Greenwashing: A hindrance to Achieving Sustainability?

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Abstract

This paper critically discusses the concept of greenwashing as a strategy used by the corporate world and other players to create the impression that they are compliant with Environmental, Social and Governance (ESG) while hiding the true level of compliance, through marketing. The author argues that it is necessary to ensure that all corporations and businesses, whose operations have the potential to impact the environment, are included and held accountable for any detrimental consequences on both human beings and the environment, through stricter enforcement of corporate governance and environmental legislation aimed at curbing violation of ESG rules and greenwashing in particular. These efforts are aimed at attaining sustainability in Kenya and Africa as a whole.

1. Introduction

A company's level of social responsibility may be measured by how well it strikes a balance between its economic success and its commitment to protecting the environment.[1] The concept of Corporate Social Responsibility (CSR) pertains to the equilibrium between a company's financial performance and its commitment to environmental preservation. This subject has garnered growing interest among academic researchers, particularly in the context of the Paris Climate Agreement of 2015.[2] Corporate social responsibility (CSR) refers to a discretionary conduct that goes beyond legal obligations. It is often used by firms as a strategic approach to address the diverse demands of many stakeholder groups, including institutional, public, and other stakeholders, in response to external pressures.[3]

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[1] Zhang D, ‘Are Firms Motivated to Greenwash by Financial Constraints? Evidence from Global Firms’ Data’ (2022) 33 Journal of International Financial Management & Accounting 459.
[2] Ibid.
[3] Xia F and others, ‘Financial Constraints and Corporate Greenwashing Strategies in China’ (2023) 30 Corporate Social Responsibility and Environmental Management 1770.

In light of the need for sustainable development, Corporate Environmental Responsibility has emerged as a vital ethical asset for organisations seeking to enhance company values and secure resources.[4]

The incorporation of environmental performance into corporate social responsibility (CSR) is a crucial aspect that is gaining significance in tandem with the global push for sustainable economic development.[5] Organizations that demonstrate strong environmental performance have the potential to cultivate a favourable reputation among investors and therefore lower their costs of financing. Conversely, organizations that exhibit poor environmental performance are likely to face detrimental consequences, such as damage to their reputation.[6] The fundamental process at play is that investors anticipate that polluting entities would incur substantial costs and liabilities associated with pollution, thereby diminishing their future competitiveness.[7]

Nevertheless, a legitimate worry arises over the phenomenon known as "greenwashing," wherein corporations may strategically disclose environmental performance data in a manner that deceives both the general public and potential investors.[8]

This paper critically discusses the concept of greenwashing as a strategy used by the corporate world to create the impression that they are compliant with Environmental, Social and Governance (ESG) while hiding the true level of compliance, through marketing, and makes recommendations on how to address the same.[9]

2. Greenwashing: Meaning and Drivers

One of the conceptualizations of greenwashing pertains to the phenomenon whereby firms exhibit an appearance of transparency and disseminate substantial volumes of environmental, social, and

[4] Ibid.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Xia, F., Chen, J., Yang, X., Li, X. and Zhang, B., 'Financial Constraints and Corporate Greenwashing Strategies in China' (2023) 30 Corporate Social Responsibility and Environmental Management 1770.
[9] Yu EP, Van Luu B and Chen CH, 'Greenwashing in Environmental, Social and Governance Disclosures' (2020) 52 Research in International Business and Finance 101192.

governance (ESG) data, but demonstrate inadequate results in many dimensions of their ESG endeavours.[10]

The assessment of a firm's engagement in greenwashing involves evaluating its standing in relation to other firms by comparing the disparity between its ESG disclosure and performance ratings.[11] The primary motivation for organizations' decision to participate in greenwashing of their environmental performance is the anticipation of future investment and financing need. It has been observed that companies with elevated levels of debt are more inclined to partake in greenwashing practices.[12]

The phenomenon of greenwashing often arises from the strategic use of legal resources, such as green subsidies, by enterprises. The presence of legitimacy status ensures that corporations are open to external resources, which may lead enterprises with substandard environmental performance to use selective disclosure tactics.[13] However, it is important to note that firms engage in greenwashing practices with the intention of conveying favourable messages. Companies may engage in the deceptive transmission of information by concealing unfavourable environmental data in order to preserve their reputation and project an environmentally responsible image, sometimes in response to pressure from investors.[14] Furthermore, the environmental decisions made by firms may be influenced by the interests and risk preferences of corporate leaders, who hold managerial and decision-making positions inside these organisations.[15]

There is ongoing discourse on the potential influence of cultural variables on the propensity for greenwashing. The development of the current notion of corporate social responsibility (CSR) and the majority of studies on greenwashing have been focused on western cultures. However, there is an increasing interest in the social and environmental practices of corporations in transitional economies, leading to a fast expansion of relevant literature.[16]

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[10] Zhang D, 'Are Firms Motivated to Greenwash by Financial Constraints? Evidence from Global Firms' Data' (2022) 33 Journal of International Financial Management & Accounting 459.
[11] Ibid.
[12] Xia F and others, 'Financial Constraints and Corporate Greenwashing Strategies in China' (2023) 30 Corporate Social Responsibility and Environmental Management 1770.
[13] Ibid.
[14] Ibid.
[15] Ibid.
[16] Xia F and others, 'Financial Constraints and Corporate Greenwashing Strategies in China' (2023) 30 Corporate Social Responsibility and Environmental Management 1770.

3. Combating Greenwashing for Sustainability

In recent years, there has been a growing focus on climate change and pollution emissions due to their significant impact on both human well-being and the economic and financial sectors.[17]

The involvement of firms in greenwashing practices has the potential to negatively impact several stakeholders, such as investors, the general public, and competing enterprises. Greenwashing practices may result in a situation of information asymmetry, thereby causing detrimental effects on the financial interests of investors. The disclosure of previously concealed adverse environmental data by corporate executives has the potential to result in a significant decline in the value of a company's shares.[18] Furthermore, engaging in greenwashing practices does not contribute to the enhancement of business environmental performance. It is plausible for corporations to conceal instances of pollution and even breaches of environmental legislation by engaging in symbolic compliance.[19]

The absence of consequences for greenwashing corporations also ultimately hampers equitable competition within markets, particularly for companies who prioritize environmental management and proactively publish essential environmental information.[20] Consequently, the presence of greenwashing practices may have an impact on stakeholders' perceptions of the firm, the decision-making processes of managers, the work performance of staff, and the purchase choices of customers.[21]

It is the cultural aspect that has informed the current paper, with a focus on developing nations like Kenya. For instance, the Kenya Flower Council, a voluntary membership organisation run by a board, with its main office located in Nairobi, oversees the adherence of its members to a set of guidelines encompassing various aspects of horticultural practices, sustainability, social responsibility, hygiene, health and safety, capacity development, environmental preservation, and conservation. The adherence to the code of practice serves as the fundamental support for all

[17] Zhang D, 'Are Firms Motivated to Greenwash by Financial Constraints? Evidence from Global Firms' Data' (2022) 33 Journal of International Financial Management & Accounting 459.
[18] Xia F and others, 'Financial Constraints and Corporate Greenwashing Strategies in China' (2023) 30 Corporate Social Responsibility and Environmental Management 1770.
[19] Ibid.
[20] Ibid.
[21] Ibid.

actions undertaken.[22] The code of practice has been evaluated by the Floricultural Sustainability Initiative to assess its compliance with recognised social and environmental sustainability criteria, making it one of the three global standards that have undergone independent benchmarking.[23]

This does not mean that human rights violations and greenwashing have not been reported in Kenya and perhaps other African countries.[24] Western countries have been increasingly calling on African companies and other international corporations with presence in developing countries and others to adhere to ESG requirements. For instance, on the 1st of June 2023, after a prolonged period of rigorous discussions, the European Parliament endorsed its formal stance on the Corporate Sustainability Due Diligence Directive (CSDDD).[25] The implementation of the Corporate Sustainability Due Diligence Directive (CSDDD) proposed by the European Commission would require corporations to create due diligence protocols in order to mitigate the negative consequences of their activities on human rights and the environment. This would include addressing such effects across their global value chains. The objective is to promote the development of enduring and accountable corporate conduct, as well as to include sustainability factors into the operational and governance practices of firms.[26]

The CSDDD is a component of the European Green Deal which encompasses a series of policy measures implemented by the European Commission. Its primary objective is to align the climate, energy, transport, and taxation policies of the European Union in order to achieve a minimum

[22] 'Council Strives to Ensure Flower Farmers Meet Defined Standards - Kenyan Woman' (4 February 2018) <https://kw.awcfs.org/article/council-strives-to-ensure-flower-farmers-meet-defined-standards/> accessed 23 August 2023; see also 'EU Trade Deal: Kenya Opens Its Market to European Goods – DW – 06/20/2023' (*dw.com*) <https://www.dw.com/en/eu-trade-deal-kenya-opens-its-market-to-european-goods/a-65978273> accessed 23 August 2023.

[23] Ibid; see also Buxton A and Vorley B, 'The Ethical Agent: Fresh Flowers in Kenya' [2012] International Institute for Environment and Development/Sustainable Food Lab.

[24] Arif-Fear L, 'The Dark Side of the Flower Sector: The Growing Exploitation of Women in Kenya' (*Anti-Slavery International*, 3 November 2022) <https://www.antislavery.org/flower-sector-exploitation-of-women-in-kenya/> accessed 23 August 2023.

[25] Russell G, 'One Step Closer to Mandatory Human Rights and Environmental Due Diligence in the EU' (*Anti-Slavery International*, 20 June 2023) <https://www.antislavery.org/one-step-closer-to-mandatory-human-rights-and-environmental-due-diligence-in-the-eu/> accessed 23 August 2023.

[26] Union (EBU) EB, *Sustainability Rulebook: The Corporate Sustainability Due Diligence Directive (CSDDD)* (2023) <https://www.ebu.ch/case-studies/open/legal-policy/the-future-of-eu-sustainability-regulation-ii-the-corporate-sustainability-due-diligence-directive-csddd> accessed 23 August 2023.

reduction of 55% in net greenhouse gas emissions by 2030, relative to the levels recorded in 1990. Furthermore, the European Green Deal aims to attain climate-neutral by 2050.[27]

Similarly, the proposal for a rule on deforestation-free supply chains was presented by the EU Commission in November 2021.[28] Cocoa was chosen, with beef, palm oil, soy, and coffee, as one of the five global commodities that needed more control. According to the survey, cocoa is alone accountable for 7.5% of deforestation worldwide that is attributed to the European Union.[29]

It has been noted that Although governments require corporate environmental information disclosure, weak enforcement and low penalties can make it easy for companies to greenwash.[30] It is suggested that African countries could borrow a leaf from the proposed European CSDDD Rules' mode of enforcement which is:[31]

a. **Administrative supervision and sanctions**: Member States would designate an authority to supervise and impose administrative sanctions, including fines and compliance orders. At the European level, the Commission will set up a European Network of Supervisory Authorities that will bring together representatives of the national authorities to ensure a coordinated approach. Natural and legal persons would be entitled to submit "substantiated concerns" to any supervisory authority alleging that a company is failing to comply.[32]

b. **Civil liability**: Member States will ensure that victims have access to compensation for damages resulting from the companies' failure to comply with their due diligence obligations.[33]

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[27] Ibid.

[28] Ghana <Anand Chandrasekhar> with reporting by Delali Adogla-Bessa in, 'West Africa Braces for Tough Sustainable Cocoa Rules in Europe' (*SWI swissinfo.ch*, 2 August 2022) <https://www.swissinfo.ch/eng/business/west-africa-braces-for-tough-sustainable-cocoa-rules-in-europe/47713236> accessed 23 August 2023.

[29] Ibid; see also Ilgar O, 'SAP BrandVoice: The Sustainability Problems Percolating In The Coffee Supply Chain' (*Forbes*) <https://www.forbes.com/sites/sap/2022/09/29/the-sustainability-problems-percolating-in-the-coffee-supply-chain/> accessed 23 August 2023.

[30] Xia F and others, 'Financial Constraints and Corporate Greenwashing Strategies in China' (2023) 30 Corporate Social Responsibility and Environmental Management 1770.

[31] Union (EBU) EB, *Sustainability Rulebook: The Corporate Sustainability Due Diligence Directive (CSDDD)* (2023) <https://www.ebu.ch/case-studies/open/legal-policy/the-future-of-eu-sustainability-regulation-ii-the-corporate-sustainability-due-diligence-directive-csddd> accessed 23 August 2023.

[32] Ibid; see also 'Corporate Sustainability Due Diligence' (23 February 2022) <https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en> accessed 23 August 2023.

[33] Ibid; 'Corporate Sustainability Due Diligence' (23 February 2022) <https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en> accessed 23 August 2023.

c. **Financial incentives**: Implementation of the emission reduction plans will be embedded in the financial incentives of directors of EU companies by linking their variable remuneration to their contribution to fulfilling these plans.[34]

While these proposals may require additional legislation/regulations, they are not entirely unachievable with the current framework, especially in Kenya. Companies are subject to oversight from the public and social organisations in order to ensure their adherence to Corporate Social Responsibility (CSR) practices. Public and social organisations closely monitor the environmental practices of enterprises and often express dissatisfaction or impose penalties on companies that demonstrate environmental irresponsibility.[35] The presence of social oversight heightens the likelihood of greenwashing being exposed, resulting in a subsequent erosion of public confidence.[36] Hence, the oversight from the general public has the potential to impede the practice of greenwashing by corporations.[37] Moreover, in a geographical area characterized by elevated environmental requirements and a greater emphasis on corporate environmental disclosure, the influence of societal scrutiny will assume a more important role.[38]

Directors, in fulfilment of their duty to enhance the flourishing of a company, are mandated by the Companies Act of 2015 in Kenya to duly consider the potential impacts of the company's operations on both the surrounding community and the ecological environment.[39] Furthermore, the legislation mandates that directors include environmental considerations into their reports and assess the impact of the firm's activities on the surrounding ecosystem.[40]

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[34] Ibid; see also 'Corporate Sustainability Due Diligence' (23 February 2022) <https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en> accessed 23 August 2023.

[35] Xia F and others, 'Financial Constraints and Corporate Greenwashing Strategies in China' (2023) 30 Corporate Social Responsibility and Environmental Management 1770.

[36] 'Corporate Sustainability Greenwash and the Risk to Social and Governance Standards' <https://www.ibanet.org/corporate-sustainability-greenwash-risk-to-social-and-governance-standards> accessed 23 August 2023; Laufer WS, 'Social Accountability and Corporate Greenwashing' (2003) 43 Journal of business ethics 253;

[37] Xia F and others, 'Financial Constraints and Corporate Greenwashing Strategies in China' (2023) 30 Corporate Social Responsibility and Environmental Management 1770.

[38] Ibid.

[39] Companies Act, No. 17 of 2015, s. 143 (1) (d), Government Printer, Nairobi.

[40] Ibid, s. 655 (4) (b).

Efforts must be collectively undertaken to ensure the implementation of effective reporting mechanisms, particularly in the realm of corporate and environmental legislation, in order to successfully attain sustainability objectives within the nation and effectively curb the practice of greenwashing. This can get support from the provisions of section 655 of the Companies Act[41] which requires that unless the company is subject to the small companies regime, the directors shall include in their report a business review that complies with subsection (3), so far as relevant to the company.[42] The purpose of the business review is to inform members of the company and assist them to assess how the directors have performed their duty under section 144.[43] In the case of a quoted company, the directors are required to specify in the business review (to the extent necessary for an understanding of the development, performance or position of the company)— (a) the main trends and factors likely to affect the future development, performance and position of the business of the company; (b) information about— (i) environmental matters (including the impact of the business of the company on the environment); (ii) the employees of the company; and (iii) social and community issues, including information on any policies of the company in relation to those matters and the effectiveness of those policies; and (c) information about persons with whom the company has contractual or other arrangements that are essential to the business of the company.[44]

In addition to the foregoing, the Environmental Management and Co-Ordination Act, 1999[45] (EMCA) envisages environmental reporting and even spells out enforcement tools and offences to enhance compliance.[46] EMCA stipulates various environmental offences which including offences related to *inspection*, offences *related to Environmental Impact Assessment*, offences related to records and *standards and offences related to hazardous wastes* (emphasis added).[47] The Act also prescribes penalties for these offences.[48] Offences under EMCA relate to among other things, failing to submit to inspection[49], offences relating to Environmental Impact Assessment[50]; offences

[41] Companies Act. No. 17 Of 2015, Laws of Kenya. Revised Edition 2021 [2015]
[42] Ibid, s.655(1).
[43] Ibid, s.655(2).
[44] Ibid, s.655(4).
[45] Environmental Management and Co-ordination Act, No. 8 of 1999, Laws of Kenya, Revised Edition 2019 [1999].
[46] See SEC. 38 (C); Sec. 57; Part XIII, EMCA
[47] EMCA, s. 137-146.
[48] Ibid.
[49] Sec. 137, EMCA.
[50] Sec. 138, EMCA.

relating to records[51]; offences relating to standards[52]; offences relating to hazardous waste[53]; offences relating to pollution[54]; and offences relating to restoration orders[55].

To meet the obligations towards the environment, it is mandated by both Kenya's Constitution and the Environmental Management and Coordination Act (EMCA) that periodic environmental audits and monitoring activities be conducted.[56] According to EMCA, an environmental audit is a systematic, documented, regular, and unbiased evaluation of the effectiveness of an organization's environmental practices, management strategies, and equipment in the preservation and safeguarding of the environment.[57] Environmental audits and monitoring are used as subsequent measures to examine the extent to which ongoing operations align with the environmental impact assessment study report, addressing the pertinent problems associated with the particular project at hand.[58]

This is a testimony that Kenya is not entirely devoid of the requisite legislation to curb greenwashing by the corporations operating in the country. All that is required is streamlining the operational efficiency of co-operation between enforcement agencies and the goodwill of the political class. The political goodwill is important as the monitoring and enforcement task will not come without financial implications. While some of the enforcement costs may be recovered from the polluters, some of the costs may not.[59] Even as the companies market themselves as 'green' they must not be taken at their word; regulators must verify the information being fed to the public either through media or own audit reports.

4. Conclusion

There is an urgent need for enhanced implementation of these provisions, accompanied by the implementation of sustainability audits. This is necessary to ensure that all corporations and businesses, whose operations have the potential to impact the environment, are included and held

[51] Sec. 139, EMCA.
[52] Sec. 140, EMCA.
[53] Sec. 141, EMCA.
[54] Sec. 142, EMCA.
[55] Sec. 143, EMCA.
[56] Constitution of Kenya, 2010, Article 69 (1) (f), Government Printer, Nairobi.
[57] EMCA, s. 2.
[58] *National Environment Management Authority (NEMA) - Environmental Audit (EA)*. https://www.nema.go.ke/index.php?option=com_content&view=article&id=155&Itemid=274 (accessed 2023-06-16).
[59] See Chapter Seven, Farmer A, *Handbook of Environmental Protection and Enforcement: Principles and Practice* (Earthscan 2012).

accountable for any detrimental consequences on both human beings and the environment. These efforts are aimed at attaining sustainability in Kenya and Africa as a whole.

Greenwashing is clearly a hindrance to achieving true sustainability. We should curb or avoid it altogether.

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