

## **The Nexus between Corporate Social Responsibility and Protection of Environment in Kenya.**

By: **Peter Mwangi Muriithi\***

### **Abstract**

*The motivation behind this paper is to analyze the role of corporate social responsibility in protecting the environment in Kenya. The paper questions the role that the principle of corporate social responsibility plays in the protection of the environment in Kenya. Inquisitively, the paper asks; what is the nexus between the principle of Corporate Social Responsibility and Environmental Protection in Kenya?*

*In doing so, the author shall: offer a brief history of the principle of corporate social responsibility; succinctly define the principle corporate social responsibility and environment; enunciate the role of corporate social responsibility in environmental protection in Kenya; juxtapose the principle of corporate social responsibility and environmental protection in Kenya, and lastly, the paper shall give a conclusion.*

### **1.0 Introduction**

To commence this discussion, this paper notes the words of two eminent personalities. In 1965, *Lai Bahadur Shastri*, then the prime minister of India, stated:

*“A business has a responsibility to itself, to its customers, workers, shareholders and the community... Every enterprise, no matter how large or small, must, if it is to enjoy confidence and respect, seek actively to discharge its responsibilities in all directions... and not to one or two groups, such as shareholders or workers, at the expense of community and consumer. A business must be just and humane, as well as efficient and dynamic.”<sup>1</sup>*

Buttressing this position, former UK Prime Minister *Tony Blair* opined:

*“...we are now, more than ever, aware of the potentially negative impact of business on the environment, whatever the nature or size of the business. There can only be positive results from developing sustainability from benefiting your own bottom line to benefiting tomorrow’s industry to benefiting the environment in which we all live.”<sup>2</sup>*

Within the world of business, the main responsibility for corporations has historically been to make money and increase shareholder value. In other words, corporate financial responsibility has been the sole bottom line driving force. However, a movement defining broader corporate responsibilities for the environment, for local communities, for working conditions and ethical practices has gathered momentum and taken hold.<sup>3</sup> It is now generally accepted that beyond their normal profit-maximization goals, businesses have a

---

\*LLB-University of Nairobi, PGDL, CPM (MTI), Patent Agent (KIPI), ACI Arb, LL.M- University of Nairobi.

<sup>1</sup> Kate Brown, Center for Social Markets, *Corporate Social Responsibility: Perceptions of Indian Business 1* (Malini Mehra ed., Centre for Social Markets 2001) (quoting A. Mohan, *Corporate Citizenship: Perspectives from India*, 2 J. Corp. Citizenship 107

<sup>2</sup> Tony Blair, UK Prime Minister, May 2000.

<sup>3</sup> Sir Geoffrey Chandler, “Defining Corporate Social Responsibility,” *Ethical Performance Best Practice*, Fall 2001.

responsibility to society at large. This new driving force is known as *corporate social responsibility* (hereinafter CSR).<sup>4</sup>

Despite the growing awareness and popularity of the term *corporate social responsibility* (CSR), there is no consensus as to what it actually means. CSR is often used interchangeably with various other terms, such as corporate philanthropy, corporate citizenship, sustainability, business ethics, and corporate governance. Although all these other terms do not mean the same thing, there is one underlying thread that connects them.<sup>5</sup>

This is the understanding that companies have a responsibility not just towards shareholders, but also towards other stakeholders, such as; customers, employees, communities, environmentalists, indigenous people, cultural organizations e.t.c.<sup>6</sup> All of these stakeholders are equally important to a corporation, and it should, therefore, strive with sincerity to fulfill the varied expectations each. A corporation has a role to play in treating its employees well, preserving the environment, developing sound corporate governance, supporting philanthropy, human rights, respecting cultural differences and helping to promote fair trade among others. All are meant to have a positive impact on the communities, societies and environments in which companies.<sup>7</sup>

However, there have been various attempts to explain the term corporate social responsibility. *World Business Council for Sustainable Development* described corporate social responsibility “as 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>8</sup> This description implies that corporate social responsibility requires companies not only to strive for economic gains but also to address the moral issues they face.<sup>9</sup>

*Corporate social responsibility* (CSR) is oftentimes also described as the corporate “triple bottom line” the totality of the corporation’s financial, social and environmental performance in conducting its business. It stresses that all three elements are equally important and that managers need to find a balance among the three in developing their strategies.<sup>10</sup>

As the commercial sector increases its investments in its three usual venues (the workplace, the market place and the community) it becomes vital to question the role of corporate social responsibility in environmental protection. Broadly, the term Corporate Social Responsibility is said to be concerned with

---

<sup>4</sup> Mahesh Chandra, 'ISO Standards from Quality to Environment to Corporate Social Responsibility and Their Implications for Global Companies' (2011) 10 J Int'l Bus & L page110

<sup>5</sup> Juno Consulting, Making Sense of Corporate Responsibility 1 (2005), Available at; <[http:// www.junoconsultingxom.aai/articles/Making\\_Sense\\_of\\_Corporate\\_Social\\_Responsibility\\_Part II Pdf](http://www.junoconsultingxom.aai/articles/Making_Sense_of_Corporate_Social_Responsibility_Part_II_Pdf)> accessed on 20/10/ 2019

<sup>6</sup> Ibid No.5

<sup>7</sup> Sharma, Seema G. “Corporate Social Responsibility in India: An Overview.” *The International Lawyer*, vol. 43, no. 4, 2009, page 1517. Available at <JSTOR, [www.jstor.org/stable/40708084](http://www.jstor.org/stable/40708084)> accessed on 20/10/ 2019

<sup>8</sup> World Business Council for Sustainable Development, 2000: 10

<sup>9</sup> Mahesh Chandra, 'ISO Standards from Quality to Environment to Corporate Social Responsibility and Their Implications for Global Companies' (2011) 10 J Int'l Bus & L page110

<sup>10</sup> Sir Geoffrey Chandler, “Defining Corporate Social Responsibility,” *Ethical Performance Best Practice*, Fall 2001.

the relationship between a corporation and the local society in which it resides or operates or concerned with the relationship between a corporation and its stakeholders.<sup>11</sup>

The EU Commission on Corporate Social Responsibility stated that “...Corporate social responsibility (CSR) is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.”<sup>12</sup> Hence Corporate social responsibility is the commitment of businesses to contribute to sustainable economic development by working with employees, their families, the local community and society at large to improve their lives in ways that are good for business and development.<sup>13</sup>

Further, Howard R. Bowen goes on to argue that “...corporate social responsibility is no panacea for all business social problems, but that it contains an important truth that must guide business in the future.”<sup>14</sup> Howard R. Bowen defined corporate social responsibility as “...the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society.”<sup>15</sup>

William C. Frederick analyzing what constitutes corporate social responsibility stated: “...corporate social responsibility implies a public posture toward society’s economic and human resources and a willingness to see that those resources are utilized for broad social ends and not simply for the narrowly circumscribed interests of private persons and firms.”<sup>16</sup>

Clarence C. Walton addressed many facets of corporate social responsibility and presented several different varieties or models of corporate social responsibility. Clarence C. Walton elaborating what constitutes corporate social responsibility stated “... the new concept of corporate social responsibility recognizes the intimacy of the relationships between the corporation and society and realizes that such relationships must be kept in mind by top managers as the corporation and the related groups pursue their respective goals.”<sup>17</sup>

Further, he emphasizes that the essential ingredients of the corporation’s social responsibilities include a degree of voluntarism, as opposed to coercion, an indirect linkage of certain other voluntary organizations to the corporation and the acceptance that costs are involved for which it may not be possible to gauge any direct measurable economic returns<sup>18</sup> and this definition is costly related to Harold Johnson’s definition of corporate social responsibility as ‘convention wisdom’ and described this conventional wisdom in that “... a socially responsible firm is one whose managerial staff balances a multiplicity of interests. Instead of striving only for larger profits for its stockholders, a responsible enterprise also takes into account employees, suppliers, dealers, local communities, and the nation.”<sup>19</sup>

---

<sup>11</sup> David Crowther & Güler Aras, ‘Corporate Social Responsibility’, 2008, page 10.

<sup>12</sup> EU Commission [(2002) 347 paragraph 5.

<sup>13</sup> World Business Council for Sustainable Development, ‘Corporate Social Responsibility: Making good business sense’ 2000 page 2

<sup>14</sup> Howard R. Bowen, ‘Social Responsibilities of the Businessman’ (1953)

<sup>15</sup> Howard R. Bowen, ‘Social Responsibilities of the Businessman’ (1953)

<sup>16</sup> William C. Frederick, ‘The Growing Concerns Over Business Responsibility, 1960.

<sup>17</sup> Clarence C. Walton, ‘Corporate Social Responsibilities’ (1967) page 18.

<sup>18</sup> Ibid No.17

<sup>19</sup> Harold Johnson, ‘Business in Contemporary Society: Framework and Issues’ (1971), page 50.

Finally, a groundbreaking contribution to the concept of corporate social responsibility (CSR) came from the Committee for Economic Development (CED)<sup>20</sup> and started by observing that *'business functions by public consent and its basic purpose is to serve constructively the needs of society to the satisfaction of society'*<sup>21</sup> and further noted that the social contract between business and society was changing in substantial and important ways and stated that:

*"... Business is being asked to assume broader responsibilities to society than ever before and to serve a wider range of human values. Business enterprises, in effect, are being asked to contribute more to the quality of American life than just supplying quantities of goods and services. In as much as the business exists to serve society, its future will depend on the quality of management's response to the changing expectations of the public..."*<sup>22</sup>

On the other hand, there is the seminal issue of *protection of the environment*. This paper critically links the protection of the environment to the principle of corporate social responsibility (CSR) as a means of realizing sustainable development, to protect natural resources for future generations.<sup>23</sup> There is a growing concern of the impact of corporate activities on non-shareholder constituencies such as employees, creditors, victims of their torts, as well as the environment.<sup>24</sup>

The natural environment is not strictly a 'stakeholder' but rather a set of essential ecological services that are preconditions for a healthy society and the continued success of our economic activities. Thus the real stakeholder in the community, which depends upon the natural environment to supply essential ecological services that sustain its economic and social activities, as well as a multitude of unique aesthetic and recreational opportunities that add to our quality of life.<sup>25</sup>

The simplest and most memorable definition of "environment" is that given by Albert Einstein, who once said, *"The environment is everything that isn't me."* The only problem with adopting this definition is that there will be very little activity that does not have an "environmental" impact.<sup>26</sup> This illustrates that defining the environment in its own way is challenging due to the scope of what can be regarded as part of the environment.

A succinct definition of *environment* is that it is a combination of elements whose complex interrelationships make up the settings, the surroundings and the conditions of life of the individual and society as they are and as they are felt. (EC Council Regulation 1872/84, Action by the Community Relating to the Environment, 1984.)<sup>27</sup>

---

<sup>20</sup> CED, Social Responsibilities of Business Corporations.1971

<sup>21</sup> Ibid No. 20 page 11

<sup>22</sup> CED, Social Responsibilities of Business Corporations page 16

<sup>23</sup> Helen Anderson; Wayne Gumley, Corporate Social Responsibility: Legislative Options for Protecting Employees and the Environment, 29 Adel. L. Rev. 29 (2008) page 62

<sup>24</sup> Helen Anderson; Wayne Gumley, Corporate Social Responsibility: Legislative Options for Protecting Employees and the Environment, 29 Adel. L. Rev. 29 (2008) page 43

<sup>25</sup> Helen Anderson; Wayne Gumley, Corporate Social Responsibility: Legislative Options for Protecting Employees and the Environment, 29 Adel. L. Rev. 29 (2008) page 52

<sup>26</sup> Justine Thornton & Silas Beckwith, Environmental Law(Sweet and Maxwell 1997) page 2

<sup>27</sup> Mark Stallworthy, Environmental Law 1<sup>st</sup> Edition ,page 2

A legal definition of the term *environment* in Kenya is provided by Section 2 of the Environmental Management and Co-Ordination Act No. 8 of 1999 which states that: "*Environment*" includes the physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment"<sup>28</sup>

To ensure environmental protection environmental laws are enacted and their role remains unequivocally seminal in environmental protection. *Environmental Law* can be described as the body of law that is concerned with protecting the natural resources of Land, air, water (the three "environmental media") and the flora and fauna which inhabit them.<sup>29</sup> The *Black's Law Dictionary 9<sup>th</sup> Edition* defines *environmental law* as the field of law dealing with the maintenance and protection of the environment, including preventive measures such as the requirements of environmental-impact statements, as well as measures to assign liability and provide clean-up for incidents that harm the environment.<sup>30</sup>

It's worth noting that there are four main principles enshrined in Environmental Law. These are; Preventative principle, Polluter pays, Precautionary Principle and sustainable development. Principles such as these, along with other environmental policies and aims are sometimes referred to as 'soft law'. In comparison, 'hard law' refers to actual laws which can be enforced.<sup>31</sup>

## **2.0 Tracing the Historical Origins of the principle of Corporate Social Responsibility**

The history of CSR dates back many years and in one instance can even be traced back 5000 years in Ancient Mesopotamia around 1700 BC, King Hammurabi introduced a code in which builders, innkeepers or farmers were put to death if their negligence caused the deaths of others or major inconvenience to local citizens.<sup>32</sup>

In Ancient Rome senators grumbled about the failure of businesses to contribute sufficient taxes to fund their military campaigns, while in the year 1622 disgruntled shareholders in the Dutch East India Company started issuing pamphlets complaining about management secrecy and "self-enrichment". With industrialization, the impacts of business on society and the environment assumed an entirely new dimension.<sup>33</sup> The "corporate paternalists" of the late nineteenth and early twentieth centuries used some of their wealth to support philanthropic ventures. By the 1920s' discussions about the social responsibilities of business had evolved into what we can recognize as the beginnings of the "modern" CSR movement.<sup>34</sup>

---

<sup>28</sup> Section 2 of EMCA Act Laws of Kenya

<sup>29</sup> Justine Thornton & Silas Beckwith, *Environmental Law*(Sweet and Maxwell 1997)page 2

<sup>30</sup> Bryan A. Garner, *Black's Law Dictionary* 9<sup>th</sup> Edition.

<sup>31</sup> Brenda Short, *Environmental Law* 1<sup>st</sup> Edition ,page 12

<sup>32</sup> 'Corporate Social Responsibility: History, Benefits and Types' (UKEssays.com, October 2019) <<https://www.ukessays.com/essays/management/a-brief-history-of-corporate-social-responsibility-management-essay.php?vref=1>> accessed on 20/10/ 2019

<sup>33</sup> Ibid No.32

<sup>34</sup> 'Corporate Social Responsibility: History, Benefits and Types' (UKEssays.com, October 2019) <<https://www.ukessays.com/essays/management/a-brief-history-of-corporate-social-responsibility-management-essay.php?vref=1>> accessed on 20/10/ 2019

The phrase 'Corporate Social Responsibility' was coined in 1953 with the publication of Bowen's Social Responsibility of Businessmen" (Corporate watch report, 2006). The evolution of CSR is as old as trade and business for any corporation. The industrialization and impact of businesses on society led to a completely new vision.<sup>35</sup>

By '80s and '90s CSR was taken into the discussion, the first company to implement CSR was Shell in 1998. (Corporate watch report, 2006).<sup>36</sup> With well informed and educated general people it has become a threat to the corporate and CSR is the solution to it. In 1990 CSR was standard in the industry with companies like Price Waterhouse Copper and KPMG. CSR evolved beyond the code of conduct and reporting, eventually, it started taking initiative in NGO's, multi-stakeholder, ethical trading. (Corporate watch report, 2006).<sup>37</sup>

### 3.0 The Role of Corporate responsibility in promoting environmental protection

A company's social responsibilities can be categorized into four groups: economic responsibility, legal responsibility, ethical responsibility, and discretionary responsibility. The social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of companies and other organizations at a given point in time. The economic purpose of a company and its responsibilities towards shareholders and debtors, first and foremost, is a natural starting point in reviewing the responsibilities.<sup>38</sup>

A company must always obey the law as it tries to achieve its economic objectives. However, this is not always enough. There is a growing acknowledgment by corporations themselves and the broader community of the impact of corporate activities on non-shareholder constituencies, such as employees, creditors, victims of their torts, as well as the environment. This is reflected in the increased focus on corporate governance and the increasing use of the terms 'corporate social responsibility' and 'corporate citizenship'.<sup>39</sup>

The principle of corporate social responsibility was created to address this acknowledgment by corporate entities. The principle of *corporate social responsibility* refers to the operations or actions of companies that are above or independent of the limits or minimum requirements set by legislation.<sup>40</sup> Society expects

---

<sup>35</sup> Ibid No.34

<sup>36</sup> 'Corporate Social Responsibility: History, Benefits and Types' (UKEssays.com, October 2019)

<<https://www.ukessays.com/essays/management/a-brief-history-of-corporate-social-responsibility-management-essay.php?vref=1>> accessed on 20/10/ 2019

<sup>37</sup> 'Corporate Social Responsibility: History, Benefits and Types' (UKEssays.com, October 2019)

<<https://www.ukessays.com/essays/management/a-brief-history-of-corporate-social-responsibility-management-essay.php?vref=1>> accessed on 20/10/ 2019

<sup>38</sup> Carroll, Archie B.: A Three-Dimensional Conceptual Model of Corporate Social Performance. *Academy of Management Review* 4/1979, pp. 497-505.

<sup>39</sup> Helen Anderson; Wayne Gumley, *Corporate Social Responsibility: Legislative Options for Protecting Employees and the Environment*, 29 *Adel. L. Rev.* 29 (2008) page 52

<sup>40</sup> Carroll, Archie B.: A Three-Dimensional Conceptual Model of Corporate Social Performance. *Academy of Management Review* 4/1979, page 497-505.

companies to act in socially responsible ways. The society sets expectations for businesses to reflect its ethical norms, which includes the protection of the environment.<sup>41</sup>

*Corporate social responsibility (CSR)*, has been defined in many different ways, but there are some common features in the given definitions. First, the obligation must be voluntarily adopted; behavior influenced by the coercive forces of law is not voluntary as such. Second, the obligation is broad extending beyond traditional duty to shareholders to stakeholders, such as customers, employees, and suppliers. Thirdly, *corporate social responsibility* requires openness and transparency; a responsible company reports its businesses and activities in public, and thus provides the general public with an opportunity to assess its activities. Fourthly, *corporate social responsibility* is the responsibility within the day-to-day business operations and activities, not something, which is occasional, or separate from the business.<sup>42</sup>

Juxtaposing these features with environmental protection, it goes without saying, that environmental protection by corporate entities under the concept of *corporate social responsibility* is: *environmental protection that is voluntary, environmental protection that extends beyond the existing traditional duties of a corporate entity, environmental protection that is open and transparent and lastly environmental protection that is carried out by a corporate entity within its day-to-day business operations and activities and not environmental protection which is occasional or separate of the business.*

It is noteworthy that environmental protection under the concept of *corporate social responsibility* is separate from the constitutional, statutory, policy and regulations duty of corporate entities to protect the environment. Succinctly stated, the environmental protection under the concept of *corporate social responsibility* consideration is outside the scope of environmental laws. Environmental protection under the concept of *corporate social responsibility* is majorly distinct from the duty to protect the environment by corporate entities under environmental laws, as it is voluntary in nature and non-enforceable. This assertion is in accordance with the voluntary approach to corporate social responsibility as adopted in Kenya.<sup>43</sup> This can further be deduced, from the interpretation of the existing legal framework providing for corporate social responsibility in Kenya.

Arjun Adhikari, in his article, defined voluntary corporate social responsibility approach as that approach which includes self-imposed obligations and negotiated instruments to the company for CSR.<sup>44</sup> In Kenya, the voluntary nature of the concept of *corporate social responsibility* has meant the concept is minimally legislated upon. Under The Code of Corporate Governance Practices for Issuers of Securities to the Public 2015 (hereinafter 'The Code') corporate social responsibility is provided for in a recommendative manner. From the onset, the Code of Corporate Governance decodes its recommendative nature. To this end the code chapter 1 under paragraph 1.1.1 it verbatim provides that "...The Code sets out the principles and specific recommendations on structures and processes, which companies should adopt in making good corporate governance an integral part of their business dealings and culture" Premised on this understanding, the code proceeds to provide for the principle of *corporate social responsibility*. Chapter 2 under paragraph 2.1.1

---

<sup>41</sup> Carroll, Archie B.: A Three-Dimensional Conceptual Model of Corporate Social Performance. *Academy of Management Review* 4/1979, page 497-505.

<sup>42</sup> R Knuuiten page 39

<sup>43</sup> Arjun Adhikari *Corporate Social Responsibility: Voluntary or Mandatory?* 8 *NJA L.J.* 185 (2014), Page 187

<sup>44</sup> *Ibid* No. 43

the Code provides that the Board of a company is required to subject the company to an annual governance audit.

The governance audit among other areas ought to cover the company's governance practices in *corporate social responsibility*.<sup>45</sup> After undergoing the governance audit, the Board is required to provide an explicit statement on the level of compliance.

Chapter 5 of the Code best captures the concept of *corporate social responsibility*. To this end, the Code under paragraph 5.0 verbatim provides: "*To make ethical and responsible decisions, companies shall not only comply with their legal obligations but shall consider the reasonable expectations of their stakeholders. Companies need to demonstrate their commitment to appropriate corporate practices and strive to be socially responsible. Good corporate citizenship is the establishment of an ethical relationship between the company and the society in which it operates. As good corporate citizens of the societies in which they do business, companies have, apart from rights, legal and moral obligations in respect to their social and natural environments. The company as a good corporate citizen should protect, enhance and invest in the well-being of society and the natural ecology.*"<sup>46</sup>

The Code further, explaining the social responsibility it provides under paragraph 5.3.1 that *as a good corporate citizen the company should have comprehensive policies and practices in place throughout the business that enables it to make decisions and conduct its operations ethically, meet legal requirements and show consideration for society, communities and the environment. Under paragraph, 5.3.2 of the Code the board of a company is required to consider not only its financial performance but also the impact of the company's operations on society and the environment. Paragraph 5.3.2 of the Code provides although the company is an economic institution, it remains a corporate citizen and therefore has to balance between economic, social and environmental value.*<sup>47</sup>

It is crystal clear, from the salient provisions of the code that *environmental protection remains a major facet of the concept of corporate social responsibility*. Buttressing the provisions of the Code of Corporate Governance Practices for Issuers of Securities to the Public 2015 is *Mwongozo, which is the Code of Governance for State Corporations*.

Chapter I of *Mwongozo* provides, that the Board for state corporations ought to carry out a governance audit annually. The governance audit among other areas ought to cover the corporation's governance practices in *corporate social responsibility*.<sup>48</sup>

Chapter 4 of *Mwongozo* in a bid to promote the culture of corporate social responsibility in state corporations, provides that the Board should ensure that a sustainable and appropriate budget is allocated for corporate social responsibility and investment. Lastly, under annexure I(E) of *Mwongozo*, the board

---

<sup>45</sup> The Code of Corporate Governance Practices for Issuers of Securities to the Public 2015 under paragraph 2.11.1 (h)

<sup>46</sup> The Code of Corporate Governance Practices for Issuers of Securities to the Public 2015 Chapter 5

<sup>47</sup> Ibid No.46

<sup>48</sup> *Mwongozo* (The Code of Governance for State Corporations.)

is tasked with reviewing periodically the organizations' strategic objectives and policies relating to sustainability and social responsibility investment.<sup>49</sup>

Lastly, Section 655 (4) (b) (i), (ii) and (iii) of the Companies Act 2015<sup>50</sup> provides that in the case of a quoted company, the directors shall specify in the business review (to the extent necessary for understanding of the development, performance or position of the company) information about: the environmental matters (including the impact of the business of the company on the environment); the employees of the company; and social and community issues including information on any policies of the company concerning those matters and the effectiveness of those policies. The Companies Act in this way adopts corporate social responsibility.

From the above analysis, it is clear that corporate social responsibility as envisaged under the analyzed provisions of the law is voluntary in nature in Kenya. The voluntary corporate social responsibility approach includes self-imposed obligations and negotiated instruments to the company for corporate social responsibility. Usually, this results from the fact that the company itself chooses to issue a set of rules. Codes of conduct are one of the most prominent voluntary approaches to corporate social responsibility. The voluntary nature of corporate social responsibility is often interpreted by business to mean that, since corporate social responsibility activities are not binding, they are always optional and therefore can be determined solely by the business. This approach emphasizes that the value of corporate social responsibility lies in its voluntary nature. Those with a less polarized position suggest that corporate social responsibility does not have to be regulated heavily but the state should provide an enabling environment.<sup>51</sup>

In the view of businesses, attempts to regulate corporate social responsibility would be counterproductive because this would stifle creativity and innovation among enterprises that drive the successful development of corporate social responsibility and could lead to conflicting priorities for enterprises operating in different geographical areas.<sup>52</sup>

Several tools are gradually evolving as a legal means of enforcing voluntary corporate social responsibility issues. Among these are the emerging rights of action under different national laws with the extra territorial application. The increasing interest in human rights issues has directed to voluntary corporate social responsibility as a possible basis for action against companies.<sup>53</sup> Even voluntary approaches to corporate social responsibility have a legal context. The intent to be bound is usually a decisive factor when Courts or other bodies administering justice are asked to determine legal issues relative to different forms of expression of will. The voluntary approaches such as company codes of conduct can shape the standards of care that are legally expected of businesses. In the workplace, an agreement reached through collective bargaining between employers and trade unions can become legally binding through

---

<sup>49</sup> Ibid No.48

<sup>50</sup> Act No. 17 of 2015

<sup>51</sup> Arjun Adhikari Corporate Social Responsibility: Voluntary or Mandatory? 8 NJA L.J. 185 (2014), page 187

<sup>52</sup> Ibid No.51

<sup>53</sup> Arjun Adhikari Corporate Social Responsibility: Voluntary or Mandatory? 8 NJA L.J. 185 (2014), page 187

incorporation in employment contracts. Through the use of voluntary codes and other forms of private standard-setting, companies decide what they consider to be their responsibilities to society.<sup>54</sup>

Corporate social responsibility, though voluntary, it can play a seminal role in the protection of the environment in Kenya. Arguably, the very nature corporate social responsibility being voluntary in Kenya can make it a viable means of protection. The voluntary nature of corporate social responsibility codes, principles and norms are *innovative and important instruments for the protection of the environment, especially in countries where public authorities fail to enforce minimum standards*. However, they are complementary to national, international legislation and collective bargaining.<sup>55</sup>

## **5.0 Conclusion**

The protection of the environment in Kenya is vital and of optimum importance. This paper posits that corporate social responsibility can be an innovative way of protecting the environment. It is this paper considered view that corporate social responsibility can play a vital role in the realization of sustainable development.<sup>56</sup> There is a need for innovative ways of protecting the environment in Kenya. Corporate social responsibility offers an innovative way of protecting the environment.

---

<sup>54</sup> Arjun Adhikari Corporate Social Responsibility: Voluntary or Mandatory? 8 NJA L.J. 185 (2014), page 187

<sup>55</sup> Ibid No. 54, page 187-188

<sup>56</sup> *The Brundtland Commission* established by the United Nations in 1983 released a report entitled *Our Common Future*, also known as the *Brundtland Report*. This report defined Sustainable Development as Development that meets the needs of the present without compromising the ability of future generations to meet their own needs

## References

Arjun Adhikari Corporate Social Responsibility: Voluntary or Mandatory? 8 NJA L.J. 185 (2014)

Brenda Short, Environmental Law 1st Edition

Bryan A. Garner, Black's Law Dictionary 9<sup>th</sup> Edition.

Carroll, Archie B.: A Three-Dimensional Conceptual Model of Corporate Social Performance. Academy of Management Review 4/1979,

CED, Social Responsibilities of Business Corporations. 1971

'Corporate Social Responsibility: History, Benefits and Types' (UKEssays.com, October 2019)

Clarence C. Walton, 'Corporate Social Responsibilities' (1967)

David Crowther & Güler Aras, 'Corporate Social Responsibility', 2008

Environmental Management and Co-Ordination Act No. 8 of 1999

EU Commission [(2002) 347

Harold Johnson, 'Business in Contemporary Society: Framework and Issues' (1971)

Helen Anderson; Wayne Gumley, Corporate Social Responsibility: Legislative Options for Protecting Employees and the Environment, 29 Adel. L. Rev. 29 (2008)

Howard R. Bowen, 'Social Responsibilities of the Businessman' (1953)

Juno Consulting, Making Sense of Corporate Responsibility I (2005),

Justine Thornton & Silas Beckwith, Environmental Law (Sweet and Maxwell 1997)

Kate Brown, Center for Social Markets, Corporate Social Responsibility: Perceptions of Indian Business I (Malini Mehra ed., Centre for Social Markets 2001) (quoting A.

Mohan, Corporate Citizenship: Perspectives from India, 2 J. Corp. Citizenship 107

Mahesh Chandra, 'ISO Standards from Quality to Environment to Corporate Social Responsibility and Their Implications for Global Companies' (2011) 10 J Int'l Bus & L

Mark Stallworthy, Environmental Law 1<sup>st</sup> Edition

Mwongozo (The Code of Governance for State Corporations.)

Sharma, Seema G. "Corporate Social Responsibility in India: An Overview." *The International Lawyer*, vol. 43, no. 4, 2009,

Sir Geoffrey Chandler, "Defining Corporate Social Responsibility," *Ethical Performance Best Practice*, Fall 2001.

The Brundtland Commission established by the United Nations in 1983 released a report entitled *Our Common Future*, also known as the Brundtland Report.

*The Code of Corporate Governance Practices for Issuers of Securities to the Public 2015* Tony Blair, UK Prime Minister, May 2000

William C. Frederick, 'The Growing Concerns Over Business Responsibility, 1960.

World Business Council for Sustainable Development, 'Corporate Social Responsibility: Making good business sense' 2000