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Challenges to Reforming CSR Standards into Laws in the Southern African Development Community (SADC) Region

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Abstract

The concept of corporate social responsibility is a phenomenon that has since made global waves in more ways than one. The concept itself is yet to have a definite definition however, the impact of the concept has far more reaching debates than the term having a definition. Building on the foundation that businesses or corporations are a part of a society and that citizenship is based on shared understanding of the basic social and political rights, sometimes this realization is hampered by poor coordination and lack of logic connecting the various initiatives involved with the concept. With the increasing presence and influence of multinational corporations in the world economy, Southern African Development Community (SADC) included, there are frameworks and policies that need to constantly be amended to cater for the changes that are occurring in the business sphere. This has led to CSR nowadays being characterized by an increasing legalization and becoming an element of the regulatory toolbox of governments. Most of the growing interest in legalizing the notion stems from the fact that international organizations, foreign governments, and civil groups are always working to integrate the concept in legislation. Despite this move, there is still a lack in most of the SADC states in understanding the concept in its wholeness and the complexities of the phenomena, lack of civil society participation and constitutional and political gaps which then impedes the reforming of the standards into laws. Some of the countries in the region or even the region as a whole fail to understand that the concept of CSR has advanced beyond the philanthropy stage therefore has stunted the advancement of the phenomena beyond this understanding. The concept of CSR is a complex one but at its core it encompasses principles of transparency, accountability and sustainability. Moreover, CSR can be viewed as a revolutionary way of contributing to systematic social changes in which investments can produce lasting social benefits when well implemented.

Keywords

Corporate Social Responsibility, Law Reform, Soft Law, Governance Gaps, Civil Society, Democracy, Rule of Law, EIA

1. Introduction

Over the years, the meaning, definition and the concept of what businesses are to the society has shifted not to only include the economic impacts of those businesses but to also include the social and environmental impacts that the business activities have. With this notion, many companies have voluntarily adopted CSR-related codes, guidelines or initiatives to manage their activities and responsibilities with respect to a wider group of stakeholders than just capital shareholders (Monterio, 2021). Despite the fact that CSR has been a topic of discussion for over three decades now, there is still no internationally standardized definition or agreement on what its scope should entail. This paper will adopt the definition of the term by McWilliams & Siegel (2001) that states that, "CSR is how businesses align their values and behavior with the expectations and needs of stakeholders, not just customers and investors but also employees, suppliers, communities, regulators, special interest groups and society as a whole." This means that the focus on businesses is no longer only on fulfilling the requirements and the needs of the business itself and its immediate stakeholders but also the needs of the extensive stakeholders. Embedded in this is the claim that firms can engage in responsible behaviour while pursuing profit-making activities.

The key issues of CSR include governance, environmental management, stakeholder involvement, labour standards, employee and community relations, social equity, responsible resourcing and human rights (https://us.sagepub.com/sites/default/files/upm-assets/56767_book_item_56767.pdf). This description should be viewed as an umbrella phrase that encompasses a variety of perspectives on the relationship between business and society, rather than a clear definition of what the term means (Aras & Crowther, 2008). As the world is changing at a rapid pace, with apparent repercussions in economic and social aspects, as well as in attitudes and consumption choices, there is a need for reorientation to development direction which promotes the maintaining resources at a quantitative and qualitative guaranteed level (Monterio, 2021). One of the approaches that has been in place is by explicitly including CSR in the provisions of legal documents, policies and other important documents that will ensure the proper implementation of the concept and to hold corporations accountable in case of failure to comply (https://us.sagepub.com/sites/default/files/upm-assets/56767_book_item_56767.pdf). CSR was traditionally regarded as voluntary and private; however, it has become increasingly "legalized" where CSR is shaped by governmental policies and integrates nonvoluntary elements. The linkage between CSR and govern-

ment policies has permeated into trade and investment policy and moreover, some governments have made efforts to link CSR with trade at the multilateral level. The reference to CSR is found in some of the most prominent frameworks like the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (MNEs), the United Nations Global Compact, and the International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises on Social Policy (International Training Centre-International Labour Organisation (ITC-ILO), 2012).

The incorporation of the concept of corporate social responsibility however, is yet to be seen in national legislation of some of the countries especially in the developing countries. Where law reform is the process of analyzing current laws, advocating and carrying out changes in the legal system, usually with the aim of enhancing justice or efficiency (https://www.sdgaccountability.org/working-with-formal-processes/pursuing-law-reforms-strategic-litigation-and-legal-empowerment/), there is a need for the developing countries to engage in processes that will help improve the standards of legal systems in their respective countries. The process thereof is one of the many tools that is available to policy makers and is a process that is more than just a technical inquiry into the defects of the law nor a process aimed at simplifying the laws. It is rather built on the technique of conceptualization the problem and bringing in social data (The Hon Michael Kirby AC CMG, 2015). In this way, a company exercises its rights, obligations, privileges and overall corporate responsibility within local and global environments. Moreover, it is alluded that the underlying goal of corporations remains to make the world a better place in which to do business and in which to live. While the concept has gone through different phases of definition and implementations, this is still very much of a challenge in developing countries especially Africa. This paper looks into the challenges of reforming the CSR standards into laws in the Southern African Development Community (SADC) member states.

2. What Is Law Reform?

Legal reform is a confusing term because it can encompass so much and it can also mean so little. From a substantive perspective, legal reform is synonymous to economic reform. Most economic policies are implemented through laws and regulations and economic analysis help guide policymakers as they design such laws and regulations (Gray, 1997). There are three ingredients that appear to be essential to a well-functioning legal system which are supply of market-friendly laws, adequate institutions to implement and enforce them and a demand for them from the market participants. It is therefore defined as the process of analyzing current laws advocating and carrying out changes in a legal system usually with the aim of enhancing justice or efficiency. Reforming the law can take shape in the forms of repealing or removing a particular law, creation of a new law, consolidation which means a combination of a number of laws into one and co-

dification which is the collection and systematic arrangement usually by subject of the laws of a state or a country (https://www.sdgaccountability.org/working-with-formal-processes).

In any case, the concept of reforming law or the rule of law should cohere with the goals of development as reform implies that change is for the better (Trebilcock & Daniels, 2008). A good law reform procedure is one where there is extensive consultation in which in turn brings new perspectives and ideas and also enables people with different views to contribute to the process of the reform (The Australian Law Reform Commission (ALRC), 2019). A legal reform is not often introduced by dictators or parliaments but rather by an outcome of political pressure from property owners. Form a substantive perspective, law reform is often synonymous to economic reform. Government leaders and policymakers should not be complacent as improving the functioning of the legal systems is an essential component of economic development. In other words, legal short-comings have economic costs (Gray, 1997). Public participation in law reform processes strengthens the rule of law. Moreover, fostering public understanding and ownership of the proposed laws ensures that they are suitable for the economic, social and legal climate and thereby facilitates subsequent compliance by the public at large. Legal reform cannot succeed if there is no judicial system that is independent and where courts can interpret and apply the laws and regulations in an impartial, predictable, efficient, and transparent manner (The World Bank, 2003).

Some of the principles of law reform are fairness, accessibility, effectiveness and seamlessness. Where law reform is seen as the modernization of law by bringing it into accord with the current conditions, the elimination of defects in the law, simplification of the law and the adoption of a new or more effective methods for the administration of the law and the dispensation of justice (https://www.countycourt.vic.gov.au/files/documents/2020-07/factsheet-2-county-court-and-law-reform_0.pdf). Modernization concerns whether to bring the law up to date or to design the law up to date or to design the law in the first place good is for future developments (Lee, 2023). In saying that law is seamless, it means that there should be no awkward transitions, interruptions or indications of disruptions. This means that there should be consistency in definitions and moreover that there is greater sharing of information and facilitation of pathways between agencies, services and courts that are involved (The Australian Law Reform Commission, 2019). Accessibility means that the law will be available to everyone who needs it. This means that law should be easy to obtain all the while reducing complexities in the system. Fairness in law means appropriateness and equity. The ideas of fairness and just also means being able to protect all those who need to be protected by the law (The Australian Law Reform Commission, 2019). The concept of effectiveness means that the law should be designed to deliver the best outcomes for users. All elements of the justice should be directed towards the prevention and resolution of disputes, delivering fair and appropriate outcomes and maintaining and supporting the rule

of law (The Australian Law Reform Commission, 2019).

2.1. Poor Understanding of Corporate Social Responsibility in the Region

Over the years CSR has been considered a catch-all phrase for an array of different concepts and hence the necessity for a very thorough exploration and definition of the term when using it. 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 being conscious of their responsibility for the welfare of society around them. CSR is supported by the case that the government alone definitely cannot afford to have sole responsibility in improving the lives of their people as it exceeds their capabilities. If the government is unable to fulfill the increasing demands of its people thus a need for corporations to step in and support the government (Khan et al., 2012). Corporate social responsibility can be understood as an integrative management concept, which establishes responsible behavior within a company, its objectives, values, competencies and the interest of the stakeholders. It is a business system that involves the production and distribution of wealth for the betterment of the stakeholders through the implementation and integration of ethical systems and sustainable management practices (Khan et al., 2012). At its core, CSR upholds principles such as sustainability, accountability and transparency, these principles help the organisation to avoid excessive exploitation of labour, bribery and corruption. As businesses are a part of the larger economy or country where a country operates, the government's role is therefore very critical in promoting the CSR activities or agendas.

2.2. Lack of a Definite Definition for the Concept

There is no global standard definition of CSR, nor a definitive list of the issues it encompasses. However, there is a common theme for the most cited definitions which entails meeting the legal requirements and broader expectations of stakeholders in order to contribute to a better society through actions in the workplace, marketplace and local community and through public policy advocacy and partnerships (Lin, 2021). The concept of CSR has to be taken as an umbrella term that unites a number of different approaches and perspectives that explicitly address the relationship between business and society. Hence the academicians have suggested that the concept needs to be considered as a field of study rather than a specific term with an agreed upon meaning (https://us.sagepub.com/sites/default/files/upm-assets/56767_book_item_56767.pdf). Howard R Bowen, 1953, states the term refers to the obligations of businessmen and businesswomen to pursue those policies to make decisions or to follow those lines of action which are desirable in terms of the desirable in terms of the objectives and values of our society. The definition does not imply that businessmen as members of the society lack the rights to criticize the values. It is however assumed that as servants of society, they must not disregard socially

accepted values or place their values above those of the society (Hamidu, Haron Md, & Amran, 2015).

With this mentioned though the understanding of CSR has been different for different people and this has not been different with African countries. The definition of CSR in the African continent has been interpreted as philanthropy. CSR policies and programs in the Sub-Saharan are largely shaped by the traditional understanding of philanthropy of charity giving, donations and show of empathy to the less privileged people and communities in the operating environment, but this philanthropic perspective, is being reinforced by the strategic CSR approach in most countries in Sub-Saharan Africa because companies now find it fashionable to tie CSR policies and programs to their core business objectives, vision, and mission (Kirkton & Trebilcock, 2004). This has been in a lot of ways been demonstrated in the way African states; however, the aspect of philanthropy should only be seen as part of the corporate responsibility not an entirety of what the concept means. In Most of the African states, a number of multinational and local companies have found it necessary to develop CSR policies and programs that reflect their philosophies, values and long-term business objectives whereas in most instances organizational CSR and policies are shaped by the direction of the government's agencies and regulators (Isiaka & Raimi, 2021). This is because most governments know what could work better for their people than what organisations or companies would. This is for the governments who have the citizens best interests at heart.

2.3. Ambiguity of the Concept

The question of interest is that can CSR be reformed into laws? Due to the ambiguous nature of the concept, carrying a distinctive meaning of the term is a difficult task. CSR law is very controversial as on one hand, critics of CSR say that the law is an unwise effort to challenge profit maximization as the only social responsibility of corporation. We live in a world whereby governments, particularly businesses and civil societies cannot do anything alone without others (Wirba, 2023). In order to ensure that companies perform according to the rules and norms of the society in which they work and that companies profit from CSR activities, the government has a role to play (Wirba, 2023). The government should legislate, collaborate, promote business and support best practices to boost CSR growth. While CSR activities have been practiced for a while, there is no global and standard definition of the term, nor a definitive list of issues it encompasses. However, there is a common thread that runs through the most cited definitions which include meeting the legal requirements and the broader expectations of stakeholders in order to contribute to a better society through actions in the workplace, market place and local community through public policy advocacy and partnerships (Lin, 2021). Given the vague statutory language of CSR, the practical application of the law places high demands on the judiciary. However, as the countries that have adopted the CSR law are mainly developing countries with rather weak legal institutions, it simply raises a common concern

that the law is simply an innovation without implementation. CSR is considered to be a highly incomplete and possible CSR actions are hard to standardize. The understanding of the concept of CSR for most of the African states as mentioned comes in the form of philanthropy, this tends to box the nature of what the states see CSR as (Lin, 2021). A rich body of literature in the field of CSR affirmed strongly that the understanding, definitions, and motives for CSR differ globally because of historical contexts, cultural norms, and managerial philosophies (Kirkton & Trebilcock, 2004). CSR policies and programs in the Sub-Saharan are largely shaped by the traditional understanding of philanthropy of charity giving, donations and show of empathy to the less privileged people and communities in the operating environment, but this philanthropic perspective is being reinforced by the strategic CSR approach in most countries in Sub-Saharan Africa because companies now find it fashionable to tie CSR policies and programs to their core business objectives, vision, and mission (Kirkton & Trebilcock, 2004). The vagueness of the definition of the concept allows a huge leeway in what is proposed and accepted as CSR, how resources are allocated to meet obligations and also how the results of CSR are interpreted (Davarnejad, 2011).

The OECD Guidelines on Multinational Enterprises are also said to contain ambiguous and vague content, there are also issues of legal construction and legal commitments that have led to uneven expectation and multiple approaches to this unique dispute resolution mechanism (Davarnejad, 2011). Moreover, there seems to not be a consensus on the National Contact Points on CSR commitments and how to apply the standards. The initiatives can only be understood in the context of minimal legal obligation requiring business entities to respect human rights, social norms and environmental standards. Global players also can avoid controls and regulations imposed by domestic laws due to their mobility as they are not obliged to respect international law because they are not or are only partial subjects of international law (Davarnejad, 2011). MNEs increasing economic activities, they are not subject to sufficient international regulation and control, a legal situation that is often described as a legal vacuum or accountability gap. While investment treaties and customary international law protect corporate assets there are few legally binding obligations to respect human rights, the environment and other societal concerns. Not only are the dimensions of the subject matter manifold, there is also a debate about whether CSR standards have or ought to have a hard law nature (Davarnejad, 2011).

CSR can either be binding or voluntary depending on whether MNEs are bound by domestic law or whether they respond to societal expectations. The normative quality and significance of internationally agreed CSR standards are often unclear. One thing to also put in mind when discussing this issue of CSR is to note that when discussing CSR's international and their legal quality, a distinction should be made between governmental/non-governmental or private and multi-stakeholder acts (Davarnejad, 2011). The Guidelines therefore represent a governmental initiative because only the adhering countries can determine how to change and implement the guidelines. Due to the fact that Guidelines are

not an enforceable governmental code of conduct, they are considered soft law from the international law point of view (Davarnejad, 2011). Soft law and codes of conduct addressed to MNEs particularly are often viewed with skepticism because of their assumed voluntary character and their alleged lack of or ambiguous effectiveness. According to the Guidelines' own terminology the guidelines are voluntary, non-binding and not legally enforceable. This terminological confusion the term and normative nature of soft law invokes the disagreement about whether corporations should comply with the Guidelines (Davarnejad, 2011).

The question of compliance with international law is a difficult one because of the overarching sovereignty as it does not exist to compel compliance with international norms. Moreover, instead of trying to dissect the notion of soft law positively, it is often described negatively by reference to hard law which is counter-productive since the concept of hard law is problematic itself as it suggests an unrealistically pure and clear idea of law regarding its dimensions of precisions, obligation and delegation (Davarnejad, 2011). There is no generally agreed upon definition of soft law, the term is a catchall concept for a heterogenous group of norms. The acts included under the umbrella of "soft law" range from moral or political commitments to legal ones (Davarnejad, 2011).

3. The Difference in Constitutional and Governance Gaps in the SADC Region

The term governance has been defined to refer to structures and processes that are designed to ensure accountability, transparency, responsiveness, rule of law, stability, equity and inclusiveness, empowerment and broad-based participation. It also represents the norms, values and rules of the game through which public affairs are managed in a manner that is transparent, participatory, inclusive and responsive (https://unevoc.unesco.org/bilt/tvetipedia). Governance can compensate for certain deficiencies of the States and the market in regulation and coordination but it is never a panacea. It is a broader concept than government. From modern corporations to colleges and basic level communities, all of them can do without a government by the state, but not without a governance, if they are meant to run efficiently and in an orderly manner (Keping, 2017). It is important to note that all institutions of democratic governance play a critical role in harnessing constitutionalism, rule of law and democratic governance. Although the community is made up of fifteen member states in the southern region, it still recognises the sovereignty of each member state and allows them to exist as individuals. Globalization is eroding established primarily national institutions and procedures of governance. This means that there is so much influence from the global world in terms of pressing issues of global concern and CSR is one of them (Jaenicke, 2013).

There is so much uneven and unequal economic development and high levels of inequality both in the region and within the individual countries. Countries

within the region face diverse challenges. This is also the case with the issue of how CSR is administered in these different countries. For example, based on the apparent environmental degradation emanating from economic activities, the SADC region is now proposing to harmonize the Environmental Impact Assessment process. There are however countries still fumbling with the EIA process altogether. For example, Tanzania is one of the countries still fumbling with the EIA process in the absence of a comprehensive EIA policy, legislation, effective political commitment, adequate expertise and public awareness (Kibbassa, n.d.). Legal deficiencies as regards institutional frameworks have to a certain extent continued to pose serious threats to the EIA process. This is so because there is lack of effective sectoral coordination at national level is a major weakness in the EIA process. There is no requirement for one institution to liaise with others and ensure that a project has fulfilled the requirements in other relevant sectors prior to issuing a permit. This tendency leads to inter-agency either through duplication in mandates or violation of sectoral laws. The cross-sectoral nature of environmental issues calls for coordinated and holistic approaches (Kibbassa, n.d.). There are no effective linkages between the government and private sectors on environmental management issues. There is no overall mechanism in place to provide adequate support and guidance to the government and private. There is no single authorizing agency whose technical matters are regarded as final and conclusive. There are still ambiguities as to who should issue an environmental approval or permit upon which other licenses may be issued. Lack of official guidelines as well as a legal requirement to conduct EIA has been a major cause of EIAs being undertaken in a haphazard way. Some of these weaknesses are related to socio-political system for example lack of openness and transparency, increasing political interference, minimal political will, lack of independent decision-making capabilities and general lack of environmental awareness (Kibbassa, n.d.).

Distinct from other regional integrations in Africa, the SADC prioritized cooperation and coordinate on in a limited number of sectors where clear benefits could be gained from regional approaches. This is a regional integration that consists of sixteen member states being; Angola, Botswana (where the head office is established), Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe (https://www.sadc.int/member-states). The main objectives of the SADC are to achieve development, peace and security, and economic growth, to alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa, and support the socially disadvantaged through regional integration, built on democratic principles and equitable and sustainable development (https://www.sadc.int/member-states).

4. Comparative Study with the European Union

In comparison to the European Union which is also a regional integration as

much as the SADC, environmental law has been built up since the 1970s therefore several hundred of directives, regulations and decisions are in force today. The effectiveness of the EU environmental policy is determined by its implementation at the national, regional and local levels and deficient application and enforcement remain an important issue (https://www.europarl.europa.eu/erpl-app-public/factsheets). Moreover, the issue of monitoring is crucial both of the state of the environment and the level of implementation of EU environmental law. Integrating environmental concerns into other EU policy areas has become an important concept in the European politics since it first arose from an initiative of the European Council held in Cardiff in 1998 (Schoenefeld et al., 2019). Environmental policy integration has made significant progress, for instance in the field of energy policy as reflected in the parallel development of EU climate and energy package or in the roadmap for moving to a competitive low-carbon economy by 2050. The EU is competent to act in all areas of environment policy such as air and water pollution, waste management and climate change.

Overall, member states have taken significant efforts in promoting CSR, however some member states actions have not gone far in putting in place mandatory due diligence as some member states often rely upon non-mandatory CSR provisions (https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658541/IPOL_STU(2020)658541). While these provisions provide a company with a certain degree of flexibility, such provisions do not provide for clear and specific legal duties to be applied to all companies regardless of their size as national legislation in particular do not provide for general tasks and duties that all companies' boards shall follow in order to prevent, promptly identify and mitigate the risks of human rights and environmental abuses in their own companies, their subsidiaries and also across the supply chain (https://www.europarl.europa.eu/erpl-app-public/factsheets). Moreover, the member states have not set out enforcement mechanisms and legal remedies for victims of wrongdoings or mandate sanctions for non-compliance so that CSR remains an initiative of a largely voluntary nature. This was in a study about CSR and its implementation in the EU company law. The study however sampled some countries in the EU like France, Germany, Netherlands, Italy and Poland with the issue of due diligence legislation in the EU in question (https://www.europarl.europa.eu/erpl-app-public/factsheets). The notion of corporate governance including CSR came into focus through the European Commission Action Plans of 2003 and 2012. Both of these action plans were reactions to the corporate scandals the first being the break-down of Eron which invigorated the corporate governance debate worldwide and restoring public trust was at the heart of each of the action plans. In terms of environmental law, which provides for the protection of humans, animals and the environment against harmful emissions and for operators to take measures into accordance with the scientific and technical state of the art to reduce risks of environmental nuisance

whose materialization is possible but not yet sufficiently probable to trigger a duty of protection.

The European legislation has accepted diversity among the member states and abstained from intervention into the substance of national CSR arrangement. In terms of administering the legislation, the European Commission starts off the regulatory process in the member states through Communications and Recommendations which do not require approval by the European Council (https://www.europarl.europa.eu/erpl-app-public/factsheets). Absent an approval requirement the Commission is at liberty to formulate its own supranational law-making policies. For example, in the 2005 European Commission made clear what it expects from the national corporate governance commissions and their drafting of the codes of conduct in regard to the role of non-executive supervisory advisors. These commissions and recommendations are non-binding for member states or corporate actors. They however tend to inform the interpretation of European Union legislation by national governments or courts. Legislation is brought through directives that require transformation into national laws by member states (https://www.europarl.europa.eu/erpl-app-public/factsheets). The 2006 corporate governance Directive introduced the annual corporate statements for corporations of public interests. The corporate governance codes with the European member states and possibly around the world tend to reveal similar features and deviations from internationally agreed standards normally do not seem advisable in business. This is why comply and explain which act as an indirect harmonization device. Since its implementation, listed companies must state their code of compliance or explain possible non-compliance. Moreover, the European Commission measures the effects against the policy goals set in the earlier stages. If the effects do not emerge fast enough then further action follows (https://www.europarl.europa.eu/erpl-app-public/factsheets). It is stated that the operation and impact of comply or explain is less obvious than that of a behavior prescription through rules or standards. The first aspect of it relates to enabling corporations to satisfy the demand for information mainly by shareholders and outside investors and the second relates to strengthening the awareness for specific matters of those who are responsible for reporting (https://www.europarl.europa.eu/erpl-app-public/factsheets).

The South African King Code on Corporate Governance

South Africa has the King Code of corporate governance of which some of the Southern African member states subscribe to while others do not. It sets out the philosophy, principles, practices and outcomes which serve as the benchmark for corporate governance in South Africa. One of the main aims of the Code is to broaden acceptance of corporate governance by making it accessible and fit for application. It also provides extensive guidance in relation to the implementation of the principles by listing recommended practices under each principle (https://www.werksmans.com/storage/2021/08/Werksmans_KingIV_Booklet_V2.pdf). This code focuses on the concept of stakeholders inclusivity and high-

lights that organisations are not merely responsible for the economic bottom line but critically need to consider the societal and environmental impacts and outcomes if their operations. The code has predecessors but according to research this one seeks to instill a greater level of integrated thinking in board decisions, asking governing bodies to consider not just financial gain but the wider context including social and environmental considerations while retaining many of the guiding principles of its predecessors (https://www.pwc.co.za/en/publications/king4.html).

The reason why this Code is worth mentioning is that though it is not explicit with activities that are geared towards corporate social responsibility the underlying message from the Code is that corporations must comply and help achieve the principles mentioned. Moreover, it is somewhat impossible to separate the concept of corporate social responsibility from that of corporate governance. According to the Organisation for Economic Cooperation and development, (OECD, 1999) "Corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company's objectives are set, and the means of attaining those objectives and monitoring performance." (Wogu, 2016) With this said, the King Code have much of a bigger role to play in influencing corporations to look beyond profit making but also into the impacts that the activities the corporations have on society which is what CSR also entails. The notion of CSR and that of corporate governance share these two principles in common; accountability and transparency among integrity, diversity and independence (https://www.pwc.co.za/en/publications/king4.html).

Despite this, there is no record of how many other countries in the region subscribe the code. There is no comprehensive or concrete CSR policy or law in most countries in the region apart from some ad hoc legislative and non-regulatory activities. As already mentioned even with the comparison with the EU, some countries such as the USA too have guidelines with CSR that are applicable to companies. These guidelines specify the allocation of rights of, not only shareholders but also stakeholders with specific actionable steps described (Mrabure & Abhulimhen-Iyoha, 2020). Internationally, the comply or explain principle has evolved into different approaches where board of directors, in its collective decision making could conclude if to follow a recommendation in the particular circumstance will be in the best interest of the company (Seidl et al., 2013). The board could decide to apply the recommendation directly or apply another practice and still achieve the objective of the overarching corporate governance principles of fairness, accountability, responsibility and transparency. One thing to bear in mind is that there is a link between good governance and compliance with the law as good governance is not something that exists sepa-

rately from the law and it is totally inappropriate to unhinge governance from the law (Seidl et al., 2013).

In order for SADC to achieve its mandates and objectives, there is need for a well laid out structure and laws to carry out the mandates of the region as member states have been put in place to guide and standardize the work of the member states. One of these instruments is the SADC Protocols, which protect the aims of the community by providing codes of procedure and practice on various issues agreed on by member states (https://www.sadc.int/pages/sadc-protocols). A protocol is a legally binding document committing member states to the objectives and specific procedures stated within it. For a Protocol to enter into force, two thirds of the member states need to have ratified or signed the agreement, giving formal consent and making the document officially valid. These Protocols include but are not limited to; Against Corruption 2001; on Combating Illicit Drug Trafficking 1996; the on the Control of firearms Ammunition and other related Materials 2001; Culture, Information and Sport 2001; Education and Training 1997; Energy 1996, Extradition 2002; Facilitation and Movement of Persons 2005; Finance and Investment 2006; Gender and Development 2008; Health 1999 (https://www.sadc.int/pages/sadc-protocols) but none that is explicit on the issues of CSR and Corporate governance.

5. Governance Gap as a Challenge to Achieving Harmonized Corporate Governance in the Region

Governance makes a big difference to all of us: it determines our security from conflict, disease and destitution; our freedom to participate in our societies and to have a say in the way we are governed; and our opportunities to educate ourselves and to be economically productive, securing a better future for ourselves and our communities (DFID, 2001-2010). Governance describes the way countries and societies manage their affairs politically and the way power and authority are exercised. For the poor and vulnerable societies, the difference that good, particularly bad, governance, makes to their lives is profound as the inability of the government institutions to prevent conflict, provide basic security or basic services can have life or death consequences (DFID, 2001-2010). In most of the setups, understanding governance is central to achieving development and ending conflict, lack of understanding thereof creates lack of opportunities that can prevent generations of poor families from lifting themselves out of poverty (Isiaka & Raimi, 2021).

Most of the African states suffer from a governance gap, this refers to a backward socioeconomic and political situation prevailing in developing nations, particularly Africa which is characterized by infrastructural neglect and a dysfunctional economy (Raimi, 2015). Monitoring of the law is an important aspect of making sure that it is well implemented, it therefore important to note that in any setting the legislative process does not end with the adoption of the law but also making sure that it is well implemented (Raimi, 2015). The history of most

African states is that there is a problem of leadership and governance. SADC member states especially are a mixed bag of regime types ranging from hard-line autocracies such as the DRC and Zimbabwe to consolidating democracies such as Botswana and Namibia. Despite the recorded number of democracies, in recent years, some of the Southern African states have experienced democratic backsliding, including increased restrictions on civil society (Campbell & Quiin, 2021). This has been asserted poignantly by Mohamad Saahil who pointed out that, political parties in Africa emerged during the colonial rule which was neither democratic nor legitimate. Essentially political parties during emerged in a non-democratic setting which to a large extent informed their practice during independence. It is worth noting that the countries however adopted a relatively stable multiparty system ushered in by independence elections (Mohamed Salih, 2003). Ironically, a number of these states have made a U-turn in the mid 1960's, abandoned the multiparty framework and adopted one party-system. Some of these decisions were based on the grounds that there was need to focus attention on economic development, the need to prioritize the imperatives of national building and reconciliation following decolonization process and the need to reduce the intensity of politics which was perceived as divisive thus inimical to the achievement for the two first objectives (Mohamed Salih, 2003). SADC's history and organizational culture is deeply rooted in the region's liberation movements and that is to say that the organisation was born out of the Frontline States, an alliance that opposed apartheid in South Africa. The nature of the organisation is that it is an intergovernmental organisation whose authority lies on the heads of the states.

5.1. Democracy as a Model of Governance

Democracy is a universally recognized ideal based on common values shared by people across the world, irrespective of cultural, political, social and economic differences. The Vienna Declaration and Programme of Action recognises that democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of life (https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action). The SADC is believed to be institutionally weak because its decision-making procedures are separate from its statutory provisions. The issue within the region is that responsibility has been transferred based on the national election; if regional representation was also subject to an election, there may be other choices and representation. It also depicts an organization that is suffering from an internal governance crisis, in that it has various decision-making mechanisms that are provided for in its statutes but is unable to use them to its harm (IDEA, 2009). When people pass judgement, lack empathy for different viewpoints, and do little about matters that matter to them, democracy fails. There are a number of factors that are unique to the re-

gion and contribute to the challenges of building democracy in the region. The population is increasing in most of the African states, which contributes to a greater number of jobseekers, some with poor education while entering limited labour markets. Moreover, urbanization is taking place at an alarming rate and is exacerbated by the perceived urban-rural divide which favours urban areas in the utilization of development resources (IDEA, 2009).

Lack of sustainable management thereof of the various demographic imperatives including non-provision of opportunities for young people and the rural population and limited actions to address the socio-economic realities of underdevelopment, lie at the heart of the challenges of supporting democracy building, poverty eradication and sustainable development in Africa (IDEA, 2009). This is not to say democracy alone cannot address the multitude of Africa's challenges, most notably corruption. Holistic and multi-stakeholder approaches are not always pursued to address the development challenges of the continent (IDEA, 2009). This is to say that democracy building is an inclusive and holistic process that requires the active involvement of all actors, including non-state actors, the diaspora and women, but in too many African countries the complementary role that they could play in promoting sustainable development and alleviating poverty is either marginalized or not adequately recognized.

Democracy in the continent as a whole is still considered young as compared to the western counterparts (the European Union) hence the integration into the whole continent is still at an infancy stage. In addition to issues of low capacity and institutional deficits, the process is slow due to the unwillingness of the states to cede aspects of national sovereignty to the integration (the AU) and also a perceived lack of political will to allow for enhanced political integration, increased coherence in policy formulation and empowerment of continental and regional organisations and institutions as well as subsequent exercise of supranational powers (DFID, 2001-2010). Colonialism and neo-colonialism are some of the main challenges to democracy building in the region. This in turn produced institutional and administrative structures that were not conducive to the promotion of sustainable development and democracy building. Colonial powers have left most African states with systems of authoritarian values and norms that weakened public administration and the education system which are both essential for effective democracy building (DFID, 2001-2010).

Weak governance manifests itself in other ways as well, too often dysfunctional governance processes persist, creating environments where civil servants and political elites acts with impunity, embezzling scarce public resources that could be used for education, healthcare, infrastructure (Mbaku, 2020). In most instances elites are usually not incentivized to implement pro-poor economic programs that enhance of the poor to participate productively and gainfully in economic growth, such as public investments in primary and secondary education, clean water, basic health care and child nutrition (Mbaku, 2020). Unfortunately, weak and dysfunctional governance structures continue to prevent many African countries from creating and sustaining the necessary enabling environment for

peaceful coexistence, entrepreneurship, and wealth creation. In this manner, the kind of governance that African countries should be striving for is the one that should address peaceful coexistence and economic development, inequality, the effects of climate change, health pandemics and enhanced regional cooperation as well as ensure the full and effective participation in both the economic and political system of groups that have been marginalized such as women, youth and ethnic and religious minorities (Mbaku, 2020). A governance that is characterized by separation of powers with effective checks and balances, including a robust and politically active civil society, an independent judiciary, and a viable, free and independent press. Moreover, what is important is being able to empower all the marginalized groups to be able to participate fully and effectively in the constitution making process. Also having a robust amendment process, one that can prevent the manipulation of the constitution by opportunistic executives to remain in power indefinitely as it is the case with some of the African states today (Mbaku, 2020).

The Declaration adopted on 24 September 2012 by the United Nations General Assembly at the High-level Meeting on the Rule of Law at the National and International Levels reaffirmed that "human rights, the rule of law and democracy are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations (https://www.un.org/en/chronicle/article/rule-law-and-democracy). If considered not solely an instrument of the government but as a rule to which the entire society, including the government, is bound, the rule of law is fundamental in advancing democracy (https://www.un.org/en/chronicle/article/rule-law-and-democracy). The rule of law means that no one including the government is above the law, where the laws protect fundamental human rights and justice is accessible to all. The concept implies a set of common standards for action, which are defined by the law and enforced in practice through procedures and accountability mechanisms for reliability, predictability and administration through the law. This concept has been determined as one of the key dimensions that determine the good governance of a country (OECD, 2013).

Making the rule of law strong has to not only be approached in only focusing on the application of norms and procedures but also in the role of protecting fundamental human rights and advancing inclusiveness and in this way framing the protection of human rights within the broader discourse on human development. A common feature of both democracy and rule of law is that a purely institutional approach does not say anything about the outcomes of processes and procedures even if the latter are formally correct. However, the distinction that has to be made between the two concepts is the issue of the "rule by law" where law is an instrument of government and government is considered above the law whereas "rule of law" implies that everyone in the society is bound by the law including the government. Essentially constitutional limits on power, a key feature on democracy require adherence to the rule of law (OECD, 2013). Con-

stitutions contain the fundamental and most often the supreme law of the state and the rule of law dictates the enforcement of those principles above all other laws. One of the other offers of a constitution is the ability to preserve fundamental principles and values by making the process of amendment burdensome and some constitutions ensure the permanence of certain principles by prohibiting amendments (OECD, 2013). This is light that in most instances constitutions do much more than establish a government and regulate the relationships between it (the government) and the citizens as they have also become a crisis management too (OECD, 2013). For example, the constitutions that are designed for conflict-affected and deeply divided states hinge on their ability to reconcile groups, address the intolerable differences and to prevent further polarization and conflict deterioration. Some of the constitutional designs that were designed to the requirements of managing conflict have had some degree of success, this goes on to show the power that the constitutions possess if they are set out with the right intentions (OECD, 2013).

On an international scope, the United Nations has fostered the rule of law through the consolidation and development of an international framework of norms and standards, the establishment of the international and hybrid courts and tribunals and non-judiciary mechanisms. Moreover, the framework has been refined for engagement in the rule of law sector at the national level through the provision of assistance in constitution making, the national legal framework, institutions of justice, governance, security and human rights, transitional justice and the strengthening of the civil society (OECD, 2013). On one end The Global Commission on Democracy, Elections and Security ensures that elections with integrity based on political equality, transparency and accountability are crucial for human rights and democratic principles as they give life to rights enshrined in the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights instruments and covenants (OECD, 2013). On the other notion electoral justice is another linkage between democracy and rule of law and it ensures that every action, procedure and decision related to electoral process is in line with the law and that the enjoyment of the electoral rights is protected and restored and thus giving people who feel that their electoral rights have been violated the ability to file a complaint, get a hearing and receive an adjudication. An electoral justice system is a key instrument in the rule of law and the ultimate compliance with the democratic principle of holding free, fair and genuine elections (OECD, 2013).

One of the commendable steps for consolidating laws in the region has however been the newly established Labour Law Guide, this is an online tool that provides up to date labour laws from the SADC region in one central location. Work behind the LLG started way back in 2015 when the International Labour Organisation supported the SADC Private Sector Forum to compile a Compendium of SADC Labour Laws as a tool to help businesses in the SADC region to

overcome challenges of doing business in the sub-region (https://www.ilo.org/actemp/news/WCMS_748805/lang--en/index.htm). Most small businesses lamented that easy access to relevant laws, lack of advisory services and practices that vary from the formal law, are difficult to determine. The tool thus contributes to greater understanding and insights by employers of their legal obligations as well as promotion of decent work principles (https://www.ilo.org/actemp/news/WCMS_748805/lang--en/index.htm). The LLG platform includes a purpose built COVID-19 Dashboard which provides access to regularly updated information under ten keys "regulatory highlights", from Enabling Laws to Health & Safety and Goods through Ports to Unemployment Relief, where the pandemic is leaving its mark. The Dashboard is a comprehensive way to keep abreast of both in-country and regional responses and reactions to COVID-19. The information is compiled and maintained through the coordinated effort of major legal firms from across the region. The dashboard also displays a comparative look at the state of COVID across SADC, Africa and the rest of the world (https://www.ilo.org/actemp/news/WCMS_748805/lang--en/index.htm).

5.2. Lack of Civil Society Participation

Even at a globalized level, in order to prevent any sort of chaos and be able to build anything sustainable, it requires cooperation between civil society actors at a local, national, regional, and global level with governments, intergovernmental organisations and even in some cases businesses (OSCE, 2011 Mission in Kosovo,). Good governance is often requiring the active involvement of citizens and civil society this is because citizen engagement can, under certain conditions, contribute to conferring legitimacy, demanding accountability, influencing responsive policies, countering elite capture of resources, and implementing effective service (DFID, 2001-2010). Civil society is a concept that is often connected to discussions of associational life, social value and social capital. These aspects of civil society exist in the activities and organisations that bring us together, the values and norms that make a good society, and the places and spaces where we come together to discuss the issues of the day (https://civilsocietycommission.org/wp-content/uploads/2021/05/What-is-civil-society.pdf). This does not only refer to It only does not refer to institutions but agencies, movements, cultural forces and social relationship which are privately and voluntarily organized and which are not directly controlled by state, which means it includes groups such as household religious group, trade unions, private companies, political parties, humanitarian organisations, the women movement, environment groups and parent teacher associations. The term is often used as a point of reference in public and welfare policies (Singh, 2012). These particular groups participate in the market and politics in the interests of their members or constituency without seeking financial gain or political office. One of the reasons that the civil society is important is because it is important in the development of the democratic political system (OSCE, 2011, Mission in Koso-

vo).

In most instances communities and or societies, different groups of people play a bigger role in helping the governments make decisions that concern them. They are able to analyze situations, formulate recommendations, develop policy options and engage in policy dialogue to address whatever conflicting idea there is (OSCE, 2011 Mission in Kosovo). This becomes a problem in societies where important official information is withheld from the civil society. The ability to access laws, regulations, reports and other documents that regulate and inform on public policy, and the need to have their requests for public information handled promptly and competently, is of the utmost importance (OSCE, 2011 Mission in Kosovo). Moreover, public awareness and participation is very important as it brings the issues to the people firsthand. This reinstates the logic that civil societies play a very important role in the leadership formation of the country as they play an important role in promoting political participation through educating people about their rights and responsibilities and in the context of national elections in delivering non-partisan civic education information (McAuliffe, n.d.). It cannot be denied any longer that civil society participation is important in virtually all issues-areas of global governance but it is worth noting that civil society participation varies widely around civil organisations and even different states in the world (UNDP, 2006). Civil society participation therefore refers to the presence and activities of non-state actors making use of formal and informal avenues of access. It implies bottom-up, active involvement with the aim to influence others and their decisions that concern societal issues. Participation can be said to be high if non state actors use existing avenues of access at ahigh rate. It is stated that high levels of access and high participation often go hand in hand (Odhiambo, Ebobrah, & Chitiga, 2016).

Article 23 of the SADC Treaty posits that, "SADC shall seek to involve fully the people of the region and key stakeholders in the process of regional integration. SADC shall cooperate with and support the initiatives of the peoples of the region and key stakeholders." There are a number of ways in which the civil society organisations can participate at regional governance depending on what stage of the policy they are seeking to influence. Due to the varying range of access and levels of participation at different stages of the policy cycle, civil society influence may be higher at certain stages than others. Regional civil society networks can play a valuable in effecting change at the national level. Regional platforms and cross-border networks can play a particularly valuable role when channels between domestic groups and the government at the national level are hampered to the extent that they are ineffective for resolving societal conflicts (Hulse, Gurth, Kavsek et al., 2018). SADC has implemented a number of formal access mechanisms for non-state actors, the most important of which are SADC National Committees (sometimes also referred to as National Contact Points) and Memoranda of Understanding (MoUs) with the SADC Secretariat (Hulse, Gurth, Kavsek et al., 2018). Other notable regional civil society bodies or networks include the Gender Protocol Alliance, the Southern African Social Protec-

tion Experts Network (SASPEN) and the Southern African Peoples Solidarity Network (SAPSN). The Memorandum of Understanding(s) (MoUs) are there to provide a legal framework between SADC and non-state actors. CSOs with MoUs are usually invited to the relevant ministerial meetings, where they have the opportunity to give inputs. Obtaining the MoUs is a long, drawn-out process that relies on having good contacts within SADC secretariat. Existing mechanisms for civil society access are either inoperable, difficult to obtain or rely too much on the individual inclination of decision makers and bureaucrats (Hulse, Gurt, Kavsek et al., 2018). The SADC National Committees (SNCs) were introduced in 2001 and were formulated to allow government, civil society and the private sector at the national level a pathway for providing input into regional matters. They have a direct link to the secretariat and should be have direct input into regional policy making thereby making them the most promising avenue of civil society organisations willing to participate in regional policy making. There is the problem however that it is only in three countries being Botswana, Mozambique and Mauritius, where the SNCs were fully operational, however they are either lacking the capacity to operate effectively or are only existing on paper (Odhiambo, Ebobrah, & Chitiga, 2016).

The SNCs are in most instances chaperoned by the ministry responsible for regional integration and where they are functional there are only a few selected to engage with the governments of the states. As much as these SNCs are set up with the intent to involve people of the region, there is no mechanism put in place to sanction member states that fail to institutionalize the SNCs (Hulse, Gurth, Kavsek et al., 2018). The SNCs are in most instances are chaperoned by the ministry responsible for regional integration and where they are functional there are only a few selected to engage with the governments of the states. As much as these SNCs are set up with the intent to involve people of the region, there is no mechanism put in place to sanction member states that fail to institutionalize the SNCs. This is despite Article 1 (5.2) (b) of the SADC Treaty Amendment of 2001 stipulating that SADC will encourage the people of the region and their institutions to take initiatives to develop economic, social and cultural ties across the region and to participate fully in the implementation of the programs and projects of the SADC (Hulse, Gurth, Kavsek et al., 2018).

The SADC Council of Non-governmental Organisations is also one of the setups by the SADC region to be able to engage with the civil society on matters that affect them. It was formed in 1998 by CSOs and the SADC Secretariat to facilitate meaningful engagement of the people of the region with the SADC Secretariat at the regional level, and with the member states at national level through national NGO umbrella bodies (Hulse, Gurth, Kavsek et al., 2018). Setting up the SADC-CNGO created a common platform for CSOs to address issues of poverty alleviation, democratization and good governance, ending internal political conflicts that have characterized the civil society landscape of SADC. It organizes a civil society forum on the sidelines of official SADC meetings, generally in the country where the Summit is hosted (Hulse, Gurth, Kavsek

et al., 2018). This organisation was set up at a time when other regional bodies such as the African Development Bank, the UN agencies and the World Bank were setting up their own NGO committees. In order to enhance the participation of the citizens, the SADC-NGO launched the SADC Protocols Tracker which is aimed at tracking and reporting on the new level of signing, ratification and implementation of SADC protocols and other policy documents (Hulse, Gurth, Kavsek et al., 2018).

The Southern Africa Gender Protocol Alliance (SGPA) which was established in 2005 and campaigned for the adoption and now the implementation of the SADC Protocol on Gender and Development. The SGPA has been working closely with the SADC gender unit to provide technical assistance to national gender machineries to update national gender policies and develop costed gender action plans that are aligned to the Protocol (Hulse, Gurth, Kavsek et al., 2018). It consists of national networks of gender NGOs and country theme clusters. There have been concerns over the shrinking number of civil society organisations, which has been echoed by a number of policy makers, as well as reports by CSOs, think tanks, and the media. This then leads to a number of reasons that need to be in check such as the level of democracy, civil liberties and press freedom. If one or more of these elements are in jeopardy then the rest the civil society organisation is also affected. In addition to some of these elements there is an issue of foreign funding of civil society organisations which a lot of states have spoken against. This is one of the issues that was raised by the former president of Zimbabwe Robert Mugabe when he introduced a bill to ban foreign funding for CSO stating that, "we cannot allow them to be conduits or instruments of foreign interference in our national affairs (Hulse, Gurth, Kavsek et al., 2018). This was also agreed to by the President of Russia Vladimir Putin stating that the only purpose of the 2012 Russian Foreign-Agent Law was to ensure that foreign organisations representing the outside interests and not those of the Russian state would not intervene in the domestic affairs of the state. The Hungarian President also contended that the foreign funded CSO are a threat to the sovereignty and national security of his country. There have even been concerns over the loss of political maybe heightened especially in the wake of the Arab Spring and the color revolution in post-Soviet Union (Hulse, Gurth, Kavsek et al., 2018). This restriction however comes at a significant cost especially for the middle- and low-income states. The governments of these individual countries do not only risk to be named and shamed but moreover are at a risk of losing access to international aid. Healthy democracies depend on civil society, at the same time the global crackdown on civil society is also testament to the resilience and power of these concepts which, while contested, continue to resonate among those who share a deeply-held concern for progressive political change, the protection of human life and liberty, and an end to the arbitrary abuse of power (Hulse, Gurth, Kavsek et al., 2018).

Participative decision-making at all levels of SADC's institutions may assist in accelerating growth and development. To achieve, a high degree of honesty, in-

tegrity and accountability by both the government players and civil-society movements is required. Moreover, the issue of heterogeneity could also be of issue because of institutional construction as an interstate organ with bureaucratic decision-making structures especially more so the government makes so many decisions on a wide variety of issues (Hulse, Gurth, Kavsek et al., 2018). The civil society has expressed concern over the fact that SADC continues to be political entity overly focused on the heads of states at the expense of an open and participatory process. Moreover, the civil society has expressed concern over the lack of commitment by SADC member states to the domestication of regional Declarations and Protocols and that non-adherence to Protocols and Declarations by some member states, many instances resulting in internal conflicts and instability, which slowed down or reversed the agenda of regional integration (Hulse, Gurth, Kavsek et al., 2018).

Suggestions for the study

As already established that the concept of CSR in the region is still at a novice stage, there is need for governments to engage more in understanding the concept so that its inception will be much easier to regulate and work with. With governments understanding the concept it helps with the smooth regulation of it not only from the cooperations' perspectives where they are at liberty to do the minimal of the work and also not much of accountability as there is no one to follow up on the regulation processes as stated in the case of Tanzania. CSR policies adherence is typically not evaluated or assessed. In most instances corporate leadership involvement in CSR matters tend to be focused on launching community projects, supporting CSR policies and ensuring resources for CSR projects rather than embedding CSR in business processes (Gajadhur & Nicolaides, 2022). The involvement of governments through regulations, incentives or support for CSR dialogues was considered critical in successful CSR projects. Governments in the SADC region need to take initiatives in mandating, facilitating, partnering and endorsing CSR strategies in their portfolios in order to help improve the state and understanding of the concept in the individual member states (Gajadhur & Nicolaides, 2022). In the process, governments of individual countries have to understand that CSR develops in relation to external forces such as fulfilling legal and regulatory obligations and responding to public opinions. The fact that CSR is gradually moving from the historical focus on corporate giving toward a broader collection of activities that engage businesses with a broader range of stakeholders and assist organisations in integrating CSR strategies into their core strategies (Gajadhur & Nicolaides, 2022). With this understanding, there is a need for governments in the region to step up in understanding the concept so that they will be able to integrate it with the existing legislation aimed towards issues of sustainable development which will in turn help with the regional harmonization.

According to many researchers, there are no universal laws for corporate governance and the efficiency of specific corporate governance practices can vary in different contexts. In other words, some governance mechanisms may not

work in developing countries as they may work in more developed countries like Europe. Moreover, companies are aware that no one size fits all approach to CSR operations is unsuccessful at addressing organizational drivers for socially responsible conduct. This has not been the case with most of the SADC member states as the codes of corporate governance were trying to address issues that were dominant at the time of setting the codes up for example; the King Code on corporate governance in South Africa was trying to address the issue of political change and the efforts to balance out unequal wealth from the period of apartheid have been a major driver of CSR in the country. This is from the understanding that the relative interest of the different types of CSR are strongly affected by the cultural context in which they operate.

One of the advantages of legalizing CSR is the fact that there will be mandatory due diligence. The regulatory approach requires companies to identify and assess social and environmental risks associated with its business operations and execute reasonable plans to prevent harm resulting from the identified risks. Moreover, this makes it easy for those harmed by the company to lodge civil action and ultimately seek damages for corporate negligence (Lin, 2020). Legalizing CSR also helps in the sense that it mandates corporate philanthropy this is because modern CSR has evolved far beyond corporate charity and focused on accountable management of any negative externalities as a result of the daily business operations. While the operations of this may vary from country to country, the mandate to legislate is to require companies to commit a certain percentage of their profits to designated CSR programs such as building schools and building roads or building shelters for the poor (Lin, 2020). One of the most important aspects of CSR and law is the fact that the social responsibility of corporations may assist the government in fulfilling welfare state goals as they may help in the integration of immigrants, education and training, access to health services and to employees' welfare and financial conditions after retirement. Where corporations act and fund activities on behalf of the governments then the government funds may be channeled somewhere else. Understanding the interaction between CSR and law will be useful to corporations and states in dealing with transformation processes encountered by the welfare state, as well as corporate duties in a globalization process.

Large multinational corporations have become very powerful economic and social agents. The world's biggest corporations have revenues that equal or even exceed the gross domestic products of some developed states. The power of MNCs is not just based on the enormous amount of resources they control (Scherer & Palazzo, 2009). Their power is further enhanced by their mobility and their mobility and capacity to shift resources to locations where they can be used most profitably and to choose among suppliers applying criteria of efficiency. Globalization is weakening the power of national political authorities to regulate the activities of corporations that globally expand their operations (Scherer & Palazzo, 2009). This erosion of the regulatory power of (national) hard law has two effects as it forces national governments into a race into the

bottom and it opens a regulatory vacuum for transnationally expanded corporate activities. Due to globalization, international law has been developed as a legal framework for the interactions of the nation-states themselves. Meanwhile globalization is defined as the process of intensification of cross-area and cross-border social relations between actors from very distant locations and of growing transnational interdependence of economic and social activities (Scherer & Palazzo, 2009). Economic processes underway in most of the world have transformed the national settings and the potential role of law. Economies are more open, foreign investment has become more welcome and the state is no longer expected to be the dominant actor in economic development and poverty reduction (Scherer & Palazzo, 2009). This is to say that MNCs have recently become powerful economic and social agents therefore they play a significant role in poverty reduction and economic development.

6. Conclusion

Upon analyzing the literature on CSR, law reform and the SADC region on the issue of reforming the CSR standards, there is a lot that has to be realized before reaching the point of reforming the standards. The understanding of the concept is of utmost importance in the region as it goes beyond philanthropy. It has a far-reaching viability to be instrumental or strategic in satisfying stakeholder expectations and its potential capability to the achievement of organizational objectives. Businesses exist for the pleasure of society and their behavior and methods of operation must fall within the guidelines provided by the country of operation. Therefore, a better understanding and coordination of the activities of the concept can yield far better results for the region. As mentioned, that the decision to include CSR related provisions depends on the countries that take part in the negotiations, it is therefore also important for the SADC member states to actively take part at the negotiating table in the international sphere. As much as the law reform process seems lengthy and a tedious one, it is necessary for the region to implement and adopt be able to achieve some of the objectives for economic growth. As some definitions go as far as mentioning that the process of reform includes the principle of modernization which means to bring the law in accord to current principles and conditions. The aim here is to make the laws more modern and keep it at par with the issues that are current. It is like giving law a makeover to make it work better for everyone. CSR always has the potential of improving social welfare and making corporate activities more sustainable. Further understanding of the concept within the region will enable for better access to the opportunities that the concept can offer. With the understanding that CSR is only philanthropy in these countries, because of this, some companies cannot be fully responsible. It is with this understanding therefore that there is a need for legalizing the standards into laws in the region in order to hold these companies accountable. This will not be a new phenomenon; however, the region has not jumped into the bandwagon just yet, which could yield better results than what has been going on. This calls for good governance within the re-

gion and more so individual countries to be able to tailor the inclusion of the standards into their legislations. This has also allowed for the participation of civil society as they play an active role in the formulation of policies and legislations.

Moreover, the issue of having a harmonized legislation on CSR still looks like a far-fetched idea in the sense that individual countries still have to get the understanding of the holistic understanding of the concept.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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