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Abstract

This article presents a case for transfer mispricing as an argument for Corporate Social Responsibility (CSR). The argument builds on the position that in order to compensate for potential loss of brand image and reputation, Multinational Companies (MNCs) would be more socially responsible when they are operating in countries where the legislation and laws in place are not effective at identifying and sanctioning transfer mispricing. We first discuss the dark side of transfer pricing (TP), next we present the nexus between TP and poverty and finally we advance arguments for CSR in transfer mispricing. While acknowledging that TP is a legal accounting practice, we argue that in view of its poverty and underdevelopment externalities, the practice *per se* should be a solid justification for CSR because it is also associated with schemes that deprive developing countries of capital essential for investments in health, education and development programmes. Therefore CSR owing to TP cannot be limited to a strategic management approach, but should also be considered as some kind of social justice because of associated transfer mispricing practices. We further argue that, CSR by multinational corporations could incite domestic companies to comply more willingly with their tax obligations and/or engage in similar activities. Whereas, traditional advocates of CSR have employed concepts such as reputation, licence-to-operate, sustainability, moral obligation and innovation to make the case for CSR, the present inquiry extends this stream of literature by arguing that TP and its externalities are genuine justifications for CSR. We consolidate our arguments with a case study of Glencore and the mining industry in the Democratic Republic of Congo.

JEL Classification: F20; H20; M14; O11

Keywords: Corporate Social Responsibility; Transfer pricing; Extreme poverty

1. Introduction

Transfer pricing (TP) is a process by which commodities are traded between legal entities or subsidiaries within a corporation. It consists of setting the price at which goods and services are sold by one subsidiary to another. For instance, if a subsidiary corporation sells commodities to another subsidiary, the cost of the commodities sold is transferred to the buying subsidiary as the transfer price. Some of these subsidiaries with legal entities that are within the control of a parent company include branches as well as corporations that are majority or wholly owned by the parent establishment. Within a broader framework of globalisation, TP can be employed as a method of allocating profits (or losses) before taxes to various nations where a multinational corporation does business. In a nutshell, TP is the outcome of setting prices among various branches within the same corporation.

In principle, TP should be consistent with either what the buyer would independently pay or what the seller would independently charge. Unfortunately, whereas unrealistic price transfers among subsidiaries does not affect the corporation or multinational in overall terms, TP becomes an issue for taxing authorities within a government when the accounting practice is used to (i) increase profits in countries of low tax jurisdictions (or low income taxes) and (ii) decrease profits in countries with high tax jurisdictions (or high income taxes). Given that tax havens are in the former category, TP is a principal mechanism for tax avoidance and the shifting of profits.

There is a consensus in the literature that corporations need to cater for some of the needs of communities in which they operate (Asongu, J.J; 2007). According to the narrative, the act by corporations of going beyond the delivery of commodities to address some of the core demands of society has been acknowledged as Corporate Social Responsibility (CSR). According to Asongu, J.J[1], there are four main traditional arguments for CSR, namely, the: brand image (or reputation), ethical (or moral), legal (or licence-to-operate) and sustainability arguments.

Over the past decades, the presence of Multinational Companies (MNCs) in developing countries has increased the debate as to what extent MNCs should invest in social amenities in communities in which they operate (Sinder et al., 2003; Matten & Moon, 2004; Valentine & Fleischman, 2008). This debate has been inflamed by evidence on the role of

[1] There are two authors with last names as Asongu used in this study, namely: Asongu, J.J and Asongu, S.A. Hence, the interested reader should not construe the recurrence of Asongu as citations from one person.

globalisation in developing economies and implications for human development (Asongu, S.A; 2013a).

It is important to devote some space to discussing the connection between globalisation and concerns about unbalanced development. This is essentially because transfer pricing, while a rational accounting practice that is consistent with the challenges of globalisation, has also contributed to rational asymmetric development: "*refers to unfair practices of globalisation adopted by advanced nations to the detriment and impoverishment of less developed countries*" (Asongu, S.A; 2015, p. 14). Insights into how globalisation is linked to rational asymmetric development have been abundantly documented in the literature, notably: (i) Stiglitz (2007, p. 85), "*The average European cow gets a subsidy of $2 a day; more than half of the people in the developing world live on less than that. It appears that it is better to be a cow in Europe than to be a poor person in a developing country…… Without subsidies, it would not pay for the Unites States to produce cotton; with them, the United States is, as we have noted, the world's largest cotton exporte*r"; (ii) the 'Bad Samaritans: The Myth of Free Trade and the Secret History of Capitalism' of Chang (2008); (iii) Mshomba (2011) with perspectives on how policies of the World Trade Organisation (WTO) are skewed to the detriment of some developing regions and (iv) Asongu, S.A (2015) on the spirit of African poverty.

It is reasonable to infer that the above narratives are evolving partly because Multinational Companies (MNCs) are failing in their role as good corporate citizens. This is essentially because whereas the spirit of capitalism is motivating MNCs in their ever increasing quests to boost profits, civil societies of countries in which they operate are becoming less tolerant of MNCs that are failing to address their social responsibilities (Branco & Rodrigues, 2006; Osabuohien et al., 2013, 2014, 2015). One recurrent mechanism via which MNCs are evading their responsibilities towards countries in which they operate is tax evasion through TP (Sikka, 2010). While acknowledging that TP is a necessary and indispensible practice in the era of globalisation, this article argues that TP *per se* should also be a solid justification for more CSR because the practice by definition enables underlying MNCs to surreptitiously evade their tax obligations. In essence, TP is most often associated with transfer mispricing. Therefore, CSR owing to TP cannot be limited to a strategic management approach, but should also be considered as some form of social justice because of associated transfer mispricing practices.

Whereas, traditional advocates of CSR have employed concepts such as reputation, licence-to-operate, sustainability and moral obligation to make the case for CSR, recently there has been growing emphasis on other forms of arguments for CSR, *inter alia*: innovation (Asongu, J.J. 2007). The present inquiry extends this stream of literature by arguing that because TP is inherently associated with transfer mispricing, the practice of TP should naturally be a genuine justification for CSR. In this light, we take care in distinguishing this form of CSR from good works or charitable donations.

We devote space to clarifying transfer mispricing as an argument for CSR. Typically, arguments for CSR can be made on three broad grounds. (i) CSR is beneficial to the corporation (e.g. in improving the corporation's finances and reputation). (ii) Corporations have moral obligations to operate in ways that are broadly beneficial to society and not simply to create returns for stockholders and (iii) a combination of (i) and (ii).

Regardless of on what grounds the corporation stands, two main perspectives are apparent. *First*, eliminating TP is not an argument for CSR, but rather is a means for achieving CSR; one means among many that a firm might implement. For example, as a part of a CSR programme, a firm might undertake a series of infrastructure improvements in the countries in which it operates. This would be a means of accomplishing its CSR goals. *Second,* in a like manner, eliminating transfer mispricing would also be a means of achieving CSR goals, in this case by reducing the negative externalities of mispricing. But these beneficial consequences are not per se an argument for CSR.

In the light of the above, the argument in this study neither builds on the eliminating of TP nor on the eliminating of transfer mispricing. The former cannot be eliminated because it is a legal accounting practice and the latter cannot be eliminated because poor countries do not have proper legislation and laws in place for the purpose. Therefore, whereas neither TP nor transfer mispricing should directly be an argument for CSR, the indirect connection between transfer mispricing and CSR is that most poor countries lack proper legislation and laws to monitor and sanction transfer mispricing. Hence, in the absence of effective laws and legislations that oversee TP practices by MNCs, it is very likely that MNCs will not consider transfer mispricing as illegal because the laws in place are not effective at identifying and sanctioning it.

The rest of the study is structured as follows. Section 2 discusses linkages between transfer mispricing, extreme poverty and CSR. Here, we first discuss transfer mispricing as the dark side of TP, then argue about the linkages between TP and poverty before finally presenting the case for CSR in transfer mispricing. Section 3 presents practical insights with a case study of the Democratic Republic of Congo's mining industry and Glencore Plc. We conclude with Section 4.

2. Transfer Mispricing, Extreme Poverty and Corporate Social Responsibility (CSR)

2.1 The negative side of transfer pricing (TP)

The negative side of TP is obviously 'transfer mispricing' which has been documented to be linked to tax avoidance and retention of wealth (Sikka & Willmott, 2010; Asongu, S.A 2016). According to this stream of the literature, TP is a legitimate accounting practice which has gained more prominence with the advent of globalisation because the operations of corporations extend beyond national borders with different taxation regimes and regulations. In essence, the ever growing quest to increase company cash flows, profits and goals of marketing, among others, has also prompted underlying companies with multinational position to adopt measures of cost performance and accounting for taxable profits that are of questionable business ethics, even by conservative standards. Within this framework, MNCs tailor cost- and overhead-allocation schemes that enable them to transfer commodities to various subsidiaries/branches.

It is important to note that some discretion is enjoyed by companies which engage in TP owing to the subjective features in mechanisms of cost and overhead allocation. Hence, companies can assign commodities to specific geographic regions so as to increase profits and keep their taxes low. The basic idea in the TP strategy consists of allocating higher profits to low-tax jurisdictions and higher costs to high-tax jurisdictions.

Whereas TP can enable corporations to limit the downsides of double taxation, abuse of the practice is increasing and it is being employed by virtually all MNCs to shift profits (Baker, 2005). According to Ernst and Young (2005), TP is a very useful instrument for tax avoidance. Moreover, Ernst and Young (2006) have also established that the practice is the most important concern in international taxation. The above TP practices obviously have negative externalities on tax incomes, public service delivery and living standards in countries with relatively higher rates of corporate taxation, especially low income economies.

According to Asongu, S.A (2016), the strength of MNCs is being increasingly solidified with the spirit of capitalism such that microstates are increasingly taking precedence over nation states which are competing for investment needed for employment and taxable income. This unfortunate scenario is that in this competition investment and profits are delivered to nation states and micro states respectively. Consistent with the narrative, TP schemes are also providing an enabling environment for the proliferation of microstates which are commonly known as offshore financial centres or ‘tax havens’.

In light of the above, low-end taxation or microstates have been growing substantially (Sikka, 2010).Microstates have very small populations and hence less public expenditure is needed for public commodities and services. Some microstates are even tax-free and therefore do not have much regard for mispriced profits that are declared within their jurisdictions. It is important to put this point into perspective by articulating the growing depth of activities by MNCs in microstates. First, according to Sikka and Willmott (2010), microstates are witnessing the birth of over 200000 new enterprises on a yearly basis. Baker (2005) claims that there were approximately 3,000,000 corporations registered in microstates by the year 2000. Notable examples include: (i) the Cayman and British Virgin Islands accounting for respectively 3389 and 182 companies for every 100 inhabitants; (ii) a single building in the Cayman Island accounting for approximately 19000 companies and (iii) about 15000 corporations registered in Sark Island that is host to only 574 residents (UK Home Office, 1998).

It is important to note that the above microstates are also associated with developed countries. These more advanced nations have the legislative authority to provide a business environment that is favourable to MNCs, which are in constant search of obscure administrative structures: imposition of low/no taxes, preservation of secrecy and less stringent regulations. The above conditions are conducive to global tax avoidance schemes and transfer mispricing mechanisms. It is therefore unsurprising that whereas only about 50 percent of transactions from global trade are traceable to offshore financial centers, these underlying tax havens constitute only about 3 percent of global GDP. Moreover, according Sikka and Willlmott (2010), whereas microstates make-up only about 1.2 percent of the world’s population, they represents about 26 percent of assets and 31 percent of net profits of the United States MNCs.

Given the above stylized facts, it is apparent that globalization is engendering novel trends in international taxation by MNCs (Asongu, S.A. 2016). According to Sikka and Willmott (2010), under the pressure of territorial juridical constraints, MNCs have been engineering mechanisms of tax avoidance by means of special purpose entities, negotiating trust and joint ventures and establishing subsidiaries as well as affiliates that enable them to manipulate asymmetries in taxation systems around the world. It follows that worldwide production is increasingly engendering novel and entrenched networks of TP mechanisms which are being masterfully developed by MNCs to shift taxes to microstates, and so avoid them in countries where their mainstream operations are conducted. What is also striking is that the inherent complexity, scale and strength of globalization is facilitating both the good and bad sides of TP. Accordingly, production and distribution networks are progressively complex, notably: (i) national companies are in a permanent quest for transnational and multinational profiles and (ii) foreign companies are at liberty to either jointly enterprise with local corporations or establish new companies under different jurisdictions.

The above scenarios illustrate the case of global trade that has increased international corporate legitimacy and by so doing has enhanced the ability of MNCs to introduce 'tax avoidance' TP schemes. There is a wealth of literature with evidence of MNCs manipulating international taxation privileges. Tanzi (2000) has documented how tax administrators are deeply engaged in transfer mispricing. According to Sikka and Willmott (2010) and Asongu, S.A (2016), multilateral institutions like the World Bank, the International Monetary Fund (IMF) and the African Development Bank (AfDB) are increasingly concerned with the plethora of issues in national taxation that have emerged in relation to transfer mispricing by MNCs, namely issues surrounding: fixed costs, trademark valuations, loans and patents.

Whereas the poverty externalities of such schemes may not be so apparent in developed nations, poor countries (especially resource-rich nations) are more likely to suffer, given that public goods and services are still substantially absent (Borkowski, 1997). Furthermore, developing countries are more vulnerable than developed to some TP practices like illicit capital flight (Asongu, S.A.2016).

2.2 Linking transfer pricing (TP) to underdevelopment

We have already emphasised that while TP is a legitimate accounting practice because it is needed to distribute profits to various jurisdictions, transfer mispricing which is also a commonly associated practice leads to underdevelopment in countries with high corporate tax jurisdictions, essentially because of shortage of taxable income that is needed for the delivery of public goods and services (Asongu, S.A.,2015, 2016).

The unfortunate link between transfer mispricing, losses in tax revenues and underdevelopment in high-tax nations has consistently been deplored by renowned policy makers and economists who have reached a consensus in acknowledging that, in its current form, the international taxation system is inequitable and repulsive (see Walsh, 2015). For example Nobel Laureate Joseph Stiglitz has qualified as ‘repulsive, inequitable and inefficient’ the manner in which MNCs operate nationally when their capital is global. Hence, according to him, these MNCs have “*free rein to move their money around to the low-cost (tax) jurisdictions*” (Walsh, 2015). Stiglitz further posits that this scenario has substantially deprived developing countries of capital essential for investments in health, education and development programmes. He further claims that “*it undermines the social and economic fiber of a country*”.

In order to substantiate the above narratives, we present some statistics and stylize facts in the paragraphs that follow. Given that capital flight is one of the main consequences of TP (Donnelly, 2015), recent estimates show that the stock of capital in some poor regions (e.g Africa) would have been 60 percent higher had TP and illicit funds been kept on the continent. Moreover, the corresponding Gross Domestic Product (GDP) increase is estimated to have been 15 percent higher had illicit capital flight been mitigated. On the basis that absolute pro-poor[2] growth is a consequence of GDP growth, the connection between TP and poverty becomes apparent. According to Donnelly (2015), commercial corporations contribute to about 65 percent of illicit capital flows. Furthermore, it was suggested that deliberate over- and under-invoicing of trade activities represented approximately 67.4 percent of illegal capital outflows between 2003 and 2012. Donnelly goes on to emphasize about 60 billion USD are lost annually to TP-related activities like illicit capital flight.

According to the Donnelly, illicit capital flows from Africa represent about 4 percent of GDP; substantially outpacing official development assistance (ODA) and foreign direct investment (FDI). It is important to note that this illegal flow of money is the product of tax evasion made possible by mechanisms for , among others: bribery, trade misinvoicing, money laundering and transfer mispricing by MNCs. The report by Donnelly (2015) documented that in 2012 the stock of illicit capital flows from sub-Saharan Africa (SSA) stood in the neighbourhood of 68.6 billion USD, compared to ODA and FDI that were respectively 41.1 billion USD and 35.4 billion USD during the same interval. Asongu, S.A (2016) suggested that these estimates may be way lower because the real scale of illicit flows by is very nature is often under-reported.

It is estimated by Fofack and Ndikumana (2010) that over the past decade, there was about 25 percent of capital flight loss due to TP-related activities being reinvested in Africa,

[2] Whereas ‘relative pro-poor growth’ is growth that reduces inequality, ‘absolute pro-poor growth’ is one that reduces poverty. The former engenders sub-optimal externalities for both rich and poor households (see, Asongu & Kodila-Tedika, 2015a).

GDP would have increased by between 19 percent and 35 percent. Diak (2014) argued that if tax income lost to transfer mispricing had been spent on health care, about 350,000 children could have been saved every year. Mechanisms through which illicit capital flight and transfer mispricing contribute to underdevelopment have been substantially documented. Boyce and Ndikumana (2012ab) provided country-specific consequences of transfer mispricing whereas Nkurunziza (2012) empirically investigated relationships between illicit capital flows, transfer mispricing and poverty[3].

2.3 Arguments for CSR in transfer mispricing

There has always been an intense debate about CSR. More specifically, while some scholars argue that the concept is not relevant to business others view it as of strategic importance, passing through and some protagonists who admit its relevance but still stress that it is not good for business (Asongu, J.J. 2007). In light of the above, the relevance of CSR to business remains an open debate. According to Asongu, J.J, CSR embodies the notion that organisations have the obligation to acknowledge and take into account the interest of employees, customers, communities, the environment and shareholders in their operations. Moreover, the notion of CSR is tied to sustainable development which requires corporations to go beyond the 'making of profit and payment of dividends' so as to consider the long-run environmental and social consequences of their operations. Hence, such may be viewed as the continuous commitment by business ethics in order to contribute to socio-economic development through improvements in life quality for the local community and society as a whole.

In the paragraphs that follow, we attempt to demonstrate that TP and CSR are not mutually exclusive. In fact their complementarity could *inter alia*: (i) consolidate shareholders' trust, (ii) improve benefits by company employees, (iii) enhance company reputations, (iv) compensate for losses in investment as well as the absence of legislation in developing countries against transfer mispricing and (v) improve tax compliance by domestic companies. We discuss the above points chronologically in five main strands. The first-three components are broadly consistent with Groen (2014).

[3] The interested reader can find more evidence of the linkages in a substantial bulk of the literature devoted to the relationships (Boyce & Ndikumana, 1998, 2001, 2003, 2011, 2012ab; Weeks, 2012, 2015; Asongu, S.A., 2013b, 2014; Efobi & Asongu, 2016).

First, CSR from MNCs is very likely to increase shareholders' trust. Accordingly, it is beneficial for shareholders if MNCs have a responsible CSR strategy. Another dimension from which CSR may be viewed is to conceive of it as being in the same category as dividends to shareholders in MNCs. In essence, the maximisation of shareholder value and CSR are not a contradiction because if MNCs do not engage in CSR, shareholders maybe doubtful of the dividends apportioned them. Moreover, in the transition for Millennium Development Goals (MDGs) to Sustainable Development Goals (SDGs), MNCs with a substantial degree of CSR are more likely to be positively viewed by shareholders, civil society and multilateral development agencies.

Second, investments in CSR are also very likely to be profitable for MNCs. This is essentially because MNCs also use benefits from the social opportunities offered by the CSR schemes, through *among others*, improvements in human resources and efficiency in operations (Asongu, J.J. 2007). Other mutually beneficial social amenities include healthcare, infrastructural development and educational institutions (Groen, 2014).

Third, with CSR the reputation of MNCs can also be substantial improved. In this light, CSR is also a kind of public relations appeal because the general public (including suppliers and customers) tend to view the engaging MNC in a positive light. With the proliferation of information and communication technologies (ICTs), the concern about corporate reputational damage is very important and hence a good track-record in CSR is a valuable asset in times of tax avoidance accusations and transfer mispricing. The position is even more relevant in societies where some MNCs' stakeholders work and live in high-end tax countries.

Fourth, we have already substantially discussed the need for MNCs to engage in CSR as a form of compensation for losses in tax income by nation states from which they operate. Our position on this line of inquiry is also substantiated by the fact that MNCs profit from the social opportunities offered by nation states upon using taxed income from MNCs to provide public goods and services. Accordingly, in the absence of tax income, welfare may plunge with obvious negative externalities for underlying MNCs, notably: mediocre education, poor health services and low public infrastructural quality owing to less maintenance. Hence, it is reasonable to argue that MNCs that are conscious of inherent transfer mispricing schemes should engage in more CSR as means of compensating for lost capital by nation states. Furthermore, there is an absence or lack of proper legislation against transfer mispricing in many developing countries. The documented challenges to formulating and implementing policies against the abuse of TP include: (i) lack of resources and knowledge, (ii) lack of comparable standards, (iii) income skewed by the Intellectual property (IP) regimes or the intangible economy to the benefit of advanced nations, (iv) lack of comprehensive tax treaties and (v) issues with location of savings (Asongu, S.A., 2016).

Fifth, we further argue that CSR by multinational corporations could incite domestic companies to comply more willingly with their tax obligations and/or engage in similar activities. This position is consistent with Stiglitz who has postulated that endowing MNCs with breaks in taxes and implicitly given them the leeway to indulge in transfer mispricing, makes domestic corporations less willing to meet-up with their tax obligations: "*If multinational companies are escaping taxation, domestic firms are put in an unfair competitive position and it distorts the economy*" (Walsh, 2015).

The foregoing arguments for CSR in respect of TP are also justifiable by two main complementary tendencies. They are: (i) the growing strength of MNCs and (ii) increasing poverty levels in developing countries in which underlying MNCs operate. This is because:

First, by the beginning of the 21st century, 51 percent of the top 100 largest economies were MNCs, not nation states (Anderson et al., 2005). We support the narrative with five points. (1) According to Anderson et al., intellectual property rights (IPRs) have been monopolised to the height of 97 percent by the Organisation for Economic Cooperation and Development (OECD) countries and 90 percent of the underlying proportion is retained by powerful MNCs. (2) Developing nations which are overly reliant on agriculture have been left to the mercy of MNCs because: (i) twenty of them control trade in coffee; (ii) six influence about 70 percent of wheat trade; (iii) two companies control approximately 80 percent of global grain market which is also distributed by two MNCs and (iv) one MNC has control over 98 percent of the production of packed tea. (3) two-hundred corporations constituted approximately 28 percent of the global economy. (4) The top five-hundred MNCs controlled 80 percent of FDI, 70 percent of global trade in commodities, about 33.3 percent of manufactured exports, 30 percent of global GDP and roughly 80 percent of trade in management and technical services. (5) The one-hundred largest corporations account for approximately $3400 billion worth of assets, of which 60 percent are located in foreign economies that is developing countries currently experiencing increasing levels of poverty.

Second, the highlighted growing poverty in some developing countries has been recently confirmed by a World Bank report in April 2015 (Caulderwood, 2015; World Bank, 2015). According to the report on Millennium Development Goals (MDGs) poverty targets, poverty has been decreasing in all regions of the world with the exception of SSA, where about 45 percent of countries are still substantially off-track from achieving the MDG extreme poverty target (Asongu & Kodila-Tedika, 2015b). This unfortunate trend substantially contrasts with the two decades of growth resurgence in the mid- 1990s (see Alan & Carlyn, 2015, p. 598; Fosu, 2014, p.44).

3. The Case of Glencore and Mining Industry in the Democratic Republic of Congo

Glencore Plc is an Anglo-Swiss MNC headquartered in Baar-Switzerland that is specializes in commodity trading and mining (Why Poverty, 2013; Asongu, S.A 2016). According to the narrative, by 2013 it was ranked among the top 10 Fortune Global 500 of the World's largest companies. It is also the third largest family business in the world. Conversely, whereas the Democratic Republic of Congo (DRC) has been abundantly blessed with natural resources, it remains one of the poorest countries in the world (Daniele, 2011). The DRC is a nation state that is poor and at the same time rich.

We do not wish to engage in the debate on transfer mispricing by Glencore in the DRC for the simple reason that it is difficult to establish such evidence. This is essentially because, TP regimes in Africa present a very mixed picture. In essence, according to Curtis and Todorova (2011), some countries have: (i) well established TP regimes (South Africa and Kenya); (ii) recently passed TP legislation (Uganda); (iii) tax code provisions that only mention TP (Algeria and Mozambique); (iv) expectations of enacting TP legislation (Zimbabwe and Nigeria) and (v) no TP legislation/regulation (Sudan and Libya). This apparent heterogeneity among nations constitutes a substantial challenge to TP policy harmonization across Africa. Moreover, as far as we have reviewed, TP legislation is currently inexistent in the DRC. This implies that Glencore can misprice without oversight and sanctions from national authorities. This inference is also coupled with the fact that the secrecy surrounding Glencore's deals with the DRC has been estimated to tarnish the long term reputation of the company, essentially because shareholders might have been involved in corrupt practices (Global Witness, 2012).

We discuss Glencore's CSR in three strands, namely: a highlight on the exercise of TP; Glencore's CSR and caveats to her CSR. Narratives of underlying elements are drawn from an independent assessment of Glencore's CSR activities in the DRC by three notable organizations:(i) Rights and Accountability in Development (RAID); (ii) BREAD for All (a development foundation of the Swiss Protestant Churches) and (iii) Fastenopfer (the Catholic Lenten Fund is the Swiss Catholic relief agency) (Peyer et al., 2014).

The *first* aspect which highlights evidence of TP is dealt with by Glencore's taxation strategy. According to Peyer et al. (2014), there has been no substantial progress in the domain of taxation. In essence, Glencore's investment in community infrastructure and development projects should not conceal the fact this MNC is engaged in optimising its tax liability through the transfer of profits to microstates or tax havens. For instance, taking exclusively the case of Kamoto Copper Company (KCC) which is Glencore's DRC unit, TP practice has cost the DRC more than 150 million USD between 2009 and 2014. This is very surprising given that the government of the DRC which is an indirect shareholder should not tolerate such transfer mispricing. Perhaps such inertia on the part of the DRC government may be traceable to the lack of legislation on transfer mispricing for the country's mining industry.

In the second strand, consistent with Peyer et al. (2014), since the year 2012, and more precisely since Glencore merged with Xstrata, the MNC has improved its CSR policies, notably: (i) a more detailed sustainability report; (ii) a human rights policy has been adopted; (iii) an application has been made for admission into the 'Voluntary Principles on Security and Human Rights' and (iv) it has integrated the 'International Council on Mining and Metals' (ICMM). The following improvements are also noteworthy.

First, on the 'pollution of the Luilu River', there has been some investment by the KCC in pipes and acid neutralisation systems in order to canalise '*some of its effluent to an old quarry (Mupine)*' (p.115). However, contrary to the information provided by Glencore to the media and investors, the issue of pollution in the Luilu River remains to be resolved. Accordingly, the hydro-metallurgical plant is still discharging effluent (that is substantially contaminated with cobalt and copper) into the Luilu River.

Second, on the 'Basse-Kando Game Reserve', Glencore has eventually acknowledged that installations at MUMI are located within the 'Basse-Kando Game Reserve'. However, the MNC is still failing to engage in transparent and open negotiations with the relevant stakeholders, including the Ministry of Environment and the Congolese Institute for Nature Conservation (ICCN).

Third, with regard to 'security and human rights', Peyer et al. (2014) remarked that Glencore is continuously relying on police officers who often have recourse to excessive force and use of live ammunition to protect mines from thieves and clandestine miners. The report reveals that most of the human casualties suffered near KCC concessions have neither been adequately investigated nor have victims (or families of victims) received compensation. The MNC seems to have adopted a military approach in the protection of its assets. This represents opportunities for the violation of human rights, especially, when Glencore's security is also entitled to executing judicial police functions at MUMI and KCC.

Fourth, concerning communities, whereas Glencore and its DRC subsidiaries have employed new staff to help enhance the company's relations with local communities, the measures put in place are still not enough. Moreover, the approach which had not been previously sanctioned by human rights has not changed substantially. According to Peyer et al. (2014), Glencore still lacks accountability and transparency and genuine community participation is not promoted. According to the authors, Glencore is not taking the necessary measures to reduce the negative effects of its activities on local communities, *inter alia*: (i) the resettlement of residents in Musonoi who have been most adversely affected by blasting and dust from the KCC open cast mine; (ii) enabling access to existing roads that are used by MUMI villagers and (iii) provision of drinkable water to Musonoi and Luilu.

Fifth, the fact that Glencore has permitted RAID, Fastenopfer and 'Bread for All' to visit its installations and sites in the DRC is an eloquent testimony that there is some dialogue with non-governmental organisations (NGOs). To this end, Peyer et al. (2014) have been able to engage in extensive discussions and interviews with MUMI and KCC management as well as the representatives of Glencore in Switzerland. However, it is important to note that Glencore has also been threatening and exerting pressure on these NGOs. Such threats of legal action are viewed by Peyer et al. (2014) as manoeuvres to deflect criticism which is inconsistent with constructive engagement of dialogue with NGOs.

In the third stand, Peyer et al. (2014) concluded from their research that in spite of efforts devoted by Glencore towards improving its CSR in the DRC, not much has changed on the ground in the country. According to the authors, the company's human rights, social and environmental performances are lacking in the international standards the MNC supposedly subscribes to. In essence, half-measures and non-transparent tactics are still being employed by Glencore. In summary, it is apparent from RAID, Fastenopfer and 'Bread for All' that the MNC still has to make the respect for the environment and human rights a top priority. It follows that CSR remains of marginal importance compared to Glencore's continuous interest in minimising tax payments and maximising profits.

4. Conclusions

This article has presented a case for transfer pricing (TP) as an argument for Corporate Social Responsibility (CSR). The argument has built on the position that Multinational Companies should be more socially responsible when they are operating in countries where the legislation and laws in place are not effective in identifying and sanctioning transfer mispricing. While acknowledging that TP is a legal accounting practice, we have argued that in view of its poverty and underdevelopment externalities, the practice *per se* should be a solid justification for CSR because it is also associated with schemes that deprive developing countries from capital essential for investments in health, education and development programmes. Therefore, CSR owing to TP cannot be limited to a strategic management approach, but should also be considered as some kind of social justice because of associated transfer mispricing practices. We have further argued that CSR by multinational corporations could incite domestic companies to comply more willingly with their tax obligations and/or engage in similar activities. Whereas, traditional advocates of CSR have employed concepts such as reputation, licence-to-operate, sustainability, moral obligation and innovation to make the case for CSR, the present inquiry has extended this stream of literature by arguing that TP and its externalities are genuine justifications for CSR.

The analytical argument has consisted of the following steps. We have first described the connections between transfer mispricing, extreme poverty and CSR by: (i) discussing transfer mispricing as the dark side of TP, (ii) explaining the link between TP and poverty and (iii) presenting arguments for CSR in transfer mispricing. In the second phase of the analysis, we have consolidated our arguments with a case study of Glencore and the mining industry in the Democratic Republic of Congo (DRC). To this end, we have built on an independent assessment of Glencore's CSR by NGOs in the DRC to confirm three main theses surrounding our arguments. They are: (i) the MNC's top priority is minimising taxes paid to the DRC government and maximising profits transferred to her branches in tax havens, (ii) the absence of a TP legislation that oversees mispricing by MNCs operating in the DRC and (iii) striking disparities between findings on the ground and Glencore's efforts towards CSR which implies that the company still has much to invest in the DRC to compensate for lost income from transfer mispricing.

References

Alan, K., & Carlyn, R-D., (2015). "Is Africa Actually Developing?", *World Development*, 66(C), pp. 598-613.

Anderson, S., Cavanagh, J., & Lee, T., (2005). *Field guide to the global economy*. Washington, DC: Institute for Policy Studies.

Asongu, J. J. (2007), "Innovation as an Argument for Corporate Social Responsibility", *Journal of Business and Public Policy*, 1(3), pp. 1-21.

Asongu, S. A., (2013a). "Globalisation and Africa: Implications for Human Development", *International Journal of Development Issues*, 12(3), pp. 213-238.

Asongu, S. A., (2013b, October), Fighting African capital flight: timelines for the adoption of common policies', *The Empirical Economics Letters*, http://www.eel.my100megs.com/volume-12-number-10.htm (Accessed: 09/08/2015).

Asongu, S., (2014). "Fighting African Capital Flight: Empirics on Benchmarking Policy Harmonization", *The European Journal of Comparative Economics*, 11 (1), pp. 93-122.

Asongu, S. A., (2015). "Rational Asymmetric Development, Piketty and the Spirit of Poverty in Africa", *African Governance and Development Institute*, No. 15/006, Yaoundé.

Asongu, S. A. (2016), "Rational Asymmetric Development: Transfer Mispricing and Sub-Saharan Africa's Extreme Poverty Tragedy", In Economics and Political Implications of International Financial Reporting Standards: IGI Global, 2016. 282-302.doi:10.4018/978-1-4666-9876-5.ch014.

Asongu, S. A., & Kodila-Tedika, O., (2015a). "On the Empirics of Institutions and Quality of Growth: Evidence for Developing Countries", *African Governance and Development Institute Working Paper* No. 15/041, Yaoundé.

Asongu, S. A., & Kodila-Tedika, O., (2015b). "Is Poverty in the African DNA (Gene)?", *African Governance and Development Institute Working Paper* No. 15/011, Yaoundé.

Baker R.W., (2005). *Capitalism's Achilles heel*. New Jersey: John Wiley.

Borkowski S. C., (1997). "The transfer pricing concerns of developed and developing countries". *The International Journal of Accounting*, 32(3), pp.321-36.

Boyce, J. K., & Ndikumana L. (2011). "Capital flight from sub-Saharan Africa: linkages with external borrowing and policy options", *International Review of Applied Economics*, 25(2), pp. 149-170.

Boyce, J. K., & Ndikumana, L. (2001). "Is Africa a Net Creditor? New Estimate of Capital Flight from Severely Indebted Sub-Saharan African Countries, 1970-1996", *Journal of Development,*38(2), pp. 27-56.

Boyce, J. K., & Ndikumana L. (2012a). "Capital Flight from Sub-Saharan African Countries: Updated Estimate, 1970-2010', *Political Economy Research Institute*, University of Massachusetts. http://www.peri.umass.edu/fileadmin/pdf/ADP/SSAfrica_capitalflight_Oct23_2012.pdf (Accessed: 09/08/2015).

Boyce, J. K., & Ndikumana L. (2012b). "Rich Presidents of Poor Nations: Capital Flight from Resource-Rich Countries in Africa', *Political Economy Research Institute* University of Massachusetts. http://concernedafricascholars.org/wp-content/uploads/2012/11/caploss01-ndiku-14th.pdf (Accessed: 09/08/2015).

Boyce, J. K., & Ndikumana L., (2003). "Public Debt and Private Assets: Explaining Capital Flight from Sub-Saharan African Countries", *World Development*, 31(1), pp. 107-130.

Boyce, J. K., & Ndikumana, L. (1998). "Congo's odious debt: External borrowing and capital flight in Zaire", *Development and Change*, 29(2), pp. 195-217.

Branco, M. C., & Rodrigues, L. L., (2006). "Corporate Social Responsibility and Resource-Based Perspectives", *Journal of Business Ethics*, 69(2), pp. 111-132.

Caulderwood, K., (2015) "Sub-Saharan Africa Falls Behind In Fight Against Extreme Poverty: World Bank Report", International Business Times (April 14th 2015). http://www.ibtimes.com/sub-saharan-africa-falls-behind-fight-against-extreme-poverty-world-bank-report-1881460 (Accessed: 04/10/2015).

Chang, H-J., (2008). Bad Samaritans: The Myth of Free Trade and the Secret History of Capitalism. Bloomsbury Press; Reprint edition (December 23, 2008).

Curtis, A., & Todorova, O., (2011). "Spotlight on Africa's transfer pricing landscape", Transfer pricing perspectives: Special edition. Taking a detailed look at transfer pricing in Africa. https://www.pwc.com/en_GX/gx/tax/transfer-pricing/management-strategy/assets/pwc-transfer-pricing-africa-pdf.pdf (Accessed: 30/08/2015).

Daniele, V., (2011). "Natural Resources and the 'Quality' of Economic Development", *Journal of Development Studies*, 47(4), pp. 545-573.

Diak, D., (2014). "A Look at Capital Flight from the Developing World", *GIVING what we can* https://www.givingwhatwecan.org/blog/2014-10-16/look-capital-flight-developing-world (Accessed: 04/10/2015).

Donnelly, L., (2015, May). "Illicit financial flows costing Africa billions", *Mail&Guardian*, http://mg.co.za/article/2015-05-25-illicit-financial-flows-costing-africa-billions/ (Accessed: 04/10/2015).

Efobi, U., & Asongu, S. A., (2016). "Terrorism and Capital Flight from Africa", *International Economics*; Forthcoming.

Ernst & Young (2006). "Global Transfer Pricing Surveys", September http://www.ey.com/Global/download.nsf/International/Tax - Global Transfer Pricing Survey Part 3/$file/EY GlobalTPSurvey3 Sep2006.pdf.

Fofack, H., & Ndikumana L., (2010), "Capital Flight Repatriation: Investigation of its Potential Gains for Sub-Saharan African Countries", *African Development Review*, 22(1), pp. 4-22.

Fosu, A. K., (2015). "Growth, Inequality and Poverty in Sub-Saharan Africa: Recent Progress in a Global Context", *Oxford Development Studies*, 43(1), pp. 44-59.

Global Witness (2012). "Secrecy Surrounding Glencore's Business Deals in the Democratic Republic of Congo Risks Exposing Shareholders to Corrupt Practices", Global Witness (9th of May, 2012). file:///C:/Users/Asongu/Downloads/global%20witness%20memo%20on%20glencore's%20secretive%20dealings%20in%20the%20democratic%20republic%20of%20congo.pdf (Accessed: 04/10/2015).

Groen, T., (2014). "The Influence of Corporate Social Responsibility on International Tax Planning", Tilburg University, School of Economics and Management. http://arno.uvt.nl/show.cgi?fid=134297 (Accessed: 04/10/2015).

Matten, D., & Moon, J., (2004). "Corporate Social Responsibility Education in Europe", *Journal of Business Ethics*, 54(4), pp. 323-337.

Mshomba, R. E., (2011). Africa and the World Trade Organization. Cambridge University Press; Reprint edition (February 21, 2011).

Nkurunziza J. D. (2012). "Illicit Financial Flows: A Constraint on Poverty Reduction in Africa", Officer-in-charge, Africa Section, ALDCs Division of UNCTAD, Geneva http://concernedafricascholars.org/wp-content/uploads/2012/11/caploss03-nkuru-14th.pdf (Accessed: 04/10/2015).

Osabuohien, E.S., Efobi, U.R. & Gitau, C. M.W., (2013). "External intrusion, internal tragedy:environmental pollution and multinational corporations in Sub-Saharan Africa", in Leonard, L. and Gonzalez-Perez, M. A. (Eds), Principles and Strategies to Balance Ethical, Social and Environmental Concerns with Corporate Requirements (Advances in Sustainability and Environmental Justice, Vol. 12), Emerald Group Publishing Limited, Bingley, pp. 93-118.

Osabuohien, E.S. Efobi, U.R. & Gitau, C.M.W., (2014). "Beyond the environmental kuznets curvein Africa: Evidence from panel co-integration", *Journal of Environmental Policy & planning*, 16(4), pp. 517-538.

Osabuohien, E.S. Efobi, U.R. & Gitau, C.M.W., (2015). "Environment challenges in Africa: further dimensions to the trade, MNCs and energy debate", *Management of Environmental Quality: An International Journal*, 26 (1), pp. 118-137.

Peyer, C., Feeney, P., & Mercier, F. (2014). "PR or Progress? Glencore's Corporate Responsibility in the Democratic Republic of the Congo", *Rights and Accountability in Development (RAID).* http://www.brotfueralle.ch/fileadmin/deutsch/2_Entwicklungpolitik_allgemein/C_Wirtschaft%20und%20MR/Landgrab/2014_Glencore/BFA-FO-RAID_Glencore_Study_June_2014.pdf (Accessed: 04/10/2015).

Sikka, P., (2010). "Smoke and mirrors: Corporate social responsibility and tax avoidance", *Accounting Forum*, 34(3-4), pp. 153-168.

Sikka, P., & Willmott, H., (2010). "The dark side of transfer pricing: Its role in tax avoidance and wealth retentiveness", *Critical Perspective on Accounting*, 21(4), pp. 342-356.

Stiglitz, J. E., (2007). Making Globalization Work. W. W. Norton & Company; Reprint edition (September 17, 2007).

Tanzi, V., (2000). "Globalization, technological developments, and the work of fiscal termites", *IMF Working Paper* No. 00/181.Washington, DC: IMF.

UK Home Office (1998). Review of financial regulation in the crown dependencies. London: The Stationery Office.

Valentine, S., & Fleischman, G., (2008). "Ethics Programs, Perceived Corporate Social Responsibility and Job Satisfaction", *Journal of Business Ethics*, 77(2), pp. 159-172.

Veselinovic, M., (2015). "Rich getting richer, poor getting poorer? Africa's inequality struggle", CNN Africa View, http://edition.cnn.com/2015/05/12/africa/africa-inequality/ (Accessed: 04/10/2015).

Walsh, B., (2015, August). "The International Tax System is 'Repulsive And Inequitable.' Here's A Way To Fix It", *Huffpost Politics*, http://www.huffingtonpost.com/entry/multinational-corporations-taxes_55d4baede4b055a6dab265d9 (Accessed: 04/10/2015).

Weeks, J., (2012). "Macroeconomic impact of capital flows in Sub-Saharan African countries, 1980-2008", *Association of Concerned Africa Scholar Bulletin*, 87, pp. 1-7.

Weeks, J., (2015). Macroeconomic impact of capital flows in Sub-Saharan Africa, in Ajayi, S.I., and Ndikumana, L., (Eds.), *Capital Flight from Africa: Causes, Effects and Policy Issues*. Oxford: Oxford University Press.

Why Poverty (2013). "Stealing Africa-How much profit is fair?" whypoverty.net, https://www.youtube.com/watch?v=WNYemuiAOfU&feature=iv&src_vid=HuBR2IaEkx0&annotation_id=annotation_725881 (Accessed: 04/10/2015).

World Bank (2015). "World Development Indicators', World Bank Publications http://www.gopa.de/fr/news/world-bank-release-world-development-indicators-2015 (Accessed: 04/10/2015).