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## Corporate Social Responsibility and Environmental Protection in the Nigerian Energy Sector: Reflection on Issues and Legal Reform

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## **Corporate Social Responsibility and Environmental Protection in the Nigerian Energy Sector: Reflection on Issues and Legal Reform**

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The abatement of environmental degradation has been an issue which has received growing attention in recent times. Despite the increased attention however, environment pollution has remained unabated in Nigeria with its adverse impacts on the citizens. The question then is, do businesses owe society any social responsibility as it relates to the protection of environment? The Energy sector in Nigeria plays a very crucial role in Nigeria's development, as the industrial development and innovation necessary for the economic development of any country is directly linked to the management of energy resources. Nigeria is endowed with abundant (fossil fuel) energy resources, such as oil, gas, coal, fuel wood, etc., which are dominantly the fuel sources for electrical energy production, yet, Nigeria is faced with environmental challenges capable of limiting and destroying access to these energy resources without taking cognizance of their environmental control. Therefore, this article attempts at navigating the imperative of Corporate Social Responsibility. Furthermore, the use of Corporate Social Responsibility as a tool for abatement and prevention of environmental damage to the energy sector is considered. Finally, possible recommendations were made as control measure through CSR in Nigeria in order to protect the energy resources and ensure a clean and healthy environment.

**Keywords:** Corporate Social Responsibility (CSR); Pollution; Sustainable Development.

### **1. INTRODUCTION**

Corporate Social Responsibility is an offshoot of several principles and guidelines which have been proffered for the

regulation of business activities.<sup>1</sup> Prominent among these are: The United Nations Global Compact, the Caux roundtable principles for business and the Global Sullivan principles. The global Sullivan principles provide that it shall be the responsibility of a company to provide a safe and healthy workplace; protect human health and the environment; and promote sustainable development.<sup>2</sup> The Caux Roundtable principles for business provides under principle 6, “Respect for the Environment” thus: a business should protect and, where possible, improve the environment, promote sustainable development, and prevent the wasteful use of natural resources.<sup>3</sup> The United Nations global compact proposed nine universal principles in the areas including the environment. The concept of Corporate Social Responsibility (CSR) in Nigeria is relatively new. However, this article attempts to examine the existing framework for corporate social responsibility in Nigeria and the role it can play in environmental and energy resources protection. It also considers the prospects of having a unified corporate social Responsibility policy specifically geared towards environmental protection and sustainable development. This article in essence canvases an argument for increased attention to the subject and legal regimes for the enforceability and remodeling of this concept to what obtains in the 21<sup>st</sup> century.

Therefore, this article is divided into seven sections and this introduction which set the tone is the first. Section 2 examines the concept of CSR in order to understand the operational meaning of the term within the purview of this article. Section 3 examines energy sector in Nigeria with a view to understanding the need to maintain the balance in the

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<sup>1</sup> Damilola Olawuyi, ‘Redefining Corporate Social Responsibility as a Human Right Obligation in Nigeria’ (2014) University of Jos Current Law Journal 1-15.

<sup>2</sup> Heartland Institute, ‘The Global Sullivan Principles’ <[http://www.google.com/url?q=https://www.heartland.org/sites/all/modules/custom/heartland\\_migration/files/pdfs/6789.pdf&sa=U&ved=0ahUKEwiTrKzUsLPJAhUFLQ8KHfVhB5cQFggbMAU&usg=AFQjCNHeR01g76ipXHzAytE5Ork9Yllfxg](http://www.google.com/url?q=https://www.heartland.org/sites/all/modules/custom/heartland_migration/files/pdfs/6789.pdf&sa=U&ved=0ahUKEwiTrKzUsLPJAhUFLQ8KHfVhB5cQFggbMAU&usg=AFQjCNHeR01g76ipXHzAytE5Ork9Yllfxg)> accessed 28 November 2020.

<sup>3</sup> Caux Roundtable ‘Principle for Business’ <[http://www.google.com/url?q=http://www.forgioneengineering.com/Company/cauxprinciples.pdf&sa=U&ved=0ahUKEwi7jP\\_DsbPJAhWElg8KHZiEABMQFggLMAA&usg=AFQjCNFzoO91xhxmADJ7BVn4B\\_JZ-xz9pg](http://www.google.com/url?q=http://www.forgioneengineering.com/Company/cauxprinciples.pdf&sa=U&ved=0ahUKEwi7jP_DsbPJAhWElg8KHZiEABMQFggLMAA&usg=AFQjCNFzoO91xhxmADJ7BVn4B_JZ-xz9pg)> accessed 28 November 2019.

access to energy resources and ensure its regeneration. Section 4 part looks into the concept of CSR in the energy sector and how to balance it with a environmental protection. Section 5 considers the links between the protection of environment and corporate social responsibility. Section 6 investigates into the legal frameworks on corporate social responsibility in order to underscore where legislative reforms are necessary. Section 7 is dedicated to the role of stakeholders in CSR to ensure environmental protection and the need for public-private synergy. Section 8 is the conclusion.

## 2. CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY

CSR is an evolving concept, a current issue being discussed in several fora. Its definition is vague, imprecise and misty depending on a number of variables differing by society and industry. Ijaiya defines the concept as an obligation on companies to consider the interests of the communities by providing social infrastructure such as schools, hospitals, roads, water supply in their area of operations.<sup>4</sup>The EU's Green paper on CSR defined it as a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.<sup>5</sup> Mullerat defines CSR as a concept whereby companies voluntarily decide to respect and protect the interest of a broad range of stakeholders while contributing to a cleaner environment and a better society through an active interaction with all<sup>6</sup>. International

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<sup>4</sup> Hakeem Ijaiya, 'Challenges of Corporate Social Responsibility in the Niger Delta Region of Nigeria' (2014) 3:1 *Journal Of Sustainable Development Law and Policy* 60 – 71 <[http://www.law.unilorin.edu.ng/publications/private/ho\\_ijaiya/1.pdf](http://www.law.unilorin.edu.ng/publications/private/ho_ijaiya/1.pdf) accessed on 9 May 2020.

<sup>5</sup> [http://europa.eu.int/comm/employment\\_social/soc-dial/csr/csr2002col\\_en.pdf](http://europa.eu.int/comm/employment_social/soc-dial/csr/csr2002col_en.pdf)> accessed 9 May 2020.

<sup>6</sup> Ramon Mullerat *The Global Responsibility of Business*' in Ramon Mullerat OBE, *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (1<sup>st</sup> Ed, International Bar Association and Kluwer Law

Chamber of Commerce defines it as the voluntary commitment by business to manage their roles in society in a responsible way. The World Business Council for Sustainable development defines CSR as the commitment of business to contribute to a sustainable development by working with employees, their families, the local communities and society at large to improve their quality of life. Frynas defines it as an umbrella term for a variety of different theories and practices all of which recognize that companies have a responsibility for their impact on society and the natural environment, that companies have a responsibility for the behaviour of others with whom they do business, and that CSR activities are normally conducted on a voluntary basis beyond legal compliance.<sup>7</sup> Under the proposed CSR Bill, Corporate Social responsibility refers to the obligation of an organization to seek actions that protect and improve the welfare of the society along with its interest. Shell in their own definition of CSR recognises five areas of responsibility as follows:

To shareholders - to protect shareholders' investment, and provide a long-term return competitive with those of other leading companies in the industry.

To customers - To win and maintain customers by developing and providing products and services which offer value in terms of price, quality, safety and environmental impact, which are supported by the requisite technological, environmental and commercial expertise.

To employees - To respect the human rights of our employees and to provide them with good and safe working conditions, and competitive terms and conditions of employment. To promote the development and best use of the talents of our

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International, Hague 2005) 3, 27. See also Damilola Olawuyi, 'Corporate Accountability for the Natural Environment and Climate Change', in Ilias Bantekas and MA Stein (eds), *Cambridge Companion to Business and Human Rights* (Cambridge University Press 2021).

<sup>7</sup> Jędrzej George Frynas, *Beyond Corporate Social Responsibility: Oil Multinationals and Social Challenges* (1<sup>st</sup> Ed, Cambridge University Press, UK 2009)

employees; to create an inclusive work environment where every employee has an equal opportunity to develop his or her skills and talents. To those with whom we do business - To seek mutually beneficial relationships with contractors, suppliers and in joint ventures and to promote the application of these Shell General Business Principles or equivalent principles in such relationships. The ability to promote these principles effectively will be an important factor in the decision to enter into or remain in such relationships.

To society - To conduct business as responsible corporate members of society, to comply with applicable laws and regulations, to support fundamental human rights in line with the legitimate role of business, and to give proper regard to health, safety, security and the environment.<sup>8</sup>

CSR is a concept that imposes moral obligations of communal existence to a corporate personality (company). In its nature, CSR is voluntary, but may be made mandatory by the prevailing legal framework of the industry or society. Consequent from the above, devising an operational definition of CSR is important for the theoretical and practical development of CSR, proponents have stated that this will at long last put to rest arguments on the definition of the concept thus leading to focus and progress. Opponents on the other hand have argued that defining it will grossly limit the concept. Notwithstanding this, CSR as a doctrine is still in its early stage of development and as such, consistent definitions, labels, and vocabulary are still emerging and remain hotly debated. The operational definition of CSR in a society is a factor in determining the kind of CSR activities

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<sup>8</sup> Royal Dutch Shell plc. 'Shell General Business Principles' <[https://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ad=rja&uact=8&ved=0ahUKEwidqs6V0oTMAhVlKCYKHUK7BcYQFgdMAA&url=http%3A%2F%2Fwww.shell.com%2Fcontent%2Fdam%2Fshell-new%2Flocal-content-packages%2Fcorporate%2Fsgbp-english-2014.pdf&usq=AFQjCNFeNX\\_tpXAjx14y8A6TLGxLHdywNQ&bvm=bv.119028448,d.eWE](https://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ad=rja&uact=8&ved=0ahUKEwidqs6V0oTMAhVlKCYKHUK7BcYQFgdMAA&url=http%3A%2F%2Fwww.shell.com%2Fcontent%2Fdam%2Fshell-new%2Flocal-content-packages%2Fcorporate%2Fsgbp-english-2014.pdf&usq=AFQjCNFeNX_tpXAjx14y8A6TLGxLHdywNQ&bvm=bv.119028448,d.eWE)> accessed 10 April 2020.

businesses in the society will carry out. Thus, people from different countries laid emphasis on different issues; for example, in Ghana local empowerment for communities was the focus while for Thailand, the main issue was environment.<sup>9</sup> These differences in perception and expectation make any common or globally acceptable definition of CSR difficult.

Today's debates on CSR however are conducted at the intersection of development, environment and human rights, and are more global in outlook. While the role of business in society seems to have been changing for some time, there is no agreement among observers on what CSR stands for or where the boundaries of CSR lie. In the academic front, CSR means different things to practitioners seeking to implement CSR inside companies than to researchers trying to establish CSR as a discipline.<sup>10</sup> It can also mean something different to civil society groups than to the private sector. The responsibilities of companies in developing nations are also defined differently depending on the social context.<sup>11</sup> According to Amaeshi and Bongo the socio-cultural characteristics of Nigeria are unique and as such, the meaning and practice of CSR amongst indigenous Nigerian firms would mainly be shaped by the socio-economic conditions in which these firms operate. Thus, CSR in Nigeria is aimed towards addressing the peculiarity of the socio-economic development challenges of the country majorly poverty, and would be informed by socio-cultural influences especially communalism and charity.<sup>12</sup> Irrespective

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<sup>9</sup> Richard Holme and Phil Watts, 'Corporate Social Responsibility: Making Good Business Sense' (World Business Council for Sustainable Development' January 2000) <<http://www.wbcsd.org/web/publications/csr2000.pdf>> accessed on 3 April 2016.

<sup>10</sup> The Latin American Council of Management Schools, 'Some Criticisms to Corporate Social Responsibility (CSR) and Radical CSR as a Proposal to Overcome them' <[http://cladea.org/proceedings\\_2013/wp-content/uploads/2014/02/2013-XC-0314.pdf](http://cladea.org/proceedings_2013/wp-content/uploads/2014/02/2013-XC-0314.pdf)> assessed 3 April 2020.

<sup>11</sup> Richard Holme and Phil Watts 'Making Good Business Sense: World Business Council for Sustainable Development' <<http://www.wbcsd.org/web/publications/csr2000.pdf>> accessed on 3 April 2020

<sup>12</sup> Kenneth M Amaeshi, Bongo C Adi et al, 'Corporate Social Responsibility (CSR) in Nigeria: western mimicry or indigenous practices?' <<https://www.google.com.ng/url?sa=t&rect=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwj31uPE083MAhVMOpKHSP-BXcQFggg>>

of different perceptions about CSR, CSR within the purview of the objective of this article is one connecting with environment goods.

### 3. ENERGY SECTOR IN NIGERIA

Energy plays the most fundamental position in the economic development, progress, and growth, as well as eradication of poverty and protection of national security. Thus, continuous energy supply is a fundamental subject for all nations today.<sup>13</sup> This is because future economic development critically depends on the continuing accessibility of energy from sources that are affordable, available, and environmentally friendly. This is the reason why issues of security, climate change, and public health are directly interconnected with energy.<sup>14</sup> Energy is an essential factor in all the sectors of any country's economy and the standard of living of a nation can be directly linked to the per capita energy consumption.<sup>15</sup> The current world's energy crisis is due to two reasons: the rapid population growth and the increase in the living standard of whole societies. Energy provide support to the provision of fundamental needs such

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MAA&curl=https%3A%2F%2Fwww.nottingham.ac.uk%2Fbusiness%2FII  
CCSR%2Fresearch.php%3Faction%3Ddownload%26id%3D41&usg=AF  
QjCNGVWkXONLIbXZB2O2gMTi1PNzqziA&sig2=PBrGZGH1m0Xi  
x6lCyBxDg> accessed 9 May 2020; see also Shu Li and Paul Appiah  
Konadu 'The top-Down Model: A Discussion of Corporate Social  
Responsibility Policy in China' (2021) 12 (1) *The Journal of Sustainable  
Development, Law and Policy*, 137-156, DOI: 10.4314/jsdlp.v12i1.7

<sup>13</sup> The Latin American Council of Management Schools, *Some Criticisms to Corporate Social Responsibility (CSR) and Radical CSR as a Proposal to Overcome them* (Cldea.org, 2013) <[http://cldea.org/proceedings\\_2013/wp-content/uploads/2014/02/2013-XC-0314.pdf](http://cldea.org/proceedings_2013/wp-content/uploads/2014/02/2013-XC-0314.pdf)> assessed 3 April 2020.

<sup>14</sup> Richard Holme and Phil Watts, 'Making Good Business Sense: World Business Council for Sustainable Development' (WBCSD, 2000) <<http://www.wbcd.org/web/publications/csr2000.pdf>> accessed on 3 April 2020

<sup>15</sup> Maurice Sunkin, David M. Ong and Robert Wight, *Sources Book on Environmental Law*, (Cavendish Publishing Limited, London, 2002), 1-2; Kramer, 'Focus on European Environmental Law' cited in Maurice Sunkin, David M. Ong and Robert Wight, *Sources Book on Environmental Law*, (Cavendish Publishing Limited, London, 2002) 14.



as cooked food, lighting, a comfortable living temperature, piped water or sewerage, the use of appliances, educational aids, communication, essential health care, and transport. Likewise, it fuels industrious activities such as agriculture, industry, manufacturing, commerce, and mining.<sup>16</sup>

The energy crisis, which has overwhelmed Nigeria for about two decades, has been massive and has mostly contributed to the prevalence of poverty by damaging industrial and commercial activities during this era.<sup>17</sup> The Council for Renewable Energy of Nigeria estimates that power outages brought about a loss of 126 billion naira (US\$ 984.38 million) yearly.<sup>18</sup> Apart from the enormous economic loss, it has also led to health hazards owing to the exposure to carbon emissions resulted from continuous use of 'backyard generators' in different family unit and business ventures, leading to a weakening of living conditions. Furthermore, according to the Central Bank estimation in 1985, Nigeria consumed 8,771,863 tonnes of oil equivalent.<sup>19</sup> This is equal to about 180,000 barrels of oil per day. Since then, oil consumption in Nigeria has considerably increased. The impact of this increase on the economy relying exclusively on revenue from oil is marvelous. Besides, the Department for Petroleum Resources estimated a quantity of petroleum of more than 78% of the total energy consumption in Nigeria.<sup>20</sup> In the current predicament as a country, it is clear that relying largely on fossil fuel (petroleum) is not sufficient to meet the energy needs of the country. Since Nigeria is endowed with plentiful renewable

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<sup>16</sup> Justine Thornton and Silas Beckwith, *Environmental Law*, (Sweet & Maxwell, London, 2004) 6;

<sup>17</sup> Kenneth M Amaeshi, 'Bongo C Adi et al, 'Corporate Social Responsibility (CSR) in Nigeria: western mimicry or indigenous practices?' <<https://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwj3luPE083MAhVMOpKHSP-BXcQFgggMAA&url=https%3A%2F%2Fwww.nottingham.ac.uk%2Fbusiness%2FICCSR%2Fresearch.php%3Faction%3Ddownload%26id%3D41&usg=AFQjCNGVWkXONLIbXZB2O2gMTi1PNzqiA&sig2=PBrMGZGH1m0XIx6lCyBxDg>> accessed on 9 May 2020.

<sup>18</sup> Council for Renewable Energy, Nigeria Nigeria Electricity Crunch. (CREN, 2009)

<sup>19</sup> Central Bank of Nigeria, Annual Reports and Statement of Account, (CBN, 1985)

<sup>20</sup> Department of Petroleum Resources (DPR) (2007).

energy resources such as hydroelectric, solar, wind, tidal, and biomass, there is a need to exploit these resources and map a new energy future for Nigeria. In this perspective, the government has a duty to make renewable energy accessible and affordable to everyone.

#### **4. THE THREE PILLARS OF CSR IN ENERGY SECTOR AND GLOBAL ENVIRONMENTAL PROTECTION**

The energy business is a major basis of air and water pollution and one of the globe's major emitters of greenhouse gasses resulting to climate change. In fact, there is barely another business sector that has such prospective to contribute to economic and social development than the energy industry.<sup>21</sup> A fast changing climate and continuously increasing electricity demand underscore the exigency of defining corporate social responsibility in the context of the energy sector using the three pillars of CSR. These three pillars are social issues, environmental issues, and economic issues.<sup>22</sup>

In a contemporary business world, social duty is the latest of the three dimensions of CSR and it is getting more attention these days. A rising number of organisations are becoming more and more active in addressing social issues. Social responsibility implies being accountable for the social impacts the corporation has on people directly and indirectly. This includes the people within the company, in the supply chain of the company, in the community where the company operates and as customers of the company. Likewise, it refers to the management's responsibility to make choices and take measures that will contribute to the welfare and interests of society as well as those of the organization. For instance, social issues relate to the consequence that an electricity company's businesses have on

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<sup>21</sup> Carol, A.B, "A History of Corporate Social Responsibility: Concepts and Practices"(The Oxford Handbook of Corporate Social Responsibility, Oxford University Press, 2008) pp.19-46.

<sup>22</sup> Ibid.

the social welfare of a country or community.<sup>23</sup> Despite the fact that social issues are generally of great concern to developing countries and this social pillar of sustainable development is often the most neglected by electricity companies.

Environmental issues have been an imperative subject of debate for the past forty years in the business world. The energy production and transmission may have several kinds of consequences on the environment.<sup>24</sup> Generally, environmental impact refers to the harmful effects happening in the surrounding natural environment owing to business activities. Such impacts may include: overuse of natural, non-renewable resources, climate change, waste, pollution, degeneration of biodiversity, deforestation, etc. Since many business-related environmental problems transcend national boundaries, most companies are actors in the global environment. Therefore, the environmental dimension cannot be ignored in the utilization of energy resources.<sup>25</sup>

Economic responsibility is not merely an issue of companies being financially accountable; the economic aspect of the sustainability plan rather considers the direct and indirect economic impacts that the organisation's operations have on the surrounding community and on the company's stakeholders.<sup>26</sup> Economic issues affect the progress and sustainability of economic development. While it is clear that energy companies must make a profit in order to continue their operations; energy companies are expected to contribute to sustainable economic development in their host country by investing in and improving electricity infrastructure, researching and developing sustainable new

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<sup>23</sup> Ibid.

<sup>24</sup> ECOTEC, The impact on employment in EU-25 of the opening of electricity and gas markets, and of key EU directives in the field of energy. Case study country chapter - SWEDEN and Vattenfall. (ECOTEC Research & Consulting, United Kingdom, 2007)

<sup>25</sup> Ibid.

<sup>26</sup> European Commission, Energy 2020. A strategy for competitive, sustainable and secure energy. (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2011), <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0639&from=EN>>, accessed 14 December 2016.

technologies that can be utilised by the host country in the future.<sup>27</sup>

Prior to 1900, the prevalence philosophy was one of mankind's conquests over nature by science and technology and depletion of natural resources was not considered as a problem.<sup>28</sup> During this period, a few agreements relating to the issue of environment existed. This is because negotiated agreements then enjoyed unconstrained national sovereignty over natural resources.<sup>29</sup> Matters on pollution and other problems associated with the environment are not dealt with. However, the United Kingdom-United States Boundary Water Treaty of 1909 was a remarkable development at that period.<sup>30</sup> This treaty forbids causing injury to the health or property of each side that may arise from the pollution of water. Countries by 1900s through mutual agreements started to acknowledge the need to safeguard scarce and valuable geological resources.<sup>31</sup> The magnitude of protecting the resources of the earth including flora and fauna became acknowledged.<sup>32</sup> During this period, pronouncement on the applicability of customary rules to matters of environment began to crystallize. The *Trail Smelter Arbitration* marked the global beginning of the application of customary rules to

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<sup>27</sup> Ibid.

<sup>28</sup> Richard Holme and Phil Watts 'Making Good Business Sense: World Business Council for Sustainable Development'(WBCSD, 2000) <<http://www.wbcd.org/web/publications/csr2000.pdf>> accessed 3 April 2020

<sup>29</sup> Grieder T., "Landscapes, the Social Construction of Nature and the Environment" (1994) 59 *Rural Sociology*, 1, see also Damilola Olawuyi, *Principles of Nigerian Environmental Law* (Afe Babalola University Press, 2015) 1-25.

<sup>30</sup> Treaty between the United States and Great Britain Respecting Boundary Waters Between the United States and Canada (Washington), in force 5 May 1910.

<sup>31</sup> Some of them are: the 1902 Convention for the Protection of Birds Useful to Agriculture, the Convention for the Protection of Migratory Birds in the United States and Canada and the Treaty for the Preservation and Protection of Fur Seals signed in 1911. The 1900 London Convention for the Protection of Wild Animals, Birds and Fish in Africa focused mainly on wildlife generally.

<sup>32</sup> These include the 1933 London Convention on Preservation of Fauna and Flora in Their Natural State (focused primarily on Africa), and the 1940 Washington Convention on Nature Protection and Wild Life Preservation (focused on the Western Hemisphere).

environment.<sup>33</sup> This was a case between United States and Canada. The decision of the tribunal in this case has widely been accepted as endorsing the rule making a state liable for activities causing harms or damages to the territory of another state.<sup>34</sup> The decision has today attained a key place in the jurisprudence of environmental international laws.

Contemporary environmental international law is traceable to 1972 when states assembled at Stockholm for the Conference on the Human Environment. This gathering led to the adoption of the Stockholm Declaration.<sup>35</sup> The principles in the Declaration have provided the foundation for modern international environmental law.<sup>36</sup> Ever since then, countries have negotiated and concluded several documents to safeguard the diverse nature of the environment.<sup>37</sup> Another significant development was in 1992 when states assembled at Rio de Janeiro, Brazil, for the United Nations Conference on the Environment and Development.<sup>38</sup> Rio Declaration which was adopted at the conference symbolizes a significant step in the course begun by the Brundtland Report by laying down some principles in pursuit of sustainable environment. This was seen as an indication of the beginning of an innovative segment where environment as well as economic issues is to be incorporated into the curb webs of developmental project.<sup>39</sup> This shows the global progressive awareness of the crucial need to observe and investigate environmental risk and to mitigate them. This is an obvious manifestation that the protection of the environment is now seen as a universal concern both at the regional and global level. This offers us optimism that possibly, with a number of achievements capable in the

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<sup>33</sup> 33 AJIL (1939), 182, where Canada was held liable for damage from copper smelter Fumes Company operating within its territory.

<sup>34</sup> Ibid.

<sup>35</sup> See the Stockholm Declaration, 1972.

<sup>36</sup> See for example principle 1 of the Declaration.

<sup>37</sup> See for example, the Convention on International Trade in Endangered Species 1973; the London Ocean Dumping Convention 1972; and the World heritage Convention 1972; Nordic Convention on the Protection of the Environment (Stockholm), 1974..

<sup>38</sup> Rio de Janeiro Declaration on Environment and Development, June 16, 1992, UN Doc. A/CONF.15/15. It is popularly known as the Earth Summit.

<sup>39</sup> Ibid, principle 3 and 4.

future coupled with political will to deal with the enormous confrontations of global change in the environment and to address the exigent need for a friendly and sustainable environment.

## 5. CORPORATE SOCIAL RESPONSIBILITY AND ENVIRONMENTAL PROTECTION

The idea of Corporate Social-Environmental Responsibility under the veil of CSR derives its validity from the principles of UN Global Compact for Corporate Sustainability which reads as follows:<sup>40</sup>

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
- Principle 8: undertake initiatives to promote greater environmental responsibility; and
- Principle 9: encourage the development and diffusion of environmentally friendly technologies.<sup>41</sup>

It is worthy to note that environmental issues have evolved together with the 21<sup>st</sup> century; Global warming, threats to the Earth's ozone layer, deserts consuming agricultural land, water Pollution and threat to aquatic life etc. It has therefore become necessary for these concerns to be reflected in the company's policy. Issues of Environmental concern should be paid close attention and deserve inclusion in the company policy of responsible businesses because they are as urgent as they are complex and bear on our very survival. CSR in this wise is the umbilical cord between sustainable development, environmental protection and disaster management fashioned towards making the idea of development – socially safe and commercially viable. The doctrines of corporate social

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<sup>40</sup> Ramon Mullerat, *Corporate Social Responsibility: The Corporate Governance of the 21<sup>st</sup> Century*, (1<sup>st</sup> ed. Kluwer Law International, The Netherlands 2011) pp. 265–274

<sup>41</sup> United Nations, *The Rio Declaration on Environment and Development* <<http://www.un.org/esa/sustdev/documents/agenda21/index.htm>> accessed 30 November 2020.

responsibility and Environmental protection have in recent times become closely related. It is unfortunate to note that at the inception of industrialization and modernization, little attention was paid to issues concerning the welfare of the environment. However, as time progressed, the interrelationship between the environment and development came to be appreciated by all. The 1972 UN Conference on the Human Environment brought the industrialized and developing nations together to delineate the "rights" of the human family to a healthy and productive environment. A string of such meetings followed: on the rights of people to adequate food, to sound housing and safe water. This spurred more international, municipal and local legislations, agreements and reports – chief among which was the Report of the World Commission on Environment and Development: *Our Common Future*.<sup>42</sup> The main aim of the report was for a new era of economic growth – growth that is forceful and at the same time socially and environmentally sustainable. The specialized environmental perspective of CSR also known as Corporate Environmental Responsibility (CER) traditionally covered such areas as legal compliance, waste minimization, and pollution prevention. However, developments in the global economy has ushered forth new markets with new levels of responsibility for the environment. Corporate environmental performance now takes place against a backdrop of evolving environmental priorities in which numerous stakeholders – governments, non-governmental organizations, activist, groups etc. - help to shape rules and environmental expectations for businesses.

Around the globe, leading companies are adopting more sophisticated environmental practices and refining their approach to various elements of their environmental programs. The high visibility of environmental issues drives customers, investors and employees to pressure companies to go well beyond regulatory and legal compliance. Companies are increasingly expected to address environmental impacts

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<sup>42</sup> Report of the World Commission On Environment and Development: *Our Common Future* <http://www.google.com/url?q=http://www.undocuments.net/our-commonfuture.pdf&sa=U&ved=0CDsQFjAlahUKEwiLrKuzr5PJAhWC1hoKHU7wCDE&usg=AFQjCNGNRsd6LVZIMafg3Fo9yF55cTNOkg> accessed 15 November 2020.

of their facilities and to deliver value to their customers while protecting the environment.<sup>43</sup> Hence, the application of CER has increased tremendously in recent times, this is evidenced by the findings of the study carried out by the New Nigerian Foundation which showed that in 2005, 36 companies (being 22% of the original 163 surveyed) had focused donations, most of which were contributed to Education, Health, sports, community development and Environment.<sup>44</sup>

CSR as defined among oil multinationals also takes an interesting stand point. The oil and gas sector has been among the leading industries in championing CSR. This is at least partly due to the highly visible negative effects of oil operations such as oil spills and the resulting protests by civil society groups and indigenous people. Prominent examples of publicized industry 'debacles' include indigenous unrest such as anti-Shell protests in Nigeria.<sup>45</sup> Such events widely reported by the media have put particular pressure on multinational oil companies such as Shell, which are perhaps more visible and whose brand image is more vulnerable than companies in some other sectors of the economy. Therefore, it is safe to say that Oil companies pay greater lip service to CSR and they engage more with local communities than companies in many other sectors. This is demonstrated by, among other things, the remarkable growth of corporate codes of conduct and social reporting among Oil companies. Oil companies now help to build schools and hospitals, launch micro-credit schemes for local people and assist youth employment programs, particularly in developing countries. Thus, given the importance of CSR activities, the oil and gas sector is an instructive example for analyzing to what extent the CSR movement can transform practices in an industry.<sup>46</sup>

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<sup>43</sup> New Nigerian Foundation, *Corporate Social Responsibility Performance in Nigeria: An Evaluation* (1<sup>st</sup> Ed, Skkor Services Ltd, Nigeria 2007)

<sup>44</sup> New Nigerian Foundation, *Corporate Social Responsibility Performance in Nigeria: An Evaluation* (1<sup>st</sup> Ed, Skkor Services Ltd, Nigeria 2007)

<sup>45</sup> Jędrzej G. Frynas, 'Corporate Social Responsibility or Government Regulation? Evidence on Oil Spill Prevention' <<http://www.ecologyand society.org/vol17/iss4/art4/ES-2012-5073.pdf>> accessed 3 April 2020.

<sup>46</sup> Jędrzej George Frynas *Beyond Corporate Social Responsibility: Oil Multinationals and Social Challenges* (1<sup>st</sup> Ed, Cambridge University Press, UK 2009)



## 6. LEGAL FRAMEWORK ON CORPORATE SOCIAL RESPONSIBILITY RELATING TO ENERGY SECTOR AND ENVIRONMENTAL PROTECTION

Governmental involvement is vital if measures to protect the environment are to be successful. This is the stage at which the law has an imperative role to play. No quantity of technological or scientific strategies or design can successfully protect the environment without the aid of legal system to sustain them.<sup>47</sup> The purpose of preserving and maintain the purity of the environment can be attained only if the law can be mobilized to operate in companionship with science and technology.<sup>48</sup> This development support the fact that environmental issues are now perceived as a universal issues from which a nation can no longer consider itself isolated.<sup>49</sup> Environmental laws are now up and coming to regulate the basic national environmental problems and control activities likely to occasion pollution in a nation's territory.

### 6.1 Constitution of the Federal Republic of Nigeria<sup>50</sup>

The Constitution of the Federal Republic of Nigeria remains the supreme law of the land. This has three implications. First is that everything must be done according to the dictate of the law.<sup>51</sup> Secondly, all other laws are secondary to the

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<sup>47</sup> White, Paul and Anke Jentsch, "The Search for Generality in Studies of Disturbance and Ecosystem Dynamics, in *Progress in Botany* (2001) 62 Springer-Verlag, pp 399-450; Wilson Harlan, "Environmental Democracy and the Green State," (2006) 38(2) *Polity*, 276-94.

<sup>48</sup> Young and Oran "Regime Effectiveness: Taking Stock," in *The Effectiveness of International Environmental Regimes: Causal Connections and Behavioral Mechanisms*. (Edited by Oran Young. Cambridge, Massachusetts: The MIT Press, 1999) 249-279.

<sup>49</sup> *ibid*

<sup>50</sup> The Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011)

<sup>51</sup> *Id*, section 1(1) (2) and (3)

constitution.<sup>52</sup> Thirdly, any law that is inconsistent with the constitutional provisions will be regarded as null and void and of no effect.<sup>53</sup> The Constitution of Federal Republic of Nigeria, which came into force on May 29, 1999 specifically makes environmental protection a state objective and indeed provides for it in the chapter two on Fundamental Objectives and Directive Principle of State Policy.<sup>54</sup> Section 20 expressly contains provision on environmental protection and states as follows:<sup>55</sup>

The state shall protect and improve the environment and safeguard the water, air, land, forest and wild life in Nigeria.

The justification for section 20 as argued by one author is to ensure a healthy environment for Nigerian Citizens.<sup>56</sup> The protection of the environment is essential for the realization of human rights because human rights can only be enjoyed in an environment that is free of pollution.<sup>57</sup> Thus, safeguarding the air, water, land and wild life as stated in section 20 of the Nigerian Constitution would ensure protection of human rights. This is because it has been argued that pollution of air, water and land can affect the health of humans or destroy the biological systems of plant and animal. On this note, Mathew Adefi argues that pollution of water threaten the quality of water supply and the sustenance of aquatic life.<sup>58</sup> He went further and observed that pollution of water can cause water to be incapable of sustaining human life.<sup>59</sup>

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<sup>52</sup> *ibid*

<sup>53</sup> *ibid*

<sup>54</sup> See the provisions of the chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011).

<sup>55</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011)

<sup>56</sup> Gozie Ogbodo "Environmental Protection in Nigeria: Two Decades After Koko Incidence" (2010) 15(1) *Annual Survey of International and Comparative Law*, 1-18

<sup>57</sup> See Abdulkadir .B.A and Sambo A.O. "Human Rights and Environmental Protection: The Nigerian Constitution Examined" (2009) 2, *Journal of Food, Drug and Health Law*, Kogi State University, Nigeria, 61-73.

<sup>58</sup> Mathew Adefi Olong, "Human Rights, the Environment and Sustainable Development: Nigerian Women's Experiences" (2012)(1)*Journal of Politics and Law*, 100-108

<sup>59</sup> *ibid*

It has also been contended that the emissions of substances into the air can result into a lot of health problems to the Nigerians like cancer, birth defects, genetic damage and instant death.<sup>60</sup> This shows that the protection of water, air, land and wild life is vital in CSR.

In spite of the laudable provision of section 20 in the constitution, the question remains whether an individual or aggrieved person has a right or the locus to approach the court to enforce the provision. In answering this question, it is pertinent to examine the provision of section 6(6)(c) of the Constitution which is reproduced below:

The judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution

This provision has been interpreted to deny the court the power to adjudicate on any issue bothering on section 20 of the Constitution.<sup>61</sup> That is, protection of the environment. This is because section 20 also falls under the provisions of fundamental objectives and directive principles of state policy set out in chapter two of the constitution which by section 6(6)(c) are generally not enforceable. This provision was judicially interpreted in *Okogie (Trustees of Roman Catholic Schools) and other v. Attorney-General, Lagos State*.<sup>62</sup> This case was based and decided on the similar provision of the 1979 Nigerian Constitution. The issue in this case was on the Plaintiffs' fundamental right under section 32(2) of the 1979 Constitution to own, set up and manage private primary and secondary schools for the

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<sup>60</sup> Ikoni UD, "Rural Women, Poverty and Environmental Protection in Nigeria: Challenges and Prospects" (2006)2, *Journal of Gender and Contemporary Studies*, 113

<sup>61</sup> Mathew Adefi Olong, "Human Rights, the Environment and Sustainable Development: Nigerian Women's Experiences" (2012) 5(1)*Journal of Politics and Law*, 100-108

<sup>62</sup> (1981) 2 NCLR 337.

purpose of imparting ideas and information, and the constitutional responsibility of the Lagos State government to guarantee equal and adequate educational activities at all levels under section 18(1), Chapter II of the 1979 Constitution. The Court of Appeal, while considering the constitutional status of the said Chapter stated:

While section 13 of the Constitution makes it a duty and responsibility of the judiciary among other organs of government, to conform to and apply the provisions of Chapter II, section 6 (6) (c) of the same Constitution makes it clear that that no court has jurisdiction to pronounce on any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles of State Policy. It is clear therefore that section 13 has not made Chapter II of the Constitution justiciable. I am of the opinion that the obligation of the judiciary to observe the provisions of Chapter II is limited to interpreting the general provisions of Constitution or any other statute in such a way that the provisions of the Chapter are observed, but this is subject to the express provisions of the Constitution.

This case confirm and validate the provision of section 6(6)(c) to the effect that no court has jurisdiction to pronounce or entertain any question regarding the enforceability of section 20 of the constitution and other matter stipulated in chapter two of the constitution. Commenting on the justification for making section 20 of the Nigerian Constitution unjusticiable, Wonika argued that:<sup>63</sup>

Section 20 of the 1999 constitution of the Federal Republic of Nigeria states that, states shall protect and improve the environment and safeguard the water, air, forest and wild life of Nigeria even at

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<sup>63</sup> Quoted in Mathew Adefi Olong, "Human Rights, the Environment and Sustainable Development: Nigerian Women's Experiences" (2012) 5(1) *Journal of Politics and Law*, 100-108

that it is important to note that, this provision as non justiciable as it forms part of the Fundamental Objectives and Directive Principle of State Policy in chapter II of the constitution the implication of which is that no Nigerian citizen can go to the court to enforce his/her rights in respect of a violation or threatened violation of such provision. The fear of enshrining human and environmental rights in Nigeria is in the possibility of multiplicity of suits against the Federal government.

This paper argued that the reasoning on multiplicity of action is not tenable. This is because justice and the right of populace should not be sacrifice in fear of multiplicity of action. It is therefore expected of the court the upholder of justice to stand by its feet and own up to its responsibilities to be courageous and imaginative to the expectations of people and the future generations of Nigerians to ensure compliance with the provision of section 20 of the constitution. On the implication on non-enforceability of section 20, Obafemi Awolowo argued that the non-justiciability of the provision implies that “the quality of the social objectives is destroyed, and the provisions under chapter II for these objectives are reduced to worthless platitudes.”<sup>64</sup> The Nigerian Tribune also lamented that the non-justiciability provision has rendered the whole “chapter useless to both the government and the people.”<sup>65</sup> Obiagwu also comments that<sup>66</sup>:

The provision of section 6(6)(c) 1979 and 1999 Constitutions operate as an ouster clause over ECOSOC (economic and social rights) provisions

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<sup>64</sup> Awolowo O, “My Thoughts” in Ofonagoro WI, Oko A, and Jinadu A, (eds) *The Great Debate: Nigerian Viewpoints on the Draft Constitution* Lagos(Daily Times, Nigeria, 1977)42.

<sup>65</sup> Nigerian Tribune, “Tribune Comment on Fundamental Objectives” in Ofonagoro WI, Oko A, and Jinadu A, (eds) *The Great Debate: Nigerian Viewpoints on the Draft Constitution* Lagos(Daily Times, Nigeria, 1977) 55.

<sup>66</sup> Obiagwu C, ‘Promoting Economic, Social and Cultural Rights Using Domestic Mechanisms’(Human Rights Seminar by LEDAP Owerri, June 2005)

in chapter 2 of the Constitutions. To that extent, the powers of court to enforce those rights are prohibited.

Evidently, the provision of section 6(6)(c) serves as exclusion clause ousting the jurisdiction of the court with regards to the justiciability of the provision of section 20 and negatives the goal of national policy on environment to protect and conserve the water, air, land and the natural resources. It can therefore be argued that the combined reading of section 20 and the provision of section 6(6)(c) of the constitution suggests that the constitution lack express provision for the protection of the environment and this indeed has a negative effect on the enjoyment of right to healthy environment since the citizens cannot secure the enforceability of this provision. By this, activities likely to occasion environmental devastation cannot be challenged in the court because the provision on environmental protection is not enforceable. This could be argued is one of the reasons for continuing environmental abuse and human rights violation by oil industries operating in Nigeria.<sup>67</sup>

## **6.2 Environmental Impact Assessment Act<sup>68</sup>**

In Nigeria, the Environmental Impact Assessment Act obliges the government, its agencies, incorporated and unincorporated companies, to take significant steps before engaging in projects that may likely have environmental effects, from preliminary stage to implementation.<sup>69</sup> The Act is in compliance with paragraph 1 of the national policy on environment for Nigeria which recommended the need for a mandatory environmental impact assessment of every project. The Act prescribed minimum standard matters which a good EIA must contain.<sup>70</sup> They are:

- (a) a description of the proposed activities;

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<sup>67</sup> See interviewed with Abdullahi Salihu, A practising Legal Practitioner (Ilorin, Kwara State Nigeria, 27 June, 2011)

<sup>68</sup> Environmental Impact Assessment Act, Decree No. 86 1992

<sup>69</sup> See section 1 of the Environmental Impact Assessment Act, Decree No. 86 1992

<sup>70</sup> Id. Section 14

- (b) a description of the potential affected environment including specific information necessary to identify and assess the environmental effects of the proposed activities;
- (c) a description of the practical activities, as appropriate;
- (d) an assessment of the likely or potential environmental impacts on the proposed activity and the alternatives, including the direct or indirect cumulative, short-term and long-term effects;
- (e) an identification and description of measures available to mitigate adverse environmental impacts of proposed activity and assessment of those measures;
- (f) an indication of gaps in knowledge and uncertainty which may be encountered in computing the required information;
- (g) an indication of whether the environment of any other State, Local Government Area or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives;
- (h) a brief and non technical summary of the information provided under paragraph (a) to (g) of this section.

The Act makes environmental impact assessment of any project mandatory<sup>71</sup> and in the mandatory study List, the following activities were listed as activities requiring environmental impact assessment:

- (a) Oil and gas fields' development;
- (b) Construction of offshore pipelines in excess of 50 kilometers in length;
- (c) Construction of oil and gas separation, processing, handling, and storage facilities;
- (d) Construction of oil refineries;
- (e) Construction of product depots for the storage of petrol, gas or diesel (excluding service stations) which are located within 3 kilometres of any commercial, industrial or residential areas and which have a combined storage capacity of 60,000 barrels or more.

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<sup>71</sup> Id. Section 2

The Act also mandates EIA for non-oil and gas operations. These are: land reclamation; dredging and construction; housing estate; sewage system; landfill; road construction to mention but view. Also, all major upgrades of facilities must undergo EIA process. The Act required the EIA report to be presented to public for comments.<sup>72</sup> This is to enable interested members of the public the right to give their views on the environmental effects of the proposed project. This provision is in line with principle 10 of the Rio Declaration which stress on the need for consultation and information with regards to environmental matters.<sup>73</sup> It can be argued that these provisions incorporate the right to freedom of expression so that members of the public can voice objections to activities likely to occasion environmental harms.<sup>74</sup>

Commenting on the importance of public participation, Shepherd and Ortolano are of the opinion that for EIA to be flourishing, all participants has to be wholly involved at each stage of the project.<sup>75</sup> Permitting public involvement would according to them result into a fair and transparent EIA decision making activity since the public are the primary stakeholders and beneficiaries of such projects. Also, a project would acquire a more legitimacy and less hostility, if the public has become effectively involved to influence every stages of decisions-making process.<sup>76</sup> This shows that the Act contains minimum degree of provisions which if enforced to the letter would help in checkmating the activities of the polluter. It would also ensure that the oil and gas industries in Nigeria put in place a preventive and precautionary measure to mitigate the likely effects of their activities on the environment. This thesis therefore argues that environmental impact assessment is vital in any project in order to mitigate

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<sup>72</sup> See generally section 7, 22(3), 25 and 37 of the Environmental Impact Assessment Act, Decree No. 86 1992

<sup>73</sup> See the Rio Declaration 1992

<sup>74</sup> Andrew Harding, "Practical Human Rights, NGOs and the Environment in Malaysia" in *Human Rights Approached to Environmental Protection*, (Clarendon Press Oxford, 1996) 240.

<sup>75</sup> Shepherd A. and Ortolano L., "Environmental Impact Assessment: Challenges and Opportunities" (1995) 13(1) *Impact Assessment*, 3-30

<sup>76</sup> *ibid*



the likely effects of such project on the environment and the people in general.

Environmental impact assessment includes human rights impact assessment of the proposed project.<sup>77</sup> This will aid companies in adhering to both national and international human rights standards and norms and ensure the implementation of human rights at a corporate management or project level.<sup>78</sup> The aim is to discover, avoid and manage (potential) negative human rights impacts. It is imperative that all companies have a clear insight in order that they can anticipate and address the potential human rights impacts of their activities and operation. Commenting on this, John Ruggie stated:<sup>79</sup>

Many corporate human rights issues arise because companies do not consider the potential implications of their activities before they begin. Proactive steps are necessary to understand how existing and planned activities may affect human rights. The scale of Human Rights Impact Assessments will depend on the industry, and national and local context. While these assessments can be linked with other processes like risk assessments or environmental and social impact assessments, they should include explicit references to internationally recognised human rights. Based on the information collected, companies should refine their plans to address and avoid potential negative human rights impacts on an ongoing basis.

In reality, projects are embarked upon by the Nigerian government without environmental impact assessment of the project on the environment and the people in general. The public are not even informed or consulted of any project having environmental impact until same is concluded.<sup>80</sup> There is nothing on record to show that environmental

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<sup>77</sup> Olga Lenzen and Mariner d'Engelbronner, *Guide to Human Rights and Impact Assessment Tool* (Drukkarij Liberta, Netherland, 2009)1-6

<sup>78</sup> *ibid*

<sup>79</sup> John Ruggie "Business and Human Rights: The Evolving International Agenda" (2007) Faculty Research Working Paper Series, John F. Kennedy School of Government, 1-39

<sup>80</sup> *ibid*

impact assessment was conducted in respect of various activities and operation of the oil industries in the Niger Delta of Nigeria.<sup>81</sup> This has indeed given unfettered power to the oil industries to operate with impunity, damage the environment and abuse of fundamental rights of the people. A youth leader, Mr. Morenia Enemia from Opolo, a community in the Niger Delta said that Shell Petroleum Development Company did not ask for the expert opinion of members of the communities in the area before embarking on environmentally hostile works.<sup>82</sup> He argued:

If they had consulted us we would have educated them on the nature of our land. They call us illiterate even on matters of our environment. We would have told them where and how to put bridges or culverts and thus avoid this catastrophe... they have destroyed the habitat of our fishes, our animals, our forests, and also farmlands. Does this mean that they do not know what is right and wrong?

On this note, Ibaba S. Ibaba also noted:<sup>83</sup>

EIA studies are not properly done, which creates problems for communities. For example, the construction of the Gbarain link road (in Bayelsa State) by the SPDC without a proper EIA study has created environmental problems and socio-economic difficulties for the host communities (Opolo, Obunugha, Onopa, Gbarantoru, etc). The identified problems include: severe or excessive flooding of forest and farmlands which leads to the destruction of food crops,

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<sup>81</sup> Ibid.

<sup>82</sup> Environmental Rights Action Monitor Report No 2 1997 "Shell and the Ni-ger Delta Between Rhetoric and Practice" June, 7 – 8 quoted in Tari Ebimo Dadiowe "Niger Delta Fund Initiative - Women, Environmental Impact Assessment (EIA) And Conflict Issues In The Niger Delta: A Case Study Of Gbaran Oil Field Communities In Bayelsa State" Retrieved from <http://www.earthrights.net/nigeria/news/women.html> [accessed on the 6th April, 2020]

<sup>83</sup> Ibaba S. Ibaba, "Environmental Protection Laws and Sustainable Development in the Niger Delta"(2010) *Africana* <[http://www.africanajournal.org/PDF/vol4no1/vol4no1\\_2\\_Ibaba%20S.%20Ibaba.pdf](http://www.africanajournal.org/PDF/vol4no1/vol4no1_2_Ibaba%20S.%20Ibaba.pdf)> accessed 6 April 2020

economic trees; a reduction in available farmland, thus creating land fragmentation in the affected locality; permanent flooding of fishponds, lakes and creeks, which prevents the owners from harvesting them; a reduction of games and wildlife populations in the forest; and the blockage of communication/access routes among the neighboring communities

Thus, it is true that the Act came to being after the commencement of the activities of oil industries in the Niger Delta. However, the provision of the national policy on environment in Nigeria required that all existing laws be reviewed to conform and comply with the goals, aspiration and strategy of the policy. Thus, the Nigerian environmental impact assessment act is designed in respect of future project and it has not incorporate provisions to ensure that existing industries comply with the provisions of the Act. It is sufficed therefore to say that the Act exclude completed project prior its commencement. This has given far-reaching power to the oil industries in the Niger Delta to operate indiscriminately without due regards to the environment and the right of the people.<sup>84</sup>

### 6.3 Harmful Waste (Special Criminal Provisions) Decree<sup>85</sup>

Poverty has always been reason adduced by the people for tolerating substances that they would ordinarily not have. This poverty is responsible for permitting the exportation of wastes into Africa in general and Nigeria in particular. A good example of this case was the Koko dumping incidence of 1987.<sup>86</sup> In September 1987, an Italian man named Gian Franco Raffaelli who had resided in Nigeria for almost 20 years approached one Sunday Oyemirs Nana, a farmer at Koko, a small village in old Bendel State (now Delta State) to dump about 3,880 tonnes of toxic and hazardous waste on

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<sup>84</sup> *ibid*

<sup>85</sup> Harmful Waste (Special Criminal Provisions) Act Cap. H 1 Laws of Federation of Nigeria 2004 formally Harmful Waste (Special Criminal Provisions) Decree No. 2 of 1988.

<sup>86</sup> Adewale O. "Africa: The Waste Basket of The West" (1988) 67 *Business and Society Review* 48-50

behalf of his company at agreed sum.<sup>87</sup> Months later, a scandal regarding the toxic wastes was publicized when the effects started leaking into the environment. It was later discovered that the wastes were stored at the port of Koko and the Nigerian government issued an ultimatum for the company to return the wastes back to its original place. At last, the Italian government accepted to bear the cost of importing the wastes back to Italy. In July 1988, two ships were sent down by the Italian government for the carriage of the wastes back to Italy.<sup>88</sup> The incidence acted as a vehicle that drove the attention of the government on the implication of the negligence of her environment. This episode prompted the Nigerian government to the promulgation of the Harmful Waste (Special Criminal Provisions) Decree which later becomes an Act.<sup>89</sup>

The Act was enacted for the purpose of prohibit the carrying, deposit and dumping of harmful waste on any territorial water of Nigeria.<sup>90</sup> The Act authorizes the minister saddled with the responsibility for works and housing to seal up any or site used or being used for the purpose of depositing or dumping harmful waste.<sup>91</sup> The Act imposes civil liability (apart from criminal liability) on any one dealing with harmful waste<sup>92</sup>. The immunity from prosecution conferred on certain persons by the Diplomatic and Privileges Act does not extend to crime committed under the Act.<sup>93</sup>

The Act defines Harmful waste to mean:

.....any injurious, poisonous, toxic or noxious substance and in particular, includes waste emitting any radioactive substance if the waste is in such quality, whether with any other consignment of the same or of different substance, as to subject any person to the risk of death, fatal injury, or

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<sup>87</sup> American University, "Nigeria waste Imports from Italy"<<http://www1.american.edu/ted/nigeria.htm>> accessed 17 October 2020

<sup>88</sup> *ibid*

<sup>89</sup> Harmful Waste (Special Criminal Provisions) Act Cap. H 1 Laws of Federation of Nigeria 2004 formally Harmful Waste (Special Criminal Provisions) Decree No. 2 of 1988.

<sup>90</sup> *Id*, see the preamble to the Act and in particular the provision of section 1

<sup>91</sup> *Id*, section 11

<sup>92</sup> *Id*, section 13

<sup>93</sup> *Id*, section 9

incurable impairment of physical and mental health; and the fact that the harmful waste is placed in a container shall not by itself be taken to exclude any risk which might be expected to arise from the harmful waste.<sup>94</sup>

A contravention of any provision of the Act amount to a crime in respect of which the Federal High Court has the exclusive jurisdiction to try.<sup>95</sup> Any person that violated the provisions of the Act will be liable to prosecution and upon conviction be sentenced to life imprisonment.<sup>96</sup> There is also a provision for civil liability under the Act. By section 12 of the Act, where any damage occurred by any harmful waste which has been deposited or dumped on any land, the person who deposits, dump or imported the harmful waste or who caused the harmful waste to be deposited, dumped, or imported is liable for damages.<sup>97</sup> It need be pointed out that by section 12 of the Act,<sup>98</sup> a person is deemed to have deposit or dumps harmful waste under the Act if he deposits or dumps harmful waste, whether solid, semi-solid or liquid, in such circumstances or for such period that he may be deemed either (a) to have abandoned it where it is deposited or dumped or (b) to have brought it to the place where it is so deposited or dumped for the purpose of its being disposed of or abandoned whether by him or any other person.<sup>99</sup>

The Act no doubt makes provisions for pollution control measures with regard to waste disposal as envisaged in the national policy on environment and incorporates the need for the protection of human rights. Section 15 of the Act defines harmful waste as any substance likely to subject any person to the risk of death, fatal injury or incurable impairment of physical and mental health. Thus, subjecting any person to risk of death or fatal injury constitutes an act which may directly affect the right to life and health of the people. Though these are measures designed to protect the

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<sup>94</sup> Id, section 15

<sup>95</sup> Id, section 13

<sup>96</sup> Id, section 6

<sup>97</sup> Id, section 12(1)(b)

<sup>98</sup> Id, section 1(3)

<sup>99</sup> Ibid; for more detail view see Aina E. O. and Adedeipe N. O, *The Making of the Nigerian Environmental Policy* (University Press, Ibadan, 1991) 311.

environment which if implemented would protect human right as well since the enjoyment of basic rights depends on the healthy state of the environment.<sup>100</sup> The Act though remains a landmark in the history of environmental law in Nigeria because it makes provision for the protection of individuals against activities likely to affects the enjoyment of human rights. This is because indiscriminate disposal of waste is an act of pollution which may affect the enjoyment of basic rights since human rights can only be enjoyed in a polluted free environment. On this note, Cyril Uchenna Gwam said<sup>101</sup>:

Toxic waste dumping and its adverse effect on the right to health will have implications on the right to life, liberty and security of persons, privacy, health, adequate standard of living, food, housing, education and development. This issue cuts across civil, political, economic, social and cultural rights. The human rights dimension is expansive because virtually every measure of disease control has a human rights dimension

However, the Act is fraught with some problems which renders it ineffective for those seeking redress in the Nigeria and in particular, the Niger Delta. The Act does not create any legal right capable of being enforced against the polluter or the government. Thus, the failure to conferred legal right on a person to seek compliance with the provisions of the Act is indeed a great omission.<sup>102</sup> This omission has a negative effect on the enjoyment of basic rights since there is no way to stop or seek injunction against indiscriminate

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<sup>100</sup> Peter Gleick, *The Right to Water* (Pacific Institute for Studies in Development, Environment and Security 1999) 1-12. Also available at [http://www.pacinst.org/reports/basic\\_water\\_needs/human\\_right\\_to\\_water.pdf](http://www.pacinst.org/reports/basic_water_needs/human_right_to_water.pdf) [accessed on 21st November, 2020].

<sup>101</sup> Cyril Uchenna Gwam, "Toxic Wastes and Human Rights" (2000)7(2) *The Brown Journal of World Affairs*, 185-196.

<sup>102</sup> See also Adejoke Babington-Ashaye, "Evaluating the Protection of Socio-Economic Rights in the Niger Delta" <[http://www.google.com.my/url?sa=t&rct=j&q=Adejoke+BabingtonAshaye+%E2%80%9CEvaluating+the+Protection+of+SocioEconomic+Rights+in+the+Niger+Delta%E2%80%9D&source=web&cd=1&ved=0CCwQFjAA&url=http%3A%2F%2Fwww.serac.org%2FPublications%2FBabingtonAshaye%2520paper.doc&ei=3\\_1ST-PdBsemrAeGiNzBAQ&usq=AFQjCNHK0XwlST0GTO4k3qrPT2VZ5ZPiyw&cad=rja](http://www.google.com.my/url?sa=t&rct=j&q=Adejoke+BabingtonAshaye+%E2%80%9CEvaluating+the+Protection+of+SocioEconomic+Rights+in+the+Niger+Delta%E2%80%9D&source=web&cd=1&ved=0CCwQFjAA&url=http%3A%2F%2Fwww.serac.org%2FPublications%2FBabingtonAshaye%2520paper.doc&ei=3_1ST-PdBsemrAeGiNzBAQ&usq=AFQjCNHK0XwlST0GTO4k3qrPT2VZ5ZPiyw&cad=rja)> accessed 3 March 2020]

disposal of waste which may likely occasion human rights abuse. Also, by section 1(2), the Act only applies where the corporation or individual disposes harmful waste without lawful authority. Thus, where there is lawful authority to dispose harmful waste, the disposer will not be liable under the Act.<sup>103</sup> This suggests that the government may give permission or authority to dispose waste notwithstanding the likely effects on the environment and human rights. Besides, knowingly well that the major polluters are the corporate body, the Act failed to prescribe penalty against corporate offenders. It only stated that the offender “shall be liable to be proceeded against and punished accordingly.” It is therefore suffice to say that corporate bodies are excluded from liability within the purview of the Act. The reason being that, by the provision of section 36(12) of the Constitution of Federal Republic of Nigeria, a person can only be tried, convicted and sentenced for an offence defined by law and punishment prescribed thereto.<sup>104</sup> In the light of this, the Act failed to provide for corporate liability. In addition, it should be noted that the meaning assigned to harmful waste in section 15 of the Act is restrictive in content and scope because it exclude other cases of environmental consequences in Nigeria. For instance, environmental issues in the Niger Delta covers a wide range of matters ranging from damage to property, destruction of farmland, pollution of water to destruction of fish ponds and human rights abuses. An action for damages under the Act can only be maintained where the poisonous, toxic or noxious substance has subjected a person to the risk of death, fatal injury or incurable physical and mental health. Thus, the Act failed to recognise property rights. Therefore, this thesis argues that the Act was not designed to protect other environmental consequences; rather it was meant against physical and personal injury.

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<sup>103</sup> *ibid*

<sup>104</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011)

#### 6.4 Corporate Social Responsibility Bill (CSR Bill)<sup>105</sup>

The Nigerian upper house of parliament, i.e. the Senate, is presently considering passing into Law a Corporate Social Responsibility Bill. In the midst of the cacophonous buck-passing, a Bill on Corporate Social Responsibility is now before the National Assembly. The Bill is for an Act to create the Corporate Social Responsibility Commission, which will be charged with providing standards, integration of social responsibility, and international trade issues. Its primary function includes the formulation, implementation, supervision and provision of policies and reliefs to host communities for the physical, material, environmental or other forms of degradation suffered as a result of the activities of companies and organizations operating in these communities. The CSR Commission is required by this Bill, when passed into Law, to be a body corporate with its own common seal and the legal authority to sue and be sued, to purchase or sell its property, etc. The CSR Commission is also expected to be administered on a daily basis by a Director General with assistance from other departmental directors and a governing council. In essence, the bill seeks to establish a supervisory organ that will mandate corporations and companies to spend 3.5 per cent of their profit before tax on Corporate Social Responsibility (CSR). Other roles of the Commission will include:

- publishing the annual report of the social and environmental impact of the activities of firms;
- developing policies to encourage corporate organizations to undertake community engagement as part of CSR;
- ensuring that companies sponsor cultural and educational activities that offer added value to Nigeria's socio-political and technological development;
- promoting statutory labor standards and collective social governance in the context of globalization; and
- Ensuring that companies are accountable not only to employees and their trade unions but also to investors,

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<sup>105</sup> National Assembly 'a Bill for an Act to Provide for the Establishment of the Corporate Social Responsibility Commission' <<http://nass.gov.ng/document/download/1>>accessed 13 April 2019.



consumers, host communities, and to the wider environment.<sup>106</sup>

The CSR Bill mandatorily seeks to compel all registered companies in Nigeria to utilize not less than three and a half percent (3½%) of their annual gross profits on CSR programs in their locations of doing business. Such programs are expected by this Bill to include educational, cultural, environmental and economic programs. The CSR Bill recommends the authorization of the CSR Commission to temporarily shut down and suspend the operations of any company, corporation or organization, for a minimum number of 30 days, as penalty for none compliance with the statutory requirement(s) of this proposed Law. The CSR Bill further provides that first offenders of the statutory provisions of this proposed Law shall be liable to a fine of not less than 2% of the offending organization's or corporations' gross annual profit in addition to the statutory CSR contribution that was not expended. For subsequent none compliance, the penalty is a fine of not less than 3.5% in addition to the mandatory compliance with the statutory CSR obligations of the company or organization for the period under consideration. The CSR Bill also makes it a criminal offence for any person or organization or corporation or company to willfully withhold information from the CSR Commission or to willfully fail to comply with the lawful directives of the CSR Commission. Should such a party be prosecuted and convicted, he/she shall be liable to imprisonment for a term of not less than six months imprisonment.<sup>107</sup> This is a commendable development as the Bill has made elaborate provisions for ensuring that companies comply with CSR rules or principles. However, the Bill is yet to see the light of the day and it is hopeful that it will materialize soon.

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<sup>106</sup> Oserogho & Associates 'Corporate Social Responsibility Bill' <http://www.oseroghoassociates.com/articles/75-corporate-social-responsibility-bill> accessed 13 April 2020.

<sup>107</sup> National Assembly, 'Explanatory Notes on a Bill for an Act to Provide for the Establishment of the Corporate Social Responsibility Commission' <[http://www.femiamao.com/files/CSR\\_BILL.pdf](http://www.femiamao.com/files/CSR_BILL.pdf)> accessed 13 April 2020.

## 7. ROLE OF STAKHOLDERS AND PUBLIC-PRIVATE PARTNERSHIP IN CORPORATE SOCIAL RESPONSIBILITY

### 7.1 Government

There is general agreement that the public sector has a role to play in promoting CSR. The role of public policy and the government in promoting CSR may be defined as the identification of CSR activities that are relevant to each industry sector and making it possible for the greatest number of companies in each sector to take up as many of those activities as possible. The urgency or importance of the sustainability objectives may in some cases require that specific measures be required from all companies in a given sector or across sectors regardless of shareholder considerations. In such instances, it may be necessary to resort to the Legislative Approach.<sup>108</sup>The public sector's role must be a proactive one. In cases where there are issues of corporate accountability, it is suggested that government engagement is particularly crucial. Four roles have been identified for the government in promoting CSR:

- Mandating laws, regulations, penalties that relate to the control of some aspect of business investment or operations;
- Facilitating and setting clear overall policy frameworks and positions to guide business investment in CSR;
- Partnering: This involves combining public resources with those of business and other actors to leverage complementary skills and resources to tackle issues within the CSR agenda; and
- Demonstrating public political support for particular kinds of CSR practice in the market place or for individual companies.<sup>109</sup>

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<sup>108</sup> Felix Martin, 'Corporate Social Responsibility and public policy' in Ramon Mullerat OBE, *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (1<sup>st</sup> Ed, International Bar Association and Kluwer Law International, Hague 2005) 5, 80.

<sup>109</sup> Philip Dalsou, 'The Role of the Public Sector in Corporate Social Responsibility' <[https://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjcmfyL\\_9DMAhUD6CYK](https://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjcmfyL_9DMAhUD6CYK)

## 7.2 Private Sector

While CSR is largely accepted as an integral part of business, there is, however, still no single position on its scope and the extent to which it should change the business landscape. Its scope, content application and implementation largely depend on the geographical location where a company is operating varying from country to country and from one corporate entity to another. For companies operating in poor countries where, there is little or no respect for rule of law, corruption, insecurity, unemployment, ethnic strife, no freedom of speech and press and other infrastructural facilities are grossly inadequate or malfunctioning. Thus, the pressure on the few companies around to be involved in CSR is always extremely high if not out of proportion. Government support for CSR in some of such countries is partly both as a result of concerns for the host communities and as a means of transferring some responsibilities of government to business entities. CSR should not be allowed to become an escape route for governments to abdicate their responsibilities at the door step of companies. In the meantime, companies in such environments may be faced with high litigation portfolio, adverse public opinions, sabotage, kidnapping, unofficial levies and demands and threat to license to operate and grow. Consequently, more pressure will come on business entities to discharge what they have accepted and or what the society has imposed on them as part of their CSR.<sup>110</sup>

## 7.3 The Need for Private-Public Synergy

In carrying out CSR activity, there is a need to promote linkages and create synergies among companies and governments in order to ensure greater impact on common

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<sup>110</sup> Isaiah Odeleye, Corporate Social Responsibility and the In-house Counsel' in Ramon Mullerat OBE, Corporate Social Responsibility: The Corporate Governance of the 21st Century(1<sup>st</sup> Ed, International Bar Association and Kluwer Law International, Hague 2005) 30, 447.

focus area and to avoid duplication of efforts. Presently, there is no evidence of networking among the various companies to ensure greater impact on common focus area. There are several circumstances and projects in which collaboration among companies could enhance impact and sustainability of CSR projects but very rarely is such collaboration practiced. Each company seems to want to lay exclusive claim to certain initiatives. Greater value could be derived from CSR activities if there is improved collaboration and cooperation among corporate bodies in implementing CSR activities particularly when the recipients or beneficiaries are the same or when the projects being implemented are similar. Attempt should be made to create the kinds of synergies that can substantially increase value to beneficiaries. It is also important that CSR programs of companies should be linked to the broader development aspirations and plans of the government such as NEEDS, NEPAD and the Millennium Development Goals (MDGs). Except in isolated cases, when programs are developed, hardly is any attempt made to create synergy with these broader national efforts.<sup>111</sup> CSR has been called the Corporate Governance of the 21st century this in no way means that these prominent roles and duties that business enterprises are to assume should replace the states' archetypal obligations but, by the same idea that governments cannot off-load their traditional responsibilities on to companies, companies cannot renege from these new duties and hide behind the governments' responsibilities. Rather, it should be an interweaving and interchanging of ethics and law. Thus governments and business corporations should honestly and decidedly synergize and work hand in hand.<sup>112</sup>

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<sup>111</sup> New Nigerian Foundation, *Corporate Social Responsibility Performance in Nigeria: An Evaluation* (1<sup>st</sup> Ed, Skkor Services Ltd, Nigeria 2007) 6, 100-101.

<sup>112</sup> Ramon Mullerat, 'A Few Concluding Remarks' in Ramon Mullerat OBE, *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (1<sup>st</sup> Ed, International Bar Association and Kluwer Law International, Hague 2005) 32, 485-486.

## 8. CONCLUSION

CSR is important, because it influences all aspects of a company's operations. CSR is increasingly crucial to success because it gives companies a mission and strategy around which multiple constituents can rally. The businesses most likely to succeed in today's rapidly evolving global environment will be those best able to balance the often conflicting interests of their multiple stakeholders. Unquestionably, every company's minimum social responsibility is to comply with acceptable laws and regulations. Beyond this however, the unending debate has been centred on the extent to which CSR should be mandated or be made voluntary thereby giving the companies the latitude to choose whether to comply or not. It is the opinion of the author that the voluntary standards are merely means for companies to avoid increased responsibility to society, therefore CSR should be mandated. Consequently, it therefore follows that the proposed CSR Bill currently under consideration at the National Assembly should be passed. This will go a long way in checkmating companies whose activities are environmentally disastrous. Likewise, there is a need to promote linkages and create synergies among companies in order to ensure greater impact on common focus area and to avoid duplication of efforts. Presently, there is no evidence of networking among the various companies to ensure greater impact on common focus area. There are several circumstances and projects in which collaboration among companies could enhance impact and sustainability of CSR. Each company seems to want to lay exclusive claim to certain initiatives but greater value could be derived from CSR activities if there is improved collaboration among corporate bodies in implementing CSR activities particularly when the recipients or beneficiaries are the same or when the projects being implemented are similar.