

# **Sustainable Development Law and Policy: CSR as an Independent Tool for Building the Nation**

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## **ABSTRACT**

*With a large population and a rewarding economy, there has never been a limit to the opportunities available to local companies and multinational corporations in Nigeria. However, 56 years after gaining independence, Nigeria is still largely considered a developing nation with below par living conditions, environment, amenities and services. Corporations have established themselves and have sucked from the rich nectar of Nigeria's economic fruits without planting seeds on its land in show of appreciation. This paper seeks to discuss how corporations could play a significant role in developing the Nation and the adoption of international legal frameworks to enforce active participation in this role.*

## **1.0 INTRODUCTION**

After 56 years of independence, the Nigerian government still struggles with developing the nation past third world standards. In the eyes of the international community, Nigeria remains a developing a nation. Taking a look at numerous developed nations, a common player in the attainment of such status is capitalism. Capitalism has served as a driving tool for the development of nations and citizens, boosting sectors and factors

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such as technological advancements and innovations, employment, revenue, living standards, resource utilisation and other factors. However, a nation cannot truly be said to be developing or developed, as the case may be, where its citizens and their environment are not positively affected. In modern times, and as practiced in advanced nations, it is believed that corporations have an obligation to, not just their shareholders, but the communities in which they conduct their activities.

Corporate Social Responsibility (CSR) is the continuing commitment by businesses to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.<sup>1</sup>

In the author's view, CSR could help in accelerating the country's development, independent of the government's already existing activities. If companies engaged in sustainable development activities in their respective communities, it could lead to an overall development of the nation as a whole.

## **2.0 CSR AND SUSTAINABLE DEVELOPMENT**

Corporate Social Responsibility is the continuing commitment by a business to behave ethically and contribute to economic development, while improving the quality of life of the workforce their family, as well as the local community and the society at

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<sup>1</sup>A. Helg, Corporate Social Responsibility from a Nigerian Perspective(2007) available at [gupea.ub.gu.se/bitstream/2077/4713/1/07\\_23.pdf](http://gupea.ub.gu.se/bitstream/2077/4713/1/07_23.pdf) (accessed February. 2010)

large. It is anchored on the philosophy that businesses, as artificial persons, should take decisions that are considered indeed to be in the interest and benefit of a large number of people, hence have respect for the fundamental rights of the public. CSR can be categorised as economic, legal, ethical and voluntary responsibilities respectively.<sup>2</sup> There are several controversies surrounding CSR as to whether it is a soft law obligation or a moral obligation to be carried out by corporations to improve their long term image in the eyes of their present and potential consumers. However, CSR should be seen more as part of the objectives of any corporation. Corporate Social Responsibility should be a tacit contract between business organisations and a hosting community, whereby the community permits the business to operate within its jurisdiction to create job opportunity for its residents<sup>3</sup>, amongst other things. In addition, the community expects the corporation to improve their living standards. CSR is becoming more important and frameworks have been developed, but mostly in Western states, and the benefits of this can be seen in their present living conditions and development status'. Traditionally, CSR mainly focuses on how the activities of corporations do not negatively affect the community such as; reducing harm to the environment and releasing products which are up to standard, non-discriminatory employment tactics; and in modern parlance, grants, amenities, and more proactive efforts.

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<sup>2</sup> O.C. Ferrell and J. Fraedrich, *Business Ethics: Ethical Decision Making* (South-Western College: 1997)

<sup>3</sup>C. Mordi , I.S Opeyemi, M Tonbara, S Ojo, "Corporate Social Responsibility and the Legal Regulation in Nigeria"(2012), Vol. LXIV *Economic Insights – Trends and Challenges*, No.1 (1-8)

The Bali Roundtable on developing countries in 2002 recognised the business sector as a primary driver of economic development and the World Summit for Sustainability identified business involvement as critical in alleviating poverty and achieving sustainable development.<sup>4</sup>

The Triple Bottom Line (TBL) concept, obliged by several corporations, was introduced by J. Elkington in 1994. It is a standard of responsibility for companies to take on sustainable practices. The concept is linked primarily to the stakeholder theory and also to CSR.<sup>5</sup> TBL is “a successful encapsulation of the vague and sloppy concept of CSR”.<sup>6</sup> Elkington considered TBL to pay regards to the environmental and social aspects as well as the long established economic aspects of a business. According to Elkington, a business should also be measured within these three areas. The social aspect is a company’s ethical conduct in regards to its labour practices and its attempt to create objectives that uphold mutually beneficial relationships with all stakeholders.<sup>7</sup> The environmental aspect entails a company “to do no harm to” and improve the environment. Elkington believed that pursuing the values of TBL would improve the society as well as making businesses more successful.

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<sup>4</sup>Available at <http://www.un.org>

<sup>5</sup> J. Elkington, “Towards the Sustainable Company. Win-win-win business strategies for sustainable development”, *California Management Review*, (1994) vol. 36, no 2: p 90-100

<sup>6</sup> R. Mullerat, “International Corporate Social Responsibility: The Role of Companies in the Economic Order of the 21st Century”, (2010) *Kluwer Law International BV, The Netherlands*

<sup>7</sup> S. Hajime, “Policy and Politics of Health Risk Management in Five Countries,” *Asbestos and BSE Series: Alliance for Global Sustainability Bookseries* (2010) Vol 16  
Available at: <http://www.unglobalcompact.org>

According to the Brundtland Report, sustainable development is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it, two key concepts:

- a) the concept of needs; in particular the essential needs of the world's poor, to which overriding priority should be given; and
- b) the idea of limitations; imposed by the state of technology and social organization on the environment's ability to meet present and future needs."

Beyond simple philanthropy business action, CSR increasingly focuses on creating shared value or sustainability – the deliberate inclusion of public interest in corporate decision making and honouring of a “triple bottom line” to advance people, planet and profit. After all, as the World Business Council for Sustainable Development (WBCSD) memorably stated, “businesses cannot succeed in societies that fail.”

### **3.0 INTERNATIONAL CSR STANDARDS AND INSTRUMENTS**

#### **3.1 Aspirational Statements and Standards**

##### ***3.1.1 The United Nations Global Compact***

Former United Nations Secretary-General, Kofi Annan proposed the Global Compact at the World Economic Forum on January 31, 1999. He challenged world business leaders to help build the

social and environmental pillars required to sustain the new global economy and make globalisation work for all of the world's people. The Global Compact is a network that is working to bring companies together with UN agencies, labour and civil society to support nine principles in the areas of human rights, labour and the environment. Through the power of collective action, the Global Compact seeks to advance responsible corporate citizenship so that business can be part of the solution to the challenges of globalisation. In this way, the private sector - in partnership with other social actors - can help realize the vision of a more sustainable and inclusive global economy. Today, hundreds of companies from all regions of the world, international labour and civil society organizations, are engaged in the Global Compact.

### ***3.1.2 International Labour Organisation (ILO) Declaration of Fundamental Principles and Rights at Work***

One of the aims of this declaration is the creation of a climate for economic and social development. The Declaration seeks to stimulate national efforts to ensure that social progress goes hand in hand with economic progress while respecting the diversity of circumstances, possibilities and preferences of individual countries. The Declaration's follow-up contains promotional reporting tools; The Annual Review is composed of reports from governments describing their efforts. These reports provide a baseline against which countries can measure their own progress. The Global Report, submitted by the ILO to the International

Labour Conference, paints a dynamic global picture of the situation with regard to one of the categories of principles and rights each year. It serves as a basis for determining future priorities so that the Organisation through its technical cooperation activities can assist its members.<sup>8</sup>

### ***3.1.3 The International Labour Organisations' Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy***

Although voluntary, it advocates, in developing countries, that Multinational Enterprises (MNE) should provide the best possible wages, conditions of work (including health and safety), and benefits, adequate to satisfy basic needs and within the framework of government policies. Governments should adopt policies ensuring that lower income groups and less developed areas benefit as much as possible from MNE activities. MNE's should provide, upon request, information concerning health and safety standards observed in other countries which are relevant to local operations.

### ***3.1.4 The Social Venture Network Standards of Corporate Social Responsibility***

The Social Venture Network (SVN) was created in 1987 to develop an association of business and social entrepreneurs dedicated to the idea that business can be a potent force for solving social problems. It advocates that corporations should not

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<sup>8</sup> Available at <http://www.ilo.org/public/english/standards/decl/declaration/text/> (Accessed June 2017)

only protect the community's environment but must also foster an open relationship with the community in which it operates and plays a proactive, cooperative, and where appropriate, collaborative role in making the community a better place to live in and conduct business. Taken as a whole, the Standards are analogous to the Caux Round Table Self-Assessment and Improvement Process; another tool designed to help organizations improve their performance.<sup>9</sup>

### ***3.1.5 Corporate Responsibility Principles for Global Corporate Responsibility***

In view of the wider community, one of its core principles is that the company strives to contribute to the long-term environmental, social, cultural, and economic sustainability of the local communities in which it operates and that the company's corporate governance policies balance the interests of managers, employees, shareholders, and other interested and affected parties (such as the community in which they operate in). These principles are mainly seen as aspirations.<sup>10</sup>

## **3.2 International Institutions**

### ***3.2.1 World Business Council for Sustainable Development (WBCSD)***

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<sup>9</sup>Available at [http://www.cauxroundtable.org/view\\_file.cfm?fileid=79](http://www.cauxroundtable.org/view_file.cfm?fileid=79)

<sup>10</sup>Available at <http://www.web.net/~tccr/benchmarks/index.html>



The World Business Council for Sustainable Development<sup>11</sup> is a major driving force on the concept of CSR, established in January 1995, its reports on corporate (social) responsibility have helped to focus global attention on the necessity for governments and companies to demonstrate a degree of responsibility towards the society. WBCSD formulated three conceptual frameworks on CSR: the generation of economic wealth, environmental improvement, and social responsibility. On the third pillar, WBCSD defines what a company has to do in order for it to win and enjoy the confidence of the community as it generates economic wealth and responds to the dynamics of environmental improvement. WBCSD identified the core values of CSR as human rights, employee rights, environmental protection, community development, and stakeholder rights as the values that define the responsibility of companies and governments to the society. Under the WBCSD template, the community is respected as a stakeholder in the project. Thus, the company is compelled to construct a base for close collaboration and consultation with the community, as well as assist the community in capacity building in all aspects of social and economic development.<sup>12</sup> Shell Petroleum Development Company is a member of the WBCSD.

### ***3.2.2 The Organisation for Economic Cooperation and Development (OECD)***

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<sup>11</sup> Two major international organizations – the-Business Council for Sustainable Development (BCSD) and the World Industry Council for the Environment (WBCE) – merged to form the WBCSD.

<sup>12</sup> H.H. Ijaiya, “Challenges of Corporate Social Responsibility in the Niger Delta Region of Nigeria”, *Afe Babalola University: Journal Of Sustainable Development Law And Policy* (2014) 3:1 at p. 63

The Organisation for Economic Cooperation and Development (OECD) stressed the need for both companies and governments to demonstrate their corporate responsibility by pursuing sound environmental and socially based policies. OECD, at its ministerial meeting on June 27, 2000, approved a guideline to ensure that the operations of enterprises are in harmony with government policies.<sup>13</sup>

### **3.2.3 The Dow Jones Sustainable Indexes (DJSI)**

The Dow Jones Sustainable Indexes (DJSI) was launched in 1999.<sup>14</sup> The DJSI defines CSR as social well-being which companies must satisfy in order to be listed in the DJSI. The DJSI sustainable principles include technology, governance, shareholders, industry, and society. It is clear that the CSR concept has been placed on the global agenda by leading international organisations. This should be seen as a critical challenge to environmental justice as it compels companies and governments to address distributional inequities of environmental risks, especially in the natural resources sector of the economy.<sup>15</sup>

## **4.0 CSR IN NIGERIA**

In 1990, following the Ogoni crisis, CSR gained recognition in Nigeria. It led to corporation led projects, such as the provision

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<sup>13</sup>*Ibid* at p. 64

<sup>14</sup> On September 8, 1999, the Dow Jones Sustainability Group Indexes (DJSI) was launched in Zurich, Switzerland, as the first global equity indexes that track the performance of the leading sustainability – driven companies world-wide. The DJSI at its inception included over 200 of the top sustainability companies in 68 industries in 22 countries.

<sup>15</sup>*Supra* note 11 at p. 65

of social amenity structures and the creation of scholarship and grant systems aimed at poverty alleviation and development.

Currently efforts are being made to discuss making a specific law which caters for CSR.

#### **a. Indirect Regulations**

It can be argued that there are several Nigerian legislations that incorporate within their provisions, certain expectations that directly or indirectly do not contradict, or in some instances, regulate the observance or practice of CSR. For instance, Section 279 (4) *Companies and Allied Matters Act 1990*, points out that; the director of a company is to have regard in the performance of his functions including the interests of the company's employees in general as well as the interests of its members.

The company's employees would most likely also be members of the society where the company operates. Note that companies in Nigeria are not in any way precluded from carrying out social responsibilities towards the environment, what they will be expected to do is to ensure that such intended social friendly policies are embedded in their Article and Memorandum of Association.<sup>16</sup> There are various laws which relate to CSR and the environment such as; *National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007*; *Harmful Waste (Special Criminal Provisions Act)*. In addition, Sections 234 to 248 of the Nigerian Criminal Code provides for offences against public health. However, these laws do not directly address CSR.

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<sup>16</sup> Supra note 4

## **b. Proposed CSR Bill and Regulations**

In 2008, the late Senator Uche Chukwumerije sponsored a bill entitled; A Bill for an Act to provide for the establishment of the Corporate Social Responsibility Commission– popularly referred to as the “CSR Bill.” The bill sought to establish the Corporate Social Responsibility Commission, a supervisory body that would be responsible for the control and regulation of the CSR activities of businesses in Nigeria. The Commission was to see to 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 organisations operating in these communities. The Bill proposed five main divisions which respectively provide for the establishment of the CSR. Considering the provisions of this Bill, its successful passage in the house will be welcome development and indeed a great reformation of the practice of CSR in Nigeria and will help in firmly establishing corporate ethics among the firms in Nigeria.<sup>17</sup>

The CSR bill also proposed that all businesses undertake CSR activities utilizing not less than 3.5% of their Gross Annual Profit. While urging the accountability of corporate organisations to their labour force, investors, consumers and host communities, the bill proposed sanctions for defaulting companies and incentives for companies who complied with the regulations. Response to the bill has been less than welcoming. The Nigerian

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<sup>17</sup> Supra note 4

Employers Consultative Association (NECA) and Organized Private Sector (OPS) groups out rightly rejected the bill. While CSR is an ostensibly worthy cause, stakeholders argue that the bill is fraught with challenges. Some suggest that the bill goes against the voluntary essence of CSR. Further, that the pursuit of CSR through the regulatory-bureaucratic apparatus means, both forceful and punitive, would impose additional costs on doing business in Nigeria.<sup>18</sup> The CSR Bill has been described as a reactive legislation as opposed to a proactive law and therefore needs to be subjected to an amendment. It was also argued that CSR contributory charge could be a disincentive to investments in Nigeria in the light of the already existing high and multiple taxes at various strata of the federal, state and local governments. It was therefore recommended that the proposed charge of 3½% could be reduced to a basic minimum charge for all companies and organisations, whilst the penalty charge for none compliance with the statutory requirements of the law could be increased by the same margins of the CSR charge itself.<sup>19</sup> . It has also been pointed out that the CSR Bill has failed to follow recent legislative practices which impose criminal liability on both the corporation and all the directors and managers of any corporation or company who are aware of the breach of an existing law and this therefore should be subjected to the necessary amendment.

#### **4.1 CSR Challenges and Implementation**

##### **a. CSR Challenges**

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<sup>18</sup> 'CSR Bill and doing business in Nigeria' *Business Day* March 24 2016

<sup>19</sup>Oserogho Associates 'Corporate Social Responsibility Bill' (2008). available at [www.oseroghoassociates.com/pdf/2008\\_10.pdf](http://www.oseroghoassociates.com/pdf/2008_10.pdf) (accessed June 2016)

A legal attempt to ensure that companies are accountable not only to employees and their trade unions but to investors, consumers, host communities and the wider environment seems to be contrary to Sections 41 and Sections 279 of the principal statute on companies in Nigeria, the *Companies and Allied Matters Act* (CAMA) of 1990, which only recognises the traditional stakeholders; shareholders. However, annual social and environment impact reporting does not alter CAMA's financial reporting scheme.

### **b. CSR Implementation**

In 2014, India became the first country in the world to mandate Corporate Social Responsibility, requiring companies to spend 2% of their net profit on social development. These social development activities include hunger eradication, education, environmental consciousness, and sports.

The Corporate Responsibility Bill was first introduced in the House of Commons by Linda Perham on June 2002, and was subsequently withdrawn. Afterwards, the Corporate Responsibility (Environmental, Social and Financial Reporting) Bill (CORE Bill) was tabled on 15 October 2002. Another Corporate Responsibility Bill followed this but none of these bills became law. Nonetheless, the failure of these integrated legislative initiatives should not suggest that CSR regulation is neither a credible nor a conceivable alternative for the control of corporate behaviour that may adversely affect the civil liberties of communities in host countries. The fact that such laws were and

continue to be drafted, read, and debated, indicates an increasing support of regulation of corporate conduct.<sup>20</sup>

## 5.0 CONCLUSION AND RECOMMENDATION

Since the emergence of CSR in Nigeria, there is no law put in place by the Nigerian government in the area of Corporate Social Responsibility. CSR is still a voluntary course of action. International law recognises the important soft law instruments, such as non-binding declarations, normative recommendations, action and declarations of principles to societal development and growth.<sup>21</sup> Consequently, most declarations and instruments that emphasise the CSR principle are not legally binding and do not carry hard law status in international law.<sup>22</sup> Traditionally, the government is responsible for developing the state and improving the welfare of the citizens. This does not however, negate the social responsibility of corporations. These instruments undoubtedly provide the best practice that could shape how companies in Nigeria can better contribute positively to the local communities where they operate and to the nation at large.

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<sup>20</sup> Supra note 20

<sup>21</sup> Soft law has been described as legal instruments that are not directly enforceable in courts and tribunals but that nonetheless have an impact on international relations and, international law. They include quasi-legal instruments which are not legally binding, or whose binding force is somewhat “weaker” than the binding force of hard law or legally binding instruments. Professor Kiss noted: The first are binding as they create hard law for member states concerned, if they have no binding character, they are generally called recommendations and constitute soft law principles. However they can contribute to the development of customary international law so that their importance should not be under estimated. See Alexandre Kiss, *Introduction to International Environmental Law*, 2nd Edition (Geneva: UNITAR, 2005) 6-7

<sup>22</sup> Supra note 14

