

Strengthening Developing Country Governments' Negotiating Skills to Ensure Corporate Social Responsibility

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Introduction

Negotiations have always been influenced by the setting within which they factor or at least a larger context (Fisher and Ury 1991). It is this larger context which typically determines the strength or weakness of the stance adopted by the parties (Fisher and Ury 1991). In order to understand a government's ability to negotiate its involvement in the direction of CSR activities, it is imperative to first understand the larger the context in which this discussion takes place.

Before one begins a discussion centred on the involvement of the public sector in its country's private sector CSR Agenda, one must first understand the prevailing global scenario wherein the sphere of influence of corporation cannot be ignored. According to the 'World Investment Report 2007', as of 2006, there were 78,411 parent corporations and 777,647 affiliates worldwide (United Nations Conference on Trade and Development 2007). The scale of the concentration of economic power is illustrated by the statistics: of the world's 100 largest economic entities, 51 are multinational companies and 49 are nation states (Anderson and Cavanaugh 1996). The Texaco Corporation operated for years in Ecuador with annual global earnings amounting to four times the size of Ecuador's GNP (Anderson and Cavanaugh 1996). When corporations, and not governments, are understood to be the one factor that most influences the international economy (Cox 1979) one is hardly surprised with the present day perception that corporations are in fact more powerful than many states (Chesterman 2004). With corporations exercising greater influence within the international legal system and participating increasingly in international law making, one further realizes that their sphere of control is not restricted to the economic sector alone (Dupuy 2005).

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) was adopted in part, because of the influence exercised by such corporations who desired such an international legislation (Matthews 2002).

The emergence of 'private–public partnerships' in the World Trade Organization (WTO) dispute settlement litigations as a matter is being disputed between two nation states, only serves to further the understanding that TNCs are increasingly playing the role of influential political actors on the international scene (Shaffer 2003). In addition, the 2008 global financial crises demonstrate the ripple effect which the regulatory gaps at the international level can lead to (Cooper 2008). The push for liberalisation of the international market by Western-based multilateral organisations such as the World Bank and the International Monetary Fund (IMF) has ensured that turbulence in one of the major countries due to TNCs' business strategies can have a global effect (Cooper 2008). With such a wide sphere of influence it is feared that corporations may work to upset the international encouragement of environmental, labour and human rights (Reinisch 2001). Hence today there exists a greater demand for domestic market regulators to engage in the workings of corporations to contain all their externalities (Reinisch 2001). One would not be wrong in understanding that such calls for greater state involvement in all areas of working of corporations is born out of a fear of their growing influence. Where states are required to enter domains traditionally held by corporations, corporations have already successfully cemented a place for themselves in conventionally state centric spheres.¹

Very often today the demarcation between traditionally sovereign functions and the functions carried out by corporations is blurred. Corporations in India today engage in the development of public infrastructure and have established towns, along with taking over the responsibility of providing it utilities (Ahluwalia n.d.). Internationally Multinational corporations are in effect been given de facto international legal personalities, when we see that under multilateral trade agreements such as the NAFTA, corporations can directly bring suits against the Government for infringements of rights (NAFTA n.d.). We have already seen that corporations play a key role in WTO dispute settlement and were instrumental in the creation of international agreements such as TRIPS. Hence we see that the prevailing global scenario sees very little distinction between states and corporations in terms of resources or spheres of influences or indeed as regards to involvement with public life as well (NAFTA n.d.). It is within these overarching circumstances which blur distinctions that a government will today attempt to negotiate their involvement in the Private Sector CSR Agenda.

In fact it was with this back drop that the world witnessed the greatest economic downturn since the great depression in 2008 which acted as a catalyst to government involvement in CSR activities. One of the significant

after effects of the 2008 global financial crisis was that the world's perception of corporate institutions as a whole changed (Bertelsmann Stiftung and UN Global Compact Report n.d.). Viewed earlier as drivers of growth and innovation, they were now looked upon as unbridled transgressors of regulations which fostered the promotion of an unequal distribution of wealth (Bertelsmann Stiftung and UN Global Compact Report n.d.). The immediate reaction of most state governments was inevitably to increase the financial regulations of corporations. Not surprisingly with greater regulations, compliance measures and in some cases financial bailouts, there came a greater involvement of the state in all spheres of corporate activity, even in those hitherto considered an exclusive domain of the private enterprises i.e., voluntary CSR activities. Such an involvement seemed to bridge the 'trust deficit' that existed between the general populace and the corporate establishment and hence received greater acceptance than at any other time in the history free market enterprise, even in the bastions of free market economy such as corporate America.

The essence of CSR lies in its aspiration to foster sustainable economic growth, through an improvement of the quality of lives of both its internal stakeholders (Workers, Shareholders, investors) which is essentially a function of business planning; as well as its external stakeholders (community members) which is in essence a function of public governance (Fox, Ward and Howard 2002a). In addition to bridging the trust deficit, government involvement in the CSR Agenda was further justified when the World Bank commissioned a programme study called the strengthening of developing country governments' engagement with Corporate Social Responsibility (Blakeley n.d.). This study based out four countries namely that of, Angola, El Salvador, The Philippines and Vietnam provided a detailed insight into the potential roles of the public sector within developing countries to encourage and strengthen corporate social responsibility. This programme began with the understanding that businesses being part of society are capable to contributing to societal aspirations through a strengthening of its relationship with its stakeholders both internal (investors, workers, shareholders) as well as external (civil society, customers etc.) (Blakeley n.d.). It was however realised that the government was conspicuous by its absence in the structuring of this CSR agenda, just as how the private sector was absent from the field of public governance policy making.

Through this programme it was observed that Business involvement in public governance is essential to enhance competitiveness of goods produces in international markets, to supplement the lack that exists in government capacity, to achieve the goals that further the common good of society by

utilising the complementary capacities and benefits in terms of resources that accrue as a result of partnering with civil society groups and the private sector, and finally to ensure that the CSR Agenda is aligned with national policy goals (Blakeley n.d., p. 5). It was for these very reasons that government involvement in the CSR agenda was thought to be a practical design.

This study observed that CSR agenda's were increasingly being taken into consideration by Multinational Enterprises before making purchasing decisions. Most foreign buyers had developed codes of conduct which were required to be followed throughout their supply chain, whether local regulatory norms required such conduct or not (Blakeley n.d., p. 5). Hence governments such as those in Vietnam realised that it is better to prepare domestic suppliers for such conduct (be in the field of labour or environment) rather than loose out lucrative on international supply contracts (Blakeley n.d., p. 6). These governments did so because they wished for their countries to be known as responsible purchase destinations, in addition to being a location for competitive pricing.

Where governments were incapacitated for want of resources to implement their social responsibilities, it was suggested that the CSR agenda of private actors can be channelized to effectively meet the disparity that existed in government capacity at least as a stop gap measure. It has long being suggested that effective governance and consequently the achievement of public policy goals, can only take place if the various stakeholders are involved in the process of planning and implementation (Fox et al. 2002a). It was hence suggested that a partnership between the government and private sector to organise and plan an effective CSR agenda could create efficient synergies making use of the core competencies of both parties for the greater public policy goal (Fox et al. 2002a).

Lastly, it was said that to align the CSR agenda of the private sector to the national public policy goals the government must the first find out the areas of over lap between the two and then plan its intervention (Blakeley n.d.). The modes of government intervention are manifold and broadly categorised as mandating, facilitating, partnering and endorsing (Bertelsmann Stiftung and UN Global Compact Report n.d.). For example governments pass legislations that mandate the hiring of the local population by MNC's to ensure the training and development of the local population. Certain Governments such as that of El Salvador have taken steps to partner private sector actors with government educational institutions in order to further its National Education Policy (Bertelsmann Stiftung and UN Global Compact Report n.d.). Hence governments are identifying their priorities and structuring incentives in a

manner that capitalises on the strengths of private sector and guides CSR towards the fulfilment of the National Agenda.

Ensuring that legislations in developing nations are enforced uniformly, efficiently and with transparency is considered as an essential pre-requisite for the development of responsible businesses (Peters 2009). For it is only when a minimum standard is achieved and there exists a level playing field, would business strive to better themselves and raise their standards to distinguish themselves from their competition in a market where consumer are conscious of such higher standards (Blakeley n.d.). However this approach requires transparency on behalf of the government with regards to the activities of the enterprises, as well as incentives in the form of tax concession for those enterprises striving to achieve higher standards (Blakeley n.d.). Transparency in the activities of enterprises ensured by the government will, it is said, also enable pressure groups to monitor the private sector more effectively, leading to an actual betterment of standards (Bertelsmann Stiftung and UN Global Compact Report n.d.).

The traditional notion that CSR activities exist purely in a realm 'beyond compliance' ignores the vigorous connection that exists between voluntary measures and mandated compliance, wherein voluntary approaches could one day harden into compulsory minimum requirements (Fox 2004). The distinction between voluntary and mandatory further draws to a close in developing nations wherein the role of government is understood to be greater than merely providing incentives to businesses to cross over into activities that are beyond compliance and instead ensure basic compliance not with legislation but with tools and incentives considered by governments to be part of the CSR agenda (Nelson 2008). Many initiatives of the government which aim at building capacities for local businesses indirectly contribute to those businesses being capable for acquiring voluntary certifications such as SA8000 (Fox et al. 2002b). Though there is little evidence of it in developing nations.

It might also be argued that the desire for seeking such voluntary certification is driven significantly by consumer demand for pro CSR goods in developed nations. In developing countries such a demand has not been actively inculcated by the state. In any case, even a slight focus on a voluntary CSR agenda by a few corporations particularly in an developing industrial market, forces the government compliance machinery into action (such as in the case of prevention of child labour) and establishes a minimum set of standards eventually followed by all, thereby levelling the playing field (Bertelsmann Stiftung and UN Global Compact Report n.d.).

Hence with state involvement evidenced in all spheres of corporate life, it came as no surprise that with the passing of time we saw a greater state involvement in what was hitherto voluntary CSR. This involvement, though faced with resistance is now being understood as necessary, as corporations gain the influence and rights of equivalent to states in the international sphere and as states view corporations with greater scrutiny in light of the trust deficit (Bertelsmann Stiftung and UN Global Compact Report n.d.). Such an increase in involvement rests on the alter of an increased enthusiasm for CSR activities which state agencies have realised can be channelled for the achievement of public policy goals (Bertelsmann Stiftung and UN Global Compact Report n.d.). The challenge for government then lies in the identification of effective incentive mechanisms that further national development priorities and that build on existing corporate capacities. Hence keeping all these factors in mind, it can be reasonable expected that government's involvement in corporate CSR structures will be accepted. The question hence remains as to how governments can be included within CSR structures.

Where can the CSR Placed within the Government Structure?

Governments around the world have begun to understand that CSR with its inherent capacity for sustainable inclusive development is relevant from the perspective of public policy as well (Ascoli 2009). Governments particularly of developing nations have increasingly begun to realize that policy tools along with conventional regulatory models can encourage business activities and have hence taken active steps in the recent past to establish environments that facilitate CSR (Ascoli 2009). In the aftermath of the 2008 global financial crises, governments having resorted to an inevitable strengthening of regulatory framework soon comprehended that a decentralised approach involving the participation of the private sector would be more effective (Fox et al. 2002b). The decentralised approach finds its basis in the understanding that although voluntary business activities are not a substitute for a regulatory framework they can be a potent complementary tool (Fox et al. 2002b).

Such an understanding has been strengthened after the 2008 financial crises which in effect caused a global rebalancing of responsibilities, leading to a greater private participation in development activities, building on the advances previously made in the field of CSR. Hence private firms today are conscious of the fact that CSR activities builds and regains trust which is

significantly valuable during a crisis situation, whereas governments understand that mere stringency in regulations alone will not promote the inclusive growth it desires and hence it must foster an environment that encourages voluntary corporate CSR (Fox et al. 2002b).

This section will deal with CSR as a governance approach in developing nations, wherein governments create a policy environment that supports or even makes compulsory responsible business activities. It will also look upon areas where the contemporary CSR agenda has spawned novel functions for the government within the agenda itself. It will also look upon certain initiatives of the government which are not traditionally associated with the CSR agenda but nevertheless give valuable insight into the functioning of the public sector in the area of contemporary CSR.

The public sector may choose to engage with the CSR in a variety of ways. However such involvement has been significantly divided into four broad categories of participation which are understood to be mandating, facilitating, partnering, and finally endorsing (Bertelsmann Stiftung and UN Global Compact Report n.d.). These broad categories help us understand better the roles played by the government in interacting with the contemporary CSR Agenda.

Within the category of Mandating, the government performs the task of establishing a floor of minimum standards which are required to be complied with through a regulatory framework, failing which sanction would most likely be imposed (Bertelsmann Stiftung and UN Global Compact Report n.d.). The tool of mandating certain requirements as a pre-requisite for conducting business has proven successful in furthering the public policy Agenda of government in the past (Fox et al. 2002a). Be it environmental, when emission limits are set or be it social when compulsory disclosures are required to be made to protect investors, mandating minimum standards has the ability to crystallized new floors on the hitherto voluntary CSR Agenda and take it out of the domain of being 'voluntary' for the entire industry (Fox et al. 2002a). It is also believed that mandating leads to industry innovations when the government requires the best technology available to be used to meet certain standards (Fox et al. 2002a).

When the government engages through the role of facilitation, it in essence incentivises the private sector to engage more directly with an accepted CSR Agenda thereby furthering a public policy objective (Berman and Webb 2003). Hence the government's involvement in this case is limited to providing a thrust in the right direction, wherein the private sector is motivated by the government to channelize their efforts to bring about social or environmental betterment (Berman and Webb 2003). The government

doest this effectively by providing financial or tax related incentives to businesses engaging more pro-actively within a particular CSR Agenda (Fox 35 al. 2002a). They also do so using their considerable market influence exercised through public procurement, to favour certain private actors which foster an active and structured CSR agenda.

With the growing realisation that complex environmental and social issues in society can be resolved only after receiving inputs from all stakeholders in society ranging from civil society to government as well as private sector businesses; the notion of 'partnering' which bring together varied core competencies to resolve these issues is being recognised as a necessary step forward (Bertelsmann Stiftung and UN Global Compact Report n.d.). That such a partnership is beneficial from the standpoint of business as well as from the point of community development was evidenced by the Business Partners for Development Programme (BPD) which studies 30 focus projects in 20 developing nations.² Here governments played a crucial role in awareness building and ensuring the long term sustenance of the investment and infrastructure that resulted from the partnership, which eventually led to community development and long term benefits for the businesses. Most importantly the spirit of partnership leads to dialogue and valuable insights into the working of each organisation as well as into the private and political aspects of CSR (Fox et al. 2002a). Many governments have since established organised forums for such dialogue.³

The fourth and final mode of governmental involvement in the Private CSR Agenda is through endorsement.⁴ Such endorsement of CSR Activities can be direct through awards or indirect through preferences being given during the government procurement processes. Taiwan enjoys a remarkable high ranking in ISO14000 certification with over 560 organisations certified.⁵ This success it is believed can be attributed to the Green Business Award instituted by the Taiwanese Government through its Environmental Protection Administration which facilitates businesses that have contributed to the protection of the environment in Taiwan.⁶ Such awards are considered successful endorsements of the CSR efforts which are in the right direction from a public policy standpoint and also publicise the best practices of such companies which are then emulated. Similarly the government of Brazil has created a separate segment in the Sao Paulo Stock exchange called Novo Mercado where companies which have voluntarily agreed to undertake some key corporate governance and disclosure practices beyond what is mandatorily required are listed.⁷ Once listed the Brazilian government allows for pension funds to invest a greater portion of their capital in such companies, thereby incentivising more companies to enlist themselves.⁸

These four roles played by the government cannot be straight jacketed are certainly not watertight. Hence with a private sector organisation the government may play the role of an endorser as well as of a facilitator, all within a mandated partnership relation.

Existing Framework Governing Trans-national Corporations (TNCs)

Before any criticism can be levied as regards the involvement of the state in the regulation of corporations, (particularly with regards to sustainable development and maintaining of the environmental and social standards) a brief analysis of the existing international framework that governs TNCs is in order. Though various attempts have been made to govern the conduct of TNCs such as by the OECD (1976), the ILO (1977), and United Nations Norms on the Responsibilities of TNCs and other Business Enterprises with Regard to Human Rights (2003), corporations haven't as yet achieved an international legal personality in international law and hence any attempt to make their behaviour subject to law has only taken place either in their home jurisdiction or under the local jurisdiction of the place where a crime was committed.⁹ With the lack of an alternative, state governments have been made to unwittingly bare the burden of disciplining corporations.

The international regulatory framework surrounding corporations stems from three international organisations namely the Organization for Economic Cooperation and Development (OECD) (Baker 2001), the International Labour Organization (ILO), and the United Nations (UN). Beginning with the OECD guidelines: The first attempt at an international mechanism to specifically regulate TNCs came in 1976 when 10 countries signed the Declaration on International Investment and Multinational Enterprises under the aegis of the OECD (Amao 2010). The 1976 OECD Guidelines for Multinational Enterprises are a subset of the above declarations and were revised in 2000 after coming into effect in 1976. These reflect the joint recommendations of government to Multinational Enterprises (MNEs) (Amao 2010) and set standards to be followed by these MNE's in the field of consumer rights, employment and labour relations, competition environment, anti bribery measures (Amao 2010, pp. 4–7, 9).

Though an attempt was made in 2000 to widen the application of these guidelines and improve the process of implementation they have little or no impact, as they themselves state that 'the observance of the guidelines by enterprises is voluntary and not legally enforceable' (Amao 2010, p. 9). The

implementation of these guidelines is dependent on the National Contact Points and the Committee on International Investment and Multinational Enterprises (ICHRP 2002), which perform only advisory and clarification functions without possessing any enforcement powers.

The Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (Tripartite Declaration) was entered into soon after the OECD guidelines in 1977 under the auspices of the ILO (Tripartite Declaration of 1977). This Declaration too was revised in 2000 and requires TNCs and other employer organisations to observe labour rights and as per paragraph 8 to 'respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly' (Tripartite Declaration of 1977). However these guidelines too are 'recommended to be observed on a voluntary basis' (Tripartite Declaration of 1977). Though a Committee on Multinational Enterprises has been set up under the Tripartite Declaration of 1977 (as per paragraph 3 of its procedure for examination of disputes related to the application of the Tripartite Declaration), its role is limited to interpreting the Tripartite Declaration's provisions whenever a dispute arises over its meaning (Tripartite Declaration of 1977).

Next we have the UN Framework which has been subdivided into three categories namely the Universal Declaration of Human Rights, 1948 (hereinafter referred to as UDHR) (UN UDHR 1948), the Global Compact of 1999 and the UN Norms of 2003 (UN Norms 2003). Though the preamble to the UN Declaration on Human Rights extends the Declaration to 'every individual and every organ of the society' which could potentially include TNCs, it still remains a state centric instrument with no mechanism for oversight or implementation specifically designed for TNCs (UN UDHR n. 80). In 1999 another attempt was made to regulate corporate human rights and other violations, through the Global Compact proposed at the World Economic Forum at Davos. Proposed by the UN Secretary General Kofi Anan, the Global Compact is essentially a voluntary code of conduct requiring business leaders to abide by the principle of human rights, labour and environment (United Nations (n.d.)).

It set out nine principles calling for corporations to develop a set of core values in the areas of human rights, labour rights and environmental protection. The Global Compact requires corporations to submit a 'net report' to show compliance, as there exists no monitoring or regulatory mechanism to ensure compliance (Hillemanns 2003). It is however clearly understood that:

The Global Compact is not a code of conduct; monitoring and verification of corporate practices do not fall within the mandate or the institutional capability of the United Nations.

(UN Press Release n.d.)

In addition the principles of the Compact are vague, with ample avenues to escape liability. For example principle one requires that corporations 'support and respect the protection of international human rights within their sphere of influence' (United Nations Global Compact 2002). Companies can always claim that the acts of a particular subsidiary or sub-contractor were outside its sphere of influence (United Nations Global Compact 2002, n. 106).

Lastly we have the UN Norms released by the sub-commission on the Promotion and Protection of Human Rights (UN Norms 2003). They make a specific reference to the UN Charter and other international treaties in order to determine the obligations of TNCs (UN Norms 2003, preamble). These Norms differ from other attempts to make TNCs accountable in so far as they provide specific provisions for the implementations of human rights norms (UN Norms 2003, pp. 15–19). In addition, these norms provide for adequate relief to the victims, in case of a failure by TNCs to live up to their responsibilities under the Norms (UN Norms 2003, pp. 16, 18). Lastly the scope of these Norms extends even to 'other business enterprises' connected with TNCs, regardless of their legal form and area of operation (UN Norms 2003, p. 21). Unfortunately however the Norms are similar to previous attempts in one crucial aspect in so far as they state that 'states have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights' (UN Norms 2003, p. 1). Therefore it is clear that the international framework furthers no binding requirements mandating corporate responsibility to promote sustainable, environmental or social development and where such requirements are furthered, their enforcement rests on individual state action. In such a scenario one must understand that greater government involvement to ensure responsible corporate behaviour becomes a necessary factor in developing nations, where TNCs are looking to establish operations to escape the stringent regulatory norms in developing nations.

The Inadequacy of the Existing Framework

The present framework does nothing to establish a uniform human rights standard which can be enforced against TNCs and hence TNCs are in a position to adhere to different standards in different countries (Sacharoff

1998). It is felt that the present framework lays too much emphasis on 'dialogue' and 'cooperation' of TNCs portraying the impression that human rights are subject to the corporation of TNCs (Donnelly 1977). For example Paragraph I.2 of the OECD Guidelines, states that the 'governments adhering to the guidelines encourage the enterprises operating on their territories to observe the Guidelines' (OECD 1976).

The regulatory system is still heavily state-centric, with the primary responsibility of enforcing human rights obligations resting upon States (UN Norms 2003). Lastly, there exists a clear lack of sanctions with the existing regulatory mechanism being voluntary with no civil or criminal consequences for lack of compliance. Neither the OECD guidelines, the ILO Declaration nor the Global Compact contain sanctions or even an enforcement mechanism. In addition the OECD does not reveal the identity of a corporation involved in a dispute, thus eliminating the fear of negative publicity for a corporation. Hence it is plain to see that at least in the international framework corporations are given a relatively restriction free operation space. In such a scenario, knowing that corporations would prefer the least amount of state interference (and who to achieve that freedom pick jurisdictions accordingly); the debate surrounding corporate behaviour is primarily focused on the question: Is it reasonable to expect that responsible behaviour which comes sometimes at the cost of profits be completely voluntary? The answer lies somewhere in between. The beginning of the answer however lies in the understanding that businesses are a part of the community and they stand to gain if the community gains. The beginning lies also in understanding that there needn't be a struggle between social policy goals and business goals and that there can be confluence between the two. The beginning further lies in the development of an understanding that the private sector and the government are not two actors on opposite ends of the pole, but propellers of the same vehicle that represents sustainable social and economic growth. Hence it is important to further deepen our understanding of the Public Sector involvement in the CSR process.

Understanding the Public Sector Involvement in the CSR Process

In order to further our understanding of the public sector's involvement in CSR it is essential for us to first understand the key motivators and restraints that lead to or inhibit such a involvement.

International policy developments often spur the promotion by governments of an environment which fosters CSR (Smith and Feldman 2003).

The Kimberley process on conflict diamonds and the Clean Development Mechanism of the Kyoto Protocol to the Framework Convention on Climate Change are examples of international policy frameworks which promote government engagement in generating an environment for pro-CSR activities (Fox et al. 2002a). Trade and investment promotion is a key driver for government engagement in CSR as well. Though the promotion of trade has traditionally been one of the primary responsibilities of the state, governments in developing nations are realizing that they are also required to build capacities specifically to meet CSR standards which would in turn help them gain new markets for export of goods and services which are sustainably produced (Fox et al. 2002a). An interesting example of public sector involvement in CSR with an overarching objective to promote trade was witnessed by the Kaleen Mark.¹⁰ With growing European awareness regarding the use of child labour in the South Asian carpet industry, Indian carpet exporter, fearing losses in the European market, lobbied the Indian government to introduce the Kaleen mark based on a self-regulated code of conduct administered by the Carpets Export Promotion Council which is quasi-governmental body.¹¹ Another example of fostering an environment for the promotion of CSR was witnessed in Uganda through the Uganda Investment Authority which is charged with the responsibility of promoting investment in Uganda (Bertelsmann Stiftung and UN Global Compact Report n.d.). The Uganda Investment Authority has chosen to do so by promoting projects which implement the clean development mechanism of the Kyoto Protocol and which meet the sustainable development criteria of Uganda, as is required by the Clean Development Mechanism of Kyoto itself (Bertelsmann Stiftung and UN Global Compact Report n.d.). The criteria in Uganda's case are those proposals that adhere to the country's poverty eradication action plan. Similarly the Egyptian government's Environmental Affairs Department, in a bid to increase capacity has implemented the ISO 14001 preparatory Program, after realising that the constant improvement of environmental standards is essential to remain competitive in existing markets and gain access to new ones (Egyptian Environmental Policy Program n.d.; Fox et al. 2002a).

It is now understood that efficient development strategies require insights from the private sector, the academia, and pressure groups from within the civil society in addition to the government (Egyptian Environmental Policy Program n.d.; Fox et al. 2002a). The potential value of private sector engagement or partnerships with the public sector to solve complex social issues in terms of innovation and resources availability has never been underestimated (Fox 2004). Nevertheless governments have failed to realise

that another impetus for the public sector to participate in CSR strategies could be garnered if business were in turn given the opportunity to be involved in the overall national policy process (Nelson 2008). However the involvement of the private sector in national policy development such as poverty eradication and environmental sustenance has been absent outside developed countries and hence as a corollary there is a distinct lack of partnerships when it comes to achieving a larger public policy objective through CSR activities (Fox et al. 2002a).

Nevertheless, pressure groups in civil societies such as NGO's, Trade and community based organisations, labour unions etc, constantly urge the government to engage in or partner in CSR activities through at least the setting of minimum standards (Fox et al. 2002a). A successful example of such employer–trade union corporation was witnessed in Brazil, where after a long and arduous campaign by the Brazilian Unified Workers Association a National Tripartite Agreement on Benzene was signed in 1995 between the Brazilian trade unions; the petrochemical, iron–steel industry; and the national government, recognising Benzene as a hazard and prescribing minimum regulations for its safe handling and controlled use. Here the workers themselves are involved in the regulation process (Fox et al. 2002a).

Lastly in order to generate a consciousness within consumers for a Pro-CSR differentiation within products, governments often engage in labelling schemes which are targeted at the creation of a substantial 'green' or 'ethical' consumer base (Fox et al. 2002a). For example in India the Indian parliament initiated the Ecomark scheme in 1991.¹² This Mark is a testimony to the products minimalistic ecological impact and is jointly administered by the Bureau of Indian standards, the Central Pollution Control Board, and the Ministry of Environment and Forests.¹³

Reinforcing Public Sector Activities in CSR within Developing Countries

Stakeholders in developing countries are usually the objects of CSR initiatives rather than participants in its settling (Bertelsmann Stiftung 2006). One must accept that thus far the international CSR Agenda has been shaped by investors in Multinational corporations, consumers and to some extent the governments of industrialised nations, but always to the exclusion of governments of developing nations who play virtually no role in CSR based standard setting (Fox et al. 2002a). In fact the governments of developing nations haven't participated in the setting of a CSR standards and policies

even within inter-governmental bodies such as the European Union or organisations such as the ISO (Fox et al. 2002a). Hence it is felt that new initiatives are required to enable the governments of developing nations to set the terms of the CSR debate and its corresponding standards, at the international level through initiatives such as the UN Global Compact as well as the local private sector standard setting level (Bertelsmann Stiftung 2006).

It is said that one of the primary pre-requisites for ensuring a robust climate for CSR activities is the stringent enforcement of a minimum set of environmental and social standards which are uniformly and consistently applied (Blakeley n.d.). It is only when this is done will corporate be able to distinguish themselves as engaging in best practices going above and beyond the minimum (Blakeley n.d.). Hence government interventions which reinforce the floor for environmental and social governance can most certainly be included within the heading of CSR-enabling initiatives of the government (Blakeley n.d.).

Furthermore it is essential to understand that if the governments of developing countries are to make use of the benefits of the CSR Agenda to achieve common public policy goals, then public policy decision will have to be made after the government has knowledge about the key drivers of the agenda and whether voluntary schemes are effective in increasing access to markets or enhancing business performance (Fox et al. 2002a). In any case if developing country governments are to capture the CSR Agenda in furthering policy goals, then the lack of private sector participation in key policy process will have to be overcome and for that there must develop a greater transparency as regards the factors that guide corporate decision making in furthering voluntary CSR (Fox et al. 2002a).

Lastly, it is recommended in effect a link between business development programmes and national development strategies may be drawn. A step forward in this regard would be the establishment of forums which bring public sector agencies responsible for resource allocation together with private sector players looking to undertake developmental activities, in a bid to understand each others core competencies whether in the area of financial resources or in capacity development activities so that CSR activities which further national priorities take place effectively (Bertelsmann Stiftung 2006). However a framework must be developed wherein the public sector is aware of the key drivers and constraints for the overall CSR Agenda of a particular private sector player in a particular and hence the government's intervention must be tailored accordingly keeping in mind local and national priorities (Bertelsmann Stiftung 2006).

Conclusion

The struggle between voluntary and compulsory responsibility has always been prevalent in light of the weak international legal framework, however in light of the financial crises of 2008 it has reached a critical stage after, with public opinion favouring a compulsory framework. To say that the origins of corporate accountability are a derivative of 'Moral panic' rather than any benign motive of social responsibility wouldn't be a falsehood (Garland 2001; Keith 2010). Moral Panic as described by Keith is:

Typified by an incident or series of incidents, a strong media reaction or distortion and a dramaturgical casting of the activity by various actors as being out of social control.

(Garland 2001; Keith 2010, p. 14).

The activity is then labelled in odious terms to garner a social and political response (Garland 2001; Keith 2010, p. 14). When such labelling is ascribed to objectionable corporate activity, it induces legislatures to heighten corporate regulation and compels courts to broaden the ambit of criminal laws to include within them acts of corporations, in a distressed bid to reinstate social direction (Silver 1967; Manning 1997; Garland 2001). The aftermath of the regrettable tragedies of Bhopal¹⁴ and Uphar (Varma 2009) in India or the 2008 financial meltdown can be in certain instances considered as exhibitions of such Moral Panic.

Governments across developing nations, at least those that actively seek investment capital, understand that the investment climate they promulgate mustn't seem to further a knee jerk reaction to the Moral panic of its citizens. Hence regardless of the public support it enjoys, no government would want to lead the charge to institutionalise mandated generosity by corporations. Such an attitude has been adopted by the government of India, when in 2009, its Ministry for Corporate Affairs issued voluntary guidelines on CSR, furthering the school of thought that believes that Corporations perform the best when they are left to their own devices.¹⁵ Nevertheless it is agreed that a several government mandated regulations and schemes indirectly foster CSR, without corporations being asked to do so directly. Another school of thought is of the firm belief that Corporations have gained significantly from society and must be required to give back whether they like it or not (Eells 1960). This school of thought gained prominence when governments were asked to bail out corporations and it was felt that corporations must not be allowed to privatise profits and socialise losses, without at least partaking in a robust CSR

Agenda. In either case, one cannot argue with the fact that today governments across the world are in the best position in terms of, need and public acceptance, to engage themselves more thoroughly with the Private Sector CSR agenda in order to partner with businesses, to develop a stronger society. It is when this larger context is taken in account, that it becomes clear that the government's position is fairly strong and it can leverage that position to gain greater involvement in the private CSR Agenda.

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Notes

- 1 For example the towns of TATA nagar and Jamshedpur in India have all their Municipal functions carried out by a private company called TATA and Sons.
- 2 For more information see: www.bpdweb.org
- 3 In 1998 the Norwegian government established the Consultative Body for Human Rights and Norwegian Economic Involvement Abroad (KOMpakt) to promote such understanding and dialogue, between the private sector, and the Norwegian authorities, particularly in areas which affect human rights.
- 4 Supra n. 57. Available at: http://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm
- 5 For more information see www.epa.gov.tw
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- 14 *Assn. of Victims of Uphaar Tragedy v. UOI* 104 (2003) DLT 234.
- 15 For text of the voluntary guidelines see http://www.mca.gov.in/Ministry/latestnews/CSR_Voluntary_Guidelines_24dec2009.pdf

