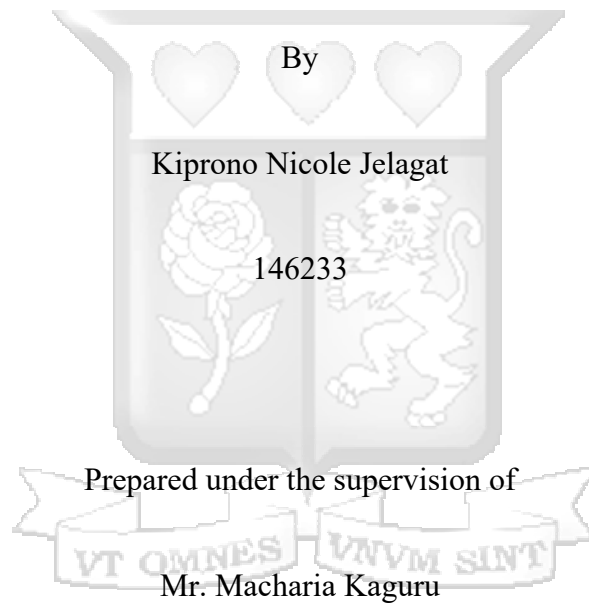


**BRIDGING THE GAP BETWEEN THE REALITY AND POTENTIAL OF ESG
IMPLEMENTATION IN KENYAN MARKETS**

Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree, Strathmore

University Law School



March 2025

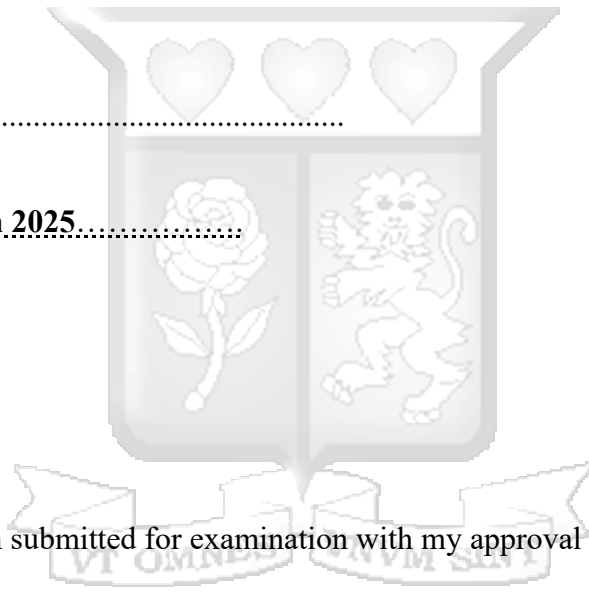
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DECLARATION

I, KIPRONO NICOLE JELAGAT, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:

Date:**06th March 2025**.....



This dissertation has been submitted for examination with my approval as University Supervisor.

Signed: 

[Supervisor's Name]: **Macharia Kaguru**

Date:**06th March 2025**.....

ACKNOWLEDGEMENTS

The completion and success of this research paper has been facilitated through the able guidance of Mr. Macharia Kaguru, a teaching fellow at Strathmore University, School of Law and my supervisor through this research period. His support and guidance has contributed to the accomplishment of this research and I wish to sincerely thank him for his support and patience throughout.



LIST OF LEGAL INSTRUMENTS

1. Nairobi Securities Exchange ESG Disclosures Guidance Manual
2. Code of Corporate Governance Practices for Issuers of Securities
3. The Companies Act, 2011
4. The Competition Act, 2010
5. The Consumer Protection Act, 2013



LIST OF ABBREVIATIONS

1. CMA- Capital Markets Authority
2. ESG- Environmental, Social and Governance
3. CSR- Corporate Social Responsibility
4. GRI- Global Reporting Initiative
5. NSE- Nairobi Securities Exchange
6. PRI- Principle for Responsible Investing
7. SDGS- Sustainable Development Goals
8. CEO- Chief Executive Officer
9. COO- Chief Operating Officer
10. CCRED- Centre for Competition, Regulation and Economic Development
11. DSTV- Digital Satellite Television
12. KPLC- Kenya Power and Lighting Company
13. BRT- Business Roundtable
14. WEF- World Economic Forum
15. UNGC- United Nations Global Compact

ABSTRACT

The rapid rise of Environmental, Social and Governance (ESG) considerations highlight a transformative shift taking place in the corporate world. This shift reflects a growing recognition among companies of the importance of integrating sustainability into their day to day operations. This study examines the current state of ESG implementation in Kenyan markets highlighting the gap between theoretical potential and practical application. Despite a growing awareness of ESG principles, several key elements such as market demand and a competitive environment are distinctively lacking. Consequently, the study will conduct an analysis as to whether the Kenyan market creates an environment to allow for the successful integration of ESG. To provide an illustration of this, the study will additionally evaluate the historical foundations of ESG practices, discuss examples of countries of where ESG is thriving and the existing legal framework of ESG practices in Kenya using the desktop approach.

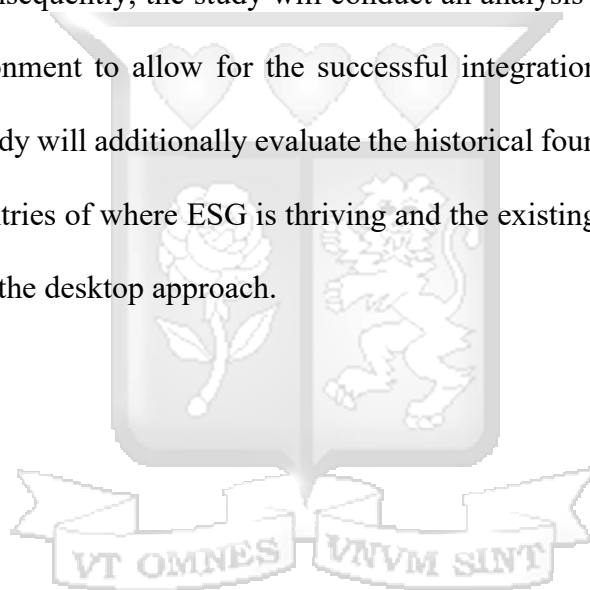


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CHAPTER ONE

1.0 INTRODUCTION

1.1 BACKGROUND

The global momentum behind Environmental Social Governance (ESG) is indisputable.¹ Major corporations are appointing chief sustainability officers, incorporating ESG considerations into strategic decisions and even linking executive compensation to ESG performance.² Regulators are coming up with frameworks to define “sustainable” activities and classify investment funds based on their ESG integration while business schools are catching up by incorporating ESG into their curriculum and research.³ The corporate world is rapidly on the transformation move, the normalcy has always been that the primary objective of corporations was to maximise profits, however, in recent years this perspective that firms have a single goal has been called into question.⁴ A complementary viewpoint has emerged, urging corporations to integrate ESG values as a fundamental principle within corporate law and policy discourse. This call for incorporation reflects a growing recognition of the necessity for firms to align their operations within broader societal expectations and responsibilities.⁵ ESG refers to the integration of Environmental, Social and Governance criteria into corporate practices and investment decisions.⁶

This paper focuses the research on ESG implementation in Africa, with a particular emphasis on Kenya. The key question pertains to the effectiveness of Kenya’s ESG culture. The ESG market is underpinned by several foundational elements that are crucial for its successful operation. First,

¹Edmans A, ‘The End of ESG’ *Financial Management*, 2023, 3–
<<https://onlinelibrary.wiley.com/doi/epdf/10.1111/fima.12413>> on 20 September 2024.

²Edmans A, ‘The End of ESG’, 3.

³Edmans A, ‘The End of ESG’, 3.

⁴Salzillo G, Ricciardi G, Moscariello N, Pizzo M, ‘Monopoly vs Competition: Determining The Optimal Regulatory Infrastructure for Sustainability Standards’ in Moscariello N, Michelle P (eds), *Climate Change and Corporate Reporting in Europe: Standard Setting and Disclosure Practices*, 1st ed, Cambridge Scholars Publishing, 2024, 42.

⁵Hannes S, Libson A, Parchomovsky G, ‘The ESG Gap’, *Brigham Young University Law Review*, 2024, 1138–
<https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?collection=journals&handle=hein.journals/byulr49&id=1168&men_tab=srchresults#> on 20 September 2024.

⁶Brammer S, Jackson G, Matten D, ‘Corporate Social Responsibility and Institutional Theory: New Perspectives on Private Governance’, *Socio-Economic Review*, January 2021, 5–
<https://www.researchgate.net/publication/228445750_Corporate_Social_Responsibility_and_Institutional_Theory_New_Perspectives_on_Private_Governance> on 30 September 2024.

market demand reflects investor and consumer preference for companies and products that demonstrate a commitment to environmental sustainability, social responsibility and sound governance.⁷ Second, a shift in corporate culture; a fundamental change in the values, beliefs and behaviours that shape an organisation’s environment and operations conforming to the reality that the value of a company is not only about financial performance but also its impact on the stakeholders and the environment.⁸ Third, transparency and disclosure; the need of organisations to provide clear, accurate and timely information about their operations, financial performance and ESG practices.⁹ Fourth, a cohesive institutional framework; laws, norms, values and regulations embedded to ensure that organisations are responsible and encourage transparency in their ESG practices.¹⁰ Finally, a competitive environment which fosters compliance given that consumer preferences can shift towards responsible businesses.¹¹ The paper will investigate whether these elements are present in the Kenyan ESG market and give recommendations on how corporations can enhance their ESG practices. Furthermore, the paper will discuss the primary regulatory framework, Nairobi Securities Exchange ESG Disclosures Guidance Manual, outlining the obligations of organisations to disclose both financial and non- financial performance to their stakeholders.

1.2 PROBLEM STATEMENT

The term “ESG” has garnered traction in the corporate world from business leaders to chief executive officers and even business schools. Historically, corporations have had a single goal; to maximise profits. In recent years, however, this has been objected to and a competing view has emerged; that aside from maximising profits, corporations must promote ESG values and corporations globally, have embraced it. This shift acknowledges the need for companies to align

⁷Pollman E, ‘A literature Review on the Difference Between CSR and ESG’ Scientific Papers of Silesian University of Technology, Organisation and Management Series No. 162, 2022, 276–
<https://www.ecgi.global/sites/default/files/working_papers/documents/esgcoverecgifinal.pdf> on 20 September 2024.

⁸Edmans A, ‘The End of ESG’, 3.

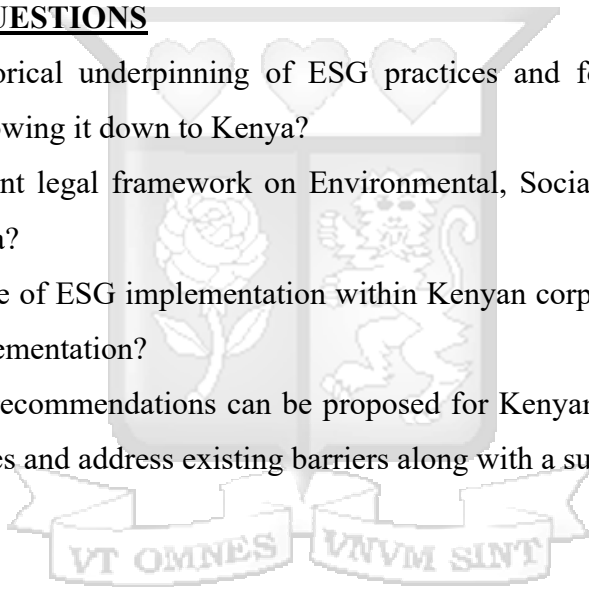
⁹The Global Compact, Who Cares Who Wins, 2004, 48.

¹⁰Lodhi R, Gresso C, ‘Theories Underlying Environmental, Social and Governance (ESG) Disclosure: A Systematic Review of Accounting Studies’, *Journal of Accounting Literature*, 2024, 7–
<https://www.researchgate.net/publication/377180615_Theories_underlying_environmental_social_and_governance_ESG_disclosure_a_systematic_review_of_accounting_studies> on 20 September 2024.

¹¹–<<https://novisto.com/resources/blogs/the-importance-of-esg-practices-in-business-part-2>> on 28 January 2025.

with societal expectations and responsibilities. ESG is meant to serve as a corrective mechanism that shifts corporate power to investors reflecting the stakeholder capitalism theory. However, for the successful implementation of ESG, certain foundational elements must be present in the market. In the Kenyan market, there has been an impediment to the successful operation of the ESG values in corporations due to the fact that the foundational elements necessary for effective implementation are either insignificant or completely absent. There is an existing gap in the research as to why ESG is not effective particularly in Kenya and this paper aims to address and analyse that gap.

1.3 RESEARCH QUESTIONS

- 
- i. What is the historical underpinning of ESG practices and foundational aspects both globally and narrowing it down to Kenya?
 - ii. What is the current legal framework on Environmental, Social and Governance (ESG) practices in Kenya?
 - iii. What is the degree of ESG implementation within Kenyan corporations and what factors influence its implementation?
 - iv. What actionable recommendations can be proposed for Kenyan corporations to enhance their ESG practices and address existing barriers along with a summary of the study's key findings?

1.4 RESEARCH OBJECTIVES

The general objective of the study is to analyse the effectiveness of ESG implementation in the Kenyan market examining its role in mitigating climate change and promoting sustainable development.

Specific objectives include;

1. To evaluate the historical underpinning of ESG practices and foundational concepts globally and its ties to Kenya.
2. To evaluate the existing legal framework regarding ESG practices in Kenya.

3. To examine the degree of ESG implementation within Kenyan corporations and to elucidate the factors influencing its implementation.
4. To propose actionable recommendations for Kenyan corporations to enhance their ESG practices and overcome existing barriers and summarise key findings of the study.

1.5 HYPOTHESIS

While ESG practices have gained global traction, their effectiveness in Kenya is hindered by the absence of essential foundational elements within the local market. The lack of a robust ESG culture, coupled with inadequate regulatory enforcement, significantly impedes the success of ESG initiatives. However, the study contends that with targeted efforts and collaboration among stakeholders, substantial advancements in ESG adoption and its positive impact are attainable.

1.6 JUSTIFICATION OF THE STUDY

The study aims to analyse the effectiveness of Environmental, Social and Governance implementation in the Kenyan market specifically focusing on its contribution to mitigating climate change and promotion of sustainable development. ESG practices have been globally accepted and implemented across the board; given that it was coined by the developed countries thus it has been on a solid ground in terms of achievement, however, in developing countries such as Kenya, it has been a slippery slope in terms of its success. Consequently, the traditional doctrine of 'shareholder' primacy has come under scrutiny particularly as companies are confronted with the costs associated with internalising negative externalities which disproportionately affect stakeholders.

Thus, this study, utilising the lens of stakeholder capitalism theory as a theoretical framework, aims to highlight the challenges that has brought about the impasse of the thriving implementation of ESG practices. Despite these challenges, this study posits that successful ESG implementation is within reach, it advocates for a concerted and collaborative effort to overcome these barriers which will eventually benefit the Kenyan market including its stakeholders.

1.7 THEORETICAL FRAMEWORK

Stakeholder Capitalism theory

Stakeholder capitalism is a business approach that recognises the interdependence of corporations on a diverse array of stakeholder contributions and interests including employees, customers, suppliers, communities and the environment, it asserts that corporations do not exist in a vacuum¹² It contrasts with the traditional shareholder primacy which focuses on maximising profits for shareholders only.¹³ It measures performance of a corporation using a broad spectrum of parameters and not the traditional way of depending on the performance of shares because the fundamental idea is to consider interests of corporate groups other than just those of shareholders.¹⁴ An emphasis that all stakeholders are sources of ends for the company, they all bear legitimate interests that must be pitched in the corporate objective function, they are not just a means to an end with the sole purpose of serving the shareholders but rather serve as building blocks to the proper management of the company¹⁵ It postulates that the company's goal is to create long term value for these stakeholders which must be done concurrently with maximising profits and enhancing overall shareholders' value.¹⁶

The theory espouses the answer to the question on how value creation and trade is sustainable over time.¹⁷ This question can be answered in three parts. First, value can be created, traded and sustained because stakeholders can jointly satisfy their needs and desires by making voluntary agreements with each other. Secondly, parties to an agreement are bound by the obligation to

¹²Lipton M, Wachtell, Lipton, Rosen, Katz, 'Stakeholder Capitalism and ESG as Tools for Sustainable Long-term Value Creation' Harvard Law School Forum on Corporate Governance, 11 June 2022—<<https://corpgov.law.harvard.edu/2022/06/11/stakeholder-capitalism-and-esg-as-tools-for-sustainable-long-term-value-creation/>> on 14 October 2024.

¹³Pollman E, 'The Origins and the Consequences of the ESG Moniker' 7.

¹⁴Brandt F, Georgiou K, 'Shareholders vs Stakeholders Capitalism' *Comparative Corporate Governance and Financial Regulation*, 2016,6—<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1002&context=fisch_2016> on 25 February 2025.

¹⁵Sacconi L, 'Introduction' in Blair M, Freeman E, Vercelli A, Sacconi L (eds) *Corporate Social Responsibility and Corporate Governance; The Contribution of Economic Theory and Related Disciplines*, 1st ed, Palgrave Macmillan, United Kingdom, 2011, xvi.

¹⁶Anukwe G, Onyeke K, Iloka C, 'The Importance of Stakeholder Capitalism in Corporate Sustainability', *Global Research Journal of Business Management*, 2024, 100—<https://www.researchgate.net/profile/Chiemelie-Iloka-2/publication/382825266_The_Importance_of_Stakeholder_Capitalism_in_Corporate_Sustainability/links/66ad3c3b51aa0775f264bb99/The-Importance-of-Stakeholder-Capitalism-in-Corporate-Sustainability.pdf> on 25 February 2025.

¹⁷Sacconi L, 'Introduction', xxvi.

assume responsibility for the consequences of their actions, in instances where third parties are harmed, they must be compensated or alternatively a new agreement should be negotiated among all affected parties. Third, human beings are complex psychological creatures capable of acting in accordance with many different values from many different points of view.¹⁸

In conjunction with this theory, comes its supportive principles that can serve as a foundation for the premise that value creation and trade are sustainable over time. First, the principle of stakeholder cooperation.¹⁹ It espouses the social nature of value creation where stakeholders voluntarily agree to satisfy each other's needs. Second, the principle of stakeholder engagement.²⁰ 'To successfully create, trade and sustain value, a business must engage its stakeholders.'²¹ Third, stakeholder responsibility, this principle espouses that even businesses have a moral ground where parties have to be held responsible for actions that cause harm to third parties.²² Fourth, the principle of complexity, it acknowledges that humans are complex and motivated by values, they act for multiple reasons and consider the consequences of their actions on themselves and others.²³ Finally, continuous creation of value that rests on the fact that value is continuously created through the cooperation of stakeholders.²⁴

With these principles, four main types of stakeholder capitalism arise. First, instrumental stakeholderism which focuses on maximising long term stakeholder value by meeting the interests of all the stakeholders which will consequently lead to an increase in value for the shareholders.²⁵ Second, classic stakeholderism which emphasizes the importance of recognising and respecting the legitimate interests of stakeholders, however, not all stakeholder desires are equally valid and thus, they should be prioritized based on ethical or legal standards.²⁶ Third, beneficial

¹⁸Freeman E, Wicks A, Parmar B, 'Stakeholder Theory as a Basis for Capitalism' in Blair M, Freeman E, Vercelli A, Sacconi L (eds) *Corporate Social Responsibility and Corporate Governance; The Contribution of Economic Theory and Related Disciplines*, 1st ed, Palgrave Macmillan, United Kingdom, 2011, 67.

¹⁹Freeman E, Martin K, Parmar B. 'Stakeholder Capitalism' *Journal of Business Ethics*, 2007, 311–<https://link.springer.com/content/pdf/10.1007/s10551-007-9517-y.pdf> on 23 January 2025.

²⁰Freeman E, Martin K, Parmar B. 'Stakeholder Capitalism' 311.

²¹Freeman E, Martin K, Parmar B. 'Stakeholder Capitalism' 311.

²²Freeman E, Martin K, Parmar B. 'Stakeholder Capitalism' 312.

²³Freeman E, Martin K, Parmar B. 'Stakeholder Capitalism' 312.

²⁴Freeman E, Martin K, Parmar B. 'Stakeholder Capitalism' 312.

²⁵Anukwe G, Onyeke K, Iloka C, 'The Importance of Stakeholder Capitalism in Corporate Sustainability' 101.

²⁶Anukwe G, Onyeke K, Iloka C, 'The Importance of Stakeholder Capitalism in Corporate Sustainability' 102.

stakeholderism which aims to not only meet the basic claims of the stakeholders but also to significantly improve their overall wellbeing. Fourth, structural stakeholderism, the main focus lies on increasing stakeholder power, the stakeholders can advocate for their interests without relying entirely on the business leader to consider them.²⁷ The adoption of the stakeholder approach in the business tends to have the outcome where upon achieving stakeholder satisfaction, their focus is directed toward the success of the company.²⁸ For employees, they will be dedicated to the business and demonstrate increased dedication to the company fulfilling their assigned roles effectively. Similarly, satisfied customers will be inclined to make repeat purchases.²⁹

Merrick Dodd espoused this theory to hold the balanced approach where both the interests of the shareholder and the stakeholders are fairly administered.³⁰ He acknowledges that shareholders are rightfully entitled to a fair return of their investment. However, Dodd also recognises that it is not solely the shareholders who contribute equity to the company; employees invest their labour and dedication, while consumers place their trust in the products. Ignoring these contributions would be tantamount to taking from the public to advantage both labour and capital.³¹ The domain of ESG investing, which incorporates environmental, social and governance factors into investment decisions, is often linked to the principles of shareholder capitalism.³² Stakeholder capitalism, supported by ESG, shifts towards a more inclusive approach where the needs of multiple stakeholders are integrated into decision making. This directly challenges the shareholder primacy model, advocating for a balanced consideration of all stakeholder interests.³³

²⁷Anukwe G, Onyeke K, Iloka C, 'The Importance of Stakeholder Capitalism in Corporate Sustainability' 103.

²⁸Anukwe G, Onyeke K, Iloka C, 'The Importance of Stakeholder Capitalism in Corporate Sustainability' 105.

²⁹Anukwe G, Onyeke K, Iloka C, 'The Importance of Stakeholder Capitalism in Corporate Sustainability' 105.

³⁰Vargas M, 'In Defense of E.Merrick Dodd: Corporate Social Responsibility in Modern Corporate Law and investment Strategy' *Business Lawyer*, 2018, 343–

https://www.jstor.org.ezproxy.library.strathmore.edu/stable/pdf/27171094.pdf?refreqid=fastly-default%3Ae9812111691658a884a84658ebd4fe00&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&initiator=&acceptTC=1 on 30 January 2025.

³¹Vargas M, 'In Defense of E.Merrick Dodd: Corporate Social Responsibility in Modern Corporate Law and investment Strategy' 343.

³²Kenan Institute of Private Enterprise, *Stakeholder Capitalism + ESG Investing*, 2022, 1.

³³Tirkkonen T, 'Sustainable Business Practices of VR Group: A Case Study of State-Owned Monopoly in the Transportation Sector' 1.

1.8 LITERATURE REVIEW

Modern corporate stakeholder theory has its roots in Professor. Merrick Dodd's classic 1932 Harvard Law Review article, "For Whom are the Corporate Managers Trustees?". He argues that corporations are no longer simply economic vehicles to produce shareholder returns but have become vital societal entities whose interests are shared by multiple groups including employees, consumers and the general public.³⁴ He ridicules the traditional view that propagates a corporation being an association of stockholders formed for the sole purpose of private gain, a ship steered by the directors towards the destination.³⁵ Where the directors and managers are considered fiduciaries whose sole purpose is to act in the interests of the stockholders.³⁶ Additionally, he sheds light on the emerging view of corporate social responsibility, a dramatic shift in the public opinion that corporations aside from having obligations to their stockholders, also have obligations to employees, customers and the general public.³⁷ He backs this up by adding that corporations acknowledging the value the aforementioned groups will, in the long run, increase shareholder value.³⁸

However, Nicholas Goosen and Charles Elson argued that the stakeholder theory is flawed supporting their claim with reference to the Dodge v Ford Motor Company where the shareholder primacy was first judicially recognised.³⁹ The court determined that shareholder primacy is justified simply because a business corporation is organised and carried on primarily for the profit of the stockholders as opposed to the 'eleemosynary'⁴⁰ goal of the corporate entity the defendant supported.⁴¹ They believed that Merrick Dodd strongly supported stakeholderism because of contextual circumstances, the great depression of 1929 that gravely affected his family.⁴² This argument is completely flawed, stakeholder theory did not arise as a direct consequence of the

³⁴Merrick D, 'For Whom Are Corporate Managers Trustees?' *Harvard Law Review*, 1932, 1154–
<https://www.wlrk.com/docs/For_Whom_are_Corporate_Managers_Trustees.pdf> on 30 January 2025.

³⁵Merrick D, 'For Whom Are Corporate Managers Trustees?' 1147.

³⁶Merrick D, 'For Whom Are Corporate Managers Trustees?' 1147.

³⁷Merrick D, 'For Whom Are Corporate Managers Trustees?' 1153.

³⁸Merrick D, 'For Whom Are Corporate Managers Trustees?' 1156.

³⁹Elson C, Goosen N, 'E. Merrick Dodd & the Rise and Fall of Corporate Stakeholder Theory', *Business Lawyer*, 2017, 3–<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2966331> on 29 January 2025.

⁴⁰of, relating to or supported by charity.

⁴¹Elson C, Goosen N, 'E. Merrick Dodd & the Rise and Fall of Corporate Stakeholder Theory', 7.

⁴²Elson C, Goosen N, 'E. Merrick Dodd & the Rise and Fall of Corporate Stakeholder Theory', 10.

Great Depression, rather it has gradually developed and taken hold in the corporate landscape nearly a century later.

Given the weight of the two arguments; stakeholder theory and shareholder primacy, a balance can be drawn between them; a balanced approach which Dodd characterizes as a “trusteeship” to administer wisely and fairly in the interest of all.⁴³ (and not in some way that the shareholder’s interests are diluted). Corporate Social Responsibility and ESG (the progeny of stakeholder theory⁴⁴) have embraced the balanced approach where stakeholder’s interests are taken into account.⁴⁵ This dispels the notion that we must choose between the interests of the shareholders and those of the stakeholders, moreover, empirical evidence suggests that stakeholder theory has become entrenched in the corporate world and has evolved into a prevailing business norm.⁴⁶

Lucian Bebchuk and Roberto Tallarita conduct an empirical study of stakeholderism and its expected consequences in their Article, “The illusory Promise of Stakeholder Governance.” They argue that the theory is fundamentally flawed due to its reliance on corporate leaders’ discretion, their incentives towards maximising shareholder value and the lack of accountability mechanisms.⁴⁷ They are informed by the Business Roundtable (BRT) statement that they considered a public relations move rather than a genuine commitment.⁴⁸ This parallels the tendency of corporations to adopt ESG principles primarily as a veneer to enhance their public legitimacy rather than a substantive commitment to those principles.

⁴³Vargas M, ‘In Defense of E.Merrick Dodd: Corporate Social Responsibility in Modern Corporate Law and investment Strategy’ *Business Lawyer*, 2018, 343–
<https://www.jstor.org.ezproxy.library.strathmore.edu/stable/pdf/27171094.pdf?refreqid=fastly-default%3Ae9812111691658a884a84658ebd4fe00&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&initiator=&acceptTC=1> on 30 January 2025.

⁴⁴Vargas M, ‘In Defense of E. Merrick Dodd: Corporate Social Responsibility in Modern Corporate Law and Investment Strategy’ 363.

⁴⁵Vargas M, ‘In Defense of E. Merrick Dodd: Corporate Social Responsibility in Modern Corporate Law and Investment Strategy’ 363.

⁴⁶Vargas M, ‘In Defense of E. Merrick Dodd: Corporate Social Responsibility in Modern Corporate Law and Investment Strategy’ 364.

⁴⁷Bebchuk L, Tallarita R, ‘The Illusory Promise of Stakeholder Governance’ *Cornell Law Review*, 2021, 99–
<<https://www.cornelllawreview.org/wp-content/uploads/2021/02/The-Illusory-Promise-of-Stakeholder-Governance.pdf>> on 30 January 2025.

⁴⁸Bebchuk L, Tallarita R, ‘The Illusory Promise of Stakeholder Governance’ 98.

In the corporate world today, there is the rise of the Environmental, Social and Governance (ESG) issues as a consideration for the stakeholders of a corporation. Investors, consumers, the public, CEOs and directors are now pushing corporations to embrace the ESG goals.⁴⁹ Michal Barzuza, Quinn Curtis and David Webber argue that the rise of ESG is linked to the changing social preferences of key stakeholders, it is a product of social demand.⁵⁰ They outline five channels that contribute to this argument; First, corporations face market pressure from their stakeholders to demonstrate a commitment to the ESG goals.⁵¹ Second, the demand for ESG has created personal incentives for CEOs to advance ESG goals independent of the corporation's overall value.⁵² Third, social demand for ESG has created strong incentives for index fund managers to promote ESG making reference to the big three index fund managers; BlackRock, State Street and Vanguard. Fourth, social demand has incentivised hedge funds to target corporations with ESG vulnerabilities.⁵³ Fifth, the demand for ESG has pushed for regulation which has weakened long standing obstacles that regulators have faced such as lobbying activities.⁵⁴ Deducting from this, it has become clear that ESG holds significant influence with real outcomes, real money at stake and consequential actions.⁵⁵

In the traditional corporation field, prior to the rise of ESG, managers had weak incentives to promote shareholder wealth and even weaker incentives to promote stakeholder wealth.⁵⁶ This is evident from the fact that managers' duties were tied to shareholder value and their private benefits and they owed no obligations to stakeholders.⁵⁷ However, in recent years this approach has been replaced by the growing demand for ESG where managers and CEOs are now adopting stakeholderism.⁵⁸ The market is being influenced by consumers who now have strong preferences for social responsibilities and investors are willing to pay for social responsibility. Moreover, they

⁴⁹Barzuza M, Curtis Q, Webber D, 'The Millennial Corporation: Strong Stakeholders, Weak Managers' *Stanford Journal of Law, Business and Finance*, 2023, 258—<https://law.stanford.edu/wp-content/uploads/2023/08/Barzuza_Final.pdf> on 25 February 2025.

⁵⁰Barzuza M, Curtis Q, Webber D, 'The Millennial Corporation: Strong Stakeholders, Weak Managers' 259.

⁵¹Barzuza M, Curtis Q, Webber D, 'The Millennial Corporation: Strong Stakeholders, Weak Managers' 259.

⁵²Barzuza M, Curtis Q, Webber D, 'The Millennial Corporation: Strong Stakeholders, Weak Managers' 260.

⁵³Barzuza M, Curtis Q, Webber D, 'The Millennial Corporation: Strong Stakeholders, Weak Managers' 261.

⁵⁴Barzuza M, Curtis Q, Webber D, 'The Millennial Corporation: Strong Stakeholders, Weak Managers' 261.

⁵⁵Barzuza M, Curtis Q, Webber D, 'The Millennial Corporation: Strong Stakeholders, Weak Managers' 262.

⁵⁶Barzuza M, Curtis Q, Webber D, 'The Millennial Corporation: Strong Stakeholders, Weak Managers' 273.

⁵⁷Barzuza M, Curtis Q, Webber D, 'The Millennial Corporation: Strong Stakeholders, Weak Managers' 274.

⁵⁸Barzuza M, Curtis Q, Webber D, 'The Millennial Corporation: Strong Stakeholders, Weak Managers' 274.

highlight the effects of the social demand. First, there has been an active push for board diversity, more women are on corporate boards and the percentage of directors who are black have tripled in the recent years.⁵⁹ Second, corporations are embracing environmental practices where climate change is being mainstreamed.⁶⁰ Third, many corporations are now making voluntary ESG disclosures and understanding that being labelled as a bad corporate citizen is more detrimental to the value of the corporation thus making it difficult to recruit new employees or even consumers.⁶¹

Narrowing this aspect from being a global issue to a burgeoning momentum within Kenya where similar trends are observed, Kariuki Muigai underpins the existence of knowledge of ESG principles in Kenya highlighting how the field has broadened to encapsulate the stakeholders in terms of activities carried out by companies, expounding their constricted view of shareholder primacy and profit maximisation. He links ESG practices to sustainable development and ethical investment. ESG has been embraced in the Kenyan markets and this can be seen in the ESG disclosure and reporting requirements that align with the Sustainable Development Goals (SDGs) as their foundational framework. He emphasises the necessity for companies in Kenya to consistently adopt the principles of ESG to advance sustainable development. ESG has been implemented in Kenya as laid out in the existing legal framework such as the Guidance on Climate-related Risk Management by the Central Bank of Kenya, the Kenya Green Board Programme, the Kenya Insurance Industry has set up a taskforce on ESG.⁶² The implementation of ESG in Kenya heavily relies on the reporting structure.⁶³ However, this implementation requires refinement, as challenges have arisen to complicate its implementation.⁶⁴

1.9 RESEARCH DESIGN AND METHODOLOGY

The scope of the study will concentrate on Kenyan firms within the broader context of African markets, addressing the unique challenges within the region. The study will cover historical

⁵⁹Barzuza M, Curtis Q, Webber D, 'The Millennial Corporation: Strong Stakeholders, Weak Managers' 295.

⁶⁰Barzuza M, Curtis Q, Webber D, 'The Millennial Corporation: Strong Stakeholders, Weak Managers' 297.

⁶¹Barzuza M, Curtis Q, Webber D, 'The Millennial Corporation: Strong Stakeholders, Weak Managers' 297.

⁶²Federation of Kenya Employers, 'ESG and its Implications for Kenyan Enterprises; FKE Member Briefing Note' June 2022—<<https://www.ilo.org/media/373041/download>> on 17 October 2024.

⁶³Nairobi Securities Exchange ESG Disclosure Guidance Manual, November 2021.

⁶⁴ Muigua K, 'Embracing Environmental, Social and Governance (ESG) Principles for Sustainable Development in Kenya', 9(2), *Journal of Conflict Management & Sustainable Development*, 2022, 15.

developments of ESG practices up to the present day. The paper will employ the desktop approach, using both primary and secondary research to solidify it. The primary resources include acts of parliament and international legal instruments while secondary sources will consist of data collected from existing reports, publications, articles and any other useful documents.

1.10 CHAPTER BREAKDOWN

The study will comprise of five chapter as structured below;

Chapter one

The introductory chapter comprising of the background, problem statement, purpose of the study, hypothesis, research objectives, research questions, rationale of the study, scope of the study, theoretical framework and the literature review

Chapter two

To evaluate the historical underpinning of ESG practices and foundational concepts globally and its ties to Africa, specifically Kenya.

Chapter three

To evaluate the existing legal framework regarding ESG practices in Kenya and its implementation within Kenyan firms.

Chapter four

This chapter analyses the relationship between the level of ESG implementation in Kenyan firms and measurable outcomes in climate change mitigation and Promotion of sustainable development while highlighting the challenges. It also explores strategies for improving ESG practices by effectively addressing the aforementioned challenges.

Chapter five

To summarise findings and recommendations.

CHAPTER TWO

2.0 HISTORICAL FOUNDATIONS TO FOUNDATIONAL REQUIREMENTS OF ESG PRACTICES: A GLOBAL PERSPECTIVE WITH A FOCUS ON KENYA

2.1 THE SPROUTING OF THE TERM ESG

The term ESG surfaced years ago when sustainable development was tabled as one of the vital discussions concerning development. In the words of Elizabeth Pollman, *‘The story begins with this international organisation and its eventual connection and responsiveness to senior executives of global financial institutions, followed by a host of related initiatives and efforts that helped to spread the term until it reached rapid uptake in mainstream discourse.’*⁶⁵ In July 2000, the United Nations Secretary General Kofi Annan launched the **UN Global Impact (UNGC)**,⁶⁶ a voluntary “corporate citizenship initiative” that subjected companies to human rights, labour, environmental and anti-corruption principles.

The monumental situation that preceded this was on January 1999 when Kofi Annan addressed the audience in the World Economic Forum (WEF) at Davos, Switzerland and managed to convince and make the crowd aware of the fragility of globalisation, the rising inequality of wealth distribution, the imbalances of governance and regulations for human rights, environmental issues and social issues and the unsustainability of the current levels of degradation of natural resources.⁶⁷ He emphasised the importance of the hand of the United Nations in this path, *‘The International Chamber of Commerce on 5 July 1999 adopted a statement ‘arguing for a stronger United Nations as the most sensible way forward, and pledged to work with United Nations agencies to implement the Global Compact at the corporate level.’*⁶⁸ The UNGC, after its formation, came up with a set

⁶⁵Pollman E, ‘The Origins and the Consequences of the ESG Moniker’ University of Pennsylvania Carey Law School, Research Number 22-23, 2024, 7– <<https://www.ecgi.global/sites/default/files/Paper:%20Elizabeth%20Pollman.pdf>> on 10 November 2024.

⁶⁶ –<<https://unglobalcompact.org/what-is-gc>> on 10 November 2024.

⁶⁷Gonzalez-Perez M, Leonard L, ‘UN Global Compact’, *ResearchGate*, 2016, 9– <https://www.researchgate.net/profile/Maria-Alejandra-Gonzalez-Perez-2/publication/309824954_The_UN_Global_Compact/links/58247c2108aeb45b588cdc73/The-UN-Global-Compact> on 10 November 2024.

⁶⁸Gonzalez-Perez M, Leonard L, ‘UN Global Compact’ 10.

of ten principles grouped into four areas; human rights, labour standards, the environment and anti-corruption. Within a couple of years, a thousand firms were signatories of the compact and this was built on the efforts of the UNGC.

In 2004, Kofi Anna invited representatives from eighteen financial institutions, including banks, insurers, asset management, consulting, and financial services companies, to “develop guidelines and recommendations on how to better integrate environmental, social and corporate governance issues in asset management, securities brokerage services and associated research functions.”⁶⁹ The resulting action of this was the production of the **Who Cares Who Wins Report** endorsed by the financial groups and overseen by the UNGC. The report provided the framework for the launch of **Principles for Responsible Investing (PRI)**, a global investor ESG initiative coordinated by the UN Environment Programme Finance Initiative (UNEP FI) and the Global Compact. Endorsing institutions were convinced that a better consideration of environmental, social and governance factors will ultimately contribute to stronger and more resilient investment markets, as well as contribute to the sustainable development of societies.⁷⁰ The report emphasised that companies managing ESG issues are likely to enhance shareholder value, establishing ESG as a key mechanism for value creation.⁷¹ The report asserts that successful investment relies on a vibrant economy, which in turn depends on a healthy civil society and a sustainable planet.⁷² Thus, there is a clear synchrony between a company’s success and its integration of ESG values as long-term value drivers.

The Global Reporting Initiative (GRI) which had launched its guidelines in 2000, the same year as the UGCC, had initially focused on environmental conduct principles following the public outcry over the Exxon Valdez oil spill.⁷³ By mid 2000s, the guidelines were expanded and GRI opened offices around the world shifting its focus from its main previous mandate- environment conduct principles to ESG issues and eventually transitioned from providing guidelines to global

⁶⁹ Wang M, ‘Environmental, Social and Corporate Governance; A History of ESG Standardisation from 1970s to the Present’ Published, Columbia University, New York, 2023, 12.

⁷⁰The Global Compact, Who Cares Who Wins, 2004, 6.

⁷¹The Global Compact, Who Cares Who Wins, 2004, 6.

⁷²The Global Compact, Who Cares Who Wins, 2004, 19.

⁷³Pollman E, ‘The Origins and the Consequences of the ESG Moniker’ 17.

standards for reporting.⁷⁴ The **Who Cares Who Wins Initiative** which originally coined the term ESG proceeded with its efforts in 2008 in “a series of closed-door/invitation-only events for investment professionals, providing a platform for asset managers and investment researchers to engage with institutional asset owners, companies and other private and public actors on ESG issues.”⁷⁵ The impact of the report further widened the array to a much larger universe of institutions from new bank participants such as Citigroup to companies like Nestlé and Royal Dutch Shell, and a wide array of non-profit organisations.⁷⁶ In fact within a decade’s time, the foundation was laid for the term ESG to become increasingly prevalent in subsequent years. Having traced the historical foundations of ESG– from its inception through global initiatives to its growing prevalence–it is now crucial to analyse the core elements functioning as a mechanism for sustainable corporate practices.

2.2 FOOTSTOOLS THAT MAKE ESG WORK

There are certain things that are needed to make ESG work in an efficient manner; certain building blocks that are fundamental in the cog machine of ESG. These include; market demand, a shift in corporate culture, transparency and disclosure, cohesive institutional framework, government intervention, a competitive environment and policies and long term vision.

2.2.1. Market demand

As Georg Kell clearly highlighted, ‘*The rise of ESG investing can also be understood as a proxy of how markets and societies are changing and how concepts of valuation are adapting to these changes.*’⁷⁷ Companies are compelled to align to changing consumer and investor preferences that favour smarter, cleaner and healthier products and services thereby moving away from the permissive practices of the industrial era when pollution was unregulated, labour was viewed merely as a cost factor and scale and scope constituted a dominant strategy.⁷⁸ This is basically

⁷⁴Pollman E, ‘The Origins and the Consequences of the ESG Moniker’ 18.

⁷⁵Pollman E, ‘The Origins and the Consequences of the ESG Moniker’ 18.

⁷⁶Pollman E, ‘The Origins and the Consequences of the ESG Moniker’ 18.

⁷⁷Pollman E, ‘The Making and Meaning of ESG’ 26.

⁷⁸Pollman E, ‘The Making and Meaning of ESG’ 26.

shifting from the historical precedent that was set in the industrial era and adopting the present era that embraces environmental, social and governance footsteps. Consumer demand is continuously driving companies towards meeting ESG expectations for two reasons; one, it is the right thing to do and second, it provides a competitive advantage. Companies that fail to adhere to consumer demand risk losing market share as consumers vote with their wallets.⁷⁹

Additionally, in recent years, ESG issues have increasingly influenced investor behaviour making investors not only care about financial returns but also the moral dividend that comes with it.⁸⁰ Billions of dollars have flowed into investment vehicles and lending facilities that promote ESG goals and subsequently, companies have faced direct and indirect pressure from institutional investors, creditors, consumers and employees to be more environmentally and socially responsible.⁸¹ The author posits that adherence to ESG principles constitutes a win-win scenario; empirical evidence substantiates that companies embracing these principles experience appreciation in stock value, concurrently fostering the advancement of ESG issues.⁸²

2.2.2. A Shift in Corporate Culture

Corporate culture is the set of shared attitudes, values, goals and practices that characterises an institution or organisation.⁸³ In 1970, Milton Friedman published his famous essay, “*The social responsibility of business is to increase profits*”, he argued that the priority of a corporate executive was to make as much money as possible while conforming to basic rules of society, both those embodied in law and those embodied in custom.⁸⁴ However, he failed to consider or rather overlooked the evolving public expectations of business and the shifting of standards for acceptable practices and ethical norms, his push for businesses to embrace the “basic rules” and meet minimum compliance did not account for the increasing demand from consumers and

⁷⁹ –<<https://storm4.com/resources/industry-insights/how-consumers-are-driving-esg/>> on 20 September 2024.

⁸⁰Barko T, Cremers M, Renneboog L, ‘ Shareholder Engagement on Environmental, Social and Governance Performance’,*Journal of Business Ethics*, 2021, 781–<<https://link.springer.com/article/10.1007/s10551-021-04850-z>> on 20 September 2024.

⁸¹Houston J, Lin C, Shan H, Shen M, ‘How does ESG Shape Consumption’,2.

⁸²Brandon R, Krueger P, Mitali S, ‘The Sustainability Footprint of Institutional Investors: ESG Driven Price Pressure and Performance’,5.

⁸³Merriam Webster Dictionary, 4th ed.

⁸⁴Wang M, ‘Environmental, Social and Corporate Governance; A History of ESG Standardisation from 1970s to the Present’ 19.

activists in the 1970s for broader corporate responsibility.⁸⁵ The concept of ESG has shifted from a compliance tool to a value creation tool mirroring the shift of businesses to a more holistic approach in terms of measurement of performance.⁸⁶ In today's world the value of a company is not only about financial performance but also its impact on the stakeholders and the environment.⁸⁷ The shift in mind-set of a company is fundamental to fostering a corporate culture where sustainability is integrated into all aspects of the business, an example of this is instead of a company solely focusing on reducing negative externalities such as pollution levels, it should also actively seek opportunities to create positive social and environmental outcomes.⁸⁸ This leans on the side of moving away from the famous shareholder capitalism to stakeholder long term value creation. Companies should regenerate to viewing the world in terms of increasing profits to accommodate environmental, social and governance goals and this without any doubt counts as a foundation to the success story of ESG.

2.2.3. Transparency and disclosure

The “Who Cares Who Wins” report highlights the crucial need of transparency and disclosure as an important tool for the successful integration of ESG factors to financial and investment analysis.⁸⁹ Transparency paves way for two things; promoting accountability (as companies are more likely to be held responsible by their actions and commitments when their practices are openly disclosed) and provision of information to allow investors to make informed decisions.⁹⁰ One of the failures of CSR was that there was a significant risk of “greenwashing”⁹¹ where CSR efforts were not aligned with the company practices or lacked integration with strategic initiatives and thus arising the need of transparency and reliability in reporting on issues of sustainable

⁸⁵Wang M, ‘Environmental, Social and Corporate Governance; A History of ESG Standardisation from 1970s to the Present’ 19.

⁸⁶ Edmans A, ‘The End of ESG’,3.

⁸⁷ Edmans A, ‘The End of ESG’,3.

⁸⁸ Edmans A, ‘The End of ESG’,3.

⁸⁹The Global Compact, Who Cares Who Wins, 2004, 48.

⁹⁰The Global Compact, Who Cares Who Wins, 2004, 48.

⁹¹ The art or practice of making a product, policy, activity etc. appear to be more environmentally friendly or less environmentally damaging than it actually is.

development.⁹² Consequently, when companies engage in reporting, they must convey the genuine value of their practices, rather than merely presenting information at face value.

2.2.4. Cohesive institutional framework

Institutional theory posits that organisations are influenced by pressures from their institutional environment including societal expectations, legal requirements and industrial norms.⁹³ It emphasises on the importance of companies submitting to these institutional pressures so as to gain acceptance and legitimacy in society.⁹⁴ A company's compliance with environmental regulations, industrial best practices and response to stakeholder concern all amount to a social licence to operate. Picture it like an equation or like a test; for a company to gain a social licence to operate⁹⁵: it needs to fulfil certain requirements; comply to the market demand-external pressures from the stakeholders and surrounding communities⁹⁶, embrace transparency and disclosure⁹⁷, adhere to standard ethical conduct in business practices, supply chain management and its interaction with the stakeholders.⁹⁸ Failure to adhere to these requirements result in reputational damage⁹⁹, community opposition¹⁰⁰, investor divestment¹⁰¹ and regulatory scrutiny.¹⁰²

⁹²Kazmierczak M, 'A Literature Review on the Difference Between CSR and ESG' 10.

⁹³Lodhi R, Gesso C, 'Theories Underlying Environmental, Social and Governance (ESG) disclosure: a Systematic Review of Accounting Studies', 7.

⁹⁴Lodhi R, Gesso C, 'Theories Underlying Environmental, Social and Governance (ESG) disclosure: a Systematic Review of Accounting Studies', 7.

⁹⁵ Acceptance and approval of a company's operations and activities by the communities and stakeholders that are affected by it.

⁹⁶Tirkkonen T, 'Sustainable Business Practices of VR Group: A Case Study of State-Owned Monopoly in the Transportation Sector' Lappeenranta-Lahti University of Technology LUT, 2023, 15–
<<https://lutpub.lut.fi/bitstream/handle/10024/166806/TirkkonenTuomoJulkaisuValmisTutkielma.pdf?sequence=1&isAllowed=y>> on 22 September 2024.

⁹⁷The Global Compact, Who Cares Who Wins, 2004, 48.

⁹⁸Pollman E, 'The Origins and the Consequences of the ESG Moniker' 15.

⁹⁹Tirkkonen T, 'Sustainable Business Practices of VR Group: A Case Study of State-Owned Monopoly in the Transportation Sector' 2.

¹⁰⁰Tirkkonen T, 'Sustainable Business Practices of VR Group: A Case Study of State-Owned Monopoly in the Transportation Sector' 2.

¹⁰¹Houston J, Lin C, Shan H, Shen M, 'How does ESG Shape Consumption', 18.

¹⁰²Tirkkonen T, 'Sustainable Business Practices of VR Group: A Case Study of State-Owned Monopoly in the Transportation Sector' 2.

2.2.5. Government intervention

Synonymous to financial returns, ESG should not receive different treatment from any other social return, evidently, externalities arise from ESG issues such as climate change and this magnitude of effect requires the hand of the government to minimise it.¹⁰³ What role might the government play? Subsidise tax or regulate externality-producing activities such as taxing carbon emissions, imposing minimum wages and introducing diversity quotas.¹⁰⁴ “Governments are being held accountable by employees, constituents and society generally, to urgently address heightened climate events, advance equity for all and drive positive social change.”¹⁰⁵ It is necessary because government policies can help correct market failures by internalising the externalities and creating a level market field for companies that prioritise ESG. However, this must be accompanied with political will from the government.

2.2.6. Decentralised corporation ownership

A competitive market incentivises companies to improve their ESG performance.¹⁰⁶ If one company fails to meet ESG standards, consumers can easily switch to a competitor that does.¹⁰⁷ Monopolies face less pressure to prioritise ESG. A state-owned monopoly being a market structure in which a government-owned company is the sole provider of a product or a service, from a sustainability perspective does not face similar pressure to operate as responsibly as companies operating in perfectly competitive markets.¹⁰⁸ State owned enterprises are most active in critical domains in society such as financial services, public infrastructural utilities such as electricity and water, and telecommunications. In a monopoly regime, the absence of competing standard setting bodies undermines essential checks and balances, making the monopolistic entity more susceptible to the influence of powerful stakeholders.¹⁰⁹ This diminishes stakeholder power, which in an ideal ESG framework is intended to serve as a corrective mechanism.

¹⁰³Edmans A, ‘The End of ESG’, 7.

¹⁰⁴Edmans A, ‘The End of ESG’, 7.

¹⁰⁵KPMG, ‘Environmental, Social and Governance: Government Leadership as a Catalyst for Success’ July 2022,4.

¹⁰⁶—<<https://novisto.com/resources/blogs/the-importance-of-esg-practices-in-business-part-2>> on 28 January 2025.

¹⁰⁷—<<https://novisto.com/resources/blogs/the-importance-of-esg-practices-in-business-part-2>> on 28 January 2025.

¹⁰⁸Tirkkonen T, ‘Sustainable Business Practices of VR Group: A Case Study of State-Owned Monopoly in the Transportation Sector’ 17.

¹⁰⁹Salzillo G, Ricciardi G, Moscariello N, Pizzo M, ‘Monopoly vs Competition: Determining The Optimal Regulatory Infrastructure for Sustainability Standards’ in Moscariello N, Michelle P (eds), *Climate Change and Corporate Reporting in Europe: Standard Setting and Disclosure Practices*, 1st ed, Cambridge Scholars Publishing, 2024, 46.

2.3 EXAMPLES OF COUNTRIES THAT HAVE SUCCESSFULLY IMPLEMENTED ESG

2.3.1. The Netherlands

Corporations across the Netherlands are incorporating ESG principles into their business models with the mind-set that ESG has caused one of the biggest disruptions in decades in the corporate world.¹¹⁰ The elements that have pushed corporations to wholly embrace ESG include external pressures (market demand) including regulation and rising consumer awareness and a decentralized corporation ownership structure.¹¹¹ The external pressure has pushed corporations to incorporate sustainable practices into their business model. *‘The younger generation is holding corporations accountable on ESG matters and employees not only have the expectation that corporations will do the right thing but also are intrinsically motivated to act toward ESG goals,’* the Google Netherlands country director reported. Moreover, corporations have been more transparent in their ESG practices, CEOs have fostered communications to their stakeholders divulging into issues such as waste reductions, diversity, health and safety.

Consequently, corporations have felt compelled to respond to the ESG imperatives in order to maintain and grow their businesses and as a result, ESG has become a top- three strategic priority from empirical evidence gathered by Sustainalytics.¹¹² Additionally, there has been a shift in corporate culture, CEOs are aware of the transformational shift and have embraced it. Adriaan Thierry, CEO at consumer products company Bugaboo said: *‘It starts with purpose—our purpose explicitly talks about current and future generations; half the words in our purpose are directly and indirectly linked to ESG’*¹¹³ Frits Eulderink, COO of tank storage company Royal Vopak said: *‘Our primary motivation is the responsibility we feel as part of society. If you don’t have a thriving society, you cannot have a thriving business.’* There has been a successful implementation of ESG

¹¹⁰—<<https://www.bain.com/insights/how-netherlands-businesses-are-rising-to-the-esg-challenge/>> on 05 March 2025.

¹¹¹—<<https://www.bain.com/insights/how-netherlands-businesses-are-rising-to-the-esg-challenge/>> on 05 March 2025.

¹¹²—<<https://www.bain.com/insights/how-netherlands-businesses-are-rising-to-the-esg-challenge/>> on 05 March 2025.

¹¹³—<<https://www.bain.com/insights/how-netherlands-businesses-are-rising-to-the-esg-challenge/>> on 05 March 2025.

practices in the Netherlands and this has been due to the fact that the key foundational elements are present; market demand, transparency and disclosure, shift in corporate culture and a cohesive regulatory structure.

2.3.2. China

Similar to other corporations embracing the ESG initiatives, China has made significant strides in this area.¹¹⁴ China's companies have advanced in ESG integration and this is evident in their ESG ranking in different industries ranging from energy, technology and automotive.¹¹⁵ This has been possible by several factors. First, through a cohesive institutional framework, the Chinese government has integrated ESG-related measures into its regulatory system to guide corporate behaviour toward more sustainable practices pushing for ESG reporting and disclosure. The China Securities Commission (CSRC) introduced ESG-related rules pertaining to investor relations management.¹¹⁶ Aside from the national framework, China's regulation has been influenced by international frameworks and principles such as the Principles for Responsible Investment and its alignment with the global standards. Second, market demand from the stakeholders including investors are becoming increasingly aware of ESG value- corporations thus calling for robust ESG disclosure to inform their investment decisions.¹¹⁷ Third, transparency, corporations are more transparent in their ESG integration and this has been done through disclosures.¹¹⁸ These disclosures are done regularly providing investors with the knowledge needed to influence their decisions.

¹¹⁴—<<https://msadvisory.com/china-esg/#:~:text=China%20began%20formalizing%20its%20ESG,companies%20in%20the%20early%20stages.>> on 05 March 2025.

¹¹⁵—<<https://msadvisory.com/china-esg/#:~:text=China%20began%20formalizing%20its%20ESG,companies%20in%20the%20early%20stages.>> on 05 March 2025.

¹¹⁶—<<https://msadvisory.com/china-esg/#:~:text=China%20began%20formalizing%20its%20ESG,companies%20in%20the%20early%20stages.>> on 05 March 2025.

¹¹⁷—<<https://msadvisory.com/china-esg/#:~:text=China%20began%20formalizing%20its%20ESG,companies%20in%20the%20early%20stages.>> on 05 March 2025.

¹¹⁸

CHAPTER THREE

3.0 NAVIGATING THE ESG LANDSCAPE IN KENYA: THE EXISTING LEGAL FRAMEWORK AND ITS IMPLICATIONS

ESG in its definition can be understood as a framework that helps stakeholders get a grasp on how an organisation is managing risks and opportunities related to environmental, social and governance criteria.¹¹⁹ As a result, the ESG criteria offer both qualitative and quantitative data on a business's sustainability policies and how they could affect different stakeholders.¹²⁰ Kenya's ESG legal framework is still growing and has not yet reached its potential, nevertheless, the existing framework covers significant areas.

3.1 The Nairobi Securities Exchange ESG Disclosures Guidance Manual

The primary regulatory framework for ESG in Kenya is provided for by the Nairobi Securities Exchange, *the Nairobi Securities Exchange ESG Disclosures Guidance Manual*. The main purpose of the manual is to '*illustrate and guide how listed companies in Kenya and other organisations interested in ESG reporting can collect, analyse and publicly disclose important ESG information using an approach that meets international standards on sustainability reporting.*'¹²¹ It highlights how organisations are required to disclose both financial and non-financial performance to their stakeholders- investors, regulators and customers.¹²² In accordance with the Nairobi Securities Exchange, listed companies in Kenya have a general awareness of ESG issues and corporate sustainability, however, there is a need for training on how to incorporate

¹¹⁹Muigua K, '(Re) Examining Environmental, Social and Governance (ESG) and Human Rights' *KMCO Publications*, 2024, 3-<<https://kmco.co.ke/wp-content/uploads/2024/01/Re-Examining-Environmental-Social-and-Governance-ESG-and-Human-Rights.pdf>> on 10 December 2024.

¹²⁰Muigua K, '(Re) Examining Environmental, Social and Governance (ESG) and Human Rights' *KMCO Publications*, 2024, 4-<<https://kmco.co.ke/wp-content/uploads/2024/01/Re-Examining-Environmental-Social-and-Governance-ESG-and-Human-Rights.pdf>> on 10 December 2024.

¹²¹Nairobi Securities Exchange, Nairobi Securities Exchange ESG Disclosures Guidance Manual, November 2021,8.

¹²²Nairobi Securities Exchange, Nairobi Securities Exchange ESG Disclosures Guidance Manual, November 2021,8.

ESG into their business strategies and how to report ESG performance consistently and in a transparent manner.¹²³

The Manual provides that ESG reporting should be on a materiality basis, a threshold for influencing the economic decisions of those using the organisation's financial information, the process of prioritising ESG topics for reporting and based on the assessed needs of different stakeholders.¹²⁴ It recommends the adoption of the Global Reporting Initiative standards as the common framework for ESG reporting which gives a guideline for what is material by providing that the ESG report should cover topics that relate to the organisation's significant economic, environmental and social impacts.¹²⁵ This disclosure is inclusive of reporting publicly on the organisation's economic, environmental and social impacts, its contributions whether positive or negative towards the goal of sustainable development.¹²⁶ It places emphasis on transparency and stakeholder engagement stating that transparency is essential for continuous improvement. The goal is to provide investors and the public with a comprehensive view of a company's activities and performance beyond just financial numbers. The manual proposes mandatory ESG disclosure of listed companies to help achieve comparability and to facilitate compliance with the CMA code, relevant international treaties, ESG standards and local regulations.¹²⁷

3.2 Code of Corporate Governance Practices for Issuers of Securities

The Capital Markets Authority published the *Code of Corporate Governance Practices for Issuers of Securities, 2015* which establishes a minimum set of standards for stakeholders of both publicly listed and unlisted companies. It requires listed companies to explain in their annual reports how they have applied the recommendations contained in the Code.¹²⁸ It provides a list of topics that the Board of listed companies should treat as material.¹²⁹ It defines material information

¹²³—<<https://thelawyer.africa/2024/03/04/nse-esg-disclosure-and-reporting-requirements/>> on 25 February 2025.

¹²⁴Nairobi Securities Exchange, Nairobi Securities Exchange ESG Disclosures Guidance Manual, November 2021,7.

¹²⁵Nairobi Securities Exchange, Nairobi Securities Exchange ESG Disclosures Guidance Manual, November 2021,8.

¹²⁶Nairobi Securities Exchange, Nairobi Securities Exchange ESG Disclosures Guidance Manual, November 2021,8.

¹²⁷Nairobi Securities Exchange, Nairobi Securities Exchange ESG Disclosures Guidance Manual, November 2021,24.

¹²⁸Capital Markets Authority, *Code of Corporate Governance Practices for Issuers of Securities to the Public* 2015.

¹²⁹Capital Markets Authority, *Code of Corporate Governance Practices for Issuers of Securities to the Public* 2015.

as any information that may affect the price of an issuer's securities or influence investment decisions.¹³⁰ The code obliges boards to implement formal strategies that are aimed at promoting sustainability.¹³¹ Furthermore, it mandates that companies disclose their environmental, social and governance policies, as well as their implementation in both their annual reports and on their websites.¹³²

3.3 The Companies Act

The Companies Act 2015 dictates that it is the duty of directors while promoting the success of a company to have regard to the impact of the operations of the company on the community and the environment.¹³³ It outlines the requirements for financial disclosure and reporting, promoting accountability and transparency.¹³⁴

3.4 The Consumer Protection Act

The *Consumer Protection Act* which provides for the protection of the consumer, prevents unfair trade practices in consumer transactions, the act establishes a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers, generally to promote and advance the social and economic welfare of consumers.¹³⁵

In conclusion, while Kenya's ESG legal framework is making strides, it remains primarily focused on voluntary reporting and disclosure, which limits its effectiveness. The existing provisions, while significant, primarily guide corporations on how to report their ESG impacts without enforcing stringent compliance measures. As such, for Kenya to fully realise the potential of its ESG framework, it must evolve beyond mere disclosure to incorporate binding standards that ensure companies actively manage and mitigate their ESG-related risks and opportunities.

¹³⁰Capital Markets Authority, *Code of Corporate Governance Practices for Issuers of Securities to the Public 2015*.

¹³¹Capital Markets Authority, *Code of Corporate Governance Practices for Issuers of Securities to the Public 2015*.

¹³²Capital Markets Authority, *Code of Corporate Governance Practices for Issuers of Securities to the Public 2015*.

¹³³Section 143(1)(d), *Companies Act (Act No. 101 of September 2015)*.

¹³⁴Section 727, *Companies Act (Act No. 101 of September 2015)*.

¹³⁵Section 3(4)(a), *Consumer Protection Act (Act No. 3 of January 2013)*.

CHAPTER FOUR

4.0 IMPLEMENTATION OF ESG PRACTICES IN KENYAN CORPORATIONS

The paper will analyse the layout of ESG practices on Kenya. While the existing legal framework provides a foundational basis, it is imperative to assess how this framework transcends mere theoretical constructs. The success of ESG implementation is contingent upon several foundational elements, as previously discussed, which will serve as critical benchmarks to evaluate the effectiveness of ESG practices within Kenyan corporations.

4.1 Market demand

The analysis will investigate whether there is market demand in Kenya and this will be assessed using the following factors; consumer preferences, analysis of investment trends and market power dynamics outlined below. The analysis will conclude that the Kenya does not

4.1.1 Consumer preferences

The part will investigate whether Kenyan consumers are willing to pay for products or services from socially responsible firms compared to those that are not and perform an analysis on consumer behaviour. In a study conducted by Omayio, Abong, Elmah and Marion, they found that only 39% of consumers are aware of sustainable consumption and production while only 41% of the respondents knew little or nothing about the environmental impact of the products they buy.¹³⁶ Moreover, they found that purchasing behaviour and factors influencing decisions are mostly prices and product quality.¹³⁷ High prices, lack of adequate information and unavailability are major hindrances to buying green products.¹³⁸

¹³⁶Omayio D, Abong G, Elmah G, Marion S, 'Consumer awareness, practices and purchasing behaviour towards green consumerism in Kenya' *East African Journal of Science, Technology and Innovation*, 2021, 3–
<<https://ejsti.org/index.php/EAJSTI/article/view/334/45>> on 25 February 2025.

¹³⁷Omayio D, Abong G, Elmah G, Marion S, 'Consumer awareness, practices and purchasing behaviour towards green consumerism in Kenya' 5.

¹³⁸Omayio D, Abong G, Elmah G, Marion S, 'Consumer awareness, practices and purchasing behaviour towards green consumerism in Kenya' 5.

4.1.2 Investor trends

The analysis will be conducted by investigating whether there is a growing interest among Kenyan investors in ESG focused funds or corporations and whether there is a growth of sustainable investment funds and the allocation of capital toward ESG initiatives in Kenya. Recent research shows that there is a shift towards ESG considerations in investment decisions.¹³⁹ There is a growing investor preference for companies with strong sustainability programs and those that are committed to ESG goals.¹⁴⁰ Additionally, investors are proactively using ESG factors to assess and value companies indicating a shift towards responsible investing.¹⁴¹ However, as previously noted, the Kenyan ESG market cannot be classified as a mature or active market as it has not reached the stage where investors intentionally divest from firms that have no commitment to ESG goals.

4.1.3 Market power dynamics

Studies show that firms with high market power may be less responsive to ESG demands.¹⁴² Kenya is saturated with firms with higher market power because they foster a less competitive environment and this has contributed to a less active market. Monopolies are present in sectors that are used by the common mwananchi, significantly impacting market demand. In a report conducted by the Centre for Competition, Regulation and Economic Development (CCRED) about investigations into the abuse of dominance in East Africa concluded that there is indeed an abuse of dominance by near monopoly industry players, cartel conduct that cuts across borders and high pricing due to exclusive agreements.¹⁴³ It classified firms such as Safaricom, Multichoice Kenya through their DSTV brand and Kenya Breweries as those involved in anti-competitive behaviour.¹⁴⁴ The power dynamic these markets hold force the consumers to pay higher prices for

¹³⁹Onsomu Z, Miraj Z, 'Effect of Socially Responsible Investment on Performance of Non-Financial Firms Listed at the Nairobi Securities Exchange' 5(1) *African Development Finance Journal*, 2023, 177.

¹⁴⁰Muigua K, 'Embracing Environmental, Social and Governance (ESG) Principles for Sustainable Development in Kenya', 1.

¹⁴¹Muigua K, 'Embracing Environmental, Social and Governance (ESG) Principles for Sustainable Development in Kenya', 3.

¹⁴²Barzusa M, Curtis Q, Webber D, 'The Millennial Corporation: Strong Stakeholders, Weak Managers' 263.

¹⁴³<<https://www.businessdailyafrica.com/bd/corporate/companies/ea-consumers-victims-of-monopolies-and-cartels--2079346>> on 05 March 2025.

¹⁴⁴<<https://www.businessdailyafrica.com/bd/corporate/companies/ea-consumers-victims-of-monopolies-and-cartels--2079346>> on 05 March 2025.

goods and services and the effects of such are that the market is closed to only few corporations who yield the market power and thus dictate how the market should be, the dominant players have the advantage of exploiting economies of scale to undercut smaller competitors.¹⁴⁵

‘The failure of Kenya to attract investors has partly been due to the structure of the economy that has supported few firms that have grown to be monopolies or duopolies in their respective sectors.’ Denis Kabaara, a management consultant reported.¹⁴⁶ Kenya has a few big companies concentrated in the most profitable sectors and consequently, new players targeting these fields has yielded no success.¹⁴⁷ The fields mentioned include the banking sector, telecommunications and the alcoholic industry and these particular sectors have undermined growth in the Kenyan market and this includes the embracing of ESG initiatives.

4.2 A shift in corporate culture

For this particular fundamental, the paper will analyse Kenyan corporations and put them under scrutiny to look into their corporate culture. First, Equity Group Holdings. This corporation has proved that sustainability can be achieved alongside profit making given its commitment to financing projects that have positive environmental and social impacts.¹⁴⁸ In Equity’s 2023 sustainability report, it illustrates a significant shift in corporate culture, emphasising the corporation’s commitment to environmentally sustainable business practices which include enhancing energy and resource efficiency and striving for continuous improvement in market offerings to align with best practices in ESG criteria.¹⁴⁹ The report further highlights initiatives of financial inclusion, educational initiatives such as the Wings to Fly and Elimu scholarships

¹⁴⁵—<<https://nation.africa/kenya/blogs-opinion/opinion/the-worst-monopolies-are-in-the-public-sector-not-the-private-sector-4164138>> on 05 March 2025.

¹⁴⁶—<<https://www.standardmedia.co.ke/business/business/article/2001490868/monopoly-firms-making-kenya-unattractive-blocking-investors>> on 05 March 2025.

¹⁴⁷—<<https://www.standardmedia.co.ke/business/business/article/2001490868/monopoly-firms-making-kenya-unattractive-blocking-investors>> on 05 March 2025.

¹⁴⁸Kenya Business Channel, Leveraging ESG Practices in Businesses, January 2024, 25.

¹⁴⁹—<<https://equitygroup Holdings.com/equity-group-unveils-2023-sustainability-report-a-sustainable-world-is-a-transformed-africa-showcasing-bold-vision-and-impact/>> on 28 November 2024.

programs along with Equity Afya aimed at breaking the cycle of poverty and contributing to broader societal advancement.¹⁵⁰

Second, JamboJet airline. In the 2023 Sustainable Flight Challenge, JamboJet participated in implementing initiatives to reduce carbon emissions in its operations and they contributed to that by optimising fuel consumption using sustainable materials and partnering with organisations for afforestation and tree growing programs.¹⁵¹ Additionally, it has promoted the circular economy focusing on resource utilisation and waste redesign.¹⁵² Beyond the principles of the circular economy and the reduction of carbon emission, corporate culture has been intricately linked to sustainability-linked loans (sustainable financing). Safaricom has obtained this type of financing which is expressly designed to incentivise borrowers in their pursuit of measurable ESG objectives.¹⁵³

Strategic, social and structural influences are what shape an organisation's culture.¹⁵⁴ Corporate culture is a process that requires a change in perspective for many CEOs.¹⁵⁵ This key element, a shift in corporate culture is tied with the support of a decentralised corporation structure. Thus, it should be considered a conjunctive test. The Kenyan market is saturated with monopolies in different sectors exacerbating a centralised corporation culture, CEOs of the aforementioned corporations are not willing to open up the market to promote a healthy competition amongst themselves.¹⁵⁶ Corporations such as those that provide water services and electricity.¹⁵⁷ Consequently, as much as different corporations such as JamboJet airline and Equity Group

¹⁵⁰—<<https://equitygroupholdings.com/equity-group-unveils-2023-sustainability-report-a-sustainable-world-is-a-transformed-africa-showcasing-bold-vision-and-impact/>> on 28 November 2024.

¹⁵¹Kenya Business Channel, Leveraging ESG Practices in Businesses, January 2024, 34.

¹⁵²Kenya Business Channel, Leveraging ESG Practices in Businesses, January 2024, 35.

¹⁵³Kenya Business Channel, Leveraging ESG Practices in Businesses, January 2024, 42.

¹⁵⁴—<<https://www.forbes.com/sites/aileron/2017/02/28/is-culture-your-sustainable-competitive-advantage/>> on 05 March 2025.

¹⁵⁵—<<https://www.forbes.com/sites/aileron/2017/02/28/is-culture-your-sustainable-competitive-advantage/>> on 05 March 2025.

¹⁵⁶—<<https://www.standardmedia.co.ke/business/business/article/2001490868/monopoly-firms-making-kenya-unattractive-blocking-investors>> on 05 March 2025.

¹⁵⁷Ogira P, 'Monopoly in Electricity Generation and Electricity Supply is a Threat to Investment Expansions in Kenya' 3(9), *International Journal of Science and Research*, 2014, 1651.

Holdings are embracing the ESG culture by incorporating its principles, a setback is brought about by the Kenyan monopoly market.

4.3 Transparency and disclosure

While the NSE-ESG Disclosure Guidance Manual emphasises the importance of transparency and disclosure for listed companies, one must critically examine whether this is genuinely reflected in practice. ‘Only one in four NSE listed firms are compliant with ESG reporting and disclosures, fifteen out of the sixty one publicly traded firms have so far adopted ESG Disclosures following the release of the guidelines on this line of reporting as of December 2021’¹⁵⁸ The disparity highlights a troubling reality; many Kenyan corporations appear to lack the willingness to engage in transparent reporting and disclosure practices undermining the very principles set forth by the guidance manual.

4.4 Cohesive Institutional framework

In succinct terms, the institutional framework governing ESG remains in its nascent stages and requires substantial impetus for further development. The foundational efforts this far consist primarily of voluntary reporting by companies in Kenya as presented by the Nairobi Securities Exchange ESG Disclosures Guidance Manual¹⁵⁹ Additionally, as aforementioned, a cohesive institutional framework has to reflect that a corporation should comply to the market demand, the external pressures from the stakeholders. The Kenyan market, however, does not have an active market demand as this is hindered by the centralised corporation ownership as will be discussed in the next parts. Thus, Kenya does not have a cohesive institutional framework that provides an environment for the successful integration of ESG in corporations.

4.5 Government intervention

To conduct this analysis, the paper will investigate what role the government has in the cog machine of ESG in Kenya. The government has incentivised the reduction of tax on companies

¹⁵⁸Mwenda E, ‘Bulk of Firms Yet to Adopt ESG Reporting’ Business Daily, 10 December 2023–<[¹⁵⁹Nairobi Securities Exchange, Nairobi Securities Exchange ESG Disclosures Guidance Manual, November 2021,8.](https://www.businessdailyafrica.com/bd/corporate/companies/bulk-of-firms-yet-to-adopt-esg-reporting--4459810#:~:text=Only%20one%20 in%20four%20Nairobi,of%20reporting%20in%20 December%202021.> on 26 November 2024.</p></div><div data-bbox=)

operating a Carbon Market Exchange or Emission Trading System.¹⁶⁰ Aside from that, it has laid the groundwork for ESG by adopting the NSE-ESG Disclosure Manual, the primary legal framework. The government saw the need to introduce a competition law and thus they legislated the Competitions Act, 2010. It provided for the control of restrictive trade practices, collusive tendering, monopolies and concentrations of economic powers.¹⁶¹ It established the Competition Authority of Kenya which is meant to promote and enforce compliance with the Act and the Competition Tribunal which is to hear and determine appeals.¹⁶² However, the effectiveness of competition laws has been called to debate in various sectors such as the telecommunications sector.¹⁶³ In a study conducted by Caroline Musyimi, she concluded that the challenges to the efficacy are; regulators may face challenges in keeping up with technological advancements¹⁶⁴, there are limited resources and skills within the competition enforcement agencies¹⁶⁵ and political interference with regulators.¹⁶⁶ Thus, in the presence of monopolised markets which exacerbate centralised corporation ownership, government intervention has proved to be of diminished assistance.

4.6 Decentralised corporation ownership

To conduct this analysis, the paper will perform a test. Initially, a foundation will be established by the identification of what is deemed essential products and services utilised daily by the typical Kenyan consumer. Subsequently, it will be assessed whether they align with a monopolistic market structure or a perfectly competitive market. Should it be categorised as the former, it would indicate a lack of competitive environment; conversely, classification within the latter would suggest a competitive environment. (a three ply test).

¹⁶⁰Section 22, Finance Act 2022.

¹⁶¹—<<https://www.competitiontribunal.go.ke/history-establishment/>> on 05 March 2025.

¹⁶²Section 71, Competition Act (Act No. 4 of 14 January 2011).

¹⁶³Musyimi C, 'The Efficacy of the Competition Laws in the Liberalisation of Trade in Kenya: A Study of the Telecommunication Sector' Published LLM Thesis, University of Nairobi, 2017, 9.

¹⁶⁴Musyimi C, 'The Efficacy of the Competition Laws in the Liberalisation of Trade in Kenya: A Study of the Telecommunication Sector' Published LLM Thesis, University of Nairobi, 2017, 12.

¹⁶⁵Musyimi C, 'The Efficacy of the Competition Laws in the Liberalisation of Trade in Kenya: A Study of the Telecommunication Sector' Published LLM Thesis, University of Nairobi, 2017, 58.

¹⁶⁶Musyimi C, 'The Efficacy of the Competition Laws in the Liberalisation of Trade in Kenya: A Study of the Telecommunication Sector' Published LLM Thesis, University of Nairobi, 2017,59.

This paper has focused on two essential products/services in Kenya; electricity and telecommunication services. Regarding electricity, the production, transmission and distribution sectors are noteworthy. KenGen stands as the dominant electricity-generating entity in Kenya responsible for approximately 60% of the country's electricity output and being 70% government owned.¹⁶⁷ The Kenya Power and Lighting Company (KPLC) oversees the transmission, distribution and retail sales of electricity, serving as the primary energy provider in the country with the government maintaining a majority stake.¹⁶⁸ Due to these corporations which hold the market power, consumers have in the past and the present, bore heavy cost burdens. KPLC has had multiple occasions where it has caused a surge in the prices of power and this has had ripple effects on several sectors such as the rise in food prices and an increase in production costs for manufacturers.¹⁶⁹

In the realm of telecommunication services, the primary players include Safaricom PLC, Airtel and Telkom Kenya. Safaricom stands out as the largest telecommunications provider, particularly notable for its M-Pesa platform, which has significantly transformed mobile money transactions in Kenya. The ownership of Safaricom comprises the government of Kenya by 35%, Vodacom by 35%, Vodafone by 5% and a free float of 25%.¹⁷⁰ Vodacom is majority-owned by Vodafone, one of the world's largest communications companies.¹⁷¹ Supporting this assertion, the crash of M-Pesa in 2020 serves as a compelling example with estimates indicating that it incurred losses in billions, the resulting ripple effects on the economy were profound.¹⁷² In a report conducted by the

¹⁶⁷—<[https://www.kengen.co.ke/index.php/our-company/ministry-of-energy.html#:~:text=Kenya%20Power%20and%20Lighting%20Company%20\(KPLC\)&text=It%20is%20responsible%20for%20electricity,for%20onwards%20transmission%20and%20distribution](https://www.kengen.co.ke/index.php/our-company/ministry-of-energy.html#:~:text=Kenya%20Power%20and%20Lighting%20Company%20(KPLC)&text=It%20is%20responsible%20for%20electricity,for%20onwards%20transmission%20and%20distribution)> on 26 November 2024.

¹⁶⁸—<<https://www.kplc.co.ke/about-us>> on 26 November 2024.

¹⁶⁹Ogira P, 'Monopoly in Electricity Generation and Electricity Supply is a Threat to Investment Expansions in Kenya' 3(9), *International Journal of Science and Research*, 2014, 1651.

¹⁷⁰—<https://www.safaricom.co.ke/sustainabilityreport_2018/stakeholder-engagement/shareholders/> on 05 March 2025.

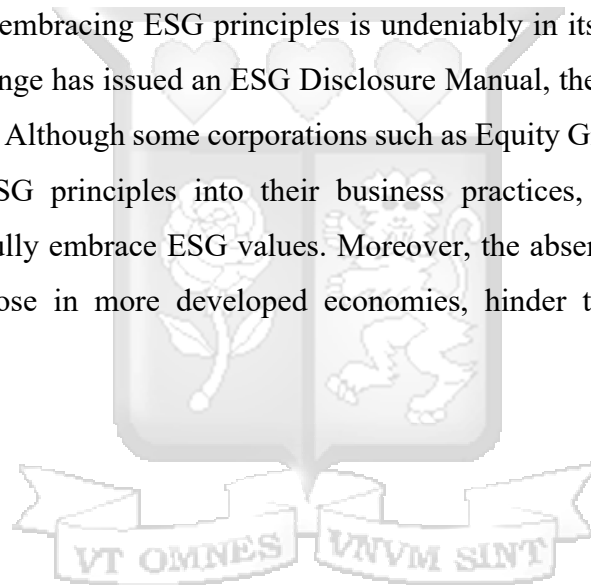
¹⁷¹—<<https://vodacom.com/about-us.php#:~:text=Vodacom%20is%20majority%20Downed%20by,largest%20communications%20companies%20by%20revenue.>> on 05 March 2025.

¹⁷²—<<https://nation.africa/kenya/business/safaricom-probed-over-costly-m-pesa-outage-117140>> on 26 November 2024.

Communications Authority of Kenya, it revealed that Safaricom’s command of the market is much higher as is the case in mobile money where M-Pesa has a 97% market share.¹⁷³

The final component of the analysis involves evaluating whether the market structure promotes a competitive environment. In a monopolistic market, a single supplier typically prevails and any failure to deliver, the market in entirety suffers. A pertinent illustration of this was the disruption experienced with M-Pesa in 2020. The aforementioned major companies exemplify monopolistic markets which inhibit a competitive environment- an essential prerequisite for the successful implementation of ESG initiatives.

Kenya’s journey toward embracing ESG principles is undeniably in its nascent stage. While the Nairobi Securities Exchange has issued an ESG Disclosure Manual, the broader legal framework remains underdeveloped. Although some corporations such as Equity Group Holdings are making strides in integrating ESG principles into their business practices, the majority of Kenyan enterprises have yet to fully embrace ESG values. Moreover, the absence of a robust and active ESG market akin to those in more developed economies, hinder the effectiveness of ESG initiatives in Kenya.



¹⁷³ <<https://www.standardmedia.co.ke/business/business/article/2001490868/monopoly-firms-making-kenya-unattractive-blocking-investors>> on 05 March 2025.

CHAPTER FIVE

5.0 FINDINGS AND RECOMMENDATIONS

5.1 Introduction

This chapter synthesizes the key findings of the study which analysed the effectiveness of ESG implementation in Kenya. Moreover, it provides a set of recommendations aimed at the adoption of ESG practices in Kenya. This study highlights a gap between the theoretical potential of ESG and its actual implementation on the ground.

5.2 Discussion of the Key Findings

While ESG practices have gained traction globally including in Kenya, their effective implementation faces significant challenges. The discrepancy stems from a lack of foundational elements essential for the successful operation of ESG practices.

The study identified several critical issues. First, regarding market demand, there is currently no active ESG-oriented market in Kenya, the absence of this demand means that companies may not feel significant pressure to adopt ESG. Second, in terms of corporate culture, while some Kenyan corporations like Equity Group Holdings and JamboJet are making strides in integrating ESG principles, many others have not yet fully embraced them. A transformative shift in corporate culture is necessary, moving from a sole focus on profits to a more holistic approach that includes environmental, social and governance factors. Third, regarding transparency and disclosure, despite the existence of Nairobi Securities Exchange ESG Disclosure Manual, many Kenyan corporations are not engaging in transparent reporting and disclosure practice. Only a small fraction of listed firms is compliant with ESG reporting, undermining the principles established by the guidance manual.

Fourth, institutional framework; the framework governing ESG in Kenya is still in its nascent stages, primarily consisting of voluntary reporting by companies and the lack of a cohesive institutional framework makes it difficult to enforce ESG standards and ensure accountability. Lastly, concerning government intervention, the government has begun to establish a framework

for ESG by incentivising carbon trading and adopting NSE-ESG Disclosure Manual. Finally, in terms of a competitive environment, many key sectors in Kenya, such as electricity and telecommunications function as monopolies. This reduces the pressure on those companies to prioritize ESG practices. Creating a more competitive environment is essential to incentivise companies to enhance their ESG performance.

Additionally, the study revealed that ESG did not originate in a fashion reminiscent of a sudden emergence; instead, its foundations culminated through initiatives such as the UN Global Compact and the Principles for Responsible Investment which seek to embed ESG factors within the financial and investment decision making processes. Furthermore, the study addresses the tension between shareholder primacy and stakeholder theory. While the former emphasises on maximising profits for shareholders. The latter advocates for a more balanced approach that considers the interests of all stakeholders and it highlights that a corporation does not exist in a vacuum. The study emphasises the need to move beyond the mind-set of solely maximising profits and to integrate ESG values as long-term drivers of value creation.

5.3 Recommendations

The study recommends that for ESG to flourish in Kenya, the foundational elements must be firmly established. This includes strengthening the regulatory framework, the current one primarily focuses on voluntary reporting and disclosure. It is imperative to advance beyond this point by potentially incorporating binding standards and stringent compliance measures. The anticipated outcome of this measure would be that companies transition from merely voluntarily reporting to actively managing and mitigating ESG-related risks and opportunities. Moreover, promoting a shift in corporate culture is essential, shifting the focus from profit maximisation to a more holistic approach that integrates ESG values. This entails embedding sustainability into all aspects of the business, encouraging companies to actively seek opportunities to generate positive social and environmental outcomes rather than merely minimising negative externalities.

Furthermore, fostering market demand. While this may appear challenging, it can be achieved by creating incentives that encourage companies to be more sustainable and this may include tax

benefits for environmentally friendly operations and consumer awareness campaigns. Investors should also be encouraged to prioritise ESG factors in their investment decisions. In addition to that, it is vital to create a competitive environment as this would increase pressure on companies to enhance their ESG performance. The study further notes that the current institutional framework is in its early stages and requires substantial momentum for further advancement. It is recommended that regulatory bodies and institutions build their capacity for enforcing ESG standards, providing guidance to companies and potentially setting up a task force to further the same goal. Companies should also encourage stakeholder engagement and be responsive to the broader environment including stakeholder and public opinions.

By implementing these recommendations, Kenya can harness ESG as a powerful tool for promoting sustainable development and fostering a more responsible and equitable economy. The aim is to transition from mere compliance to establishing a system where companies actively contribute to the wellbeing of the society and the planet.

