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The Constitutional Framework for Corporate Social Responsibility in Tanzania

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Abstract

This article analyses the adequacy of the Constitution of the United Republic of Tanzania in promoting Corporate Social Responsibility (CSR). The article employs legal analysis to systematically examine constitutional provisions and their practical application in fostering CSR. The study finds that the Constitution of Tanzania does not explicitly mandate CSR. This is also a common feature globally, as no constitution imposes direct CSR obligations on businesses. However, the Constitution of Tanzania provides foundational ideals that support responsible business practices through principles of common good, public participation, integrity, legal compliance, sustainable harnessing of national wealth, and access to information. Nevertheless, the Constitution contains three significant barriers to CSR enforcement: ouster clauses, limitation clauses, and claw-back clauses, which together prevent courts from enforcing fundamental objectives and directive principles of state policy. These clauses also render CSR foundations mere ideals rather than obligations. The clauses further undermine CSR transparency and accountability. The study, therefore, recommends strategic constitutional reforms to strengthen responsible business practices.

Key Words: Corporate Social Responsibility, Constitution, Tanzania, and Constitutional Framework

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1. Introduction

Corporate Social Responsibility has garnered significant academic attention across disciplines such as sociology, philosophy, accounting, management, finance, law, and politics, hence underscoring its multifaceted nature and importance in contemporary business practices.² The American Family Life Assurance Company (AFLAC) shows that CSR commitments influence 77 per cent of consumer purchases and 73 per cent of investment decisions.³ Research by Barakat and others has shown that CSR policies and practices positively impact employee satisfaction.⁴ Consequently, businesses have begun actively engaging in CSR practices. CSR initiatives aim to address global challenges, including inequality, poverty, climate change, and injustice.

There is a global shift in the approach to CSR governance.⁵ Traditionally, a voluntary CSR approach dominated due to its flexibility, freedom, and adaptability to the business environment.⁶ However, the trend is changing. Studies show that many countries have recently enacted legislation mandating CSR practices to ensure consistency, accountability, and enforcement.⁷ Furthermore, studies have explored the role of legislation in fostering and mandating CSR practices. Shayo argues that law can promote meaningful and credible CSR.⁸ In contrast, Melyoki indicates that laws stifle innovation in CSR, as companies might find it in their best interest to set lower targets so they can easily avoid government punishment if they fail to achieve them.⁹ In addition, Wirba highlights that the government's role is critical in promoting CSR activities and agendas,

² Lauwo S, 'Challenging Masculinity in CSR Disclosures: Silencing of Women's Voices in Tanzania's Mining Industry', *Journal of Business Ethics* (Vol. 149, No. 3, 2016) 689, <https://doi.org/10.1007/s10551-016-3047-4>.

³ AFLAC, 'AFLAC CSR Survey: Consumers, Investors Hold Corporations' Feet to the Fire', (2019), <https://www.aflac.com/docs/about-aflac/csr-survey-assets/2019-aflac-csr-infographic-and-survey.pdf>, accessed on 9 December 2024.

⁴ Barakat SR and others, 'The Influence of Corporate Social Responsibility on Employee Satisfaction', *Management Decision* (Vol. 54, No. 9, 2016) 2325–2339.

⁵ Lin L, 'Mandatory Corporate Social Responsibility Legislation Around the World: Emergent Varieties and National Experiences' (Oxford Business Law Blog, 10 November 2020), <https://blogs.law.ox.ac.uk/business-law-blog/blog/2020/11/mandatory-corporate-social-responsibility-legislation-around-world>, accessed on 27 March 2025.

⁶ Holzberg B, 'Decent Work in Textiles and Garment Production: Analysing the Formation of Glo-cal Perspectives and Practices in Egypt and Jordan', (PhD Thesis, Erasmus University Rotterdam, International Institute of Social Studies 2022), <https://pure.eur.nl/en/publications/decent-work-in-textiles-and-garment-production-analysing-the-form>, accessed on 9 December 2024.

⁷ Lin (n 4).

⁸ Shayo DA, 'Regulation of Corporate Social Responsibility in the East African Community: Legislative Developments in Kenya, South Sudan and Tanzania', *Eastern Africa Law Review* (Vol. 45, No. 1, 2018) 22.

⁹ Melyoki LL, 'Corporate Social Responsibility Practices in the Extractive Sector in Tanzania: Is It a Transition from a Voluntary to Legislative Approach?' in Idowu SO and Schmidpeter R(eds), *Social Entrepreneurship and Corporate Social Responsibility: Principles and Practice* (Springer 2020) 473.

as CSR is voluntary and not mandated by legislation.¹⁰ However, despite this widespread academic engagement, the specific study of constitutional legal frameworks governing CSR, particularly in developing nations such as Tanzania, remains underexplored.¹¹ This dilemma often compromises regulatory oversight, ultimately undermining the potential for CSR to genuinely benefit local communities and ensure sustainable environmental practices.¹² This paper bridges this gap by meticulously analysing the pertinent constitutional provisions that mandate and guide CSR activities in Tanzania.

It should be noted that no national constitution worldwide imposes a direct, explicit obligation on private businesses to undertake CSR. However, they contain general principles of social justice or resource management. Hence, some constitutions provide foundational principles that underpin mandatory CSR laws. For example, Indonesia's 1945 Constitution emphasises state control over natural resources for the 'greatest benefit of the people' and economic democracy.¹³ The Indonesian Constitutional Court has interpreted Article 74 of Indonesia's Limited Liability Company Act, 2007, to justify laws mandating CSR in resource sectors.¹⁴ Similarly, Ecuador's 2008 Constitution grants rights to nature and mandates sustainable development, therefore indirectly supporting CSR-like environmental obligations for corporations.¹⁵

Although no country has an express constitutional provision mandating CSR, the study of the constitutional framework for CSR matters because constitutions provide the normative foundation for CSR, even if they do not impose it directly. The essence is connecting CSR obligations to constitutional principles of justice, development, and sustainability. In that regard, the rationale behind this article lies in the intellectual and practical need to connect CSR obligations with constitutional principles, even if the constitution does not expressly mandate CSR. In doing so, this article demonstrates that CSR obligations in Tanzania are constitutionally grounded in principles of social justice, sustainable development, and equitable resource use, even if not expressly mandated. This elevates CSR from a mere statutory duty to a constitutional value, strengthening its legitimacy, enforceability, and scholarly importance. Regarding the article's structure, the author begins by setting the context and justifying the topic in the introduction. It then defines CSR and explains its core principles. Additionally, the article explores how constitutional frameworks support CSR, providing an overview of the

¹⁰ Wirba AV, 'Corporate Social Responsibility (CSR): The Role of Government in Promoting CSR', *Journal of the Knowledge Economy* (Vol. 15, No. 2, 2024) 7428.

¹¹ Lauwo (n 1) 689, <https://doi.org/10.1007/s10551-016-3047->.

¹² Maliganya W and Bengesi KMK, 'Policy Enabling Environment of Mining Sector in Tanzania: A Review of Opportunities and Challenges', *Journal of Sustainable Development* (Vol. 11, No. 3, 2018) 1, <https://doi.org/10.5539/jsd.v11n4p1>.

¹³ The Constitution of Indonesia, Art 33.

¹⁴ Decision No. 53/PUU-VI/2008 (Constitutional Court of Indonesia, 15 April 2009).

¹⁵ Ecuadorian Constitution, arts 14 and 395–415.

Constitution of Tanzania and highlighting pertinent provisions. This section illustrates the extent to which the Constitution of the United Republic of Tanzania incorporates CSR principles. The article concludes with final remarks.

2. Conceptualisations of Corporate Social Responsibility

Corporate Social Responsibility is a multifaceted concept that encompasses integrating social and environmental concerns into business operations and stakeholder interactions.¹⁶ In the mining industry, CSR extends beyond mere compliance with legal mandates to include proactive measures that address the environmental impacts of extraction, ensure fair labour practices, and contribute to the socio-economic development of host communities.¹⁷ This holistic approach aims to achieve a delicate balance between profitability and sustainable development, ultimately fostering long-term social stability and economic growth within resource-rich regions.¹⁸

Critics often argue that while CSR has gained an international, regional, and national agenda, there is no consensus on its exact definition.¹⁹ The reasons for variations in CSR definitions stem from contextual, historical, and philosophical diversity across societies worldwide.²⁰ This often leads to a discrepancy between corporate self-perceptions of social responsibility and the actual lived experiences and expectations of the affected communities.²¹ This divergence underscores the need for more stringent regulatory oversight and enforcement mechanisms to bridge the gap between corporate rhetoric and tangible impact.²² This is particularly pertinent in Tanzania, where local communities often express scepticism regarding corporate promises and therefore, perceive CSR initiatives as public relations strategies rather than genuine efforts to address

¹⁶ Saputri MY and Others, 'Legal Analysis of CSR Practices on Community Welfare in the Textile Industry' *Rechtsidee* (Vol. 12, No. 2, 2024)10-21.

¹⁷ Bansal S and Others, Sustaining the Mining Industry: A Review Research on the Role of Corporate Social Responsibility Initiatives, <http://dx.doi.org/10.2139/ssrn.4947946>.

¹⁸ Adewole O, 'Issues Emanating from Business Impact on Climate, Environmental Sustainability and CSR (Corporate Social Responsibility): Steps Towards Pragmatism in Extant Realities: Brand Translation to Equity from CSR As a Potential Tool in Climate Change Mitigation and Enhancing Financial Performances in Organizations', *International Journal of Corporate Social Responsibility* (Vol. 7, No. 1, 2022) 6.

¹⁹ Johnston K and Beatson A, 'Managerial Conceptualizations of Corporate Social Responsibility: An Exploratory Study', *Proceedings Australia New Zealand Marketing Academy Conference* (2005) 41–47.

²⁰ Luque A and Herrero-García N 'How Corporate Social Responsibility in the Textile Sector is Defined, and Its Impact on Ethical Sustainability: An Analysis of 133 Concepts', *Corporate Social Responsibility and Environmental Management* (Vol. 26, No. 6, 2019)1285.

²¹ Que S and Others, 'Corporate Social Responsibility: Understanding the Mining Stakeholder with a Case Study', *Sustainability* (Vol. 11, No. 8, 2019) 2407.

²² Setyawan A, 'Stakeholders and Corporate Social Responsibility in the Mining Sector Over Eight Years: A Systematic Review 2018–2025', *International Journal of Multidisciplinary Research and Analysis* (Vol. 8, No. 4, 2025).

their needs.²³ Such scepticism often arises because companies frequently engage in “socio-washing”, where CSR efforts are more aligned with branding and risk management than with genuine community betterment.²⁴

CSR is a broad concept encompassing environmental, social, economic, and ethical domains.²⁵ Environmentally, CSR requires businesses to minimise environmental harm from their operations. This means that, companies must avoid and reduce pollution, degradation, and unsustainable resource management, while also combating climate change. Ethically, CSR obliges businesses to treat stakeholders fairly and to respect their interests.²⁶ Socially, CSR refers to a responsibility to contribute positively to community welfare and the social well-being of individuals,²⁷ while economically, CSR implies responsible financial decisions.²⁸ Responsible financial decisions must benefit not only shareholders but also other stakeholders such as consumers and communities.²⁹

CSR is an evolving concept.³⁰ Traditionally, CSR was understood as simple philanthropy.³¹ Philanthropically, CSR means giving back to society. The basis of this traditional CSR understanding is shareholder theory. The implication is that businesses are voluntarily donating part of their earnings to charitable endeavours. Contemporarily, CSR refers to the operational integration of environmental and social concerns into business strategies, while balancing the interests and expectations of different stakeholders.³²

²³ Lauwo (n 1) 689.

²⁴ Rodon T and Others, *Introduction* (Routledge eBooks Informa, 2024) 1.

²⁵ Hinson RE and Ndhlovu TP, ‘Conceptualising Corporate Social Responsibility (CSR) and Corporate Social Investment (CSI): The South African Context’, *Social Responsibility Journal* (Vol. 7, No. 3, 2011) 332-346.

²⁶ Nnodim P, ‘Corporate Ethos and Justice as Fairness: Aligning CSR with Rawlsian Principles’, *Dialogue and Universalism* (Vol. 34, No. 1, 2004) 66, https://www.pdcnet.org/du/content/du_2024_0034_0001_0063_0081, accessed on 8 January 2026.

²⁷ Khaparde S, ‘The Impact of Corporate Social Responsibility on Community Well-Being & Social Work Intervention’, *Journal of Emerging Trends in Nursing and Research* (Vol. 2, No. 12, 2024) 3, <https://rjpn.org/jetnr/papers/JETNR2412053.pdf>, accessed on 8 January 2026.

²⁸ World Economic Magazine, ‘The Financial Impact of Corporate Social Responsibility Initiatives’, <https://worldecomag.com/the-financial-impact-of-corporate-social-responsibility-initiatives/>, accessed on 8 January 2026.

²⁹ Hoopes C, *Foundations of Commerce* (University of Virginia Pressbooks 2024), <https://pressbooks.library.virginia.edu/foundationsofcommerce/chapter/csr-stakeholders/>, accessed on 8 January 2026.

³⁰ Matten D and Moon J, ‘Implicit and Explicit CSR: A Conceptual Framework for a Comparative Understanding of Corporate Social Responsibility’, *Academy of Management Review* (Vol. 33, No. 2, 2008) 404.

³¹ ESG Voices, ‘Corporate Social Responsibility – Part 1: Definition, History, Pyramid and Models of CSR’ (ESG Voices 2024), <https://www.esgvoices.com/post/corporate-social-responsibility-part-1-definition-history-pyramid-and-models-of-csr>, accessed on 31 July 2025.

³² United Nations Industrial Development Organisation (UNIDO), ‘What is CSR?’ (UNIDO), <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate->

This modern conceptualisation of CSR is based on the triple bottom line and stakeholder theory. The implication is that, CSR is a commitment to operate ethically, transparently, sustainably and responsibly.³³

Globally, CSR practices vary between countries. The differences stem from the fact that CSR has distinct implicit and explicit approaches.³⁴ These variations are attributed to differing institutional frameworks and are subject to change over time. However, the conceptualisations of CSR have moved a peripheral concern into a central element of modern business strategy. These conceptualisations guide companies and other business enterprises in striking a balance between their economic goals and their responsibilities to society and the environment. Hence, CSR encompasses multiple facets of socially responsible corporate behaviour.

3. Principles of Corporate Social Responsibility

Although CSR has not received universal acceptance, it is underpinned by fundamental principles. These principles highlight the commonalities between CSR and joint efforts to promote responsible and sustainable business practices globally, regionally, and locally. These principles are sustainability, transparency, accountability, stakeholder engagement, the rule of law and ethical behaviour. These principles are recognised and entrenched in various international instruments, including the United Nations Sustainable Development Goals (SDGs), the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business and ISO 26000. For instance, SDG 12³⁵ and SDG 13³⁶ and Paragraph A1 of OECD Guidelines, provide for the principle of sustainability.³⁷ On the other hand, Paragraph A5 of the OECD Guidelines³⁸, Principle 21 of the United Nations Guiding Principles on Business and Human Rights

[responsibility/corporate-social-responsibility-market-integration/what-csr](#), accessed on 31 July 2025.

³³ Saylor A, 'Three Theories of Corporate Social Responsibility', https://saylordotorg.github.io/text_the-business-ethics-workshop/s17-02-three-theories-of-corporate-so.html, accessed on 31 July 2025.

³⁴ Matten D and Moon J, "Implicit" and "Explicit" CSR: A Conceptual Framework for a Comparative Understanding of Corporate Social Responsibility', *Academy of Management Review* (Vol. 33, No. 2, 2008) 406–410, <https://www.jstor.org/stable/20159405>, accessed on 8 January 2026.

³⁵ SGD Goals, Goal 12 - Responsible Consumption and Production, <https://globalgoals.org/goals/12-responsible-consumption-and-production/>, accessed on 8 January 2026.

³⁶ SGD Goals, Goal 13, <https://sdgs.un.org/goals/goal13>, accessed on 8 January 2026.

³⁷ OECD, *Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD 2023).

³⁸ Ibid.

(UNGPs)³⁹, Clause 4.3 of the ISO 26000 articulate the principle of transparency to promote social responsibility. Clause 4.2 of ISO 26000, Paragraph A11 of the OECD Guidelines and Principle 11 of the UNGPs underscore the accountability principle. To apply the principle of accountability, enterprises must conduct human rights due diligence in accordance with Principle 17 of the UNGPs.⁴⁰ Businesses must also account for the actions taken to prevent the repetition of unintended and unforeseen negative impacts. Moreover, Paragraph A15 of the OECD Guidelines, Principle 18(b) of the UNGPs, and Clauses 4.5 and 5.3.3, ISO 26000 underscore the principle of stakeholder engagement. Clause 5.3.3 defines stakeholder engagement as a dialogue between the organisation and stakeholders.⁴¹ Ethical behaviour is emphasised in Clause 2.7 of ISO 26000.⁴²

Within the Tanzanian constitutional framework, these principles acquire added significance. The reason is that they align with the constitutional commitments.⁴³ These commitments are social justice, sustainable development, and accountability.⁴⁴ Such alignment legitimises statutory CSR obligations such as those found in the Mining Act.⁴⁵ In this context, businesses must not only comply with CSR duties but also account for actions taken to prevent the repetition of unintended and unforeseen negative impacts.⁴⁶ Eventually, they reflect the constitutional vision of a developmental state that prioritises equitable growth and protection of community welfare.⁴⁷

In Tanzania, CSR has become increasingly important, particularly across key economic sectors. Research reveals that about 50% of the tourism firms disclose their CSR information on their websites.⁴⁸ However, the scope and quality of this disclosure remain limited. Approximately 57% of tourism firms disclose minimal CSR information, and 54% present their information solely in textual formats, without multimedia or interactive features.⁴⁹ The mining

³⁹ UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (United Nations 2011).

⁴⁰ Principle 17 of the UNGPs outlines human rights due diligence, which involves identifying, preventing, mitigating, and accounting for how organisations address their adverse human rights impacts.

⁴¹ International Standard ISO 26000, *Guidance on Social Responsibility Lines Directrices Relatives à La Responsabilité Sociétale* (2010), www.iso.org, accessed on 8 January 2026.

⁴² *Ibid.*

⁴³ The Constitution of Tanzania of 1977 as amended, Part II.

⁴⁴ *Ibid.*, arts 8 and 9.

⁴⁵ The Mining Act, s 136; the Petroleum Act, s 222.

⁴⁶ The Constitution of Tanzania of 1977 as amended, art 9(c) and (h).

⁴⁷ *Ibid.*, Part II.

⁴⁸ Suluo SJ, 'Corporate Social Responsibility Communication on the Websites of Tourism Firms in Tanzania', *Business Management Review* (Vol. 27, No.1, 2024) 18-38.

⁴⁹ *Ibid.*

sector in Tanzania presents particular challenges for transparency and accountability. Research examining the two largest transnational gold-mining companies in Tanzania found significant governance, accountability, and transparency issues in CSR reporting practices.⁵⁰ While mining companies' activities should conform to international standards and respect local communities' rights, this has remained limited in practice. Environmental problems in the mining sector often remain invisible in companies' disclosures.⁵¹ The effectiveness of the existing regulatory frameworks and NGO pressure groups in promoting transparency and accountability has been questioned.⁵²

Furthermore, laws identify CSR stakeholders, including government actors, employees, and potential victims of business activities, based on impact and inclusivity.⁵³ However, this identification falls short of international standards because it is narrow-based, government-centric, and often ambiguous. Other relevant stakeholders, including consumers and local communities, are frequently excluded from CSR processes, diminishing their role in promoting responsible business practices for sustainable development.⁵⁴ Studies on specific mining operations, such as the North Mara Gold Mine, have revealed that inadequate community involvement in CSR project cycles undermines effectiveness. The mine's CSR initiatives have not effectively served as a tool to harmonise community relations and mitigate conflicts due to insufficient community participation.⁵⁵ Interestingly, the findings indicate that communities near mining operations demonstrate awareness of CSR initiatives and can articulate the company's CSR programmes.⁵⁶

Thus, given this scenario, a comprehensive examination of Tanzania's courts and their role in enhancing the rule of law demonstrates that courts must ensure affordable access to justice for all, prevent the abuse of state power, and guarantee equality before the law through fair and just legal procedures as essential for creating the institutional conditions necessary for CSR to function

⁵⁰ Lauwo SG, Otusanya OJ and Bakre O, 'Corporate Social Responsibility Reporting in the Mining Sector of Tanzania: (Lack of) Government Regulatory Controls and NGO Activism', *Accounting, Auditing & Accountability Journal* (Vol. 29, No. 6, 2016) 1038–1074, <https://doi.org/10.1108/AAAJ-06-2013-1380>

⁵¹ Ibid.

⁵² Ibid.

⁵³ Kitime E, 'Who Qualifies as a Corporate Social Responsibility Stakeholder? Assessing Tanzania's Legal Regime Against International Standards', *African Journal of Law and Practice* (Vol. 1, No. 2, 2025) 84–103, <https://doi.org/10.61538/afjlp.v1i2.1792>.

⁵⁴ Ibid.

⁵⁵ Gillo IO, Bilame O and Assenga EA, 'Community Participation in Corporate Social Responsibility Practices of North Mara Gold Mine in Tanzania', *Journal of African Politics*, (Vol. 4, No. 2, 2024) 22–34

⁵⁶ Gillo IO, Bilame O and Assenga EA, 'Corporate Social Responsibility Practices: Insights from North Mara Gold Mine, Tanzania,' *International Journal of Research in Business and Social Science* (Vol. 12, No.6, 2023) 79.

effectively.⁵⁷ This means that without robust rule-of-law mechanisms, CSR initiatives lack enforceability and accountability, rendering corporate compliance voluntary rather than mandatory. It has been argued that voice and accountability, political stability, government effectiveness, regulatory quality, rule of law, and control of corruption all influence FDI inflows.⁵⁸ Thus, to advance both the rule of law and CSR in Tanzania, there is an urgent need to strengthen the legal framework governing corporate accountability, ensure transparent, mandatory CSR reporting mechanisms, and establish enforceable penalties for non-compliance.

4. Role of the Constitutional Frameworks in Promoting CSR Practices

This section discusses the role of constitutional frameworks in promoting CSR practices. It consists of three subsections: first, the implications of constitutionalising CSR principles, second, an overview of the Constitution of the United Republic of Tanzania (hereinafter referred to as the Constitution) and third, CSR principles in the Constitution of the United Republic of Tanzania.

4.1 Implications of constitutionalising CSR principles

The term ‘constitutionalising CSR principles’ in this article refers to two things. First, it means incorporating CSR principles into the country's Constitution, and second, it implies interpreting CSR obligations in light of constitutional values. Hence, constitutionalising CSR principles has social, economic and legal implications.

Globally, there has been a shift from voluntary to mandatory CSR approaches. The essence is to ensure the enforcement of CSR obligations and make firms accountable for the social and environmental harm they cause through their operations.⁵⁹ Hence, constitutionalising CSR principles supports the shift from being a voluntary obligation to a legal obligation. Eventually, companies are legally required to engage in socially responsible practices. This means that firms will face legal sanctions for non-compliance. The implication is that constitutionalising CSR principles establishes legal enforcement of CSR duties. Moreover, the competent courts acquire jurisdiction to interpret constitutional provisions imposing duties directly on corporations.

⁵⁷ Luambano L, ‘The Role of the Court in Tanzania in Enhancing the Rule of Law for National Development’, *South Asian Law Review Journal* (Vol. 8, 2022) 226-245.

⁵⁸ Raphael G, ‘Unravelling the Relationship between Governance Indicators and Foreign Direct Investment in Tanzania: An Empirical Analysis’, *The Pan-African Journal of Business Management* (Vol. 7, No. 1, 2023) 1-27

⁵⁹ Kumar A and Kulshrestha P, ‘The Constitution of India and Corporate Social Responsibility: Exploring the Symbiotic Relationship’, *DME Journal of Law* (Vol. 4, No. 2, 2024) 1-13.

Constitutionalising CSR principles establishes a clear linkage between responsible business practices and fundamental rights and duties.⁶⁰ The linkage can be made through constitutional values such as social justice, equality and environmental protection.⁶¹ In doing so, constitutionalising CSR principles establishes a connection between business and human rights. As a result, CSR becomes part of the duty to respect, protect and promote human rights. Implicitly, CSR becomes not only a state responsibility but also a direct responsibility of corporate entities.

In addition, since global trends emphasise harmonising CSR standards and principles, constitutionalising CSR principles aligns domestic law with international frameworks.⁶² This alignment occurs because the constitution can establish common standards applicable across different industries. Constitutionalising CSR standards creates a predictable and stable CSR regulatory environment.⁶³ The implication is that it calls for mandatory corporate respect for human rights and sustainability.

Therefore, constitutionalising CSR principles transforms the CSR regulatory landscape. It makes CSR not only a moral but also a legal obligation for business enterprises. In doing so, constitutionalising CSR principles ties CSR practices to national values and fundamental rights. This is because; it creates meaningful and impactful CSR enforcement mechanisms. Finally, constitutionalising CSR principles ensures legal alignment between business operations, societal interests, and stakeholder welfare, with sustainable impacts on all stakeholders, including shareholders, people, and the planet.

4.2 The Constitution of the United Republic of Tanzania

Functionally, the Constitution of the United Republic of Tanzania declares and defines the boundaries of the political community.⁶⁴ Also, it defines and declares the nature and authority of the political community.⁶⁵ It expresses the identity and values of the national

⁶⁰ Sengupta S, 'Corporate Social Responsibility in India: A Constitutional and Theoretical Commentary', *Academike (Lawctopus' Law Journal)* (2021) (online) <https://www.lawctopus.com/academike/corporate-social-responsibility-in-india/>, accessed on 31 July 2025.

⁶¹ Kampourakis I, 'CSR and Social Rights: Juxtaposing Societal Constitutionalism and Rights-Based Approaches Imposing Human Rights Obligations on Corporations', *Goettingen Journal of International Law* (Vol. 9, No. 3, 2018) 537.

⁶² Safa'at M, 'Corporate Social Responsibility: A Constitutional Perspective', *Jurnal Konstitusi* (Vol. 11, No. 1, 2016) 1.

⁶³ Collison N, 'The Role of Government Regulation in Promoting Corporate Social Responsibility and Sustainable Development,' *Journal of International Business Research* (Vol. 23, No.4, 2024) 3–4, <https://www.abacademies.org/articles/the-role-of-government-regulation-in-promoting-corporate-social-responsibility-and-sustainable-development-17094.html>, accessed on 8 January 2026.

⁶⁴ The Constitution of the United Republic of Tanzania, 1977, art 2.

⁶⁵ *Ibid*, art 3.

community.⁶⁶ It declares and defines the rights and duties of citizens.⁶⁷ It also establishes and regulates the community's political institutions,⁶⁸ declares the State's official religious identity and demarcates the relationships between sacred and secular authorities.⁶⁹ The Constitution commits states to particular social, economic, or developmental goals.⁷⁰ It is a living document with a soul and consciousness.⁷¹

The Constitution of the United Republic of Tanzania is the country's most important instrument: the social contract between the rulers and the ruled, which determines how the State is run.⁷² Moreover, the Constitution is the source of legitimacy and validity of actions, omissions, and laws within the country as per Article 64(5). Legally, the Constitution of Tanzania is the supreme law of the land. The force of the Constitution's law takes precedence over all other laws; when other laws conflict with the Constitution, those laws become void to the extent of their inconsistencies.⁷³

4.3 CSR principles in the Constitution of the United Republic of Tanzania

This subsection examines how the Constitution of Tanzania implicitly supports CSR through four key pillars derived from CSR theory and practice: common good, public participation, integrity, and legal compliance. These pillars align with internationally recognised CSR principles, including sustainability, transparency, accountability, and ethical behaviour (discussed in Section 3). By analysing relevant constitutional provisions and case law, this section assesses the extent to which the Constitution provides a normative foundation for CSR in Tanzania.

4.3.1 Common good

The Constitution of Tanzania prescribes the common good as the basis for the well-being of the people. Article 9(c) of the Constitution of Tanzania states that harnessing, preserving and applying national wealth and heritage must be for the common good. In doing so, a stable business environment prevails, which fosters the common good. As observed in *Muhammad Rafik and Others v the Ad Hoc*

⁶⁶ Ibid, Preamble.

⁶⁷ Ibid, Part III of Chapter One.

⁶⁸ Ibid, Chapter Eight.

⁶⁹ Ibid, art 3(1).

⁷⁰ Ibid, part II of Chapter One.

⁷¹ *Julius Ishengoma Francis Ndyababo v Attorney General* [2001] 2 E.A. 285.

⁷² Peter CM, 'Constitution-Making in Tanzania: The Role of the People in the Process Constitution-Making in Tanzania: The Role of the People in the Process Outline' (2000).

⁷³ The Constitution of the United Republic of Tanzania, art 64(5). See also *Jackson s/o Ole Nemeteni @ Ole Saibul @ Mdosu @ Mjomba and Others v Attorney General*, Misc. Civil Cause No. 117 of 2004, [2007] TZHC 565 (13 July 2007).

Committee, Sunni Muslim Jamaat Dar es Salaam,⁷⁴ at page 17, the requirements of public peace, morality, and good order, are requisites for the common good of society. CSR endeavours intend to achieve this through the principle of sustainability.

In addition, Article 9(g) requires equal access to opportunities. In *Hassan Hussein Mussa and Another v Jambo Foods Products Co. Limited*,⁷⁵ the court held, *inter alia*, that the world would be much happier and more peaceful if everyone had equal opportunities to thrive through non-discrimination. Further, in *John Seka v Minister of State in the President's Office, Regional Administration and Local Government and Another*,⁷⁶ the court observed that the Constitution of Tanzania guarantees equality, prohibits discrimination, ensures participation in governance, and affirms the right to equal opportunities.

4.3.2 Public participation

Article 8(1)(d) of the Constitution provides that the people shall participate in the affairs of their Government. One way to encourage public participation is through consultation, as it is a fundamental aspect of natural justice.⁷⁷ Correspondingly, in *Reginald Tlatlaa Sanka and 119 Others v Ministry for Agriculture and 9 Others*,⁷⁸ the court observed that consultation with parties is a fundamental aspect of good public administration that effectuates the constitutional spirit of public participation in government affairs.

Moreover, Article 21(2) of the Constitution of Tanzania enshrines the freedom to participate in public affairs. In the case of *Alphonse Lusako and 3 Others v Attorney General and 3 Others*,⁷⁹ the court emphasised the importance of public participation. On page 63, it states that public participation has become an integral means of justifying the outcome of a particular process. Participation must be accommodated in all matters that affect the public, their well-being, and the nation as a whole. Furthermore, Article 146(1) of the Constitution enshrines the role of local government authorities in involving people in development programmes. Therefore, local government authorities have a greater role to play in ensuring public participation in development programmes, including sustainable

⁷⁴ *Muhammad Rafik and Others v the AD HOC Committee, Sunni Muslim Jamaat Dar es Salaam*, Civil Case 119 of 2012, [2012] TZHC 22 (16 June 2012).

⁷⁵ *Hassan Hussein Mussa and Another v Jambo Foods Products Co. Limited*, Civil Case 84 of 2020, [2022] TZHC 9809 (11 March 2022).

⁷⁶ *John Seka v Minister of State in the President's Office, Regional Administration and Local Government and Another*, Miscellaneous Civil Cause No. 27210 of 2024, [2024] TZHC 9336 (7 November 2024).

⁷⁷ *Alphonse Lusako and 3 Others v Attorney General and 3 Others* (Misc. Civil Cause 5 of 2023) [2023] TZHC 19947.

⁷⁸ *Reginald Tlatlaa Sanka and 119 Others v Ministry for Agriculture and 9 Others*, Miscellaneous Civil Cause No. 25084 of 2024, [2025] TZHC 233 (13 February 2025).

⁷⁹ *Alphonse Lusako and 3 Others v Attorney General and 3 Others* (n 78).

business practices, to promote sustainable and inclusive development.

4.3.3 Integrity

The Constitution of Tanzania recognises the necessity of integrity for building a truthful, honest, and fair society and businesses. It emphasises integrity in various ways. First, Article 9(h) of the Constitution urges the eradication of all forms of injustice, intimidation, discrimination, corruption, oppression, or favouritism. Second, Article 25(1)(a) of the Constitution highlights the duty of every person to participate in legitimate activities to earn a livelihood. Businesses must engage in legitimate activities truthfully and sincerely. The court, in the case of *Beltida Bengesi and 2 Others v the Attorney General*,⁸⁰ emphasised that, with the increasing influx of people from the countryside to town, and some with no business, there is a need to regulate peace, health, safety, morality, and order. Every nation has its vision and Development Goals to achieve, **and without integrity, it is challenging to reach them** (emphasis mine). Also, in the case of *Veronica Suleman Nkya v Diamond Trust Bank (T) Ltd and Another*⁸¹, the court observed that undermining integrity diminishes trust and jeopardises fairness.

4.3.4 Legal Compliance

Given the indispensability of legal compliance to CSR undertakings, the Constitution of Tanzania highlights several aspects that emphasise the importance of adhering to the laws of the land. First, Article 9(b) of the Constitution underscores the imperative to uphold and enforce the laws of the land. Moreover, Article 26 imposes a duty to abide by the laws of the land. The provision implies that every person must observe and abide by the Constitution and the laws of the United Republic of Tanzania. The term "every person" includes natural persons and artificial persons, such as business enterprises and governmental entities.⁸² In *Philip Samson Chigulu T/a Philip Samson Chigulu Agent v Judge of the High Court of Tanzania and Others*,⁸³ the court opined that Article 26 requires every person to abide by the country's laws and that this requirement applies to all persons.

⁸⁰ *Beltida Bengesi and 2 Others v the Attorney General*, Misc. Civil Cause No. 16 of 2022, [2023] TZHC 23997 (16 June 2023).

⁸¹ *Veronica Suleman Nkya v Diamond Trust Bank (T) Ltd and Another*, Misc. Commercial Application No. 9151 of 2024, [2024] TZHCComD 173 (26 July 2024).

⁸² *Attorney General and Others v Bob Chacha Wangwe* (Civil Appeal No. 138 of 2019) [2019] TZCA 346 (16 October 2019). The court held that Article 26(1) establishes the duty to observe the rule of law by adhering to the Constitution and the laws of the United Republic. See also *Prisca Nyang'uba Chogero v the Attorney General of the United Republic of Tanzania* (Misc. Civil Cause No. 26 of 2021) [2022] TZHC 15880 (24 June 2022) – TanzLII, <https://tanzlii.org/akn/tz/judgment/tzhc/2022/15880/eng@2022-06-24>.

⁸³ *Philip Samson Chigulu t/a Philip Samson Chigulu Agent v Judge of the High Court of Tanzania and Others*, Misc. Civil Cause 23 of 2021, [2021] TZHC 6648 (19 October 2021).

On the other hand, every person has the right, as provided by law, to take legal action to protect the Constitution and the laws of the land.⁸⁴ When laws of the land are not complied with, every person has standing to initiate legal action against the person who breaches those laws. However, a person shall abide by the procedural requirements when taking legal action to protect the Constitution. This includes compliance with the Basic Rights and Duties Enforcement Act, which provides the procedures for enforcing fundamental rights and duties.⁸⁵

Article 26 of the Constitution creates a potential avenue for enforcing CSR-related obligations, provided specific laws exist. However, the absence of explicit CSR mandates in ordinary laws, coupled with constitutional claw-back clauses, limits this enforcement (see discussion in 5 below). Thus, while the Constitution establishes a rule-of-law framework, its effectiveness in promoting CSR depends on complementary legislation and judicial willingness to interpret constitutional principles in light of CSR norms.

Therefore, at this juncture, this article argues that while the Constitution of the United Republic of Tanzania does not expressly require CSR, its core pillars implicitly reflect globally accepted CSR principles. This alignment offers a normative foundation for a more structured, accountable, and transparent CSR culture. This is because such a constitutional framework provides Tanzania with a constitutional starting point to encourage responsible business practices across the country.

5. Constitutional Challenges in Ensuring CSR in Tanzania

After examining how and to what extent the Constitution of the United Republic of Tanzania promotes and fosters CSR practices, this section addresses the constitutional challenges that hinder effective CSR regulation in Tanzania. The challenges discussed in this article include the absence of explicit provision regarding CSR, ouster clauses, derogation clauses and claw-back clauses.

5.1 Absence of explicit provision regarding CSR

The Constitution of the United Republic of Tanzania does not explicitly mandate businesses to undertake CSR. Hence, no direct or express provision that obliges firms to adopt responsible business practices. The absence of an explicit constitutional mandate for CSR has negative implications in terms of fostering responsible business practices. Since there is no explicit constitutional obligation to undertake CSR, business enterprises may ignore CSR initiatives without fear of facing consequences of non-compliance. The Constitution lacks an explicit CSR mandate, and ordinary laws are

⁸⁴ Constitution of Tanzania, art 26(2).

⁸⁵ *Onesmo Olungurumwa v Attorney General*, Misc. Civil Cause 15 of 2019, [2020] TZHC 4555 (17 December 2020).

insufficient without constitutional backing. This dual limitation weakens enforceability.

In doing so, CSR practices continue to remain voluntary. Moshi highlights that CSR programmes are based on charitable means, as firms in Tanzania implement CSR mission statements at their discretion.⁸⁶ Moreover, regulatory bodies lack the authority to hold businesses accountable for adverse impacts on society and the environment because companies have no explicit constitutional mandate to undertake CSR initiatives. Therefore, enforcing other laws becomes challenging due to the above anomaly.⁸⁷

Furthermore, without a clear and express constitutional mandate to undertake CSR, businesses exercise their freedom to practise responsible business practices.⁸⁸ Businesses may undertake CSR based on their priorities, size and nature of operations. In *Target Borewells Limited v Shaban Cosla and 2 Others*⁸⁹, the court held that when the law is silent on the consequences, the court has discretion to dispense real justice in the circumstances of each case. Although the case is not directly relevant to CSR and its constitutional framework, it demonstrates the practical challenge of legal silence.

As a result, inconsistent CSR practices prevail even across the same industries. The uneven CSR practices lack the stability and predictability of CSR expectations in the country due to a lack of standardisation. A study by Suluo and others on CSR practices in the tourism industry reveals variations even within the same industry.⁹⁰ The study notes that tour operators generally put great emphasis on social service initiatives, which are operationalised through philanthropic contributions to community projects. Accommodation firms specifically emphasise eco-efficiency, nature conservation and economic prosperity. The assumption is that man is free to steer between lawful and unlawful conduct; therefore, laws must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he may act accordingly.⁹¹ Lack of standards may inadvertently trap the innocent by failing to provide a

⁸⁶ Moshi PF, 'Regulation of Corporate Social Responsibility Practices in Tanzania' (LLM Thesis, The Open University of Tanzania 2019), <https://repository.out.ac.tz/id/eprint/2944>.

⁸⁷ *Nyanza Mines (Tanganyika) Limited v the Registrar of Companies and Another*, Misc. Civil Application 684 of 2019, [2020] TZHC 4630 (24 December 2020).

⁸⁸ Nathaniel Collison, 'The Role of Government Regulation in Promoting Corporate Social Responsibility and Sustainable Development', *Journal of International Business Research* (Vol. 23, No. 4, 2024) 1, 3–4, <https://www.abacademies.org/articles/the-role-of-government-regulation-in-promoting-corporate-social-responsibility-and-sustainable-development-17094.html>, accessed on 8 January 2026.

⁸⁹ Civil Case No. 144 of 2021, [2022] TZHC 15553 (20 October 2022).

⁹⁰ Suluo SJ, and others 'Corporate Sustainability Practices in Tourism—Evidence from Tanzania', *Tourism Planning & Development* (Vol. 20, No. 5, 2023) 747.

⁹¹ See *Mitchell v King*, 363 A.2d 68,169 Conn. 140, <https://case-law.vlex.com/vid/mitchell-v-king-895526588>, accessed on 29 March, 2025.

fair warning.⁹² Consequently, lack of clarity and express provisions inevitably leads persons to stray far wider of the unlawful zone than if the boundaries of the forbidden areas were marked.⁹³

5.2 Ouster clauses

Ouster clauses are statutory provisions that remove the court's jurisdiction to hear and determine certain matters. They aim to prevent the court from intervening in a matter. In *Aminu v Nigeria*,⁹⁴ the African Commission on Human and Peoples' Rights clarified the function of the ouster clause. The Commission noted that an ouster clause bars courts from entertaining proceedings. In *Ibrahim Killapo v Mary Sengo*,⁹⁵ the court reiterated that no ordinary court can exercise the powers once the jurisdiction is ousted. The persistent practice of ouster clauses removes many vital matters from the jurisdiction of the ordinary courts. The rules governing ouster clauses are final and conclusive of the matter, and they create extrajudicial proceedings or remedies.⁹⁶

The Constitution of the United Republic of Tanzania includes an ouster clause that applies to provisions related to promoting and fostering responsible business practices. Article 7(2) states that:

The provisions of this Part of this Chapter are not enforceable by any court. No court shall be competent to determine whether or not any action or omission by any person or any court, or any law or judgment complies with the provisions of this Part of this Chapter.

The part not enforceable here is Part II of Chapter One of the Constitution of the United Republic of Tanzania. Part II deals with fundamental objectives and directive principles of state policy. This part enshrines accountability,⁹⁷ participation,⁹⁸ welfare,⁹⁹ and sustainability.¹⁰⁰ These are fundamental to CSR operations because they aim to promote corporate accountability for social and environmental harms, encourage public participation in CSR matters, prioritise people's welfare, and sustainably harness national wealth and heritage.

⁹² Sekhon V, 'Enforcement of Material Non-Disclosure Under the Federal Securities Laws', *Stanford Journal of Law, Business and Finance* (Vol. 16, No. 2, 2011) 273.

⁹³ *State of Utah v Carol Lee Owens and Rudell Owens* (1981), <https://core.ac.uk/download/217068310.pdf>, accessed on 29 March 2025.

⁹⁴ *Aminu v Nigeria*, Communication 205 of 1997, [2000] ACHPR 15 (11 May 2000).

⁹⁵ *Ibrahim Killapo v Mary Sengo*, Civil Appeal 10 of 2021, [2022] TZHC 10602 (27th of June, 2022).

⁹⁶ *Ibid*, p9.

⁹⁷ Art 8(c).

⁹⁸ Art 8(d).

⁹⁹ Art 8(b).

¹⁰⁰ Art 9(c).

The Ouster clause has negative implications for fostering responsible business practices in Tanzania.¹⁰¹ First, the ouster clause weakens the authority to hold both government and private institutions accountable for the adverse impacts they cause on society and the environment.¹⁰² In other words, without legal enforcement, businesses may be less incentivised to adhere to ethical and responsible business practices.¹⁰³ Moreover, removing the judicial authority to hear and determine fundamental objectives and state policies means the CSR fundamentals established by the Constitution of the United Republic of Tanzania in Part II become mere ideals rather than obligations.¹⁰⁴ The implication here is that CSR remains voluntary, with no means to enforce it. As a result, CSR practices rely on the goodwill of private and public enterprises.

5.3 Derogation clauses

Derogation clauses are statutory provisions that suspend or limit certain human rights. The suspension or limitation occurs in exceptional circumstances or at regular intervals when individuals engage in activities that endanger or compromise the nation's security.¹⁰⁵ The essence of limitation or derogation clauses is to enable the State to take measures to settle critical matters. As a result, rights, freedoms, and duties may be derogated from. Notably, the justification for derogation depends on the measures the State takes, provided they are necessary and justifiable to address the situation during a State of Emergency or in regular times, and the problem created by the conduct of the person concerned.¹⁰⁶ Therefore, the justification of limitations must be strictly proportionate and necessary.¹⁰⁷

The Constitution of the United Republic of Tanzania contains a limitation clause, as set out in Article 30(1). This Article limits the enforcement and preservation of fundamental rights, freedoms, and duties. The limitations apply to what Part III of Chapter One of the

¹⁰¹ The Constitution of the United Republic of Tanzania, Part II (Fundamental Objectives and Directive Principles of State Policy), art 7(2) (ouster clause), <https://www.wipo.int/wipolex/en/text/207678>, accessed on 8 January 2026.

¹⁰² The Constitution of the United Republic of Tanzania, art 7(2).

¹⁰³ Maina CP, *Human Rights in Tanzania: Selected Cases and Materials* (Mkuki na Nyota Publishers 1997) 45–47.

¹⁰⁴ Mwaikusa JM, 'The Role of the Judiciary in Promoting Human Rights in Tanzania', *Eastern Africa Law Review* (Vol. 1, 1999) 12–14.

¹⁰⁵ The Constitution of the United Republic of Tanzania, art 31(1).

¹⁰⁶ The Constitution of the United Republic of Tanzania, art 31(2).

¹⁰⁷ *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v Nigeria*, Communication 140/94-141/94-145/95 – Constitutional Rights Project, *Civil Liberties Organisation and Media Rights Agenda v Nigeria* (1999) ACHPR, para 40. See also the case of *Peter Ng'omango v Gerson M.K. Mwangwa and Another; The Attorney General* [1992] TZHC 44 (11 December 1992). See also the case of *Zalewska v Department for Social Development* (Northern Ireland) [2008] UKHL 67 (12 November 2008) – LawCare Nigeria, <https://lawcarenigeria.com/zalewska-v-department-for-social-development-northern-ireland-2008-ukhl-67-12-november-2008/>, accessed on 29 March, 2025.

Constitution provides. Part III provides for basic rights and responsibilities. One of the fundamental rights is enshrined in Article 18(d): the right to information. This right is relevant to CSR undertakings because it guarantees public access to CSR information and reports from business enterprises. Limiting access to information means restricting transparency and disclosure of CSR information and reports, which are necessary pillars of effective CSR undertakings.¹⁰⁸ Studies have demonstrated the challenges of non-disclosure and transparency regarding CSR in Tanzania. For instance, Mbirigenda notes that some mining companies in Tanzania are reluctant to allow researchers access to information about their activities.¹⁰⁹ The examples of companies noted by Mbirigenda include Africa Barrick Gold, Geita Gold Mine and Williamson Diamond Mines. Non-disclosure undermines efforts to promote CSR practices in Tanzania, as it leaves room for CSR to be used as a tool to advance business interests. Likewise, Gillo and others confirm that, while the North Mara Gold Mine has been actively engaging in corporate social responsibility initiatives, there is evidence of poor community involvement, a lack of transparency, and the improper use of CSR funds, which undermines the effectiveness of these programmes.¹¹⁰

Moreover, the derogation clause leads to a decline in corporate accountability, as corporations sometimes invoke limitation clauses when they have caused adverse social and environmental impacts that violate the fundamental rights and duties protected by the constitution.¹¹¹ The derogation clause also opens the door to abuse by public or private institutions that greatly influence governmental decision-making.¹¹² This suggests that enforcing limitation clauses against fundamental rights and duties, which are essential components of CSR, without strictly applying the doctrine of proportionality, may negatively affect the fostering of responsible business practices.

¹⁰⁸ *Media Rights Agenda and Others v Nigeria* (Communication 105 of 1993; Communication 128 of 1994; Communication 130 of 1994; Communication 152 of 1996) [1998] ACHPR 3 (31st of October, 1998), para 69. See also D'Orsi C, 'Protection of Freedom of Movement and of Asylum-Seekers and Refugees: Progress Made by the African Commission on Human and Peoples' Rights Via Its Communication Procedures and Beyond', *Texas International Law Journal* (Vol. 57, No 2, 2022).

¹⁰⁹ Mbirigenda S, 'Corporate Social Responsibility in Tanzania: Experience of Misconception, Misuse and Malpractices' in Kilonzo R and Kontinen T (eds), *Contemporary Concerns in Development Studies: Perspectives from Tanzania and Zambia* (University of Helsinki 2015) 100.

¹¹⁰ Gillo (n 55) 79.

¹¹¹ Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge University Press 2012) 131–135.

¹¹² Maina (n 109) 112–115.

5.4 Claw-back clauses

Claw-back clauses qualify the right, obligation, or benefit in a statute.¹¹³ The clarity and reasonableness of claw-back clauses determine whether they are enforceable. Hence, when those supporting the restriction of fundamental rights rely on a claw-back clause, the onus is on them to justify the restriction.¹¹⁴ The claw-back clauses constitute general restrictions inserted into human rights provisions by qualifying rights, permitting states to restrict those rights to the maximum extent permitted under domestic law.¹¹⁵ Thus, the presence of claw-back clauses means the drafters of the legal instruments intend to limit the right or duty based on the restriction made, just as the absence of a claw-back clause indicates that the drafters of the legal instrument envisage no circumstances in which it would be appropriate to limit a right or duty.¹¹⁶

One of the significant claw-back clauses in the Constitution of the United Republic of Tanzania with negative implications for the inculcation of responsible business practices, is outlined in Article 26(2). The provision states that 'Every person has the right, per the procedure provided by law, to take legal action to ensure the protection of this Constitution and the laws of the land.'¹¹⁷ In the Article, a claw-back clause is 'in accordance with the procedure provided by law'. The clause can prevent stakeholders from taking action against businesses when CSR laws do not provide such legal avenues.¹¹⁸ Therefore, when the ordinary laws of the land do not provide a clear avenue for enforcing CSR obligations, stakeholders cannot hold businesses accountable under the Constitution because

¹¹³ In the case of *Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt*, Communication 323 of 2006) [2013] ACHPR 120 (12 October 2013), the African Commission on Human and Peoples' Rights, in paragraph 249, observed that the claw-back clause limits freedom of expression under Article 9(2) in the context of the phrase 'within the law.'

¹¹⁴ *Julius Ishengoma Francis Ndyabo v the Attorney General*, Civil Appeal 64 of 2001, [2002] TZCA 14 (14 February 2002). See also *Dickson Paulo Sanga v the Attorney General*, Misc. Civil Cause 29 of 2019, [2020] TZHC 653 (20 May 2020); Bisimba HK, 'Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania', <https://core.ac.uk/download/5230071.pdf>, accessed on 29 March, 2025.

¹¹⁵ Communication 101/93, *Civil Liberties Organisation v Nigeria* [(2000) AHRLR 186 (ACHPR 1995)], para 16, and *Amnesty International v Zambia*, communication 212/98, para 50, have established the Commission's jurisprudence.

¹¹⁶ *Centre For Minority Rights Development and Another v Kenya*, Communication 276 of 2003, [2009] ACHPR 102 (25th of November, 2009).

¹¹⁷ The Constitution, Art 26(2).

¹¹⁸ Adjei, W.E., 'Re-assessment of "Claw-back" Clauses in the Enforcement of Human and Peoples' Rights in Africa', *Journal of Legal Studies "Vasile Goldiş"* (Vol. 24 No 38, 2019) 1-22.

of its claw-back clause.¹¹⁹ Eventually, the claw-back clause may dilute the country's efforts to foster CSR practices.¹²⁰

Therefore, the existing framework demonstrates that while Tanzania has made progress in requiring CSR in specific sectors, a more unified constitutional approach would strengthen corporate accountability and ensure that all business entities contribute to community welfare and sustainable development nationwide. This is because failure to constitutionalise CSR principles explicitly opens the door to voluntary CSR actions. The voluntary CSR actions lack legal mechanisms to enforce when firms fail to adhere to their CSR commitments. This undermines efforts to foster responsible business practices for sustainable and inclusive development in Tanzania.

5 Conclusion and Way Forward

This study concludes that while the Constitution of the United Republic of Tanzania provides broad principles, such as the common good, public participation, integrity, legal compliance, sustainable harnessing of national wealth, and access to information, that support CSR, it lacks explicit mandates for businesses, making CSR compliance voluntary and with limiting accountability. Moreover, the Constitution of the United Republic of Tanzania contains clauses that allow to ouster or hinder CSR enforcement. Thus, the limited constitutionalisation of CSR principles has led to discretionary CSR implementation in Tanzania, but with no legal consequences for non-compliance. To address this anomaly, the article recommends constitutional reforms to include an explicit CSR mandate and remove restrictive clauses, thereby fostering a genuinely responsible business environment.

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¹²⁰ *Kukutia Ole Punbun v the Hon. Attorney-General and Another*, Civil Appeal No. 32 of 1992, [1992] TZCA 22 (1st of January, 1992). See also, Wambali MKB, 'Democracy and Human Rights in Tanzania Mainland: The Bill of Rights in the Context of Constitutional Developments and the History of Institutions of Governance', <https://core.ac.uk/download/444495.pdf> accessed on 29 March, 2025.

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