which they operate, there is no comprehensive or readily available document on CSR in Ghana. What provides the CSR framework in Ghana are a variety of policies, laws, practices and initiatives. In other words, policies, legislation, and other forms of law regulate CSR in Ghana. Many government policies, such as the Ghana Land Policy document bear directly on CSR. Though these policies are not named as pro or anti CSR initiatives they have the potential to promote or denigrate CSR. In addition, specific laws which have a bearing on CSR regulate particular industries and sectors of the economy such as banking, insurance, mining and commerce. A number of international conventions that Ghana has ratified are also applicable, and have a bearing on CSR.

In the absence of a clear CSR policy, individuals, advocacy groups and public agencies seeking to hold corporations responsible for their social responsibilities usually encounter difficulties in doing so, probably because of the absence of a readily available source document on CSR for reference, particularly in the absence of any statutory or contractual obligation imposed on such corporations. Also, companies seeking to meet their corporate social responsibilities are not sure of whether they are doing what they should be doing and are unclear as to the exact parameters of CSR. A few studies have been conducted in this area primarily in the European Union (EU). Notable among them is a study conducted in Denmark by Buhmann (2006) who sought to ascertain the role of law in corporate CSR activities. The findings showed that CSR functions as informal law, and that important principles of law function as part of a general set of values that guide CSR. The findings further suggested that aspects of law in the abstract as well as in the statutory sense and as self-regulation influence the substance, implementation and communication of CSR. It was proposed that the current normative regime of CSR in terms of demands on multinational corporations could constitute pre-formal law. Another study by McBarnet (2009) on the linkages between CSR and the law established the existence of a widening range of governance methods being brought into play to form a new corporate accountability. Although some studies have been conducted on CSR in Ghana, (e.g. Amponsah-Tawiah and Dartey-Baah (2011); Ofori and Hinson, (2007); Kuada and Hinson (2012), none looked at the role of law in facilitating or otherwise ensuring compliance of CSR by corporate bodies in Ghana, hence making this study a

pioneering study. Specifically, the study sought to address the following questions: which aspects of the regulatory regime of Ghana affect Corporate Social Responsibility (CSR) activity? What is the relationship between law and the actions of corporate organisations and its implications for corporate responsibility in Ghana?

2. Theoretical Framework

2.1 Defining Corporate Responsibility

Corporate social responsibility is seen as “a commitment to improve community well-being through discretionary business practices and contributions of corporate resources” (Kotle and Lee, 2004). Some authors hold the view that CSR is an interwoven concept between business and society rather than distinct entities hence the two work hand in hand. Others have also argued that CSR concerns how companies manage the business process to produce an overall positive impact on society (Baker, 2003; Wood, 1991). In the Ghanaian context however, the concept is seen as building capacity for sustainable livelihoods, respecting cultural differences and finding business opportunities in building the skills of employees, the community and government (Amponsah-Tawiah and Dartey-Baah, 2012). These differences pertaining to what CSR is or should be, perhaps has influenced the evolving nature of the terminology. Over the decades CSR has been used interchangeably with corporate responsibility, corporate citizenship, social enterprise, sustainability, sustainable development, triple-bottom line, corporate ethics, and in some cases, corporate governance (Bassen, Hölz and Schlange, 2006). These interchangeable terminologies, have indeed, influenced the way various actors understand and by extension how CSR is defined and practiced.

2.2 The CSR Pyramid

According to Carroll (1979), the concept of social responsibility business is mainly driven by the economic, legal, ethical, and discretionary expectations that society has of organizations at any given point in time. It is therefore imperative that businesses and/or corporate organisations undertake their activities in a manner that either conforms to or exceeds the ethical, legal commercial and public expectations society has of businesses. Nonetheless, Carroll (1991) posits that an important goal of a company is to provide financial return to its shareholders. However in trying to fulfil the financial returns of shareholders corporate activities must be undertaken bearing in mind people’s opinion and the legislation of a country; reason being that corporate organizations stand to lose on its financial gains in the event that it is perceived as a ‘bad’ company within its operational area or be found flouting legal requirements of its host country. The CSR pyramid developed by Carroll (1991) therefore emphasizes that a company has four different aspects of CSR that need to be taken into consideration in order to fulfil its obligations towards the society; the economical, legal, ethical and philanthropic responsibilities. The economic responsibility component of the pyramid, according to Carroll (1991) constitutes the fundamental reason corporate organisations exist. That is to maximize shareholders value whiles remaining competitive within the market they operate. Therefore in the absence of profit, a company cannot and will not survive (Carroll, 1991). Second to the economic responsibility identified by Carroll (1991) is the legal and ethical responsibility. Carroll (1991) explains that although firms seek to maximise shareholders value, all businesses must ensure they operate within the rules and regulation of their host countries. Differentiating the legal component from the ethical component Carroll (1991) attributed the legal responsibility to written laws and the ethical responsibility to norms, standards or expectations, of consumers, shareholders and the community. He however indicated that most often the legal requirements are derivatives of ethical aspect of CSR which then becomes written law. The last of the CSR pyramid is the philanthropic responsibility. These are mainly activities corporate organisations engage in so as to be perceived as “good corporate citizens”. The philanthropic responsibility is not required by law or interested parties. It is the means by which companies increase their reputation and goodwill (Carroll, 1991).

2.3 Stakeholder Theory of CSR

The stakeholder theory holds the view that firms have a responsibility to satisfy the interests of their diverse constituents, referred to as stakeholders. Stakeholders according to Freeman (2004) are “those groups who are vital to the survival and success of the organization”. In other words the actions or inaction of these groups can make or unmake an organization. Friedman and Miles (2006) emphasizes therefore that, the efforts of organizations should be aimed at managing the interest, needs and viewpoints of these groups. Henriques and Sadorsky (1999) identified four main categories of stakeholders likely to show concern for the impacts of corporate activities. These categories include organizational, community, regulatory and media stakeholders. Organizational stakeholders are “those who are directly related to an organization and have the ability to impact its bottom line directly” (Henriques and Sadorsky 1999). These may include customers, employees, shareholders and suppliers (Clarkson, 1995). These groups are absolutely essential to the success and survival of the firm, both in the short and long term. Community stakeholders include environmental and human rights defense groups, along with other potential activists present in the areas where

the firm operates. The regulatory stakeholders group is made of Governments, trade associations, and competitors. In a nutshell the stakeholders' perspective according to (Maignan et. al., 1999) requires businesses to address the responsibilities placed on them by their stakeholders. It is therefore ethical for companies to be fair or just by giving acceptable treatment to their employees and stakeholders. For example, it would be unfair for a company that makes high earnings to pay their workers low wages or for a company to import labour from a different jurisdiction or region when there is available labour in the location of operation especially for discriminatory reasons. Businesses are expected to ensure that their actions do not deny their employees of their basic human rights.

2.4 Legitimacy Theory

Suchman, (1995) considers legitimacy as "a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions". Deegan (2002) opines that legitimacy theory posits organizations are continually seeking to ensure that they operate with the bounds and norms of their respective societies. To this end, organizations attempt to establish congruence between "the social values associated with or implied by their activities and the norms of acceptable behaviour in the larger social system of which they are part" (Dowling and Pfeffer, 1975, p. 122). Organizational legitimacy is not a steady state, but variable. This variability is not only temporal, but also spatial or across stakeholder and cultural groups. Therefore depending on an organization's perception of its state or level of legitimacy, an organisation may employ 'legitimation' strategies (Lindblom, 1993).

The above reviewed theories form the theoretical framework for this study. Collectively, the pyramid theory, the stakeholder and the legitimacy theories informed us on the different reasons for which companies engage in CSR activities. The legal responsibility component of the pyramid model by Carroll (1991) and the legitimacy lay credence to the role of law and regulations in propelling companies to undertake CSR.

3. Methodology

This study used qualitative method to address the objectives of the study. The use of qualitative methodology facilitated the analysis of various legal documents, judicial decisions and other publications which did not involve numerical data. It also allowed for in-depth analysis of various theories concerning the CSR phenomenon as well as the interpretation of documents and concepts used in this paper (Saunders, et. al., 2009; Starrin & Svensson, 2004; Åsberg, 2001). The sources of data used for the study was secondary in nature. Using content analysis and critical document review methodology, newspaper publications, legal documents, annual reports, government publications, organization and academic publications was critically evaluated. This methodology has been used in similar studies by Buhmann (2006) and McBarnet (2009) to address their set objectives.

4. Corporate Liability under the Labour Laws of Ghana

Worldwide, companies are expected to comply with laws and regulations, set by both local and international governments. These laws try to set minimum standards for responsible behaviour in various areas of their operations. They cover issues such as human rights, treatment of labour, environmental and consumer protection, health and others all of which constitute some dimensions of the triple bottom line approach. It has been indicated that CSR activities are becoming apparent in the operations of corporate bodies in Ghana; however, such activities are not carried on a significant scale. This, Ofori (2007) referred to as "the engagement of haphazard indulgence of corporate good works". The responsibility of corporate organization takes on a two-fold nature that is internal and external corporate social responsibilities. The latter, over the decades have been given much prominence at the expense of the former. Internal corporate responsibility (CR) practices according to Turker (2009) are directly related with the physical and psychological working environment of the employee. It is expressed in concern for the health and well-being of employees, their training and participation in the business, equality of opportunities and work-family relationship (Vives, 2006). In Ghana, corporate organisations are both *legally and morally* responsible for ensuring that the *rights of employees are not violated*. The observance of good labour practices is therefore essential in accessing the CSR practices of corporations in Ghana. This includes safety at work and good working conditions, an ascertainable profit sharing systems, retrieval of benefits, employee involvement in decision making and respect for workers etc. (Atuguba et al., 2000). In 2003 the Labour Act 2003, Act 651 passed into law informed by the need to codify the then existing laws on labour which were scattered in various pieces of legislation into one common statute and to develop a law which conforms to the 1992 Constitution of the Republic of Ghana, and the International Labour Organization (ILO) Conventions to which Ghana is a signatory.

4.1 Employment Protection Rights:

The Labour laws of Ghana provide for various forms of employee protection rights, including a healthy and safe working environment, maternity and holiday pay, annual leave with pay as well as protection against unfair dismissal and redundancy. For instance, section 10 of the Labour Act, 2003 (Act 651) outlines clearly the various rights of employees. Sec 10(a) states that a worker or employee must work under satisfactory, safe and healthy conditions. Section 118 gives details on the issue of health and safety of the worker in an establishment and the various duties an employer must carry out to ensure the health and safety of his or her workers. Particularly, it requires an employer to provide and maintain at the workplace, a healthy and safe system of work. This requirement extends to plant, machinery, working tools, chemicals and the environment. Accordingly, the employer is enjoined by law to provide the needed safety equipment, adequate lighting systems and an appropriate flooring etc. to ensure that employees work in a safe, hygienic and less hazardous environment. In the event that an employer who without any reasonable excuse, fails to discharge any of these obligations under subsections (1) and (2) thereof, he shall be deemed to have committed an offence and shall be liable on summary conviction to a fine not exceeding 1000 penalty units or to imprisonment for a term not exceeding 3 years or both (Sec 118(5) of the Labour Act, 2003 (Act 651).

This duty of the employer to ensure a safe working environment for its employees was emphasised in the Ghanaian case of *Issah v. Mim Timber Co. Ltd* [1980] GLR 430. In this instance the Plaintiff was employed to fell trees, he got injured whilst felling a tall tree. In an action against the employer for damages, he argued that the employer failed to ensure that a proper warning was given as to the direction in which the tree was falling, thus breached its duty to provide a safe system of work. The court held that the law places a high duty of care on an employer towards his servants and this duty includes a duty to his employees to take reasonable care for their safety in the course of their operation. Accordingly, an employer was enjoined by law to provide competent fellow workmen, adequate material a proper system of work and effective supervision. Similar views were expressed in the case of *Ekem v. Wiseway Cleaners Ltd* [1981] GLR 801. These duties have often times been extended to agents of employers and third parties. For instance, in *Issah v. Mim Timber Co. Ltd* [1980] GLR 430 the court further indicated that the duty of the employer is personal to the employer and he can't successfully delegate it. He will be liable even if the damages were caused while another was acting in his place. Similarly, in *Kuni v. State Gold Mining Corporation and Another* [1978] GLR 205-211 the court was of the view that, where a person was authorised by statute or bound by contract to do a particular work, he could not escape responsibility by contracting with another person to do it.

4.2 Deduction and Payment of Pension Contributions:

Prior to the enactment of the new National Pensions Act, 2008 (Act 766) the repealed Social Security Law, 1991 (PNDCL 247) regulated pensions in Ghana by the establishment of a trust which provided social protection for the working population for various contingencies such as old age, invalidity, and such other contingencies as may be specified by law. However, calls for some pension reforms which aimed at making the scheme more beneficial led to the promulgation of the Act 766. This Act seeks to establish a "three-tiered" pension scheme i.e. a mandatory basic national social security scheme; a mandatory fully funded and privately managed occupational pension scheme, and a voluntary fully funded and privately managed provident fund and personal pension scheme. The Act makes specific provisions for the deduction and remittance of monthly contributions of a sum equal to 5.5% of the worker's salary towards that worker's pension scheme. The law further enjoins an employer of an establishment to pay for each month in respect of each worker, an employer's contribution of an amount equal to 13% of the worker's salary during the month. The total contributions are payable to the Social Security and National Insurance Trust (Trust) as well as a Trustee of a registered scheme.

4.3 Remedies for Rights Violations

The relevant laws in Ghana often provide for specific remedies available to injured parties. Thus in the event of a violation of employment rights of workers, such as in cases of unfair termination or redundancy, workers have under sections 63, 64, and 65 of Act 651, been given a remedy at law. These remedies often include compensation or damages, re-instatement or re-employment in instances of unlawful or wrongful termination or dismissals.

4.4 Health & Safety

In today's competitive world, the success of most companies hinges on the ability of the company to attract, motivate and retain competent, effective and efficient employees. Occupational Health and Safety (OHS) issues are becoming one of the key ingredients to attracting and maintaining employees. It is important to point out that corporations must not view OHS issues in isolation but rather they must see them as forming an aspect of the company's internal corporate social responsibility to its employees and by extension its customers. To avoid legal suits, it becomes

imperative therefore for boards or managements of corporations in performing their governance role to take account of its responsibilities, one of which is to address issues bordering on occupational health and safety. The legal regime in Ghana enjoins corporate organisations to as part of their internal corporate responsibility to maintain health and safety at the work place. This provision is backed by law; hence any breach would attract the relevant sanctions. An employer is seen as abiding by the laid down regulations if they ensure that effective provision has been made for a satisfactory, safe and healthy conditions for workers; a safe plant and system of work with no risk to health; safe and risk free handling, storage and transportation of articles and substances. The availability of relevant working information, instructions, training and supervision to ensure health and safety at work is also crucial and must thus be complied with the employer. In complying with the law the employer must take all necessary steps to prevent contamination of the workplace (*toxic gases, noxious substances, vapours, dust, fumes, mists etc.*) as well as provide separate, sufficient, suitable and adequate toilet and washing facilities for males and females. He must also prevent accidents and injury to health by minimizing the causes of hazards. In the event of a breach the employer shall upon summary conviction be liable to a fine or a term of imprisonment (Section 9,118-121 of Act 651; *Ekem v. Wiseway Cleaners Ltd* [1981] GLR 801; *Nelson v. Mensah* [1976] 1 GLR 178).

The law further imposes a duty on the employer to report occupational accidents and diseases to the relevant government agency. In the case of an office, factory or shop, the report must be made to the Chief Labour Officer or the Inspector of Factories (Sections 118 – 121 of Act 651 and Reg. 18 & 19 LI 1833). The legal responsibility to maintain health and safety at the workplace does not only lie with employers, workers also have a duty to ensure that they remain healthy and safe. For instance, a worker is duty bound to use the requisite safety appliances, fire-fighting equipment and personal protective equipment in compliance with the employer's instructions. An employer would thus not be liable should a worker fail to comply with the above (*Overseas Breweries Ltd. v. Agah* [1968] GLR 192) A worker is further required to report to her employer or supervisor when she reasonably believes she is being *exposed to hazards or danger to her life, health or safety*. The law requires a worker in that situation to remove herself from the danger and the employer shall not require the worker to return when the danger is still in existence (121 of Act 651 and reg. 18 & 19 LI 1833). In *Moshie v. State Gold Mining Corporation* [1968]GLR 944, Annan J, indicated that it is the employer's duty to provide a safe system of work. In this case the plaintiff was the *headman of labourers* in the defendants' employment. His right hand got crushed whilst loading a pontoon in the usual course of his employment. He claimed damages for personal injuries arising from the employer's failure to provide competent workmen, a safe system of work and failure to fence a dangerous machine. The court held that the employers' workmen were negligent in the performance of their duties and the employers were negligent in that their system of work in respect of the work done by the plaintiff was not safe. Accordingly, the machine in which the plaintiff's hand was caught was a dangerous one which should have been fenced.

4.5 Forced Labour

Forced labour is the exaction of work from another under threat of a penalty and for which that person has not offered himself voluntarily. Corporate organisation as well as other institutions and individuals are in Ghana prohibited from exacting work from another under the pain of a penalty (sections 116 and 117 of Act 651; Article 16 of 1992 Constitution of Ghana) These laws clearly frown on the issue of organisations utilizing forced labour in any aspect of their operations. It is therefore the responsibility of *corporate* organisations to refrain from *exacting forced labour* from workers or permit to be exacted, for its benefit, forced labour from any worker. It is important to add that there are a few exceptions to these provisions. For example work required under a sentence or order of a court, work required of a member of a disciplined force or service as part of the person's duties, work reasonably required to protect life and wellbeing of communities during war, emergency or calamity that threatens life as well as work reasonably required as part of normal communal or other civic obligations. An employer, if found guilty, shall be convicted and liable to a fine. See s.116 & Art.16 of the 1992 Constitution of Ghana.

4.6 Employment of Young Persons in Hazardous Work

An organization can be held liable for employing young persons in hazardous work. As a corporate organisation seeking to create a good brand and image for its stakeholders, employing young persons in hazardous work can have enormous repercussions for the company's operations. In Ghana the employment of young persons in hazardous work is provided for under section 58 of Act 651 and reg. 7 of LI 1833. A young person is defined as any person of or above 18 years but below 21 years (*The Children's Act, 1998 (Act 560)*). These provisions are to ensure that corporations operating in Ghana act responsibly and do not exploit young persons to their detriment. In accordance with law employers are prohibited from engaging young persons in any type of employment or work likely to expose the person to physical or moral hazard or in an underground mine work. To ensure strict adherence, corporations often incorporate

prohibitive provisions or guidelines on the employment of young persons in their employment policy. For instance Johnson & Johnson's employment policies, instructs that all suppliers abide by their policy on the employment of persons under the age of 18 in the manufacture of any product, or any component of a product, by or for Johnson & Johnson or any of its affiliates worldwide (J&J Responsibility Report, 2009). This appears to be in-line with Convention 138 of the International Labour Organization (ILO).

To avoid ambiguity, the law clearly states what constitutes hazardous work and in respect of which young persons are prohibited from engaging in. Some of the types of prohibited work include manual lifting of loads, the weight of which exceeds 25 kilograms, work on scaffold and other structures at a height exceeding 2.5 metre,; work involving the use of substances and materials that emit radiation, poisonous gases or fumes, work that involves the use of dangerous chemicals or with excessive noise, the felling of timber. Other types of prohibited work for young persons are night work exceeding 8 continuous hours, the production and screening of pornographic materials or working at areas in a hotel which are likely to corrupt the moral development of that young person as well as any other works considered by the Chief Labour Officer as hazardous. A breach of any of these provisions shall attract the imposition of a fine upon summary conviction (Labour Regulation 2007, LI 1833)

4.7 Labour Inspection

Periodic or regular inspection by relevant authorities mandated by law is one sure way of ensuring that corporations are abiding by these laid down regulations. The law allows authorities to appoint a Labour Inspector to enter a workplace to carryout regular inspection of premises. Act 651 empowers the Labour Inspector, with or without notice, to enter any work place to take or remove for purposes of analysing samples of materials and hazardous or chemical substances used or handled by workers in the course of their employment. He may also direct employers to carry out alterations to buildings, installations and plant necessary to avert any danger or threat of danger to the health or safety of the workers within a specified period. In the event that an offence is committed by corporate organisation i.e. where a body corporate, firm or partnership commits any offence under the labour laws, every director or partner shall unless proven innocent be deemed to have committed that offence. An employer who fails to comply with a decision of an Inspector commits an offence and is liable on summary conviction to a fine. Any person who proves that he or she has suffered any loss, damage or injury as a result of the non-compliance by an organisation shall be entitled to compensation payable by that organisation (Section 124 of Act 651).

It is worth noting that, in the event of a commission of an offence under the Labour Act of Ghana by a body of persons, that offence shall be deemed to have been committed by that body of persons; and its officers. For instance, where the offence is committed by a body corporate, every director of that body corporate is deemed to have also committed the offence. Further, where it is committed by a firm every partner of that firm or officer or leader of the union or group of workers, respectively, is deemed to have also committed the offence. However, such a, director, partner, officer or leader would not be deemed to have committed the offence, if the person proves that the offence was committed without his or her knowledge or that he or she exercised due diligence to prevent the commission of the offence.

4.8 Bribery & Corruption

According to Transparency International, The Global Compact and IBLF bribery is an offer or receipt of any gift, loan, fee, reward or other advantage to or from any person as an inducement to do something that is dishonest, illegal or a breach of trust, in the conduct of the enterprise's business. On the other hand 'Corruption is defined as the misuse of entrusted power for private gain (IBLF 2005). In Ghana corruption is defined as a process where a person directly or indirectly influences the conduct of a public official or where the public official allows his conduct to be influenced by a gift, promise or prospect of a valuable consideration (Sections 239-261 of Act 29). Generally bribery and corruption is seen as a worldwide offense, it is however more prevalent in some countries than others, it also takes on different forms. Because of its amorphous nature, it is difficult to estimate the true extent and cost of the problem of bribery and corruption. The World Bank, however, estimates that \$1 trillion is paid in bribes every year, representing 3% of the world's gross domestic product (World Bank, 2004). In Ghana, bribery & corruption is a punishable offence and a person found guilty could be imprisoned or fined. Attempts by some states to curtail corruption have in certain instances been extended to local corporations operating in foreign jurisdictions. This is because bribery and corruption is a global phenomenon and cut across nation's legal jurisprudence. It is thus illegal in some organisation's country of residence for that company to engage in corrupt practices in another country. An example is that of the US, where its Foreign Corrupt Practices Act, makes it illegal to bribe foreign officials.

As a result of the importance placed on bribery and corruption, the practice of making bribing foreign officials illegal has crept into international spheres such as amongst the members of the Organisation for Economic Co-operation and Development (OECD). This principle was also adopted by the UN and forms the basis of the UN Convention against

Corruption (UNCAC). The Economic and Organized Crime Office (EOCO), set up by Act 804 under the 1992 Constitution of Ghana and The Criminal Act, 1960 (Act 29) also make provisions for the prosecution of offences involving serious financial and economic loss to the State as well as bribery and corruption in Ghana. Bribery and corruption as indicated earlier can take many different forms and shapes. Some identifiable and documented ones include corruption of or by a public officer, corruption of or by a juror and corruption of or by a voter. Additionally, the law indicates that every public officer or juror who commits corruption, wilful oppression or extortion in respect of the duties of his office, shall be guilty of a misdemeanour. Similarly, whoever corrupts any person in respect of the performance of any duties as a public officer or juror shall be guilty of a misdemeanour.

4.9 Noxious Trade, Environmental & Health Hazards

It is the responsibility of businesses and organisations to ensure that they do not carry out any offensive trade activities. Section 287 of Act 29 makes it a punishable offense to carry out any noxious trade or any trade activities which violates any public rights. It is thus an offence punishable under the law to carry on any noxious, offensive or noisy business at any place, or cause or permit any noxious or offensive matter to be collected or continue at any place or keep any animals at any place, as to impair or endanger the health of the public inhabiting the place. It is also an offence to use a neighbourhood and cause material damage to the lands, crops, cattle or goods of such public or cause material interruption to the public in their lawful business or occupations. An organisation could also be liable if it makes, keeps or use any explosive matter, or any collection of water, or any other dangerous or destructive thing, or any building, excavation, open pit, or other structure, work or place, keep any animal or permit to be at large, as to cause danger or harm or damage to the persons or property of the public. The Ghanaian laws thus make specific provisions for the protection of the environment and prevention of health hazards (Act 29), The Environmental Protection Agency Act, 1994 (Act 490). Act 490, in particular, makes specific provisions for the protection of the environment and prevention of health hazards. It establishes the Environmental Protection Agency (EPA), which is made responsible for protecting the environment in Ghana. The Act empowers the EPA to issue notices in the form of directives, procedures or warnings to such bodies as it may determine for the purpose of controlling the volume, intensity and quality of noise in the environment. In performing its duties, the EPA, may issue and serve enforcement notices, where it appears to it that the activities of any undertaking poses a serious threat to the environment or to public health, on persons responsible for the undertaking. It is worth noting that the law makes it an offence punishable upon summary conviction to a fine and in default to a term of imprisonment for failing to comply with an enforcement notice or permit issued by the EPA.

4.10 Recruitment of Children

It is the responsibility of all nationals, both corporate and individuals to help fight against child labour and trafficking of persons. Specific provisions have however been made for the employment of children and trafficking of persons under Ghanaian laws. Subject to certain exceptions, the law generally prohibits the employment of minors in exploitative labour or to work either wholly or partly outside Ghana or to work at night (Children's Act, 1998 (Act 560); LI 1833). The Children's Act deals with exploitative labour in Ghana. Section 87 of the Act, prohibits exploitative child labour, stating that no person shall engage a child in exploitative labour that deprives the child of his or her health, education or development. Additionally, section 88 prohibits child labour at night. Thus, organisations are prohibited from engaging a child in night work during the hours of 8p.m. to 6a.m. That notwithstanding, section 89 allows children from the age of 15 to work, while section 90 places the minimum age for the engagement of a child in light work at 13. The Act defines light work to constitute work which is not likely to be harmful to the health or development of the child and does not affect the child's attendance at school or the capacity of the child to benefit from school work.

5. CSR and the Law: The Aftermath of Corporate CSR Violations

A critical examination of both legislations and judicial precedents in Ghana seems to suggest that even though the law makes provision for the imposition of a fine or a term of imprisonment in the event of a violation of the organisation's responsibilities or liabilities in certain instances, most regulatory enforcement agencies as well as the courts, more often than not, are disposed to imposing a fine. These fines are found not to be punitive enough to prevent the recurrence of such violations. More disturbing is the failure of such regulatory agencies to enforce the payment of fines by organisations found to have violated the law. Further, the amount imposed as fines are also shared between the relevant government agencies shamefully. It appears victims suffering from the consequences of the violations rather shamefully receive the smallest proportion with the biggest share going to the relevant government agency. It is worth noting that the Seven Million Ghanaian Cedis compensation payable by Newmont Ghana for spilling cyanide into some water bodies at its Ahafo Mines in 2010, which resulted in the loss of some aquatic life was to be shared between the affected communities, the Environmental Protection Agency (EPA) and the Inspectorate Division of the Minerals Commission. In accordance with recommendations by the ministerial panel appointed by the Minister of Environment,

Science and Technology, 45 per cent of the compensation was to be used to meet some developmental needs of the affected communities, whilst 40 per cent paid to the EPA. The remaining 15 per cent went to the Inspectorate Division of the Minerals Commission (GNA, 2010).

Additionally, the recent Melcom tragedy that occurred in Ghana on the 7th of November, 2012 could have been averted if the law had been carried out to the letter. Especially given the fact that reports blamed the collapse of the building on the use of substandard materials in the construction of the building, as well as poor reinforcement in the columns that held the building and low based concrete strengths among others (BBC, 2012). Even though, there has to date been no official reports on the payment of compensation to the victims or sanction against the Melcom or its officers, it has been reported that the management of Melcom are in discussions with the National Labour Commission (NLC), the Ministry of Employment and Social Welfare and other agencies to determine an appropriate compensation for the victims of the disaster (GBC News, 2012). Other unofficial reports indicate that some compensation have been paid to families that lost their relatives as a result of the disaster to cater for their funeral expenses (Daily Graphic, 2012). Generally, the Ghanaian legal system appears to have made sufficient provisions to support the entrenchment, compliance and enforcement of CSR, thereby shaping organisational behaviour towards CSR. Thus, CSR in Ghana is to a large extent influenced by various regulatory regimes. However, its efficiency is often adversely affected by deficiencies in the enforcement of the relevant laws. It is thus suggested that the enforcement agencies should be empowered, in terms of both human and financial resources, to ensure compliance with the laws to enable an effective delivery of CSR in Ghana.

6. Conclusion and Recommendation

Over the decades Corporate Social Responsibility has shifted from voluntary practice to a more obligatory oriented practice influenced by public policy and law. As a developing country the presence of law and its enforcement can play a critical role in the development of CSR.

This paper concludes that even though there is currently no CSR policy in Ghana and there appears to be no comprehensive legal framework or legislation to guide corporate responsibility, there seem to be some relevant laws ensuring that corporate organizations engage in responsible business. Again, although these legislations sit on our statute books and are enforceable in our law courts, they seem to have little or no influence on the development of corporate social responsibility in Ghana. This could be as a result of the disjointed nature of these laws and the lack of enforcement by regulatory agencies, resulting in CSR activity remaining largely voluntary in practice. The labour law for instance has enhanced the regulation of labour disputes among employees and workers thereby helping to reduce the relatively high business and regulatory risks associated with CSR. Effective compliance and enforcement of the relevant laws is thus vital in the implementation of CSR, since it backs CSR actions by providing for penalties for non-compliance as well as guidelines for businesses desirous of engaging in CSR activities.

The findings of this paper align with the second tier of Carroll's CSR pyramid, stakeholder (internal and external) and the legitimacy theories. As indicated earlier, even though there are some legislations governing corporate responsibility in Ghana, it appears most organizations are unaware of these regulations and the consequences associated with violating them due to lapses on the part of enforcement agencies. These lapses in enforcement coupled with ignorance on the part of businesses are more often than not likely to result in disasters. There is therefore the need for government agencies including regulators to educate stakeholders as well as the general public on the responsibilities of both government and corporate organizations. In addition, law enforcement agencies should also be empowered and equipped to ensure strict compliance with these regulations. Finally, the law should serve as the backbone of CSR and should be used as a tool to influence and compel compliance with CSR actions of organisations in Ghana. Given the fact that this study broadly looked at the issue of CSR and the law, it suggests that further research should focus on specific laws pertaining to specific sectors of the economy, both public and private, so as to bring to light the influence of law on their corporate and social responsibilities.

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