



Corporate Social Responsibility beyond Law: Preliminary Instances during COVID-19

Collins C. Ngwakwe¹

Abstract: A new wave of corporate social responsibility is emerging during the COVID-19 pandemic, which deserves research attention. Objective: the objective of this research is to present a preliminary instances of corporate social responsibility beyond law in the midst of COVID-19 pandemic. Prior work: the paper is inclined on the stakeholder theory of corporate responsibility. Approach: the paper applied a qualitative conceptual review and document analysis of information from the World Economic Forum on corporate social responsibility during the COVID-19 pandemic. Results: pandemic can instil altruistic corporate social responsibility beyond what the law may prescribe; such can alleviate humanitarian crisis and elevate corporate image. The corporate may not often be an infinitely capitalist prone entity, it can be empathic and altruistic under certain unexpected conditions such disease pandemic. Implications: corporate social responsibility beyond law has the potential to upgrade corporate image and social asset. Policy makers may save certain costs of enforcing social reasonability compliance by appealing to the conscience of the corporate. Value: this paper fills the gap in the literature regarding how and when the corporate can play the role of striving to carter for the poor during times of pandemic – a beyond law altruistic social responsibility.

Keywords: corporate social responsibility; soft and hard law; beyond law; coronavirus pandemic; tort law

1. Introduction

The novel Coronavirus (COVID-19) has brought unprecedented disruption to lives, means of livelihoods, societies and business entities worldwide (World Economic Forum, 2020). At the moment, the COVID-19 has not been attributed to any corporate negligence, rather, the COVID-19 has ignited a blame game between countries (Foreign Policy, 2020). Although the corporate is currently not at the centre of the blame game, but the corporate has been responding positively in certain quarters to the humanitarian crisis albeit unsolicited (World Economic

¹ University of Limpopo South Africa, Turfloop Graduate School of Leadership, South Africa, Address: Edu-Park, Block B, Webster Street, Polokwane South Africa, Corresponding author: collins.ngwakwe@ul.ac.za.

Forum, 2020).

Concern about corporate social responsibility has remained contentious given the intricacies and economic girth of corporations. However, the clamour for a pragmatic regulatory instrument has burgeoned in recent years with the growth in social and environmental sustainability campaign, which links corporate operations with human rights to social and environmental existence (Bharadwaj, 2020). However, the opposing objectives of economic profit and social responsibility has been difficult to reconcile (Bharadwaj, 2020). Accordingly, the discussions about the connection between social responsibility and business are ubiquitous (Adeyeye, 2007). Numerous researchers contend for direct corporate social obligation in international law and strive to discover approaches to credit such duty to businesses without the assent of States (Adeyeye, 2007). This has demonstrated to be exceptionally tricky. In the view of Adeyeye (2007) different researchers rebuff calls for direct corporate responsibility for reasons such as state sovereignty, absence of personality, and troubles with thoughts of ‘corporate’ rather than ‘individual’ or ‘state’ obligation (Adeyeye, 2007).

The problem of this paper is that under the “Protect, Respect, Remedy (PRR) Framework for business and human rights put forward in 2008 by the UN Secretary-General’s Special Representative for Business and Human Rights, John Ruggie” (IFHRB, 2009, p. 1), businesses may willingly do more than officially required responsibility to assist the society. The current COVID-19 pandemic does present such situation where businesses may go beyond law in their corporate social responsibility. But no current research has as yet looked at this area of corporate social responsibility to conduct a preliminary ascertainment of how business is responding beyond law during the current COVID-19 pandemic.

Drawing from the preceding background discussions and the aforesaid problem, the objective of this paper is to present an initial overview and instances of corporate social responsibility beyond law during this time of COVID-19 pandemic. Therefore, this paper makes one the first contribution to the literature on CSR during the current COVID-19 pandemic.

In order to achieve this objective, the paper applies a review and conceptual method coupled with discursive analysis of current international documents from the World Economic Forum (2020) to elicit and discuss current corporate social responsibility tailored to the alleviation of COVID-19 humanitarian, social and economic crisis.

Accordingly, the paper is organised as follows: the next section following this introduction presents the stakeholder view of corporate social responsibility. This is followed by some literature review on corporate social responsibility beyond law. The next section discusses current instances of corporate social responsibility during this time of COVID-19 pandemic. The final section presents the

significance, value and conclusion of the paper.

2. Stakeholder Theory of Corporate Social Responsibility

The concept of corporate social responsibility had gained some ground amongst researchers and advocacy group before the 1970s (Agudelo, et al. 2019). In narrating the history of corporate social responsibility, scholars such as Zhu and Yao (2008) and Carroll (2008) traced the early origin of the concept of CSR back to the 18th and 19th centuries with some instances such as the creation of industrial community at Pullman South of Chicago. According to Carroll (1999) the literature documentation of early corporate social responsibility writings began appearing in the late 1930s and early 1940s. However a renewed heated debate and advocacy about corporate social responsibility bourgeoned the more after the Nobel Laureate Milton Friedman published his paper in the New York Times Magazine on September 13 1970. In his paper titled “*the social responsibility of business is to increase its profits*” (Friedman, 1970, p. 1), argued in favour of stockholders’ interest with the notion of capitalism and freedom and maintained that in a free society “*there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.*”

However, Edward Freeman transformed the stockholder view and popularised the concept of stakeholder in his “*stakeholder theory of the modern corporation*” (Freeman, 2001, p. 38). In his theory, he recognised the primacy of stockholders as the core providers of capital but highlights that a focus on stockholders only is a narrow description of corporate stakeholders. Hence he added the second group of stakeholders as “group or individual who can affect or is affected by the corporation”. This addition has been pivotal to all stakeholder theorisation in the literature (Freeman, 2001, p. 38). Freeman operationalized the second group of stakeholders as inclusive of the following seven interests: the corporation, shareholders/owners, suppliers, management, employees, local community and consumers (Freeman, 2001, p. 42). It is thus visible that Freeman’s stakeholder theory encompasses the society at large. This therefore means that the responsibility of the corporation is not limited to the providers of business capital – the stockholders, rather corporate responsibility extends beyond the corporate to the entire society as this is the practical win-win principle which will assist the organizations and the society to achieve the objective of profit and sustainable growth (Zhu & Yao, 2008).

This paper argues that the wider ramifications of contemporary social responsibility discuss and advocacy is almost closing the rift that subsists between the two schools of thought on corporate social responsibility – the stockholder school of thought and the stakeholder school of thought. The stakeholder view opines that whilst the stockholder’s interests is unarguably financial, but the

stockholder lives in the community and is not immune to business hazardous emissions – therefore the control of emission through internalisation of the external costs (Rafaj & Kypreos, 2007), also benefits the stockholder who is part of the community. Hence non-control of emission, is analogous to the corporate throwing a stone into the crowd which can harm its own stockholders. Accordingly in Friedman words “as long as they remain within the rule of the game” – little did critiques of Friedman’s stockholder theory realise that the rule of the game will move beyond free market (Gotoh, 2020) to widely encapsulate other elements. For instance, in contemporary social responsibility of business, the regulation is not restricted to hard law; rather the regulation includes those of soft law and pressure groups (Jentsch, 2018). Therefore, some corporate can now be seen going beyond law given their realisation that they are not just being socially responsible, but that this constitute a creation of corporate long-term social capital, which incidentally grows the stockholder’s capital at the long-run (Zhou & He, 2009; Cahill & Cahill, 1999). Accordingly, the stakeholder theory is intertwined with corporate social responsibility. It is not surprising that one of the world’s known multinationals the Mahindra Group has beckoned on fellow corporates to assist the society during this time of COVID-19 pandemic; hence the company says: “*the stakeholder principle is absolutely essential in fighting coronavirus*” (World Economic Forum, 2020, p. 2).

3. Literature Review

According to Zhou and He (2009), the multidisciplinary research prism of corporate social responsibility elevates its importance in strengthening the relationship between the corporate and society. In discussing corporate social responsibility, it becomes inevitable for diverse disciplines to be linked together; such key disciplines include law, economics, sociology, management and ethics (Zhou & He, 2009). It is interesting to see how disparate but intertwined objectives are weaved together to achieve a common concept of corporate social responsibility. For instance, as espoused by Zhou and He (2009), the management discipline is concerned with the internalisation of social values into corporate costs; economics dwells more on the development and interpretation of stakeholder theorisation; the sociology discipline interprets social responsibility as an investment in expectation of building corporate social capital. Jointly, the law and ethics pursues adherence to business commercial ethical compliance in corporate operational behaviour given the political coinage that businesses are social or corporate citizens (Zhou & He, 2009; Cahill & Cahill, 1999).

The concept of corporate social responsibility has strong link with all genres of law as all aspects of law provides the impetus to the advancement of CSR (Lambooy, 2014). According to Lambooy “*CSR is a subject that has links with many areas of law, including international law and European law, corporate law and corporate*

governance, tort law and contract law, procedural law, labour and environmental law, and criminal law” (Lambooy, 2014, p. 1).

Given the intricacies surrounding corporate social responsibility, the legal boundaries and the enforcement of CSR – both at the national and international levels seem hazy and intractable (Waagstein, 2011). This is because although international law does provide a certain measure of redress, but priority slants toward investor rights over investor responsibility in international accords (Newell & Frynas, 2007). International regulations are more of “*regulation for business than regulation of business*” (Newell & Frynas, 2007, p. 676). This is because much of the enforcement of corporate social responsibility relies more on voluntary practice tailored to market pressure compliance (McBarnet, 2009). Even where McBarnet argues that CSR is enforceable legally, he further moderates his submission by clarifying that CSR enforcement may arise through some indirect forms of pressure, which can occur “*through the use of private law by private actors, sometimes through highly innovative uses of the law*” (McBarnet, 2009, p. v). The aforesaid moderation about the conventional legal standing of CSR accentuates the intractable nature of CSR when it comes to law and the attendant scope.

The corporate social responsibility „beyond law” is the duty of corporate beyond the obligatory commitments enforceable by law but in accordance with social values and desires. The lawful standards on such sort of responsibility are soft law, which primarily is part of social values and desires in corporate business practices and governance structure, to acknowledge corporate self-regulation (Zhou & He, 2009).

As argued by McBarnet (2009), the application of corporate social responsibility approaches is not, at this point a matter of voluntary practice with respect to the business. In one sense it was rarely extremely voluntary, because companies do realise that CSR is also a way of being obedient to market pressures and evading of reputational risk, without which business may lose its customers and profit. Be that as it may, progressively, McBarnet (2009) posits that although CSR is dependent upon legal pressure and legal authorization, but it is not really a traditional state regulation *per se*, instead it resonates through indirect state pressure arising through the application of private law by private actors (McBarnet, 2009). Corporate social responsibility has mutated outside of the initial apathetic approach where companies viewed CSR as burdensome – it is now practiced by the corporate even beyond what law or regulation requires. According to McBarnet (2009) corporate social responsibility may not be seen as philanthropy but it is rather an exercise of social responsibility regarding how the business has made its profit. Thus CSR extends beyond the bottom line normally meant for the shareholders to the wider community interest with ethics at the heart of business; CSR thus goes beyond legal accountability which asks how people do their job (Gatti, et al. 2019;

Fiandrino et al, 2019; McBarnet, 2009; Parker, 2007). Hence, in addition to adhering to legal requirements, companies have ethical responsibility to devise internal measures to move beyond the regulatory compliance in a truly responsible commitment to society without necessarily being coerced to go this extra mile (Fiandrino et al, 2019). This beyond-law wilful responsibility can be seen in the manner with which the corporate have reacted responsibly to the current COVID-19 pandemic with attendant humanitarian crises (Necodemus, 2020).

Literature evidence suggests that corporate social responsibility is faintly legalised in many countries of the world; even at the international setting the hard law aspect of legally binding corporate social responsibility is weak or not very clear except for reliance on principles and codes of conduct about corporate social responsibility and/or ethics stipulated by international organisations such as the “*Organisation for Economic Co-operation and Development (OECD) and the UN Guiding Principles (UNGPs)*” (Mares, 2016, p. 118); these codes or principles make way for their application in international tort law and private law for seeking redress in the event of corporate flouting of corporate social responsibility codes (Lambooy, 2014). In the same vein, Lambooy (2014) argues that corporate self-regulation may become instruments for application in private law or tort law if self-regulatory codes are captured in supply chain contracts and employment contracts (Lambooy, 2014).

Accordingly, in this paper, the usage of the concept of “beyond law” refers to corporate performance of CSR beyond expectations contained in the elements of soft law and hard law that together constitutes pressure instruments for corporate social responsibility compliance, which includes various pressure groups, trade association codes of CSR, NGO’s codes of CSR, corporate self-regulation and country regulations on multinational companies (Mares, 2016). Though in a much umbrella context, it can be said that the main regulatory approaches to corporate social responsibility is made up of industry self-regulation, international soft law and national private law (Jentsch, 2018). Therefore, some instances of current corporate beyond law responsibility in the midst of the COVID-19 pandemic are highlighted in the next section of the paper.

4. Instances of CSR Beyond Law During COVID-19

The expectation from corporate social responsibility advocates and the law is that the corporate should take responsibility in cushioning or remedying the impact of its operations on persons, the community and the environment (George, 2020; Lambooy, 2014). However, during the current COVID-19 pandemic and the attendant humanitarian crisis, some companies CSR responses can be seen to exceed the impact of their business operations – acting responsibly in an unsolicited assistance to assist health workers in the front line, providing free

financing, health equipment's, alleviating the plight of neediest communities affected by the COVID-19 pandemic, and etcetera.

Given that COVID-19 pandemic has as of now not been attributed to corporate negligence or operational impact, some of the current corporate CSR displayed by some corporates are beyond what scholars and advocates of corporate social responsibility might regards as within-law remediation of corporate negligence due from its operations (see example: Barnett, 2020, George, 2020). Therefore, these corporate responsible behaviour beyond law Barnett (2020) deserve noting in research to bring new insight on how disease epidemic can improve positive alteration of corporate CSR behaviour to a higher level. Table 1 presents a summary of few selected examples of CSR beyond law during the current COVID-19 pandemic; these data were collected from the World Economic Forum website on COVID-19 corporate responsibility actions. The following quotations from two corporate CEOs, buttress the companies' desires to go beyond law.

“As the coronavirus outbreak continues to worsen around the world, it’s taking a devastating toll on lives and communities. To help address some of these challenges, today we’re announcing a new \$800+ million commitment to support small- and medium-sized businesses (SMBs), health organizations and governments, and health workers on the frontline of this global pandemic” (Pichai, 2020, p. 1) – Sunder Pichai: the CEO of Google and Alphabet.

“Proud to share we’ve been able to source 10m masks for the US and millions more for the hardest hit regions in Europe” (Cook, 2020, p. 1) – Tim Cook: the Apple Chief Executive Officer.

Table 1 Examples of CSR beyond Law during COVID-19 Pandemic

Company	CSR Beyond Law During COVID-19
AstraZeneca Ltd	The company has provided free of charge a 9 million protective face masks to support healthcare workers on the frontline of the coronavirus epidemic and has committed to increase testing in the UK
Mahindra Group	The company provided isolation centres and also donating IT expertise to the government for monitoring cities with electronic control devices. In addition, the company has produced very low cost respirators to assist with the provision of respirators that are very cheap to reduce shortage to safe lives
Johnson & Johnson Johnson & Johnson, General Electric, HP, Linde Group	The companies formed a 3D Printing COVID-19 response initiative to help the United States government in providing ventilators, masks, swabs, face shields and other technical and equipment needed in the fight against COVID-19.
Telenor Group	In Norway, Telenor, a major telecommunication company is using its technology to gather anonymous public movement information to assist authorities in putting measures to curb the infection

Airbus Defence and Space	Airbus is helping in freighting health equipment and delivering them to Europe to fight the pandemic. It has also provided protective masks free of charge to health workers in Europe.
AB InBev	AB InBev, a global brewing company has contributed to government's efforts in fighting COVID-19 pandemic by turning its raw material (alcohol) to disinfectants and sanitizers. The company gives away for free disinfectant alcohol and sanitizers to hospitals and front-line health staff in more than 20 countries. As of the time of this research over 1 million bottles have been distributed free of charge.
GlaxoSmithKline (GSK) and Sanofi	The two pharmaceutical giant companies have stepped up effort beyond normal duties to contribute to the fight against COVID-19 pandemic by collaborating to develop COVID-19 vaccine within the next 12 to 18 months to help quell the number of infections and deaths.
Unilever	Going beyond the normal call to corporate social responsibility, Unilever has distributed free of charge cleaning agents, food and other health products to many countries.
Wipro Ltd	Wipro Ltd a multinational information technology company headquartered in Bangalore India is using its resources amounting up to \$147.4 million on humanitarian COVID-19 pandemic relief to health staff that targets the neediest in society
Standard Chartered	The international banking group – the Standard Chartered has also gone beyond expected corporate social responsibility and has set aside a \$50 million worldwide fund to assist the neediest communities who are suffering the effect of the epidemic.
Coca-Cola	Coca-Cola has also gone beyond the corporate social responsibility expectations to assist in curbing the effects of COVID-19 epidemic. It has provided its trucks free of charge to deliver health equipment; it has also provided more than \$13.5 for taking care of health workers, the community, and caring for the children of healthcare workers.
Cisco Systems	The multinational technology leader has provided free of charge a sum of \$225 million to support healthcare, education, government and technology response actions in fighting COVID-19 pandemic.
PepsiCo	The PepsiCo has also gone beyond the CSR expectation by providing over \$45 million COVID-19 response initiative to communities toughest hit by the COVID-19 pandemic. The company's community relief effort covers inter alia, North America, Europe and Africa and other areas around the globe. Data was as of the initial time of this paper.

Source: World Economic Forum (2020)

4.1. Implications of the Paper

From the foregoing review of corporate social actions during the COVID-19, one of the implications of the paper that stands out is that aside the hard law, catastrophic events can elicit empathy and altruism from the corporate. Business

entities can alleviate humanitarian crisis arising from disease pandemic even when unsolicited. This implies that if the corporate can exercise such responsibility during normal periods to their employees and community, much of the time lost in litigations and the inherent costs of litigation to enforce compliance might be saved. The aforementioned summaries of corporate social responsibility during COVID-19 is still ongoing, further research is imperative to expand this paper when more data becomes handy as more businesses continue to shoulder the responsibility ignited by the COVID-19 pandemic. This paper can be a useful study material for the academia in the corporate governance, corporate social responsibility and managerial law classes.

4.2. Value (Contribution) of the Paper

This paper provides the first overview of corporate social responsibility beyond the law in action during this coronavirus pandemic. It thus contributes to the literature given its original value based on the most current event since it is written in the middle of ongoing global pandemic.

5. Conclusion

On the one hand, the stockholder theory believes that the only social responsibility of business is to provide profit for the shareholders as long they remain within the rule of the game (Frideman, 1970). On the other hand, the stakeholder theory posits that stockholders are only a part of wider business stakeholders and hence the business owes responsibility to all those that impact the business and to those that the business impacts through their operations (Barnett, 2020; Freeman, 2001). Accordingly, corporate social responsibility has remained contentious. However the excesses of some multinationals in recent past decades have heightened the CSR pressure and campaign from NGO, civil society, government, legal fraternity, human rights organisations and other advocacy groups (Lambooy, 2014). Hence, some levels of compliance can now be seen on the part of some corporate arising from assortment of regulatory measures including, corporate self-regulations, CSR standards and or soft laws from trade associations, NGO's and some sporadic hard laws, which are brought to bear through a logical application of private and/or tort law and other genres of law to hold the corporates responsible for the negative effect of their operations on persons, the community and environment (George, 2020).

Aside of the CSR expectations of business, which is based on cushioning the impact of corporate operations on the community, instances of recent corporate responsibility behaviour presented in the paper can be seen to exceed the expectations of law since the corporate are not responsible for the pandemic. Hence

the thrust of this paper at the onset is to provide few preliminary instances of current CSR beyond law during this COVID-19 pandemic. Although experts argue that international law on corporate responsibility is weak if not absent as CSR law is more of soft law (Lambooy, 2014); however, it is important to note that these private regulatory approaches to CSR play a significant role in stimulating CSR in business organisations. These quasi-legal laws and/or soft laws does contribute toward an advancement of hard legal rules. These soft laws can mutate to legal effect in private or tort law and even in public international law if these soft laws are captured in supply chain and labour contracts (Lambooy, 2014). The foregoing discussions in the paper does show that some companies are displaying activities of pragmatic social responsibility beyond law during the current COVID-19 pandemic. These beyond-law CSR does point out some important policy and research ideas. Firstly, disease epidemic can stimulate unprecedented corporate social responsibility beyond law. As legal citizens, the corporate can react naturally to protect their business community when a pandemic arises. By protecting the business community from extinction, a corporate entity covertly protects itself from the ripple effect of business community extinction – given that an extinction of business community might bring an end to the existence of such a business in the community. Furthermore, the ongoing CSR beyond law during the current COVID-19 pandemic constitutes a strong long-run investment in social capital. Since this paper is based on few examples of ongoing CSR during the current pandemic, more research is necessary to bring in more examples as more companies get involved in alleviating the humanitarian crisis from the COVID-19 pandemic.

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