

# Towards Effective Models and Enforcement of Corporate Social Responsibility in Ethiopia

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## Abstract

Corporate Social Responsibility (CSR) is a concept whereby companies regard stakeholder interests in reaching corporate decisions on voluntary basis. Even though social responsibility is not alien to Ethiopians who are known for their philanthropic and charitable activities, there is no law that expressly requires CSR standards and thresholds. Provisions of the 1960 Commercial Code and other domestic laws show that Ethiopian companies have the option to comply with CSR in their core business strategy and decision making. To that end, companies, have either individually or at sector level, developed model codes of conduct and guidelines including CSR projects and initiatives. However, they are inadequate and do not guarantee effective CSR behavior among companies. There is thus the need to adequately integrate CSR practices into their core business decisions, and meet the interests and legitimate expectations of their employees, creditors, customers, local communities, and the environment. I argue that the alternatives to ensure effective CSR regulation in Ethiopia are adopting the Enlightened Shareholder Value (ESV) which recognizes a CSR framework tighter than the existing shareholder primacy model, or the Responsible Stakeholder Model (RSM) which adopts more subtle and lighter principles than stakeholder model to demand CSR compliance.

## Key terms:

Companies · Corporate Social Responsibility · Enlightened Shareholder · Regulation · Responsible Stakeholder

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## Introduction

Corporate Social Responsibility<sup>1</sup>, often abridged as ‘CSR’, is a very old concept, and its core features can be traced back to ancient Chinese, Egyptian and Sumerian literature.<sup>2</sup> CSR gives due consideration to the welfare of the society in pursuing trade and commercial activities so that business activities shall uplift the lives of the society.<sup>3</sup> The concept of CSR is also implicitly present in various religious texts.<sup>4</sup> CSR took its modern conceptual attributes in western countries and it can be traced back to the work of G. Browns, “Social Responsible Businessman,” published in 1953.<sup>5</sup> Since then, it has gradually become clearer, consolidated, and transformed.<sup>6</sup>

CSR was originally a discourse of corporate philanthropy or other forms of charitable giving.<sup>7</sup> Now, CSR has undergone a vast development and it has evolved as “business system that enables the production and distribution of wealth for the betterment of its stakeholders through the implementation

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<sup>1</sup> Kingsley Adeyi (2018), ‘Corporate Social Responsibility in Nigeria: Legal Framework and Nature of Obligation Owed By Companies To Undertake’, *International Journal of Advanced Research and Publications*, Vol 2, Issue 12, p 22. Corporate Social Responsibility is also called Corporate Citizenship, Corporate Social Performance, Corporate Social Conscience, or Sustainable Responsible Business.

<sup>2</sup> Prashant Pareek (2017), ‘A Study on Corporate Social Responsibility: Historical Background and Impact on Organizations & Society,’ *London Journal of Research in Humanities and Social Sciences*, Vol 17, Issue, 3, p.75

<sup>3</sup> Ibid.

<sup>4</sup> Firuza Madrakhimova (2013), ‘History of Development of Corporate Social Responsibility,’ *Journal of Business and Economics*, Vol. 4, Issue 6, p.510

<sup>5</sup> Institutions , National Identity , Branislav Batinic and Danijela Batinic Danijela (2017), ‘Globalization and Corporate Social Responsibility,’ in Emrah Doğan and Şevket Alper Koç, (eds), *Institutions, National Identity, Power, and Governance in the 21st Century*, (IJOPEC Publication, London), p.11.

<sup>6</sup> See generally Archie B. Carroll(2008), ‘A History of Corporate Social Responsibility: Concepts and Practices,’ in Jeremy Moon, Donald Siegel Andrew Crane, Abigail McWilliams, and Dirk Matten, (eds), *Perspectives on Corporate Social Responsibility*. See also Min Dong Paul Lee(2008), ‘A review of the Theories of Corporate Social Responsibility: Its Evolutionary Path and the Road Ahead,’ *International Journal of Management Reviews*, Vol 10, Issue 1, p.53

<sup>7</sup> Mei Peng Low (2016), ‘Corporate Social Responsibility and the Evolution of Internal Corporate Social Responsibility in 21st Century,’ *Asian Journal of Social Sciences and Management Studies*, Vol 3 , Issue 1, p. 57

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and integration of ethical systems and sustainable management practices.”<sup>8</sup> It turns to be a concept whereby companies voluntarily integrate social and environmental concerns in their business operations and in their interaction with the stakeholders.<sup>9</sup> Currently, it is a concept beyond philanthropic or charitable activities.

In Ethiopia, social responsibility is not alien to the people who traditionally care to their families, neighbors, friends, and the community at all times. In spite of that, there is no a well-founded legislation which integrates this practice with everyday life, particularly with business undertakings. The 1960 Commercial Code does not make express reference to CSR, and it does not indicate the duty of companies to practice CSR. Accordingly, companies are practicing CSR through their own private regulations and on voluntarily basis. Thus, companies have the option to include or set aside CSR in their core business strategy.

This has led to inadequate CSR in core business strategies and decision making. For example, most companies do not want to go farther and ensure the occupational safety and health of their employees beyond the minimum standards stipulated in labor law. They do not strive towards producing and manufacturing products which are above the quality set for customers. They do not show extra efforts to install devices and equipment’s to treat and discharge chemicals, and hazardous waste beyond the requirements of the law, and keep the water bodies, soil, the air, local residents, animals and surrounding flora and fauna in safer and better position.<sup>10</sup> This article examines the 1960 Ethiopian Commercial Code, other laws, private regulations such as voluntary codes of conduct and private initiatives of companies based on the laws, studies conducted on CSR, and other relevant literature.

The first and second sections deal with the conceptual framework, the regulatory schemes and enforcement mechanisms. Sections 3 and 4 examine legal regulation under the 1960 Commercial Code and other laws, private regulations such as codes of conduct through private initiatives of various sectors. The fifth section examines the level of effectiveness of CSR within companies operating business in Ethiopia. Section 6 sets an agenda for

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<sup>8</sup> Richard E Smith (2011), ‘Defining Corporate Social Responsibility: A Systems Approach For Socially Responsible Capitalism’, Master Thesis, University of Pennsylvania, p. 10

<sup>9</sup> Green paper: Promoting a European framework for corporate social responsibility (Com (2001)366), 18-07-2001, commission of the European Communities

<sup>10</sup> Robi Redaa (2012), ‘Review of Environmental Pollution Challenges in Ethiopia,’ *Ethiopian Environmental Review*, Vol. 2, pp. 137-149

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regulatory paradigm shift towards a more efficient CSR framework and enforcement in Ethiopia.

## 1. The Concept of Corporate Social Responsibility (CSR)

Companies habitually open, and operate businesses inside the community based on permits to operate business in their jurisdiction. In return to their benefits from business activities, companies are expected to create job to residents, support the community to be a better place for living, pay tax and be sources of revenue for the community, and preserve the environment.<sup>11</sup> This interaction between companies and the host community establishes a tacit obligation on companies to consider the wellbeing of employees and their families, the local community as well as to act towards societal problems, goals, and aspirations or to the benefit the society at large.<sup>12</sup> This demonstrates the notion of CSR.

Various diverse definitions of CSR have been proposed and set forth over the decades. Dahlsrud, for instance, has analyzed 37 published definitions of CSR set forth between 1980 and 2003.<sup>13</sup> He noted that many of the definitions have much in common, and found that stakeholder, social, economic, voluntarism, and environmental domains are the most frequent dimensions that constitute CSR.<sup>14</sup>

CSR relates to a relationship between companies and the society with which they interact. It is about fulfilling responsibilities or obligations of companies towards the society on voluntary basis, and beyond the requirements of the law.<sup>15</sup> This includes, *inter alia*, developing good relationship with employees, customers and their families, working in partnership with local communities, engaging in investment that have social benefits, and participating in environmental conservation and sustainability

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<sup>11</sup> Nathan E. Hurst (2004), 'Corporate Ethics, Governance and Social Responsibility: Comparing European Business Practices to those in the United States,' A Study Conducted for the Business and Organizational Ethics Partnership, Santa Clara University, pp. 7-8

<sup>12</sup> Adeyi, *supra* note 1. p.22

<sup>13</sup> Alexander Dahlsrud (2008), 'How Corporate Social Responsibility is Defined: An Analysis of 37 Definitions,' *Corp. Soc. Responsib. Environ. Mgmt.*, Vol 15, p.3

<sup>14</sup> *Id.*, p.5

<sup>15</sup> Michael Fontaine (2013), 'Corporate Social Responsibility and Sustainability: The New Bottom Line?' *International Journal of Business and Social Science*, Vol 4 , Issue 4 , p.111

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practices.<sup>16</sup> It is an initiative whereby companies take the responsibility and stretch their hands for the impact of their activities on employees, suppliers, creditors, customers, host communities and the environment.<sup>17</sup>

Although CSR may entails some form of corporate philanthropy, it is not confined to such philanthropic gestures. Indeed, CSR and corporate philanthropy are expressions of the interface between the company and its societal environment. However, CSR and philanthropic initiatives of a company are not synonymous, and there is a significant difference between the two. The word *philanthropy* has generally been defined as “a concern for or love of humankind.”<sup>18</sup> It is a voluntary private action for a charitable purpose.<sup>19</sup> It is a strategy that promotes and attempts to bring about social change by mainly making generous charitable gifts, aid, or donations.<sup>20</sup> Philanthropy does not involve promotional (and marketing) objectives. It does not also involve the direct participation of philanthropists, as philanthropists often follow up and know the impact created by their contribution in remote.<sup>21</sup>

This concept of corporate philanthropy can be traced back to the late 1880s and early 1990s when business people made contributions to charity and other worthy cause as well as pursued activities which improved and uplifted the community.<sup>22</sup> It continued to grow into the 20<sup>th</sup> century, and by the late 20<sup>th</sup> century, it had become one of the institutionalized ways by which businesses provided aid to communities, the growing number of nonprofit organizations, and other national and international groups.<sup>23</sup> By the first decade of 2000s, majority of the companies began to participate in various corporate charitable giving, matching programs, product and service donations, employee voluntarism, or in any kind of involvement in response to the need of the community in areas such as education, culture, art, and

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<sup>16</sup> Maimunah Ismail (2009), ‘Corporate Social Responsibility and Its Role in Community Development: an International Perspective,’ *The Journal of International Social Research*, Vol 2, Issue, 9. p. 199

<sup>17</sup> Ibid.

<sup>18</sup> Archie B. Carroll (2011), ‘Corporate Social Responsibility (CSR),’ in *SAGE Brief Guide to Corporate Social Responsibility*, SAGE Publications, p.15

<sup>19</sup> Robert L. Payton and Michael P. Moody (2008), *Understanding Philanthropy: Its Meaning and Mission*,( Indiana University Press), p. 6

<sup>20</sup> Michael E. Porter & Mark R. Kramer (2002), ‘The Competitive Advantage of Corporate Philanthropy,’ *Harvard Business Review*, Vol. 80, Issue 12, p.2

<sup>21</sup> Visit <https://thecsrjournal.in/difference-between-csr-and-philanthropy/> . Accessed on July 10, 2019

<sup>22</sup> Carroll, *supra* note 18. pp.15-16

<sup>23</sup> *Id.*, p.16

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heath activities.<sup>24</sup> Therefore, although corporate philanthropy has its own distinct features, it is currently part of the concept of CSR.<sup>25</sup> It is one of the foremost means by which companies fulfill their social responsibilities and come to be regarded as good corporate citizens.<sup>26</sup>

There is debate among scholars on whether CSR shall be voluntary (left to the morality of companies), or shall be mandated by an external law.<sup>27</sup> Some argue that companies should regulate and enforce CSR on voluntary basis, whereas others hold that companies should be required (by an external hard law) to effectively enforce CSR. For example, based on the first strategy, the UK Government described “CSR as the business contribution to sustainable development goals. Essentially, it is about how business takes account of its economic, social and environmental impacts in the way it operates maximizing the benefits and minimizing the downsides.”<sup>28</sup> Similarly, the European Commission stated that “CSR is a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis.”<sup>29</sup> The Commission of the European community also indicated that “CSR is essentially a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment.”<sup>30</sup>

Milton Friedman,<sup>31</sup> Fulck and Hoblich,<sup>32</sup> N.V. Badi,<sup>33</sup> and Carroll<sup>34</sup> have also described CSR as a voluntary concept. In general, this view holds that

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<sup>24</sup> *Id.*, pp 17-18

<sup>25</sup> *Id.*, pp 16-17. See also Liliana Nicoleta Simionescu (2015), ‘The Gender Differences Effects on Corporate Social Responsibility (CSR),’ *Economy Series*, Issue 3. p.170

<sup>26</sup> Muhammad Tariq Khan et al.(2012), ‘Corporate Social Responsibility ( CSR ) – Definition , Concepts and Scope ( A Review ),’ *Universal Journal of Management and Social Sciences*, Vol 2, Issue 7. p. 41. He notes that “CSR does not mean just taking part in charitable activities and events; it means holding the responsibility to develop the society by envisioning future plans for socio-economic justice and be conscious about their responsibility for the welfare of society around them.”

<sup>27</sup> Gerlinde Berger-walliser & Inara Scott(2018), ‘Redefining Corporate Social Responsibility in an Era of Globalization and Regulatory Hardening,’ *American Business Law Journal*, Vol 55 , Issue 1 . p.188

<sup>28</sup> Catherine Turner (2009), *Corporate Governance: A Practical Guide for Accountants*, (CIMA Publishing, 1<sup>st</sup> Ed). P. 7

<sup>29</sup> Green paper, *supra* note 9

<sup>30</sup> *Ibid*

<sup>31</sup> Milton Friedman (1970), The Social Responsibility of Business is to Increase its Profits, *The New York Times Magazine*. at 1–6. For Milton, the social responsibility of business is to increase its profits. Thus, it makes CSR a n activity that companies can engage on their interests.

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companies should have a prerogative power to either comply or refuse to include CSR in their core business strategy and pursue CSR practices. They expect companies to develop their own CSR codes of conduct or a set of rules, and regulate and enforce CSR on voluntarily basis.

This voluntary CSR strategy is informed by two notions: the first notion argues that companies are established solely for profit purpose, and shall be managed for the sake of shareholders only.<sup>35</sup> The second notion, as corollary of the first one, focuses on theory of free market, and posits that CSR should be regulated by free market forces and not by any external hard law and mandatory rules.<sup>36</sup>

On the contrary, there is a perspective which propounds that companies shall be mandated by external hard law to effectively pursue CSR activities. Thomas McInerney argued that there are four types of companies with respect to regulation:

those who know the law and are willing to follow it (Group A); those who do not know the law but would like to be law abiding (Group B); those who know the law and do not want to follow it (Group C); and those who do not know the law and do not wish to be law abiding (Group D).<sup>37</sup>

McInerney argued that companies, particularly those under group C and D may not effectively and efficiently pursue CSR practices on voluntary

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<sup>32</sup> Vincent Konadu Griffith & et al(2015), 'Debate on Mandatory Corporate Social Responsibility,' *Conference paper presented at National Seminar on Strategies for Business Excellence in Global Era..* p.1 Fulck and Hoblich defines CSR as voluntary corporate commitment to exceed the explicit and implicit obligation imposed on a company by society's expectations of conventional corporate behavior.

<sup>33</sup> Ibid. N.V Badi in 2012 defined CSR is an organization obligation to benefit society in ways that transcend the primary business objectives of maximizing profit.

<sup>34</sup> A. B. Carroll (1979), 'A Three-Dimensional Conceptual Model of Corporate Performance.,' *The Academy of Management Review*, Vol 4, No 4, P.499 See also Archie B.Carroll (1991), 'The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders,' *Business Horizons*, Vol 34, Issue 4.

<sup>35</sup> Archie B Carroll & Kareem M Shabana(2010), 'The Business Case for Corporate Social Responsibility : A Review of Concepts , Research and Practice,' *International Journal of Management Reviews*, Vol 12 , Issue 1, p.88

<sup>36</sup> Bhavesh Sarna (2016), 'Voluntary CSR Vs. Mandatory CSR –The sound of employees,' Master Thesis, Jyväskylä University. p. 19

<sup>37</sup> Thomas McInerney (2007), 'Putting Regulation before Responsibility : Towards Binding Norms of Corporate Social Responsibility,' *Cornell International Law Journal*, Vol 40, Issue 1. p 185

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basis since they do not want or wish to observe it.<sup>38</sup> Other scholars have also indicated that there is a strong case for CSR to be regulated and be binding.<sup>39</sup> As Ruth Lea noted:

CSR is about businesses and other organizations going beyond the legal obligations to manage the impact they have on the environment and society. In particular, this could include how organizations interact with their employees, suppliers, customers and the communities in which they operate, as well as the extent they attempt to protect the environment.<sup>40</sup>

Moreover, the World Business Council for Sustainable Development (WBCSD) in 2002 declared that “CSR is the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life.”<sup>41</sup> Accordingly, the Council puts an obligation on company managers to protect and improve the welfare of the society, environment and the interest of organizations. Moreover, the International Council on Human Rights Policy, Consumers International and Chatham House, and Royal Institute of International Affairs consider voluntary initiatives of CSR as mostly ineffective and insufficient, and thereby, call for the government to regulate CSR.<sup>42</sup> This is substantiated by various compliance literature which underline that voluntary CSR standards are not self-enforcing,<sup>43</sup> and are not strong enough to secure responsible corporate behavior.<sup>44</sup>

Indeed, companies may not be responsive to CSR practices solely fearing sanction. Yet, some form of sanction is essential towards ensuring compliance. In general, the view that supports this perspective upholds that

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<sup>38</sup> *Id.*, pp 185-186

<sup>39</sup> Sarna, *supra* note 36. p.18. See also Oyungerel Tudev & Erhembayar Lkhagvasuren (2011), ‘The implementation of Corporate Social Responsibility in Mongolian Business Sector,’ *Journal on Efficiency and Responsibility in Education and Science*, Vol 4, Issue 2. p.90

<sup>40</sup> Low, *supra* note 7, p .61

<sup>41</sup> World Business Council for Sustainable Development (2002), *Corporate Social Responsibility The WBCSD’s journey* , World Business Council for Sustainable Development, p. 1 See also Richard Holme, & Phil Watts (2000), *Corporate Social Responsibility: Making Good Business Sense*, World Business Council for Sustainable Development

<sup>42</sup> Arjun Adhikari (2014), ‘Corporate Social Responsibility : Voluntary or Mandatory ?’ *NJA Law Journal*. p.194

<sup>43</sup> McInerney, *supra* note 37, p. 185-186

<sup>44</sup> Olivier De Schutter (2008), ‘Corporate Social Responsibility European Style,’ *European Law Journal*, Vol. 14, Issue 2, pp. 15-22

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companies primarily focus on how to structure their business operation and satisfy the desires of their shareholders. It argues that if companies are left free, they may not consider stakeholder interests on voluntary basis. According to the proponents of this view, companies may not be trusted in finding solutions to ongoing problems of stakeholders and the society on their own unless they are required to do so by the law. Indeed, companies may pursue CSR voluntarily, but, the proponents of this view hold that companies will use it as a public relation or a corporate strategy tool instead of serving the stakes of their employees, customers, creditors, suppliers, local communities and the environment.<sup>45</sup>

In spite of this debate, recent developments suggest that CSR is not solely based on voluntary compliance. The conceptions of governments, scholars, and national or international organizations is shifting away from the notion of CSR as a purely extralegal and voluntary activity. Currently, CSR is increasingly regulated in different countries. India is one of the countries which enacted CSR legislation in 2013. Section 135(5) of the Indian Companies Act provides that a company should “spend, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.”<sup>46</sup> While the hard law aspect of this requirement is the obligation to devote 2% of average net profit to CSR, the voluntary (i.e. soft law) dimension is the range of options in deciding the type of CSR activity that is left to the company’s CSR policy.

Increased number of countries such as UK,<sup>47</sup> Belgium,<sup>48</sup> France,<sup>49</sup> Australia<sup>50</sup> and Germany<sup>51</sup> have also enacted CSR laws which transform the existing traditional voluntary attributes of CSR practices. In 2011, the European Commission in its new communication announced that CSR is “the responsibility of enterprises for their impacts on society”<sup>52</sup> and, stated

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<sup>45</sup> Sarna, *supra* note 36. p.19

<sup>46</sup> Companies Act No. 18, 2013, India, Sec. 135, p .87

<sup>47</sup> *Companies Act, 2006*, United Kingdom, Sec. 173.

<sup>48</sup> Jonathan Lux *et al* (2005), ‘The European Initiatives’ in Ramon Mullerat (ed.), *Corporate Social Responsibility, The Corporate Governance of 21st Century* (The Hague, the Netherlands: Kluwer Law International and International Bar Association), p. 291.

<sup>49</sup> *Id.*, 293-294.

<sup>50</sup> *Id.*, p. 421.

<sup>51</sup> Adhikari, *supra* note 42. p.202

<sup>52</sup> Alexandra Horváthová (2018), ‘Commercial Contracts and Corporate Social Responsibility Values: A European Perspective and an Attempt of a Normative Approach,’ in Maren Heidemann & Joseph Lee (eds), *The Future of The Commercial*

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that adherence to applicable legislation, and collective agreements between social partners, is a prerequisite for meeting the responsibility.<sup>53</sup> It required companies to meet their social responsibility by integrating social, environmental, ethical, human rights and consumer concerns in their business operations and core strategy.

In Ethiopia, there is no specific law that directly mentions and specifies the concept of CSR. The Commercial Code does not embody a provision that makes express reference to CSR. But, different provisions of the Code impliedly consider CSR as a matter of discretion and within the prerogative power of company directors. A more express recognition of CSR without mandatory standards is embodied in the new Income Tax Proclamation which recognizes charitable donations as deductible expenses if they are made to Ethiopian Charities and Ethiopian Societies or in response to call for development or an emergency call issued by the government thereby implicitly attempting to encourage companies to engage in CSR activities.<sup>54</sup> Therefore, there is no legislation in Ethiopia that directly enjoins companies to either incorporate CSR in their policies or enforce CSR compliance. There is no any provision upon which companies can be held accountable for the negative impact they caused on employees, local residents and the environment beyond the standard of the law.

## 2. Regulation of CSR

It is difficult to obtain a holistic sense on the term ‘regulation’ with clarity and precision,<sup>55</sup> and there are still contestations on the meaning and scope of the term. In its broader meaning, it encompasses “all forms of social control, whether intentional or not and whether imposed by the state or other social institutions.”<sup>56</sup> In its narrower definition it includes “deliberate attempts by the state to influence socially valuable behavior which may have adverse

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Contract in Scholarship and Law Reform: European and Comparative Perspectives (Springer, Switzerland), p. 293

<sup>53</sup> Ibid.

<sup>54</sup> Proclamation No. 979/2016, Federal Income Tax Proclamation, *Federal Negarit Gazette Extra Ordinary Issue*, 22<sup>nd</sup> Year, No. 104, Addis Abeba, 18<sup>th</sup> August, 2016, Art, 24

<sup>55</sup> Robert Baldwin, Martin Cave & Martin Lodge (2012), *Understanding Regulation: Theory, Strategy, and Practice*, (2<sup>nd</sup> ed, Oxford University Press), p.2

<sup>56</sup> Bronwen Morgan and Karen Yeung (2007), *An Introduction to Law and Regulation: Text and Materials*, 1<sup>st</sup> ed, Cambridge University Press, pp. 3-4

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side-effects by establishing, monitoring and enforcing legal rules.”<sup>57</sup> This article adopts the narrower definition, which in the context of CSR refers to a deliberate attempt by the state to control or monitor companies to integrate CSR into their policies and core business strategies. Thus, regulation is different from ‘governance’ and ‘enforcement’. Governance often focuses on how and why companies operate their business,<sup>58</sup> whereas enforcement is not an end by itself, but a means to achieve the goals of regulation.<sup>59</sup>

Regulation may apply to CSR with a view to inducing companies to care for safety and welfare of employees, creditors, suppliers, local communities, and the environment.<sup>60</sup> However, there is variation in its application owing to different theories and interests of regulators.<sup>61</sup> CSR can also have sundry meanings.<sup>62</sup> This necessitates some discussion on soft law (self-regulation), hard law (mandatory) regulation, and co-regulation which blends the voluntary and mandatory CSR regulation approaches.

### 2.1. Soft law or self (voluntary) CSR regulation

In soft law or self CSR regulation, CSR rules are developed and enforced by the companies themselves.<sup>63</sup> This model gives companies a prerogative power to develop their own CSR codes of conduct and other set of rules,<sup>64</sup> and enforce CSR activities in a decentralized fashion, on their own will, and in accordance with their internal strategies.<sup>65</sup> Companies decide their

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<sup>57</sup> Ibid.

<sup>58</sup> Tineke E. Lambooy (2010), ‘*Corporate Social Responsibility: Legal and semi-legal frameworks supporting CSR developments 2000-2010 and cases studies*’, PHD Thesis, University of Leiden.. p.60

<sup>59</sup> *Id.*, p. 260

<sup>60</sup> Bronwen Morgan (1976), *Cases and Materials on Economic Regulation of Business*, 1<sup>st</sup> Ed, (West Publishing Co), pp 18-20

<sup>61</sup> Jennifer A. Zerk (2010), ‘Extraterritorial jurisdiction: lessons for the business and human rights sphere from six regulatory areas,’ *A Working Paper of the Corporate Social Responsibility Initiative, Working Paper No. 59*, p 82.

<sup>62</sup> Jennifer A. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (1<sup>st</sup> ed, Cambridge University Press), p. 32

<sup>63</sup> Hamed Alavi, Patrycja Hąbek & Helena Cierna (2016), ‘Corporate Social Responsibility and Self-regulation,’ *MM Science Journal*, p 1122 DOI: 10.17973/MMSJ.2016\_10\_201681

<sup>64</sup> Michał Jurek (2014), ‘The Genesis and Evolution of CSR Self-Regulation with Special Reference to the Case of Financial Institutions,’ FESSUD Working Paper, Working Paper Series No 70. p. 24

<sup>65</sup> J Jean Pascal Gond, Nahee Kang & Jeremy Moon (2011), ‘The Government of Self-regulation: On the Comparative Dynamics of Corporate Social Responsibility,’ *Economy and Society*, Vol 40, Issue 4. p. 644. See also Mia Mahmudur Rahim

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priorities and responsibilities towards stakeholders' interests and the society, and they practice CSR activities on their own. Companies will not be detected and guided by the policies and laws of the government, or are not expected to observe mandatory CSR laws and rules. Instead, they often articulate 'best practices' as a benchmark or norm with an aspirational quality. The origin and semantic interpretation of CSR are in tandem with this fact.<sup>66</sup>

In soft law or self (voluntary) CSR regulation, market factors play a paramount role in regulating CSR practices.<sup>67</sup> Markets –instead of the government– drive companies to pursue CSR activities. The government refrains from making unnecessary interventions which distort CSR practices.<sup>68</sup> As a result, this model is a “voluntary, bottom-up and self-regulation”<sup>69</sup> of CSR by companies in contrast to mandatory, top-down and coercive regulation by the government.

The soft law model implicitly endorses the neoliberal claim that the state should play, but a limited role in economic affairs.<sup>70</sup> The model also endorses a pro-business standing.<sup>71</sup> It promotes companies to be innovative and create new business ideas on issues of CSR.<sup>72</sup> It, *inter alia*, encourages companies to be more flexible to meet CSR targets based on their needs and types, reduce CSR implementation costs and bring unpriced economic returns.<sup>73</sup>

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(2013), *Legal Regulation of Corporate Social Responsibility: A Meta-Regulation Approach of Law for Raising CSR in a Weak Economy* (Springer), p.97

<sup>66</sup> Pablo Nieto, 'Why Regulating? Corporate Social Responsibility is a Conceptual Error and Implies a Dead Weight for Competitiveness', *The European Enterprise Journal*, Pp.25-26.

<sup>67</sup> SORCHA MacLeod (2012), 'Towards Normative Transformation: Re- conceptualising Business and Human Rights,' PhD thesis, pp. 257-258.

<sup>68</sup> Renginee G. Pillay(2016), 'The Limits to Self-regulation and Voluntarism: From Corporate Social Responsibility to Corporate Accountability,' *Amicus Curiae*, Issue 99. p.10

<sup>69</sup> Ibid.

<sup>70</sup> Engobo Emeseh et al.(2010), 'Corporations, CSR and Self Regulation : What Lessons from the Global Financial Crisis ?' *German Law Journal*, Vol 11, No 2, pp. 233-235

<sup>71</sup> Nieto, *supra* note 66. p. 26

<sup>72</sup> Ibid.

<sup>73</sup> Cavaliere, Alberto (2000), 'Over-Compliance and Voluntary Agreements: A Note about Environmental Reputation', *Environmental and Resource Economics*, Vol 17, issue 2.

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## 2.2. Hard law (mandatory) CSR regulation

Hard law (mandatory) CSR regulation subjects companies to government mandated CSR polices and laws.<sup>74</sup> In this model, the state enacts CSR legislation, and sets minimum CSR standards; specifies specific CSR behaviors, either positively or negatively; and requires companies to comply with them.<sup>75</sup> Thus, all companies (not only those which voluntarily choose or are pressed by brand vulnerability) engage in all legally prescribed CSR activities.<sup>76</sup> In hard law mandatory CSR regulation, CSR is enforced directly by state agencies (often through law or administrative oversight) even though the costs and benefits of regulation are shared by the public.<sup>77</sup> This demonstrates that hard law CSR regulation is a top-down, coercive and rule based CSR regulation.<sup>78</sup>

Even if there are mandatory thresholds of engagement, the details are left to companies, and they are expected to work in consultation with stakeholders while they develop, implement and evaluate their CSR activities.<sup>79</sup> Accordingly, this model ensures fair, more legitimate, and most importantly, more effective CSR in a country.<sup>80</sup> It avoids excesses in the exploitation of labor, bribery, and corruption. It lets companies to know what is expected of them and enhance their profitability, growth and sustainability as well as to re-address the balance between companies and their stakeholders.<sup>81</sup> It also penalizes rogue companies because of their lower standards.<sup>82</sup>

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<sup>74</sup> Gregory Jackson, Julia Bartosch & Emma Avetisyan (2017), 'Regulating Self-Regulation? The Politics and Effects of Mandatory CSR Disclosure in Comparison,' *SSRN Electronic Journal*. P5

<sup>75</sup> Rahim, *supra* note 62. p. 99. See also Jianling Wang et al.(2017), 'The Effect of Mandatory Regulation on Corporate Social Responsibility Reporting Quality: Evidence from China,' *Journal of Applied Business Research*, Vol. 33, No 1, p. 68

<sup>76</sup> Doreen McBarnet (2009), 'Corporate Social Responsibility Beyond Law, Through Law, For Law,' *University of Edinburgh School of Law, Working Paper Serious 2009/03*, p. 27

<sup>77</sup> Jackson, Bartosch, and Avetisyan, *supra* note 74. p3

<sup>78</sup> *Id.*, pp. 3-4

<sup>79</sup> Adhikari, *supra* note 42. p.195

<sup>80</sup> Bethel U Ihugba (2012), 'Compulsory Regulation of CSR : A Case Study of Nigeria,' *Journal of Politics and Law*, Vol 5, Issue 2, p. 69. See also McBarnet, *supra* note 76. p. 27

<sup>81</sup> Deborah Doane (2005), 'The myth of CSR: The problem with assuming that companies can do well while also doing good is that markets don't really work that way,' *Stanford Social Innovation Review*, Vol 3, Issue 3. p. 28. See also Adhikari, *supra* note 42. P.196

<sup>82</sup> Adhikari, *supra* note 42. p. 196

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### 2.3. Co-regulation of CSR

In CSR regulation, various discourses of self-regulation and mandatory regulation interact and compete for dominance with varying degrees of success. Yet, none of them dominates the regulation of CSR scholarship and practice.<sup>83</sup> Recently, scholars are arguing that an exclusive self-regulation of CSR does not characterize CSR.<sup>84</sup> They are also skeptical regarding the effectiveness of mandatory CSR regulation. As a result, interest has grown for co-regulation of CSR: the hybrid or the smart mix of self and mandatory CSR regulations.<sup>85</sup>

Co-regulation refers to “a hybrid governance approach whereby regulations are specified, administered, and/or enforced through a combination of public and private rule-making system.”<sup>86</sup> It is a cooperative form in which government and companies aim to regulate and enforce CSR activities jointly.<sup>87</sup> That is to say, the government sets mandatory CSR denominators and controls whether companies meet these minimum standards. The government also enacts soft CSR laws (i.e., voluntary standards) and encourages companies to enhance their dedication and commitment to CSR through their own codes of conduct and initiatives within the scope of the law.<sup>88</sup>

Thus, companies are not solely obliged to engage in CSR prescribed by the law; they can also pursue CSR voluntarily, but beyond what is prescribed by the law.<sup>89</sup> They assume the ethos of both voluntary and mandatory approaches.<sup>90</sup> In co-regulation, voluntary regulation of CSR will take the place where the mandatory approach is quickly outdated, as globalization may evolve or the government may fail to control CSR activities, or the

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<sup>83</sup> Rahim, *supra* note 65. p.106

<sup>84</sup> Jackson, Bartosch, and Avetisyan, *supra* note 74. p.5

<sup>85</sup> MacLeod, *supra* note 67, p.178.

<sup>86</sup> J Jane Lister (2011), ‘Corporate Social Responsibility and the State International Approaches to Forest Co-Regulation,’ *Vancouver: UBC Press*, p.23 See also Co-regulation and Corporate Social Responsibility, .p.3

<sup>87</sup> Reinhard Steurer (2013), ‘Disentangling governance: A synoptic view of regulation by government, business and civil society,’ *Policy Sciences*, Vol 46, Issue 4, p.397

<sup>88</sup> Ihugba, *supra* note 80. p.77

<sup>89</sup> Adhikari, *supra* note 42. p.202

<sup>90</sup> David Milman (2009), *National Corporate Law in a Globalized Market: The UK Experience in Perspective*, (Edward Elgar Publishing Limited), p. 146, See also Peter Utting (2005), ‘Rethinking Business Regulation: From Self-Regulation to Social Control,’ *UNRISD Program Paper TBS-15*, Issue 15, p.8; See also Ihugba, *supra* note 80. p. 77.

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mandatory approach plays an important role in regulating CSR when corporations fail to comply with voluntary approaches. The OECD has commented that “although the two approaches both offer distinctive strengths and weaknesses, the tendency now is to look at them as largely complementary efforts.” The government has roles as well as limitations in CSR regulation, as the government should not “row, but steer” by avoiding too “much control.”<sup>91</sup> To be precise, in co-regulation, the government assumes a strong, but limited role.<sup>92</sup>

### 3. Legal Regulation of CSR in Ethiopia

Ethiopia has not yet enacted a separate CSR law that imposes specific or directly enforceable CSR obligation on companies. Yet, as highlighted earlier, there are implied expectations of CSR under laws such as the 1960 Commercial Code and the 2016 Income Tax Proclamation. Voluntary CSR standards are expressed in privately developed codes of conduct, CSR projects or initiatives.

#### 3.1. Legal regulation of CSR under the Commercial Code

Under the 1960 Commercial Code, companies acquire legal personality upon registration before the concerned body,<sup>93</sup> and their establishment is publicized in a newspaper having nationwide circulation.<sup>94</sup> The Commercial Code provides that companies shall act through their shareholders in general meeting, board of directors, and officers (agents) appointed by or under authority derived from members’ general meeting or the board of directors.<sup>95</sup> According to the Code, companies act through their shareholders in general meeting.<sup>96</sup>

In the general meeting, shareholders, *inter alia*, listen to reports of directors, and make decision accordingly; appoint or remove of directors; decide on the amount of remuneration of directors; amend the memorandum

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<sup>91</sup> Rahim, *supra* note 65. p.109

<sup>92</sup> Kunnawee Thirarungrueang(2013), ‘Rethinking CSR in Australia : time for binding regulation?’ *International Journal of Law and Management*, Vol 55, Issue 3, p.178

<sup>93</sup> Proclamation No 980/2016, Commercial Registration and Licensing Proclamation, *Federal Negarit Gazeta*, 22<sup>nd</sup> Year, No 101, Addis Abeba, 5<sup>th</sup> August, 2016, Art 5(1) cum 7(1)

<sup>94</sup> *Id.*, Art 7 (2)

<sup>95</sup> Proclamation No 166/1960, Commercial Code of The Empire Of Ethiopia, *Negarit Gazeta: Gaazette Extraordinary*, 19<sup>th</sup> Year, No 3, Addis Abeba, 5<sup>th</sup> May 1960, (here after Commercial Code), Art 347 cum 348cum 350 cum 368

<sup>96</sup> Commercial Code, Art 390.

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or articles of associations; and decide on all other appropriate business matters.<sup>97</sup> Therefore, in the Code, company directors can pursue CSR practices or meet stakeholders' interests only if that is provided in the Memorandum or Articles of Association of the company, or subsequently approved by the resolution of the general meeting of shareholders. That is to say, if companies wish, and then set or approve CSR agenda, directors can voluntarily pursue CSR practices. That makes CSR a voluntary and self-regulatory activity.

Company directors, for instance, do not have the power to set and run CSR objectives by themselves. The Code lets that to be determined by companies only. This confirms that CSR activities are still managed with the interest of companies. Moreover, the Code specifies the duties of directors. These duties (similar to powers) emanate from the law (Commercial Code), Memorandum, or Article of Association, and Resolutions of shareholders meeting. Generally, the nature of these duties is two-fold, i.e. duty to the company, and duty to the creditors.

*Duty to the Company:* the Code recognizes that directors owe duties to the legal person 'the company' rather to 'shareholders or potential shareholders.'<sup>98</sup> These duties of directors are fiduciary duty, care, and diligence.<sup>99</sup> Accordingly, directors are required to act with *bona fide* and in the best interests of the company. They are expected to avoid any conflict arising between their own interests and those of the company; observe the limitations of the powers of the company as well as their power limitations to act on behalf of the company; and maintain and exercise an unfettered discretion when dealing with company affairs.<sup>100</sup> They are expected to act with care, skill and diligence, and manage the affairs of the company as a reasonable person would manage his/her own affairs.<sup>101</sup>

*Duty to the Creditors:* creditors have their money tied up in companies. As a result, the Commercial Code requires directors to act towards the interests of creditors.<sup>102</sup> It enjoins directors to regard the interests of companies' creditors and take all the necessary steps to minimize loss to creditors where they ought to know that the company has no reasonable prospect of avoiding insolvent liquidation. Otherwise, they may be called to

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<sup>97</sup> *Id.*, Art 419 cum 423

<sup>98</sup> Commercial Code, Art 364.

<sup>99</sup> *Id.*, Art 364(3)and(5)

<sup>100</sup> *Id.*, Art 355, 356, 357,360

<sup>101</sup> *Id.*, Art 364(3)

<sup>102</sup> *Id.*, Art 366.

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account to make contribution towards the company's assets in liquidation.<sup>103</sup> Moreover, Articles 435, 436 and 437 of the Code recognize company directors, or representatives of company creditors; and 20% of company creditors may call a general meeting of company creditors on matters related to the effective enforcement of their rights on Debtor Company.

Generally, these duties of directors are towards the company and creditors. They mandate directors to act towards the interests of companies and rights of creditors. The Code adopts the traditional shareholder primacy (shareholder-centric) model of corporate governance. It does not require directors to consider the interests of other stakeholders such as employees, suppliers, customers, the community and environments, or to pursue CSR activities. Directors with lower levels of awareness and commitment to CSR usually consider various CSR engagements that benefit the latter stakeholders as undue depletion of capital or money that would otherwise be available as profit for shareholders.

The Draft Commercial Code (hereinafter the Draft Code) does not make a significant departure from the 1960 Commercial Code on the regulation of CSR. It does not expressly state the concept of CSR while it could have incorporated a minimum standard of it. Yet, the Draft Code amends the duty to loyalty of directors. Article 316 of the Draft Code states that directors shall consider the long-run interest of the company, rights of employees, interests of creditors, and the impacts of their activities on the local community and the environment while they take measures to make the company more effective.<sup>104</sup>

This provision varies from the 1960 Commercial Code because the latter only requires directors to act towards to the interests of the company and creditors. Even if Article 316 of the Commercial Code widens the scope of loyalty of directors, the Draft Code adopts the shareholder-centric model of corporate governance. Its provisions consider CSR as voluntary and leave it to the discretion and whim of companies.

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<sup>103</sup> Ibid

<sup>104</sup> The Draft of the Revised Commercial Code, Art 316. It reads

አንቀጽ 316 የመታመን ግዴታ /ታማኝነት/

- 1) የዳይሬክተሮች ቦርድ አባላት ማኅበሩን የበለጠ ስኬታማ ያደርጋል ብለው በቅን ልቦና ያመኑበትን እርምጃ መውሰድ አለባቸው፤ የመላው ባለአክሲዮኖችን ተጠቃሚነት ለማረጋገጥ መስራት ይኖርባቸዋል፤
  - 2) በዚህ አንቀጽ ንዑስ አንቀጽ (1) ሥር የተመለከተውን ኃላፊነት በሚወጣበት ጊዜ አንድ ዳይሬክተር የማኅበሩን የረጅም ጊዜ ጥቅም፣ የሀራተኞች ጥቅም፣ ከማኅበሩ ገንዘብ የመጠየቅ መብት ያላቸውን ሰዎች ጥቅም፣ የማኅበሩ ሥራ በማሰራሰቡ እና በአካባቢው ላይ የሚኖረውን ተጽእኖ ግምት ውስጥ ማስገባት አለበት።
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### 3.2. Legal regulation of CSR under other laws and bilateral treaties

As indicated earlier, the Federal Income Tax Proclamation No 979/2016 entitles companies to deductible expenses if they make charitable donation. Article 24 of the Proclamation provides that donations and gifts made by companies shall be deductible expenses if they are made:

- a) to Ethiopian charities and Ethiopian societies,
- b) in response to a call for development or an emergency call issued by the government to defend the sovereignty and integrity of the country, to prevent or provide relief in relation to man-made or natural disasters or an epidemic, for any other similar cause.<sup>105</sup>

Moreover, the VAT Proclamation No. 285/2002 requires companies to pay VAT when they buy goods and services from VAT registered providers of goods and services.<sup>106</sup> The Proclamation exempts companies from payment of VAT to the extent specified by the regulation if the transaction is “the supply of goods and rendering of services in the form of humanitarian aid, as well as import of goods transferred to state agencies of Ethiopia and public organizations for the purpose of rehabilitation after natural disasters, industrial accidents, and catastrophes.”<sup>107</sup> Although the Income Tax and VAT proclamations encourage companies to set CSR objectives and pursue responsible business conduct they are encouraged to pursue them voluntarily.

Likewise, Article 5(8) of the Investment Proclamation No. 1180/2020 states that it shall “encourage socially and environmentally responsible investments”<sup>108</sup> as one of its objectives. Towards this objective, Article 54(2) of the Proclamation requires “all investors to give due regard to social and environmental sustainability values including environmental protection standards, and social inclusion objectives” while they are carrying out their investment projects. Although these provisions, are indeed commendable as expectations and standards of responsible voluntary activities, they do not oblige companies to go beyond the standards and requirements of the law based on the levels of their competence and thresholds of CSR performance.

It is also to be noted that there are national laws such as environmental, labor/employment, human rights, and anti-corruption laws which set

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<sup>105</sup> *Id.*, Art 24(1)

<sup>106</sup> Proclamation No. 285/2002, Value Added Tax Proclamation, *Federal Negarit Gazeta*, 8<sup>th</sup> Year, No.33, Addis Ababa, 4<sup>th</sup> July, 2002, Art 3

<sup>107</sup> *Id.*, Art 8(2)(h))

<sup>108</sup> Proclamation No. 1180/2020, Investment Proclamation, *Federal Negarit Gazeta*, 26<sup>th</sup> Year, No. 28, Addis Ababa, 2<sup>nd</sup> April, 2020, Art 5(8)

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minimum standards relating to the environment, labor, human rights, and other standards and thereby, require companies to comply with them. However these laws do not go beyond general standards, and fall short of requiring mandatory CSR practices.

The majority of the Bilateral Investment Treaties (BITs), to which Ethiopia is a party, do not incorporate CSR. It is only a few BITs that make some reference to CSR. For example, the preamble of the BIT between Ethiopia and Finland states that “the contracting parties are desiring for the respect of labor, health, environment, and safety measures, conclude the agreement for the promotion and protection of investment in their respective jurisdictions.”<sup>109</sup> The BIT between Ethiopia and United Arab Emirates, as well as the BIT between Ethiopia and Qatar require investors (companies) to give due regard to standards of environmental protections, labor, health, and safety in host states.<sup>110</sup> Similarly, Article 14 of the BIT between Ethiopia and Brazil states that:

investors and their investment shall strive to achieve the highest possible level of contribution to the sustainable development of the host state and the local community, through the adoption of a high degree of socially responsible practices, based on the principles and standards set out in this Article and the OECD Guidelines for Multinational Enterprises (MNEs) as may be applicable on the State Parties.<sup>111</sup>

These BITs require companies to comply with human rights, sustainable development, labor, and employment and other minimum standards set by the domestic laws or international laws and guidelines. However, they do not set CSR standards and do not expressly require compliance. They rather encourage CSR to be self-regulated by companies.

## 4. Private Regulation of CSR

### 4.1 Model Code of Ethics for Ethiopian Business

In 2014, a Model Code of Ethics (herein after Code of Business Ethics) for Ethiopian Business which engage in trading, service, and manufacturing sector was enacted by the Ethiopian Chamber of Commerce and Sectoral Associations (Herein after ECCSA).<sup>112</sup> The Code of Business Ethics, in its

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<sup>109</sup> The preamble of the agreement Between Ethiopia and the Republic of Finland, 2006.

<sup>110</sup> The agreement to promote and protect investment between Ethiopia and UAE, 2016, Articles 11-13; The agreement to protect and promote investment between Ethiopia and Qatar, 2017, Article 14.

<sup>111</sup> The BIT between Ethiopia and Brazil, 2018, Article 14.

<sup>112</sup> ECCSA is a non-profit and Non-government organization which was established by Proclamation No 321/2003 with a mandate to promote Ethiopia’s product to the

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preamble, states that companies play a paramount role in improving the life of customers and employees; shaping the future of the local community; honoring obligations towards suppliers and competitor; and protecting the environment.<sup>113</sup> It notes that companies are increasingly violating ethical behaviors, breaching trust and becoming dishonest in the country.<sup>114</sup> It further underlines that companies are causing undesirable problem on their employees, consumers, suppliers, the community, and environment.<sup>115</sup>

To Model Code of Ethics embodies five principles and eight ethical standards, and urges companies to take urgent measures which would reverse the negative impacts of their operations. Accordingly, the Code under Principle 2.2.1 enjoins companies to devise their management practices and business conduct that respect and benefit employees, customers, the community in a manner that contributes to the national development effort of the country.<sup>116</sup> Moreover, the Code of Business Ethics requires companies to protect the environment and natural resources, and run their operations without compromising the ability of future generations to meet their own needs.<sup>117</sup>

The Code of Business Ethics also incorporates minimum ethical standards which demand companies to produce, or sell standardized products/ services; offer products/services with fair value, price, intended use, and relevant information; undertake their business without adversely affecting the health and safety of the customers, and the quality of environment; and be sensitive to the needs, dignity, privacy, culture and religion of stakeholders.<sup>118</sup> Article 3.3 of the Code provides that companies should be honest towards their employees; be open in communication and sharing relevant information; create equal opportunities; protect their personal information; create awareness about the laws and regulations of the country; and respect all their legal rights.

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world, develop international trade and promote investment in Ethiopia, and foster the development of a vibrant and dynamic private sector in the country. ECCSA is currently, comprised of nine Regional Chambers of Commerce and Sectoral Associations, two City Administration Chambers of Commerce and Sectoral Associations, one National Chamber Sectoral Associations and six Sectoral Associations.

<sup>113</sup> ECCSA(2014), Model Code of Conduct of Ethics for Ethiopian Businesses, p.1

<sup>114</sup> *Id.*, p.2

<sup>115</sup> *Id.*, P.3

<sup>116</sup> *Id.*, Principle 2.4

<sup>117</sup> *Id.*, Principle 2.5

<sup>118</sup> *Id.*, Article 3.1

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Article 3.4 of the Code of Ethics also stipulates that companies' officials and employees should not accept or offer any gift and hospitality which can create conflict of interest; be honest, fair and conduct their business in good faith; and protect the personal information of suppliers. The Code of Ethics states that companies should operate in harmony with the interests of the community in which they operate; contribute to make the community a better place to live and do business with; raise the standards of health, education, safety, and economic wellbeing of the community; mitigate the undesirable side effects of its operation on the community livelihoods; be sensitive to the culture, religion, customs and traditions of the community; and participate in charitable donations, educational and cultural contributions, civic and other community affairs.<sup>119</sup>

Moreover, the Code of Business Ethics stipulates that companies should preserve and conserve all earth's resources; strive better environmental performance than specified in the law; show preference to environmental friendly products and inputs; apply the 3R principles (Reduce, Reuse and Recycle); and minimize and avoid pollution and waste including solid, liquid and atmospheric conditions.<sup>120</sup> Furthermore, Article 3.2 of the Code requires directors to run companies in the interests of shareholders; provide them with timely and reliable information; and treat them equally regardless of the size of their ownership interest in the company.

These principles and ethical standards demand ECCSA member companies to aspire beyond the profit-focused activities, and meanwhile pursue CSR objectives which consider stakeholder interests. Although these are commendable, the following discussion in Sections 4.2, 4.3 and 5 shows that the Code of Business Ethics has not been effectively implemented towards ensuring CSR in Ethiopia thereby showing the problems of enforcement in CSR principles and standards that fall under the voluntary (self-regulation) category of CSR.

#### **4.2 EHPEA's Code of Practice for Sustainable Flower Production**

The Ethiopian Horticulture Producers and Exporters Association<sup>121</sup> (here in after EHPEA) has enacted Code of Practice for Sustainable Flower

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<sup>119</sup> *Id.*, Article 3.6

<sup>120</sup> *Id.*, Article 3.7

<sup>121</sup> Ethiopian Horticulture Producer Exporters Association is a non-profit business membership organization which is established in 2002. EHPEA is meant to promote the interest of its members which are engaged in the production and export of flowers, vegetables, fruits, herbs, and cuttings. Currently, it has 119 registered members.

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Production<sup>122</sup> (hereinafter EHPEA Code) in 2007. The Code aims to “minimize adverse impact on the environment, the work force and local community, and to encourage further work to improve the farmer’s capability in the area.”<sup>123</sup> As a result, the EHPEA Code recognizes bronze, silver and gold levels of excellence which will be certified by EHPEA.<sup>124</sup>

Of these levels of excellence, the Code defines all the minimum standards of bronze level which are mandatory for all members of EHPEA, but the requirements of silver and gold levels are not finalized yet.<sup>125</sup> The standards of bronze level require flower firms, *inter alia*, to measure, document and evaluate their performance on water consumption, pesticides and fertilizers use, and waste management and energy consumption every month.<sup>126</sup> Moreover, they enjoin firms to assess and mitigate risks related to environment, health and safety of their employees and local community; refrain from purchase, store or use banned and un-registered pesticide products; implement safe pesticides use and storage; and train all their personnel on general risks of handling pesticides, correct use of protective devices and washing facilities, and general accident and emergency procedures.<sup>127</sup>

Annex 1 of the EHPEA Code<sup>128</sup> lists out different activities which flower firms shall comply with. Section 1.1 requires member firms to ensure managers are responsible and consider environmental issues in decision making. Moreover, firms are required to conduct basic assessment on environmental and labor conditions periodically, and take corrective measures;<sup>129</sup> abstain from using methyl bromide<sup>130</sup> and untreated sewage

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<sup>122</sup> EHPEA (2007), EHPEA Code of Practice for Sustainable Flower Production – Bronze Level.

<sup>123</sup> *Id.*, p.2

<sup>124</sup> *Id.*, p.18

<sup>125</sup> *Id.*, p.3. The Code states that “the Silver Level will set internationally recognized standards for Good Agricultural Practices and the Gold Level will define the key elements of current agricultural best-practice within a Sustainable Production framework”.

<sup>126</sup> *Id.*, p.8

<sup>127</sup> *Id.*, p.8

<sup>128</sup> The annex has three chapters, i.e. Production Management, Environmental Management, and Personnel, Labor and Human Resource Management which are further divided into Sub-topics together with Requirement and Compliance Criteria and Reference Documents under each topic.

<sup>129</sup> *Id.*, Section 1.2

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water;<sup>131</sup> monitor and evaluate their water, pesticide, fertilizer, waste disposal and energy consumptions;<sup>132</sup> avoid an unhealthy treatment of employees and other human beings as well as any damage on surrounding flora and fauna.<sup>133</sup>

With regard to employees, the Code requires flower farms to provide training and create awareness on basic skills of first aid in the event of pesticide poisoning, HIV/Aids, environmental management, and occupational health management.<sup>134</sup> The Code also requires firms to fulfill hygiene and ablution facilities, ensure access to clean water, establish clean and suitable rest area, and establish permanent medical clinic and directives to manage basic accidents and emergency cases for employees.<sup>135</sup>

These are standards of bronze level and they expect flower companies to be socially responsible, and consider the interests of their employees, the local community and the environment in which they operate. However, this voluntary Code may not ensure firms to effectively pursue CSR activities. One of the reasons is that the EHPEA Code only applies to member firms.<sup>136</sup> *Second*, it cannot even be effectively enforced on member firms because it stipulates that all members ‘*will be required*’ instead of ‘*shall be required*’ to meet the minimum standard of bronze level, and ‘*will be encouraged*’ instead of ‘*shall be encouraged*’ to move on to the silver and gold level.<sup>137</sup>

*Third*, the Code indicates that “it seeks to compliment the Law of Ethiopia, but does not substitute for the Law...” The EHPEA Code lacks effectiveness because the core law on companies, i.e., the Commercial Code does not oblige companies to pursue CSR practices,. It cannot oblige EHPEA member firms to pursue CSR activities other than the firms that pursue CSR objectives and try to meet the interests of employees, local community and the environment.<sup>138</sup> This has been confirmed by various studies. For instance, in 2009, out of more than 86 member floriculture

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<sup>130</sup> *Id.*, Section 1.4 “Methyl Bromide is an ozone-depleting substance regulated under the Montreal Protocol that is used as a fumigant on crops, for pest control in structures and stored commodities and for quarantine treatments and smaller amounts are also used in the preparation of other organic compounds.”

<sup>131</sup> *Id.*, Section 1.7

<sup>132</sup> *Id.*, Section 1.6, Section 2.1, Section 2.3. and 2.6

<sup>133</sup> *Id.*, Section 2.1, Section 2.9

<sup>134</sup> *Id.*, Section 3.2

<sup>135</sup> *Id.*, Section 3.3. cum 3.4

<sup>136</sup> *Id.*, p. 3

<sup>137</sup> *Id.*,

<sup>138</sup> *Id.*, p. 6

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farms, only 10 observed the terms of the Code and considered stakeholder interests.<sup>139</sup> This shows the reluctance of most farms to pursue the CSR standards articulated in the EHPEA Code of Practice.

### 4.3 CSR projects and initiatives

There are companies that have developed CSR projects and initiatives. In the financial sector, for instance, a few Commercial Banks are promoting good corporate governance, and are working for the interests of their employees, customers, and the general public.<sup>140</sup> Similarly, few cement factories have CSR in their core values and business strategies.<sup>141</sup> There are also some leather industries that have been engaged in building school classrooms, constructing small scale roads and protecting the environment.<sup>142</sup>

Yet, these pursuits of CSR are voluntary and are left to the discretion of companies, and most companies have not developed such CSR codes of conduct, projects or initiatives. This shows that private CSR codes of conduct, projects and initiatives are not pursued at comparable levels by a significant number of companies as they are usually considered as futile for their profit objectives.

## 5. Current CSR Practices of Companies in Ethiopia

As noted earlier, CSR is a voluntary concept in Ethiopia. As a result, the majority of the companies do not perceive CSR as one of the engagements in their day to day pursuits and concerns, and they tend to consider that socially responsible activities are the duty of the government as long as they pay tax.<sup>143</sup> There are a few companies that participate in various philanthropic, economic support, environmental and other CSR activities. However, the motives behind such CSR activities primarily focus on making the local community feel good about them and collect more profit. Moreover, most

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<sup>139</sup> Mulugeta Getu (2009), 'Ethiopian Floriculture and Its Impact on the Environment : Regulation , Supervision and Compliance,' *Mizan Law Review*, Vol 3, Issue 2. p. 264

<sup>140</sup> Accessed at <http://www.combanketh.et> , <https://www.bankofabyssinia.com/>, <https://www.bunnabanksc.com>. <https://dashedbanksc.com/>, <https://www.awashbank.com/> . visited on July 26, 2019

<sup>141</sup> Accessed at <https://nationalcementsc.com/>, <https://www.messeboocement.com>. visited on July 26, 2019

<sup>142</sup> Accessed at <https://elicopl.com.et> visited on July 26, 2019

<sup>143</sup> Asnake Menbere (2016), 'Analyzing Social Responsibility Towards Improving Labor Practice Issues in Ethiopia: A Focus on Metahara Sugar Factory,' Msc Thesis, Norwegian University of Science and Technology, pp. 46-47

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CSR activities of companies fail to holistically consider the interests of their employees, customers, the local community and the environment thereby failing to live up to the expectations of the public. The following overview on selected sectors illustrates this point.

*Leather and footwear companies*

Although there are companies in the leather and footwear industry sector that pursue various social, environmental and economic responsibilities,<sup>144</sup> most leather and footwear companies are posing problems on employees, local community and the environment.<sup>145</sup> Even where CSR activities are conducted, there are gaps in the establishment of CSR department which is responsible to run CSR activities regularly.<sup>146</sup> Moreover, a separate budget is not proactively allocated for CSR activities,<sup>147</sup> and fund for CSR activities is raised from contingency budget or profit. As a result, there is focus on philanthropic activities that is usually upon request from the local community or individuals. These philanthropic activities are not regular and persistent, and are done arbitrarily at any time in the budget year.<sup>148</sup>

Moreover, leather and footwear companies do not have financial and non-financial CSR reporting schemes.<sup>149</sup> Even worse, the challenge in this sector involves widespread violation of the minimum legal compliance standards by discharging waste to streams and rivers without any treatment thereby polluting the environment, affecting human health, killing animals, and causing damage on surrounding fauna and flora.<sup>150</sup> Thus, most leather and footwear companies are not in good standing with regard to CSR, even though one of the domains of CSR is *compliance with the law* in the course of a company's operations towards production (of goods and services) and profit.

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<sup>144</sup> See, for example, Mathias Nigatu Bimir (2015), 'Corporate Social Responsibility Learning in the Ethiopian Leather and Footwear Industry,' MA Thesis, Institute of Social Studies, The Hague, Netherlands, p. 20.

<sup>145</sup> *Id.* p. 37

<sup>146</sup> *Id.* For instance, CSR in ELICO is under management information department with direct supervision of the general manager. In Sole Rebels, the owner manager decides on each aspect of CSR in consultation with the advisor.

<sup>147</sup> *Ibid*

<sup>148</sup> *Ibid*

<sup>149</sup> *Ibid*

<sup>150</sup> Hunegnaw Abebaw (2015), 'Leather Industry and Environmental Challenges: The Case of Haffede Tannery', MA Thesis, Addis Abeba University, p. 56

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### *Brewery companies*

Various brewery companies participate in supporting local sports, arts, education, health and cultural activities.<sup>151</sup> However, there are gaps in the pursuance of the minimum legal standards in waste disposal because there are many companies that do not treat and discard effluents.<sup>152</sup> CSR requires these companies to fulfil their responsibilities such as reducing carbon dioxide emissions, reducing energy consumption, sustainable inputs, advocating responsible consumption, and engaging in afforestation.<sup>153</sup> However, studies show that most brewery companies fail to accord serious attention to stakeholder interests.<sup>154</sup> Employees, customers and the local communities claim that most of these companies do not strive enough to protect the environment, establish strong relationship with the local communities and customers, and support, and train their employees, and key product dealers other than provided by the law.<sup>155</sup>

### *Banks*

The CSR activities of banks in Ethiopia include their participation in the construction of schools and public health centers, community development, environmental protection; and their support for victims of natural disaster and other victims.<sup>156</sup> Yet there are gaps in various avenues such as the need for supporting green industries and healthy projects; enhanced engagement in community development; wider and inclusive lending options to low income persons and small businesses, and participation in the protection of the environment.<sup>157</sup>

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<sup>151</sup> Fentaye Kassa Hailu & K. Rama Mohana Rao (2016), 'Perception of Local Community on Corporate Social Responsibility of Brewery Firms in Ethiopia,' *International Journal of Science and Research*, Vol 5, Issue 3, P.319

<sup>152</sup> For instance, Bedele brewery, BGI Ethiopia, Dashen brewery, Meta Abo and Harar didn't treat and discard their effluent

<sup>153</sup> K Rama Mohana Rao & Fentaye Kassa Hailu(2016), 'Environmental Corporate Social Responsibility of Brewery Firms in Ethiopia,' *International Journal of Applied Research*, Vol 2, Issue 4, p.4

<sup>154</sup> Fentaye Kassa Hailu and Rao, *supra* note 164, p. 320. See also Ezana Messele (2014), 'Assessing Stakeholders Perception of Corporate Social Responsibility on Meta Abo Brewery Share Company,' MBA Thesis, St. Mary's University, p.74,

<sup>155</sup> Ezana Messele, *supra* note 168. pp. 72-73

<sup>156</sup> Mathias Nigatu (2016), 'Corporate Social Responsibility (CSR) in the Ethiopian Banking Sector: A Case Study on Commercial Bank of Ethiopia (CBE)', *Nile Journal of Business and Economics*, Vol 2, Issue 4. pp. 8-9

<sup>157</sup> Yeneneh Tadesse(2015), 'The Role of Private Commercial Banks on Corporate Social Responsibility in Ethiopia,' MSc Thesis, Addis Abeba University, pp. 44-47.

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The Commercial Bank of Ethiopia, which is the leading commercial bank, is expected to take exemplary standards in pace setting. However, it has not yet set separate CSR plan and CSR budget. Indeed, it has participated in a few philanthropic, donation and charity activities, but that is usually when request comes from stakeholders.<sup>158</sup> Moreover, the beneficiaries of most of its donation are government offices rather than vulnerable groups such as persons with disabilities and elders.<sup>159</sup>

#### *Floriculture companies*

The flower sector brings foreign exchange and creates jobs for thousands of Ethiopians.<sup>160</sup> Although there are minimum legal compliance standards that should be respected with regard to employees, local communities and the environment, there are gaps in their effective enforcement. Flower farms utilize chemical fertilizers, pesticides, and there are practices of irresponsible waste disposal system that violate the standards set by the law. Such waste disposal including hazardous chemicals has caused harm to waters and sediments in high concentration. Consequently, they have adversely affected human health, the environment, and biodiversity.<sup>161</sup> Moreover, employees work under settings of polluted and hazardous environment.<sup>162</sup> Flower farms also consume huge amount of water and thereby, cause water scarcity in the communities they operate.<sup>163</sup> Thus, the floriculture industry has failed to even meet the minimum requirements set by the law.

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This represents the CSR practice of seven private banks such as Wegagen Bank, Awash International Bank, United Bank, NIB Bank, Abay Bank, Zemen Bank, and Bunna Bank.

<sup>158</sup> Mathias Nigatu, *supra* note 156. p.1

<sup>159</sup> *Id.*, p.10

<sup>160</sup> Rakesh Belwal & Meseret Chala (2008), 'Catalysts and Barriers to Cut Flower Export: A Case Study of Ethiopian Floriculture Industry,' *International Journal of Emerging Markets*, Vol 3, Issue 2, . p.218 See also Tedla Zegeye (2013), 'Corporate Social Responsibility Programmes in Ethiopian Floriculture Industry,' MBA Thesis, St Mary's University, p.27

<sup>161</sup> Mulugeta Getu, *supra* note 139. pp. 242- 248

<sup>162</sup> Samson Mechale & Messay Shiibre (2011), 'Ethiopian Floriculture Industry from Corporate Corporate Social Responsibility (CSR) & Governance Perspective:How is CSR practiced in the Ethiopian Floriculture Industry, and does it has a linkage with the Governance System', MBA Thesis, Karlstad Business School, pp. 43-44 See also Asnake Menbere, *supra* note 143., p.29

<sup>163</sup> Mesay Adugna (2017), 'Review on Environmental Effects of Ethiopian Floriculture Industry,' *Asian Research Journal of Agriculture*, Vol 4, Issue 2,pp.3-4; See generally Nimona Fufa Hunde(2018), 'The Impact of Floriculture Industry on the Environment in Ethiopia,' *International Journal of Agriculture and Biological Sciences*, Vol 7, Issue 11. See also Tedla Zegeye, *supra* note 160. pp.28-29

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*Cement companies*

Cement Companies are increasing in number<sup>164</sup> and most of cement factories are located in cities or in productive agricultural or horticulture sites.<sup>165</sup> The companies are indeed indispensable to Ethiopia's pursuits of development efforts but should at the same time give due attention to the safety and wellbeing of employees, the community and the environment. Emission of dust and gases above the recommended standard causes respiratory and stress related diseases on employees and local communities.<sup>166</sup> Most of the cement factories have harmed the surrounding farmlands by making them unsuitable for agriculture or other investments.<sup>167</sup> Moreover, they usually do not provide training and offer job for local communities as well as participate in local infrastructure development activities such as schools, medical facilities, road, water supply, etc.<sup>168</sup> The environmental harm caused by these factories include land degradation that affects vegetation, air pollution, and discharge of waste to nearby watercourses and agricultural

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<sup>164</sup> Abera Kumie et al.(2016), 'Occupational Health and Safety in Ethiopia: A review of Situational Analysis and Needs Assessment,' *Ethiopian Journal of Health Development*, Vol 30, Special Issue 1, p. 6

<sup>165</sup> *Id.*, p. 26 For instance old National cement (former Dire Dawa cement) and Addis Ababa cement (now amalgamated with Mughher) are in the middle of the city whereas expansion of cities have closed the distance between factories and residences in Dejen and Messebo cement factories. Likewise, Huang Shan is located in the middle of highly valued and productive agricultural and horticulture production cites of Modjo area.

<sup>166</sup> Nebiyu Krishina (2013), 'Opportunities and Challenges of Cement Marketing In Ethiopia,' MBA Thesis, St. Mary's University. pp. 41-42. *See also* Mulugeta Getu, *infra* note 168, pp. 36-39. For instance, a recent study has revealed personal exposures to total respirable dust exposure to be 549 mg/m<sup>3</sup> and 6.8 mg/m<sup>3</sup> in the Muger factory, and 153 mg/m<sup>3</sup> and 2.8 mg/m<sup>3</sup> in the Mossebo factory. The respirable dust concentration was much in excess of the personal exposure limits of 1.0 mg/m<sup>3</sup> of the recommended standard of American Conference on Governmental Industrial Hygienist (18).

<sup>167</sup> Samuel Estifanos & Aynalem Degefa (2012), 'Assessing the Effect of Cement Dust Emission on the Physicochemical Nature of Soil around Messebo area, Tigray , North Ethopia,' *Int. J. econ. env. geol*, Vol 3, Issue 2, P.19

<sup>168</sup> Mulugeta Getu (2015), 'Towards a More Sustainable Cement Production: Environmental Challenges and Regulation of Ethiopian Cement Industry,' Research paper presented at Haramaya University 32<sup>nd</sup> Annual Research and Extension Workshop, pp. 26.30

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fields in violation of the law.<sup>169</sup> This has caused community grievances in various locations.<sup>170</sup>

### *Textile companies*

The Ethiopian textile sector creates substantial employment, particularly to women. There are a number of transnational companies (TNCs) and national companies. A few TNCs are participating in CSR activities. They have CSR policies on wages, working hours, occupational safety and health, the discharge of chemicals, release of waste and water management.<sup>171</sup> However, the majority of textile companies do not have CSR policies and do not undertake CSR activities. The gaps in this regard include lack of established primary treatment system or inadequate storage and discharge channel for their waste that meets the requirements of the law.<sup>172</sup>

Such textile factories discharge solid or liquid waste to nearby agricultural lands, rivers and open spaces thereby violating the law. As a result, they pollute the environment, expose the local residents to skin allergies, stomach and other health problems, harm animals and aquatic habitats.<sup>173</sup> They also do not train, orient or warn their employees as well as the local residents to protect themselves, or their property from potential health risks.<sup>174</sup>

### *Oil and gas companies*

Although various Oil and gas companies have pledged to participate in CSR activities in their mission statements,<sup>175</sup> they do not have a separate CSR

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<sup>169</sup> *Id.*, pp. 30-36

<sup>170</sup> *Id.*, p. 29. For instance, there was serious dispute, grievance and public demonstration against Dejen cement factory for dust, poor working condition, land taking and absence of community benefit.

<sup>171</sup> Clara Alderin (2014), 'Made in Ethiopia: Challenges and opportunities in the emerging textile industry in Ethiopia', Working Paper No 951, University of UPPSALA, p.21-22

<sup>172</sup> Diriba Dadi *et al.* (2017), 'Environmental and Health Impacts of Effluents from Textile Industries in Ethiopia: The Case of Gelan and Dukem, Oromia Regional State,' *Environmental Monitoring and Assessment*, Vol 189, Issue 11, p. 10

<sup>173</sup> Abrehet Kahsay, Shewit Gebremedhin & Belayneh Ayele (2015), 'Effects of Bahir Dar Textile Factory Effluents on the Water Quality of the Head Waters of Blue Nile River , Ethiopia,' *International Journal of Analytical Chemistry*, Vol 2015, p.5

<sup>174</sup> Diriba Dadi *et al.*, *supra* note 172. p. 16

<sup>175</sup> *See*, for example, Kobil Ethiopia website, CSR available at

<http://www.kenolkobil.com/corporate-social-responsibility.html/>.

[http://libyaoil.ethiopia.com/index.php?option=com\\_content&view=article&id=7&Itemid=110/](http://libyaoil.ethiopia.com/index.php?option=com_content&view=article&id=7&Itemid=110/)

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budget line or do not include CSR activities in their annual reports.<sup>176</sup> Moreover, they do not work beyond or sometimes even within the limits of the law to ensure the safety of workers, protect the environment, and ensure sustainable development in the community.<sup>177</sup> They are causing water pollution, soil pollution, air pollution, noise, health problems and other ecological impact.<sup>178</sup> Therefore, oil and gas companies have minimal commitment to social sustainability and social activities in Ethiopia.<sup>179</sup>

#### *Chemical and food companies*

Chemical and food companies are increasingly discharging hazardous waste to nearby water bodies and land without further treatment (sometimes using primary treatment systems only).<sup>180</sup> This violates the minimum standards of the law; and polluted rivers, streams, surface and ground waters in turn affect vegetables, plants, aquatic species, animals, human beings, etc.<sup>181</sup> The release of toxic substances and noise pollution from these companies affects the lives of local residents and the environment.<sup>182</sup>

## **6. The Need for Paradigm Shift**

As indicated in the preceding sections, there is no CSR legislation that makes CSR mandatory for companies. Instead, companies may voluntarily integrate CSR with their business strategies and contribute to the betterment of their employees, consumers, suppliers, community and the environment. Ethiopia's laws do not require companies to integrate CSR adequately into their core business decisions, and meet stakeholder interests. As a result, companies have not lived up to the expectations of the public. The CSR framework in Ethiopia is indeed insufficient and has failed to guarantee CSR behavior among companies thereby necessitating a paradigm shift.

I argue that there are two alternatives to ensure effective CSR regulation and enforcement in Ethiopia. The first alternative is modifying the existing soft law CSR framework that recognizes shareholder primacy model and

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<sup>176</sup> Sultan Hassen (2016), 'Corporate Social Responsibility and its Impact on Profitability : A Case Study of Oil MNCs in Ethiopia (Total, Oil Libya, and Kobil),' MBA Thesis, St. Mary's University, p. 66

<sup>177</sup> Ibid.

<sup>178</sup> Robi Redda, *supra* note 10.

<sup>179</sup> Sultan Hassen, *supra* note 176. p. 65.

<sup>180</sup> Robi Redda, *supra* note 10, p.138

<sup>181</sup> Ibid.

<sup>182</sup> *Id.*, pp. 138 and 147-149

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instead adopt an Enlightened Shareholder Value (ESV) model. ESV underlines that it is impossible to maximize the long-term market value of an organization by ignoring or mistreating important constituencies.<sup>183</sup> It provides that companies cannot create or maximize their value without recognizing and satisfying the interests of their employees, customers, creditors, suppliers and the communities.<sup>184</sup> To that end, ESV blends the paradigms of shareholder primacy and stakeholder approaches, and attempts to cope with their positives and eliminates their disadvantages.

ESV retains the paradigm of shareholder primacy and requires companies to primarily focus on maximizing their value. It allows companies to develop their own CSR rules and then, enforce CSR. However, it simultaneously requires companies to regard stakeholder interests in the course of maximizing their value. It obliges company directors to make decisions in the interests of shareholders, but with adequate regard to stakeholder interests, which is different from shareholder primacy model where company directors consider shareholder interests only.<sup>185</sup> Thus, ESV calls for a CSR framework which is tighter than the existing soft law CSR framework because the latter model is based on shareholder primacy premise. The ESV model indeed ensures the long-term existence of companies as well as the welfare of all stakeholders. It also maintains the strong interdependence that exists between companies and stakeholders which is beyond a simple contractual or commercial interaction.<sup>186</sup>

If Ethiopia opts to adopt this model, the relevant provisions of the Commercial Code should be amended so that directors shall run companies in the interests of shareholders, while at the same time balancing stakeholder interests. Moreover, the Code's provisions on strict financial or annual report and disclosure also require amendment, as they are –in current form– beneficial only to shareholders. Hence, companies should be obliged to include CSR activities in their annual financial and non-financial reports and disclosures. This may give solutions to risks or challenges that are encountered in private CSR regulations.

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<sup>183</sup> Michael Jensen (2001), 'Value Maximisation, Stakeholder Theory, and the Corporate Objective Function,' *Journal of Applied Corporate Finance*, Vol 12, Issue 1. p.16

<sup>184</sup> Ibid

<sup>185</sup> N. Craig Smith & David Rönnegard (2016), 'Shareholder Primacy, Corporate Social Responsibility, and the Role of Business Schools,' *Journal of Business Ethics*, Vol 134, Issue 2, p. 465

<sup>186</sup> Gail Henderson (2009), "The Possible Impacts of 'Enlightened Shareholder Value' on Corporations' Environmental Performance," LLM Thesis, University of Toronto, pp. 25-27

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It is to be noted that ESV has been adopted in many countries. For instance, section 417 of the English Companies Act recognizes this model of CSR in UK. Academics and business communities have given considerable attention to ESV,<sup>187</sup> and it is believed that socially responsible and ethical engagements do not contradict with the obligation to maximize shareholder value. Thus, companies shall undertake CSR although they are not expected to replace the government and NGOs in social and environmental concerns.

The other alternative is adopting Responsible Stakeholder Model (RSM). The RSM model underlines that “the business of business may still be business, only that the meaning of business itself will have to be redefined and qualified by the need to strategically implant CSR values in the business community; the business of business has to now be responsible business.”<sup>188</sup> RSM requires that companies shall be managed to enhance the value of shareholders, but it conjunctively, mandates companies to advance the aggregate welfare of stakeholders.<sup>189</sup>

The first notion of the RSM envisages that companies have a legal duty to balance stakeholder interests.<sup>190</sup> RSM notes that shareholders initiate, give life to, and nurture the seed in companies. It also provides that it is shareholders who initially encounter problems and risks when companies are in trouble. Accordingly, RSM admits that companies exist for shareholders’ wealth maximization. However, RSM simultaneously holds that it appears fair and legitimate to argue that companies may not survive, operate, function or achieve economic gains without their creditors, employees, customers, host communities and even the natural environment in long run.<sup>191</sup> Thus, it requires company directors to act responsibly in exercising their discretion and balance the competing interests of stakeholders in the course of enhancing shareholder wealth maximization.<sup>192</sup> RSM notes that

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<sup>187</sup> Stelios Andreadakis (2012), ‘Enlightened Shareholder Value: Is It the New Modus Operandi for Modern Companies’, in Sabri Boubaker, Bang Dang Nguyen & Duc Khuong Nguyen(eds), *Corporate Governance: Recent Developments and New Trends*, (Springer Berlin Heidelberg), p. 423

<sup>188</sup> Nojeem Akinjide Amodu (2017), ‘A Conceptual Framework for Effective Corporate Social Responsibility for Companies in the Nigerian Extractive Industry,’ PhD Thesis, University of Lagos, p.197

<sup>189</sup> *Id.*, p. 189. Here, stakeholders may refer to any individual or organ which may be without contract with the company but may have stakes genuinely affected by corporate decisions and relevant to the long term survival of the company.

<sup>190</sup> *Id.*, p. 191

<sup>191</sup> *Id.*, p. 192

<sup>192</sup> *Id.*, p. 197

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shareholders still acquire slight high treatment than stakeholders because directors are agents of the company, and are under the control of shareholders.<sup>193</sup>

The second notion of the RSM underpins that companies shall assume a presumptive legal duty to demonstrate CSR practices.<sup>194</sup> Under this notion of RSM, directors shall run companies to maximize shareholders value, and should at the same time balance stakeholder interests. If stakeholders allege that their interests are injured or violated and show verifiable damage or injury, RSM requires companies to demonstrate that they have acted responsibly to stakeholders or have balanced the interests of both shareholders and stakeholders in making decision.<sup>195</sup> If companies violate their duty, RSM requires companies to publish apology, retribute or rehabilitate what they caused, compensate the victim/s (financially and/or non-financially), face punitive sanctions (criminal or administrative such as fine), receive injunction or give guarantee of non-repetition.<sup>196</sup>

Thus, RSM recognizes a default presumptive CSR framework (rule) which takes a position amidst the mandatory or permissive CSR legal frameworks. As noted earlier, RSM has an attribute of meta-regulatory nature, and adopts more subtle and lighter principles to demand CSR compliance.<sup>197</sup> The RSM is not a stringent external hard law initiative, as it allows companies to self-regulate and enforce CSR. On the other side, it is not solely a soft law CSR framework since it requires companies to demonstrate their CSR practice.

RSM is a model which allows companies to develop and enforce their own CSR legal framework. It is indeed stronger than shareholder primacy model, but relatively moderate as compared to the stakeholder approach. As a result, RSM will not scare off investment opportunities. For instance, this model is practiced in USA in the aftermath of the Enron probe.<sup>198</sup> Therefore,

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<sup>193</sup> *Id.*, p. 194; For instance, shareholders still assume the power to appoint and remove directors.

<sup>194</sup> *Id.*, p. 229

<sup>195</sup> Nojeem Amodu (2017), 'Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria,' *Journal of African Law*, Vol. 61, Issue 1, p.128; Companies can discharge this obligation by showing that their decision, action or inaction is not in the sole interest of shareholders, but in the interest of shareholders and all relevant stakeholders such as employees, customers, creditors, the local community and the environment.

<sup>196</sup> Amodu, *supra* note 188. p. 231

<sup>197</sup> *Id.*, p. 231

<sup>198</sup> Zerk, *supra* note 61. p.88

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if Ethiopia opts for RSM, the present Commercial Code needs to be amended to include provisions that require companies to balance stakeholder interests, demonstrate CSR, define relevant stakeholders, and specify redress mechanisms.

## **Conclusion**

As discussed in the preceding sections, there is soft law CSR framework which recognizes the shareholder primacy model in Ethiopia. This soft law CSR framework incorporates provisions which are inadequate and do not guarantee CSR behavior in companies. In effect, companies do not adequately integrate CSR into their core business decisions, and do not meet the interests of stakeholders such as employees, creditors, customers, local communities, and the environment. This calls for the paradigm shift highlighted in Section 6; and it is submitted that there are two alternatives in addressing the challenges in the CSR activities of companies in Ethiopia which necessitate the amendment of the relevant provisions of the Commercial Code and other domestic laws.

The first alternative is adopting the Enlightened Shareholder Value (ESV). This model recognizes a CSR framework which is tighter than soft law CSR framework adopted in the Commercial Code. ESV requires companies to manage their business in the interests of shareholders but to pay adequate regard to stakeholders. The other alternative is Responsible Stakeholder Model (RSM) which adopts more subtle and moderate principles to demand CSR compliance. RSM recognizes a default presumptive CSR framework (rule) which requires companies to run their business to the interests of shareholder, but to demonstrate proper consideration and balancing of stakeholder interests. These two models can indeed serve as mandatory thresholds and enforcement schemes towards effective CSR framework and CSR practices in Ethiopia. \_\_\_\_\_■

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