

## **Corporate Social Responsibility as Catalyst for Development: Prospects and Challenges in Nigeria\***

### **Abstract**

*An efficient Corporate Social Responsibility (CSR) framework in many economies has been linked with human capital development, social and financial inclusion, environmental protection and better stakeholder management. This article examines the level of efficiency of the CSR framework in Nigeria; it underscores the developmental potentials of CSR practices within the Nigerian business community. However, a prevailing trend of haphazard and sometimes dodgy CSR practices by free riding rogue companies mars such potentials. Underpinning these dodgy practices have been a CSR 'business case' argument coupled with dysfunctional business (corporate) law assumptions amongst other causative factors. The article appraises the implications of these causative factors and towards minimizing the haphazard practices, proposes corporate law reforms through which the Nigerian CSR framework may become more effective.*

**Keywords:** *Challenges, Corporate Social Responsibility, Development, Nigeria, Prospects*

### **1. INTRODUCTION**

As confirmed by the 1987 Brundtland Report,<sup>1</sup> certain pertinent ideological and policy questions have become inevitable in the manner in which the world's businesses and economies are run. In many jurisdictions, especially the less industrialized economies around the world where there are

---

\*Nojeem Amodu has a PhD in Commercial and Industrial Law, from the School of Postgraduate Studies of the University of Lagos, Lagos, Nigeria. He is available at [namodu@unilag.edu.ng](mailto:namodu@unilag.edu.ng) and +234 (0) 8033615340.

<sup>1</sup> See generally, World Commission on Environment and Development (1987) *Our Common Future*, Report of the World Commission on Environment and Development, document A/42/427.

prevalent deficit infrastructural development and poor human capital development, these questions have bordered on the respective roles of state institutions and the business community in the economy. The questions include: whose responsibility is it to provide public goods and social services in the society? Should the business of business remain strictly business? In other words, should the business community continue to focus exclusively on wealth maximisation for shareholders and eschew developmental projects for local communities, environmental protection or human rights protection? Or should there be a refocus on enhancing stakeholder value instead? In light of market failures and near collapse of economies and attendant government bail-outs using public taxes, can the society and state institutions afford to exclusively entrust the health and/or sustainability of the world economies to the business community? Has the world gotten to a stage where the *visible hand of state intervention* should override the *invisible hand of the free market system* to ensure efficient and sustainable allocation of scarce resources for the benefit of both business and society?

CSR evolved from corporate governance reform discourse and has become relevant in providing a few answers to the above questions. CSR developed as a corporate governance tool towards reconceptualising companies as *social institutions*<sup>2</sup> and ensuring refocusing of business attention from sheer wealth maximization for shareholders to consideration and responsibility for any negative environmental, social or human capital implications of their operations.<sup>3</sup> CSR is a business behavioural philosophy or model encouraging businesses not just to ‘do well’ economically in the course of their operations but also to ‘do good’ as a good corporate citizen.

The concept of CSR is still evolving. It evolved<sup>4</sup> from corporate donations and philanthropy into more modern issues such as the triple bottom line (TBL) of planet people and profit,<sup>5</sup> the green

---

<sup>2</sup> Parkinson, J. (2003) ‘Models of the Company and the Employment Relationship’ *British Journal of Industrial Relations* 481 to 509, 491, 492 *et seq.*

<sup>3</sup>See generally Amodu, N. (2013) *Effective Corporate Social Responsibility in Corporate Nigeria: Understanding the Matters Arising*, Conference Proceedings ISSN 2048 – 0806 (12<sup>th</sup> International Conference on Corporate Social Responsibility, Universidad Federal Fluminense, Niteroi and Rio de Janeiro).

<sup>4</sup> Simon identified three generational and developmental stages of the CSR construct: (i) the corporate philanthropy stage (ii) Business case, voluntary CSR stage spearheaded by businesses (iii) futuristic mandatory CSR stage. See generally, Zadek, S. (2001) *The Civil Corporation. The New Economy of Corporate Citizenship* Earthscan, London.

movement<sup>6</sup> (comprising green advertising, green product manufacture and competition and green management). In modern times, CSR is construed in terms of a business management model which requires the consideration of the interests of a certain stakeholder group in the day to day activities of business associations and organizations. The concept of CSR has broadened roles of companies, especially large multinational corporations; it has increased the responsibilities of corporate managers and has raised the bar on the expectations of the society from corporate owners. From the foregoing, with CSR, it appears it is no longer business as usual; it will no longer be commercially wise to declare huge profit margins in annual reports without justifying how such bottom lines were legitimately reached without contravening accepted core values of the society. Otherwise, such businesses run the likely reputational risks of losing the so-called *social license*<sup>7</sup> to operate and its attendant effects. Therefore, many companies have realized the importance of CSR, even if just taken as mere public relations conception to manage reputation in the public sphere. Such attitude is reflected below:

It is all about the things that keep you out of court, that make sure that you don't find yourself suddenly on the front page of the newspaper in the morning with some exposé of something happening in another part of the world because of the company's actions. You just keep your nose clean.<sup>8</sup>

Structurally, this article is divided into 4 parts. Part 1 introduces discussions. Part 2 conceptually analyses CSR as a catalyst for development. It underscores its importance to business growth and how it is strategically utilised to drive social inclusion, financial inclusion, environmental protection and human capital development and sustainable development. Part 3 highlights

---

<sup>5</sup>Branson, D. (2001) 'Corporate Governance "Reform" and the New Corporate Social Responsibility' 62 *University of Pittsburgh Law Review* 605, 608; see also Mullerat, R. (2006) 'Corporate Social Responsibility: New Trends' American Bar Association Section of International Law 3.

<sup>6</sup>Branson *supra* note 5 at 644 – 45.

<sup>7</sup>Nwete, B. (2007) 'Corporate Social Responsibility and Transparency in the Development of Energy and Mining Projects in Emerging Markets; Is Soft Law the Answer?' 8 *German Law Journal* No. 4, 324; see also, Prno, J. (2013) 'An analysis of factors leading to the establishment of a social licence to operate in the mining industry' 38 (4) *Resources Policy* 577- 590.

<sup>8</sup>Tuppen, C. (2002) in "BT, Responsibility and the triple bottom line" interview in *Ethical Corporation Magazine*, Issue 2 cited in Raynard, P. and Forstater, M. (2002) *Corporate Social Responsibility: Implications for Small and Medium Enterprises in Developing Countries*, United Nations Industrial Development Organization UNIDO, Vienna at 11.

causative factors militating against CSR as an instrument for development. Reform proposals for reconceptualization towards addressing these factors are detailed part 4 which also concludes the article.

## 2. CSR CONCEPTUAL ANALYSIS

Although Howard Bowen was the first in 1953 to use the expression ‘Corporate Social Responsibility’ in corporate America in his book, *Social Responsibilities of the Business*,<sup>9</sup> however, relevant literature shows that the CSR conceptual analysis of Archie Carroll has received general acceptance and wide adoption.<sup>10</sup> Carroll explained that ‘*the social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time.*’<sup>11</sup> He identified four components or elements of CSR namely:

- (i) economic responsibilities;
- (ii) legal responsibilities;
- (iii) ethical responsibilities; and
- (iv) discretionary/philanthropic responsibilities.<sup>12</sup>

The economic responsibilities of a company entail its responsibility to make profits for its investors.<sup>13</sup> The legal category of responsibilities represents the responsibilities of the business to operate within the ‘framework of legal requirement.’<sup>14</sup> He maintained that ‘... just as society had sanctioned the economic system by permitting business to assure the productive role, as a partial

---

<sup>9</sup>Bowen, H. (1953) *Social Responsibilities of the Businessman*, (Harper and Row, New York); see also, Whellams, M. ‘(2007) The Role of CSR in Development: A case Study Involving the Mining Industries in South Africa’, (unpublished) Thesis submitted to Saint Mary’s University, Halifax, Nova Scotia, in Partial Fulfillment of the Requirements for the Degree of Masters of International Development Studies at 27.

<sup>10</sup>Carroll, A. B. ‘A Three – Dimensional Conceptual Model of Corporate Performances’, (1979) 4 *Academy of Management Review* 499 (Hereinafter simply *Carroll 3 Dimensional Model*); see also Carroll, A. B. ‘The Pyramid of Corporate Social Responsibility – Toward the Moral Management of Organizational Stakeholders’ (1991) 34 *Business Horizons* 39, reprinted in Craine, A., Matten, D., and Spence, L.J., eds, *Corporate Social Responsibility: Readings and Cases in a Global Context* (Routledge, Abington 2008) 60, 64.

<sup>11</sup> Carroll 3 *Dimensional Model* *supra* note 10 at 500.

<sup>12</sup>*Ibid.*, 499.

<sup>13</sup>*Ibid.*, 500.

<sup>14</sup>*Id.*

fulfilment of the ‘social contract’, it has also laid down the ground rules – the laws and regulations – under which business is expected to operate.’<sup>15</sup> He explained further that the ethical responsibilities of a company entail ‘*the responsibility to do what is right, just, and fair*’. These ethical responsibilities are meant to include society’s expectations of business over and above (any) legal requirements. In other words, the corporation must endeavour to surpass legal duties and obligations in its relation to the members of the society.<sup>16</sup> Finally, the discretionary responsibility<sup>17</sup> represents society’s expectation that a business should assume social roles and above and beyond its economic, legal and ethical responsibilities.<sup>18</sup> These discretionary duties which naturally mean that a business not engaging in them is not necessarily breaching any other legal or ethical duties include contributions to various kinds of social, educational, recreational or cultural purposes. Carroll’s categories of CSR are not mutually exclusive of one another but ordered in their fundamental role in the evolution of their importance. Aviva Geva confirmed that Carroll’s categories of CSR are comparable to a pyramid.<sup>19</sup> In the pyramidal structure, economic responsibilities are at the bottom, topped by legal responsibilities, then ethical responsibilities and ultimately topped by discretionary responsibilities.

This categorisation by Carroll was later criticised as out-dated. Andrew Zur counter – proposed four distinct and heterogeneous dimensions of CSR. He identified (i) Environmental Capability entailing environment–friendly business culture and practice (ii) Work place capability representing good health and safety and for employees. (iii) Market place capability entailing long–term relationship with suppliers, customers and business partners (iv) Societal capability which involves short – term investment into local community for future generations. Andrew posited that:

---

<sup>15</sup>*Id.*

<sup>16</sup>*Id.*

<sup>17</sup>Zur, A. (2007) ‘Corporate Social Responsibility Orientation and Organizational Performance within the Retailing Sector’ *Melbourne Business School, Australia* 5.

<sup>18</sup>Carroll 3 Dimensional Model *supra* note 10 at 500.

<sup>19</sup>Geva, A. (2008) ‘Three Models of Corporate Social Responsibility: Interrelationship between Theory, Research and Practice’, (2008) *Business and Society Review* 5.

... the traditional four obligations of CSR represent outdated thinking and do not lend themselves to conceptualisation of CSR as a business orientation... we conclude that a broader, but more specific classification is needed in order to examine CSR orientation in a manner that better reflects the current business retail climate.<sup>20</sup>

While Andrew's counter –proposals on the four heterogeneous CSR dimensions are not only commendable but also relevant towards better conceptualisation of the CSR subject, his criticism of Carroll's categories as being archaic appears unfounded however; Andrew appears not to have averted his mind to the fact that Carroll had maintained that there are in existence certain 'issue' elements to which his CSR components are tied and therefore making the components still valid till date. Interestingly, Carroll later modified his CSR model. In a later analysis, a venn diagram with three CSR components or domains was suggested in place of the earlier four domain pyramidal structure.<sup>21</sup> Schwarz and Carroll proposed the three (3) categories of Economic, Legal and Ethical Responsibilities. The Discretionary or Philanthropic category was dumped as an independent category and rather subsumed within the Ethical and the Economic Responsibilities.<sup>22</sup> Amongst others reasons, the three domain approach was adopted by the learned authors because, in their view, the philanthropic category is unnecessary, inaccurate and a misnomer as an element of CSR.<sup>23</sup> CSR is a responsibility (an obligation) and it is inaccurate and a misnomer to simultaneously describe it in terms of discretionary and voluntary activities.<sup>24</sup> It is also argued that it is difficult to really distinguish between ethical responsibilities and philanthropic responsibilities and many philanthropic or discretionary activities are actually based on economic interests.<sup>25</sup> This reconceptualization turned out crucial to his earlier postulations and has been greeted with more acceptability.<sup>26</sup>

---

<sup>20</sup>Zur *supra* note 17 at 5.

<sup>21</sup>Schwarz, H. and Carroll, A.B. (2003) 'Corporate Social Responsibility: A three – Domain Approach' 13 *Business Ethics Quarterly* 503 - 530.

<sup>22</sup> Schwarz and Carroll *supra* note 21 Schwarz, H. and Carroll, A.B. (2003) *supra* note 21.

<sup>24</sup>*Id.*

<sup>25</sup>*Id.*

<sup>26</sup>Lambooy T, (2010) *Corporate Social Responsibility: Legal and Semi-legal Frameworks Supporting CSR Developments 2000 - 2010 and Case Studies*, Kluwer, 15.

My CSR conception aligns with Carroll's especially as initially conceptualised as a four domain model. While the philanthropic category as an independent element has been rejected by a number of scholars as being inaccurate and a misnomer – since an activity cannot be an obligation or responsibility and at the same time described in terms of discretion or voluntariness<sup>27</sup> - I wish to however differ and retain it as an independent element for a few reasons.

First, I do not think that the terms *discretion* and *obligation/responsibility* are necessarily mutually exclusive in all connotations. There are instances in law (especially for administrative and judicial decisions) where there is an *obligation* to exercise or which involves the exercise of *discretion*. Further, whichever way it is examined, discretionary activities constitute an integral part of any business operations. There will always be elements of discretion in the manner business managers carry out operations and policies of the business. There is even discretion in the manner in which obligations and responsibilities whether legal, ethical or economic responsibilities are carried out. In most cases, the framework under which an obligation is exercised usually warrants the exercise of discretion. For instance, there is a legal/regulatory framework for employers to pay salaries and wages to a certain group of employees as agreed with them. However, the same regulatory framework usually admits of discretion as to the manner such obligation or responsibility is to be exercised. It is not so much of a misnomer having discretion or voluntary activities in respect of such obligations.

Secondly, the level of CSR integration in businesses and manner of practice in some jurisdictions especially amongst the less industrialised economies of Africa and Asia are still suggestive that philanthropy, charity and discretionary activities constitute an integral part of CSR conception.<sup>28</sup> For instance in India, by virtue of sections 135 of the 2013 Indian Companies Act with effect

---

<sup>27</sup> Schwarz and Carroll *supra* note 21 at 505, 506 and 507.

<sup>28</sup> Raynard and Forstater *supra* note 8 at 17 citing Centre for Social Markets, First World Report on Corporate Social Responsibility (CSR): Internet consultation of Stakeholders 2001; see also Ollong, K. A. (2013) 'Corporate Social Responsibility and Community Development in Cameroon' Conference Paper, 12<sup>th</sup> International Conference on Corporate Social Responsibility, ISSN 2048 – 0806, Niteroi and Rio de Janeiro, Brazil.



from 1<sup>st</sup> April, 2014, CSR is still largely perceived in terms of voluntary community development projects since the activities which may be included by companies in their Corporate Social Responsibility Policies Activities relate to: (i) eradicating extreme hunger and poverty; (ii) promotion of education; (iii) promoting gender equality and empowering women; (iv) reducing child mortality and improving maternal health; (v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases; (vi) ensuring environmental sustainability; (vii) employment enhancing vocational skills; (viii) social business projects; (ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and (x) such other matters as may be prescribed.<sup>29</sup> Again for instance in Cameroun<sup>30</sup> and Nigeria<sup>31</sup>, many business actors still restrictively conceive CSR in terms of philanthropic corporate charity, donations and just 'giving back to the society'.<sup>32</sup>

In light of the above therefore, while I can agree that the CSR domains ought to be represented in a venn diagram as opposed to a pyramid, I also wish to differ in the representation of the relationship existing among the four CSR elements. To my mind, as a result of the inseparable and interwoven nature of the four elements, efficient CSR practice is (or should be) at the core of any business operations involving the right balance and integration of the entire four elements in business. In other words, CSR should underlie the obligations of businesses (whether legal,

---

<sup>29</sup> See generally schedule vii of the 2013 Indian Company's Act; and Mukthar, J., and Pavithran, S. (2013) 'Corporate Social Responsibility in Birla Group of Companies' Conference Paper, (12<sup>th</sup> International Conference on Corporate Social Responsibility, ISSN 2048 – 0806, Niteroi and Rio de Janeiro, Brazil.

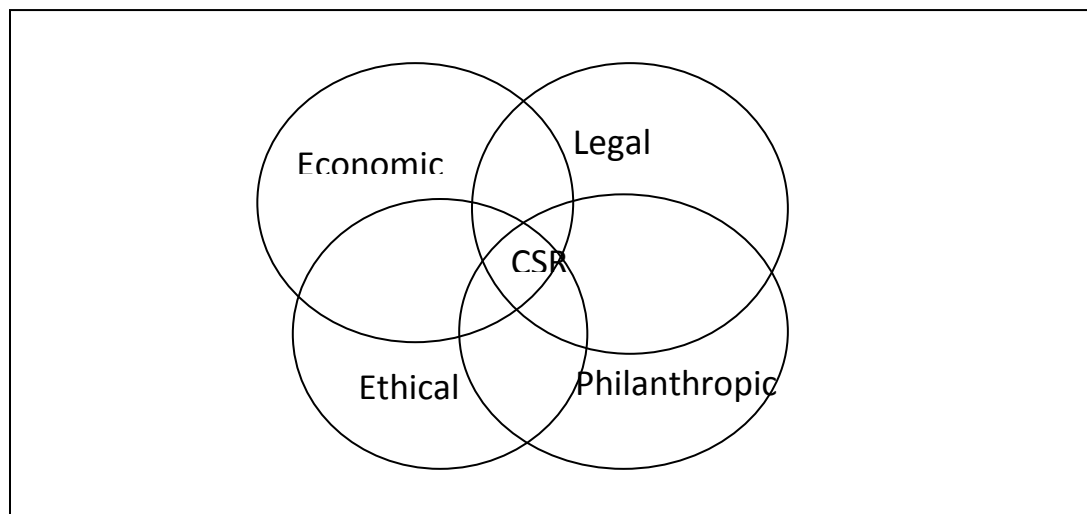
<sup>30</sup> Ollong *supra* note 28..

<sup>31</sup> Amaeshi, K., Ogbechie, C. and Amao, O. (2006) 'Corporate Social Responsibility (CSR) in Nigeria: Western Mimicry or Indigenous Practices?' 39, *ICCSR Research Paper Series*, Nottingham University Business School; see also Ijaiya, H. (2014) 'Challenges of Corporate Social Responsibility in the Niger Delta Region of Nigeria' 3 (1) *Journal of Sustainable Development Law and Policy* 60, 62.

<sup>32</sup> FSDH Merchant Bank Limited, 'Corporate Social Responsibility (CSR) Activities in 2015', *The Guardian*, 19<sup>th</sup> January, 2016; Agary, K. 'Is CSR worth the trouble for companies? (1)' *Punch*, 26<sup>th</sup> July, 2015; see also Akingbolu, R. 'Building Equity through CSR: The Grand Oak Example', *Thisday*, 22<sup>th</sup> March, 2013, 36; and Akingbolu, R. 'CSR: Groups Hail Nigerite's Efforts', *Thisday*, 14<sup>th</sup> May, 2010. There are many newspaper columns such as this showing the popular conception of CSR in Nigeria which is still diminished to corporate donations and at its best, community development projects.



ethical, economic or philanthropic). Consequently, I would rather situate CSR at the centre and as the foundational core from which economic, legal, ethical and philanthropic obligations of any company emanate. Accordingly, the diagram below represents the elementary categorisation of CSR and the position it occupies in the activities of a corporate form:



*Figure 1- Effective CSR occupies the foundational core of corporate operations.*

## **2.1 Driving Development Using CSR**

It has been argued that CSR is just an undue public pressure and detraction from serious business.<sup>33</sup> Consequently, CSR is thus argued as making companies deviate from their primary economic roles in doing business which is primarily profit maximisation for shareholders.<sup>34</sup> However, many other companies have adopted effective CSR policy as a corporate social

<sup>33</sup> Smerdon, R. (2007) *A Practical Guide to Corporate Governance*, 3<sup>rd</sup> edn, Sweet & Maxwell, London, 470.

<sup>34</sup> Wolf, M. (2001) 'Sleep-walking with the Enemy: Corporate Social Responsibility distorts the Market by Deflecting Business from its Primary Role of Profit Generation', *Financial Times*, (May 16th); see also, Owen, G. (2002) 'Time to Promote Trust, Inside the Company and Out', *Financial Times*, (August 30th); see also, Lambooy *supra* note 26 at 17.

opportunity to succeed (fundamentally strengthen their business operations) while contributing to society at the same time.<sup>35</sup>

Instances of CSR as catalyst for driving development are discussed as follows:

- 2.1.1 CSR and Social Inclusion
- 2.1.2 CSR and Financial Inclusion
- 2.1.3 CSR and Sustainable Development
- 2.1.4 CSR and Human Capital Development
- 2.1.5 CSR and Environmental Protection

### ***2.1.1 CSR and Social Inclusion***

Social inclusion can be seen as the process by which societies combat poverty and social exclusion.<sup>36</sup> Social exclusion means the involuntary exclusion of individuals and groups from society's political, economic and societal processes, which prevents their full participation in the society in which they live.<sup>37</sup> Towards reducing social tensions, mitigating social risks, promoting social integration, effective CSR practices have been adopted by many companies around the world (Nigeria<sup>38</sup> inclusive) in their business operations by way of promoting social cohesion, poverty reduction and community development projects. Further, aside the target of promoting its products and services, Globacom Limited is reputed across the three West African sub-region of Benin Republic, Ghana and Nigeria for its strides in creating a 'society for all' through its CSR practices. Amongst others, Globacom is known for the celebration of musical and performing artistes and footballers as brand ambassadors; sponsorship and promotion of socio-cultural events such as the *Ojude Oba* festival, *Oke 'Badan* Festival, *Anioma* festival, *Ofala* festival, *Puuskaat* festival; the promotion and celebration of the best football talents in Africa

---

<sup>35</sup> Amodu, N. (2013) 'Broadening Access to Finance through CSR: the Guaranty Trust Bank Plc Case' *International Bar Association Legal Practice Division, African Regional Forum Newsletter* at 12 (hereinafter simply *Amodu IBA*).

<sup>36</sup> Atkinson, A. and Marlier, E. (2010) *Analysing and Measuring Social Inclusion in a Global Context* United Nations Publications, New York, 1.

<sup>37</sup> *Id.*

<sup>38</sup> This use of the CSR concept for this purpose is quite prevalent in Nigeria. See note 32 above.

during the annual *GLO-CAF Awards* ceremonies.<sup>39</sup> All these have the necessary implications of promoting social integration, cohesion and inclusion.

### **2.1.2 CSR and Financial Inclusion**

The significance of finance in any economy makes access to it very critical. According to a World Bank Report,<sup>40</sup> financial inclusion, or access to financial services, implies an absence of price and non-price barriers in the use of financial services; it is difficult to define and measure because access has many dimensions. Services need to be available when and where desired, and products need to be tailored to specific needs. Services need to be affordable, taking into account the indirect costs incurred by the user, such as having to travel a long distance to a bank branch. Efforts to improve inclusion should also make business sense, translate into profits for the providers of these services, and therefore have a lasting effect. Research has shown that effective CSR framework and practices by financial institutions in terms of improved ethical responsibilities and better stakeholder management bolster the reputation of such institutions in society and in turn has increased the number of customers and clients interested in reaching the institutions to use their services.<sup>41</sup> On the flip side also, efficient CSR strategies and initiatives are attributable to mitigating social risks that have profound effect on the bankability of a business and the rate of returns on its projects.<sup>42</sup>

### **2.1.3 CSR and Sustainable Development**

Discussions in CSR have also engendered advocacy for sustainable development.<sup>43</sup> According to the 1987 Brundtland Report,<sup>44</sup> 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 is said to have three pillars namely: Economic Growth, Environmental Protection and

---

<sup>39</sup> See generally, *GLO Life* (Globacom Limited, ISSN: 1597 – 3425, 2015).

<sup>40</sup> The International Bank for Reconstruction and Development, *Finance for All? Policies and Pitfalls in Expanding Access*, A World Bank Policy Research Report, 2008 at 22.

<sup>41</sup> Amodu IBA *supra* note 35 at 12 to 16.

<sup>42</sup> Sheikh, S. (2006) *A Practical Approach to Corporate Governance* Tottel Publishing, West Sussex, 310.

<sup>43</sup> WBCSD, (2000) 'Corporate Social Responsibility: Making Good Business Sense', Geneva, Switzerland.

<sup>44</sup> WCED *supra* note 1.

Social Equality. The World Business Council on Sustainable Development rather takes CSR as an integral part of sustainable development.<sup>45</sup> It maintains that sustainable development is an embodiment of three concepts namely: Corporate Financial Responsibility, Corporate Environmental Responsibility and lastly, Corporate Social Responsibility.<sup>46</sup> It can also be said that sustainable development is about improving the quality of people's lives and expanding their ability to shape their futures and these generally call for higher per capita incomes, but they also involve equitable education and job opportunities, better health and nutrition, and a more sustainable natural environment.<sup>47</sup> CSR as a tool of corporate governance encourages responsible business conducts in all spheres of business operations and therefore has become inextricably linkable to sustainability for both business and society.

#### ***2.1.4 CSR and Human Capital Development***

Human capital has been defined by the Organisation for Economic Cooperation and Development as the knowledge, skills, competencies and attributes embodied in individuals that facilitate the creation of personal, social and economic well-being.<sup>48</sup> It is also said to encompass the entire range of abilities and resources that contribute to a firm or nation's success.<sup>49</sup> Trends in CSR have also demonstrated its evolution and contribution towards human capital development.<sup>50</sup> Effective CSR practices by businesses support their focus on long term goals rather than short-term benefits for a few individuals who are often referred to as business owners. Short-termism usually has tendencies for a vicious circle: for instance, a lack of talent blocks corporate growth, creating additional performance pressures that further divert the attention and

---

<sup>45</sup> World Business Council for Sustainable Development, (2003) 'CSR: Meeting Changing Expectations' 1<sup>st</sup> WBCSD Report on CSR at 3.

<sup>46</sup> *Ibid.*

<sup>47</sup> Murphy, S (2009) 'Business and Philanthropy Partnerships for Human Capital Development in the Middle East' Corporate *Social Responsibility Initiative*, Harvard Kennedy School Research Paper No.52 at page 4, available at [http://www.ksg.harvard.edu/m-rcbg/CSRI/research/publications/workingpaper\\_52\\_murphy.pdf](http://www.ksg.harvard.edu/m-rcbg/CSRI/research/publications/workingpaper_52_murphy.pdf) last accessed 15th February, 2016.

<sup>48</sup> Organization for Economic Cooperation and Development (2001) *The Well-Being of Nations: The Role of Human and Social Capital* OECD Paris.

<sup>49</sup> Murphy *supra* note 47.

<sup>50</sup> Parkinson *supra* note 2 at 481 to 502.

thinking of executives toward the short term.<sup>51</sup> In the course of demonstrating that they are good corporate citizens, companies are now expected to demonstrate responsible corporate practices towards the labour force.<sup>52</sup> More often than not, they must disclose on development of human assets by reporting annually on their labour size and category, wages and salaries, working conditions and training and other industrial relations matters.<sup>53</sup> Accordingly, in Nigeria, a number of companies are accordingly disclosing how CSR efficient they are by reporting on employee matters in their annual reports. For instance, in the 2014 Annual Report of Seven Exploration and Production Limited (a subsidiary of the UK Seven Energy International Limited), explicit disclosures are made by the company on CSR matters such as health and safety of their labour force and other employee matters.<sup>54</sup> These disclosures go a long way to not only improve the reputation of the companies involved but also give affected employees a sense of belonging in the company and which translates to better productivity eventually.

### **2.1.5 CSR and Environmental Protection**

---

<sup>51</sup> See generally, Eric, H. and Wobman, L, (2007) *Education Quality and Economic Growth* (The World Bank Washington, D.C).

<sup>52</sup> See generally, the United Nations Global Compact, UN Press Release SG/SM/6881, Secretary-General Proposes Global Compact on Human Rights, Labour, Environment in Address to World Economic Forum in Davos, Text of Speech by Kofi Annan, 1 February 1999, at 1, <http://www.un.org/News/Press/docs/1999/19990201.sgsm6881.html> (last accessed 29<sup>th</sup> June, 2015); see also, Lambooy *supra* note 26 at 235.

<sup>53</sup> Muchlinski, P. (2007) *Multinational Enterprises and the Law*, (2<sup>nd</sup> edn, Oxford University Press 359 to 383; see also, Nike Inc. v. Marc Kasky, 539 US 654; see also, Kasky v. Nike, Inc. 45 P.3d 243 (Cal. 2002). Kasky filed a lawsuit in California regarding newspaper advertisements and several letters Nike distributed in response to criticisms of labor conditions in its factories. Kasky claimed that the company made representations that constituted false advertising. Nike responded that the false advertising laws did not cover the company's expression of its views on a public issue, and that these were entitled to First Amendment protection. The local court agreed with Nike's lawyers, but the California Supreme Court overturned this ruling, claiming that the corporation's communications were commercial speech and therefore subject to false advertising laws. The United States Supreme Court agreed to review the case (Nike v. Kasky) but sent the case back to trial court without issuing a substantive ruling on the constitutional issues. The parties subsequently settled out of court before any finding on the accuracy of Nike's statements, leaving the California Supreme Court's denial of Nike's immunity claim as precedent. The case drew a great deal of attention from groups concerned with civil liberties, as well as anti-sweatshop activists. See also generally, McCorquodale, R. (2009) 'Corporate Corporate Social Responsibility and International Human Rights Law' 87 *Journal of Business Ethics* 385-400.

<sup>54</sup> See Seven Energy Annual Report 2014 at pages 42 to 45 available online at <http://www.sevenenergy.com/~media/Files/S/Seven-Energy/reports-and-presentations/2014/annual-reports-and-accounts-2014.pdf> last accessed 2nd February, 2016.

Just like many other aspects of the law, environmental law is a global response to the challenges of environmental degradation and unsustainable growth arising from industrialisation and globalisation.<sup>55</sup> Environmental law is often defined in light of a body of rules, both from the national and international perspectives, for the sustainable utilisation of resources for the social and economic development of the society<sup>56</sup>. Through the principles of corporate governance and CSR in particular, businesses can no longer neglect the negative environmental impacts of their operations. Accordingly, an effective CSR regime enjoins companies to ‘own up’ and demonstrate corporate responsibility towards environmental management. That is to say that, through CSR, companies and corporate managers may no longer focus on enhancing shareholder value at all costs without responsibly managing any negative environmental implications (for instance, pollution) of their operations. There are regulatory efforts both at municipal<sup>57</sup> and international law<sup>58</sup> levels confirming this corporate responsibility. Consequently, companies disclose in their annual reports how corporate social responsible they are in terms of water use, energy use, contribution to global warming, use of ozone depleting substance and waste management mechanisms and other environmental management issues.<sup>59</sup>

### **3. DODGY CSR PRACTICES AND UNDERPINNING CAUSES**

In spite of the contributions of the CSR subject to the development of both business and society in terms of economic advancement and other socio-cultural benefits, many corporate managers in Nigeria appear only to have only joined a band-wagon, paying lip service to CSR causes and

---

<sup>55</sup> Aniyie, (2007) “What is the much ado about Environmental Law: Another addition to the Rhetoric’s” (2007 – 2010) *Nigerian Current Law Review* 165 and 166.

<sup>56</sup> Amokaye, O. (2004) *Environmental Law and Practice in Nigeria* University of Lagos Press, Lagos 3; see also generally, Fagbohun, O. (2010) *The Law of Oil Pollution and Environmental Restoration: A Comparative Review* Odade Publishers, Lagos, 39.

<sup>57</sup> See amongst others, National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007; The National Oil Spill Detection and Response Agency Act 2006; Environmental Impact Assessment Act, CAP E12 LFN, 2004; Harmful Waste (Special Criminal Provisions) Act, cap H1 LFN, 2004.

<sup>58</sup> See the UN Global Compact, the OECD Guidelines for Multinationals, UN Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework. See generally, John Ruggie, Final Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations’ ‘Protect, Respect and Remedy’ Framework,’ A/HRC/17/31, 21 March 2011 <<http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>> last accessed 30<sup>th</sup> June, 2015.

<sup>59</sup> Muchlinski *supra* note 53 at 359 to 383.

involved in haphazard and sometimes dodgy practices.<sup>60</sup> These companies and their managers insist that the business of business is business and still conceptualize CSR as detraction from their serious business of enhancing shareholder wealth. They are therefore basically involved in CSR initiatives and practices as free riders without true or genuine commitment to responsible corporate practices.<sup>61</sup> For so many other companies, rather than an effective intrinsic CSR compliance programmes and activities whereby the basic principles of a responsible corporate citizen is integrated into the core operations of such businesses, it is just a case of CSR adoption as mere publicity stunts which in many cases boomerang.<sup>62</sup>

A number of factors have facilitated, if not caused, these haphazard and sometimes dodgy CSR practices. These include: the CSR Business Case argument; dysfunctional theoretical underpinnings; antipathy to western ideas; fear of capital flight; government's inaction and business complicity and complacency. These are discussed in turn below.

### 3.1 CSR Business Case

The *business case* argument of CSR appears to be the official CSR policy stance in the EU.<sup>63</sup> It is argued that CSR is intrinsically a voluntary concept and must be strategically shown to have

---

<sup>60</sup> Amodu *supra* note 3 at 4; Nwete, B. (2006) 'Corporate Social Responsibility and Transparency in the Development of Energy and Mining Projects in Emerging Markets; Is Soft Law the Answer?' Paper presented at the International Bar Association SEERIL Conference, Lagos, 3.

<sup>61</sup> For instance in Nigeria, despite winning awards for its so-called effective CSR operations in 2008, Cadbury Nigeria was later discovered to be involved in corporate accounting scandals; see [http://www.thenationonline.net/archive2/tblnews\\_Detail.php?id=27137](http://www.thenationonline.net/archive2/tblnews_Detail.php?id=27137) last accessed 7<sup>th</sup> January, 2016; Other instance in other jurisdictions include: the famous Enron corporate governance scandal in the US, the British Petroleum oil spill saga in the gulf of Mexico despite its 'green operations' tagged 'Beyond Petroleum', the popular 2006 'cover-up' involving Cadbury Schweppes which was forced to recall chocolate bars on a large scale after discovering tiny amounts of undisclosed salmonella are exemplary in the circumstance. Smerdon *supra* note 8 at 441; see also Farrar, J. (2008) *Corporate Governance: Theories, Principles and Practice*, 3<sup>rd</sup> edn, Oxford University Press, Melbourne, 502.

<sup>62</sup> The Cadbury Nigeria scandal, the US Enron collapse from corporate governance scandal, the British Petroleum oil spill saga in the gulf of Mexico despite its 'green operations' tagged 'Beyond Petroleum', the popular 2006 'cover-up' involving Cadbury Schweppes which was forced to recall chocolate bars on a large scale after discovering tiny amounts of undisclosed salmonella are exemplary in the circumstance. Smerdon *supra* note 33 at 441.

<sup>63</sup> Wouters, J. and Chanet, L. (2008) 'Corporate Human Rights Responsibilities: A European Perspective,' 6 *Nw U.J. Int'l Hum. Rts* 262 at 266 – 267 paras 26 and 27; The CSR 'Business Case' argument enjoins corporate managers to consider stakeholder interests and report on non-financial matters of CSR like employee or environmental matters so long as it will make *business sense* (cost-benefit implications) to so do and such considerations are in relation to the



some positive values, benefits and other company (shareholder)-success-related attributes before it should be embraced by the business community.<sup>64</sup> In other words, the business case argument for CSR means that CSR may only be engaged in by companies when it will make *business sense* in cost implications. As a corollary of the former statement, it is also argued that the normal interplay of free market forces is the best method to regulate CSR and therefore, there is no need for any hard law government interventionist external and mandatory CSR rules.<sup>65</sup> Wouters and Chanet explained further that:

Proponents of the ‘business case’ explain that corporations are financially rewarded for behaving responsibly in various ways. They argue that not only consumers, but also investors and even workers attach importance to corporations’ human rights records and have a clear preference for responsible businesses. Thus, the market itself acts as an important and sufficient incentive for corporations to take human rights into account, since responsible behavior leads to higher profits. This assumption leads them to conclude that a voluntary approach to corporate responsibility is sufficient.<sup>66</sup>

To my mind, it is arguable that this business case adoption within the EU is the most significant disservice to the CSR. This is because the EU is host to the largest MNEs in the world and many practices at the EU are cascaded eventually to developing economies including Nigeria. In other words, the implication on less industrialised economies like Nigeria is that many of the MNEs with local subsidiaries simply replicate these *business case* tendencies in local jurisdictions whereby CSR is largely reduced to haphazard voluntary and discretionary activities. Consequently, this development encourages the nefarious activities of rogue companies and

---

overall economic performance of the company and without prejudice to enhancing shareholder value; see also Villiers, C. (2008) ‘Corporate Law corporate power and corporate social responsibility’ in *Perspectives on Corporate Social Responsibility*, Boeger, N., Murray, R., and Villiers, C., eds. Edward Elgar, Cheltenham, 85, 97, 98 *et seq.*

<sup>64</sup>MacLeod, S. (2012) ‘Towards normative transformation: Reconceptualising Business and Human Rights’, PhD thesis submitted to the University of Glasgow, United Kingdom, 2012 at 257 *et seq.*; see also Smerdon *supra* note 33 at 436.

<sup>65</sup> MacLeod *supra* note 64 at 257, 258 *et seq.*

<sup>66</sup> Wouters and Chanet *supra* note 6 at 266 – 267 para.12.

other free rider companies in Groups C and D as categorised by McInerney.<sup>67</sup> This remains a huge clog in the wheel of advancing an effective and efficient CSR regulatory framework in Nigeria.

### **3.2 Theoretical Underpinnings**

Another major causative factor influencing dodgy CSR practices has been the adoption of the business (corporate) law assumptions of the shareholder primacy model and the contractarian theory. Exponents of the shareholder primacy corporate model posit that corporate managers have an obligation primarily, if not exclusively, to shareholders and the maximization of their wealth.<sup>68</sup> The theory is also based on the fundamental assumption that companies are private properties<sup>69</sup> of their incorporators and investors and as such the success of the company (overall economic performance) must be taken as the success of the shareholders. The contractarian theories provide a notional foundation for the shareholder primacy model and states that a company is a fictional central hub for series of contractual relationships.<sup>70</sup> Accordingly, the sole

---

<sup>67</sup> According to Thomas McInerney, many regulatory scholars recognize that there are four types of companies with which regulators have to deal. These four types include: those who know the law and are willing to follow it (Group A); those who do not know the law but would like to be law abiding (Group B); those who know the law and do not want to follow it (Group C); and those who do not know the law and do not wish to be law abiding (Group D). Most CSR literature does not even reflect these basics. As this analysis suggests, Group A firms are willing to comply on intrinsic grounds. See McInerney, T. (2007) 'Putting Regulation Before Responsibility: Towards Binding Norms of Corporate Social Responsibility' 40 *Cornell Int'l L.J.* 171-200 at 185.

<sup>68</sup> Parkinson *supra* note 2 at 482; Fairfax, L. (2007) 'Easier Said Than Done? A Corporate Law Theory for Actualizing Social Responsibility Rhetoric', *University of Maryland School of Law Legal Studies Research Paper No. 39*, at 779 citing Bainbridge, S., Director Primacy: The Means and Ends of Corporate Governance, 97 *NW. U. L. Rev.* 547,563; *cf* It is instructive to note that there is no corporate statute in any jurisdictions around the world specifically stating that the sole purpose of a corporation is to maximize profits for its shareholders. See generally for this position, Nelson II, W.A., 'Post-Citizens United: Using Shareholder Derivative Claims of Corporate Waste to Challenge Corporate Independent Political Expenditures', [2012] (13) *Nevada Law Journal* 134, 141 citing Elhauge, E., 'Sacrificing Corporate Profits in the Public Interest' (2005) 80 *N. Y. U. L. Rev.* 733, 763.

<sup>69</sup> Whitehouse, L. (2005) 'Corporate Social Responsibility as Regulation: The Argument from Democracy' in J O'Brien (ed), *Governing the Corporation, Regulation and Corporate Governance in an Age of Scandal and Global Market*, Wiley Publications.

<sup>70</sup> Hayden G.M. and Bodie, M.T. (2011) 'The Uncorporation and the Unraveling of the "Nexus of Contracts" Theory' 109 *Michigan Law Review* 1129.

purpose of the company is to maximize shareholders' profits and that other stakeholder groups are assumed to be protected to the extent of the provisions of their contracts with the company.<sup>71</sup>

These theories and their largely dysfunctional assumptions represent the classical foundation on which companies in the United States of America<sup>72</sup> and the United Kingdom<sup>73</sup> operate. Their protagonists have very little or nothing of any board room consideration of any societal, labour, creditor or environmental concerns in the business operations of the company, especially where such cannot be linked to enhancing shareholder value. As far as they are concerned, wealth maximisation for the shareholders is tantamount to effective economic distribution of resources in the society. In view of the modern realities in the business community, this shareholder primacy model (together with its variant model in the UK called the 'Enlightened Shareholder Value'<sup>74</sup>) has not been very useful towards embedding effective CSR practices. For its injustice to legitimate stakeholders of a company, the theory appears morally untenable and out of line with prevailing social norms.<sup>75</sup> Sadly, corporate governance and practices in the Nigerian business community are still heavily reliant on the shareholder primacy and the contractarian thinking.<sup>76</sup>

---

<sup>71</sup> Amao, O. (2007) "Reconstructing the Role of the Corporation: Multinational Corporations as Public Actors in Nigeria" 29 *Dublin University Law Journal* 312 at 313 to 314; see also Abugu, J. (2013) 'Primacy of Shareholders' Interests and the Relevance of Stakeholder Economic Theories' 7 *Company Lawyer* 201 at 213 and 214.

<sup>72</sup> Amao *supra* note 71 at 314.

<sup>73</sup> Parkinson *supra* note 2 at 485.

<sup>74</sup> This principle of Enlightened Shareholder Value is similar to the Australian 'Business Approach to Corporate Responsibility' and underlies the 'Business Case' model for CSR which enjoins corporate managers to consider stakeholder interests and report on non-financial matters of CSR like employee or environmental matters so long as it will make *business sense* (cost-benefit implications) to so do and such considerations are in relation to the overall economic performance of the company and without prejudice to enhancing shareholder value; see Villiers *supra* note 6 at 85, 97, 98 *et seq.*;

<sup>75</sup> Parkinson *supra* note 2 at 483; Donaldson, T. and Preston, L. E. (1995) 'The Stakeholder Theory of the Corporation: Concepts, Evidence and Implications' 20 *The Academy of Management Review* 65, 88; see also Johnson, L. (1990) 'The Delaware Judiciary and the Meaning of Corporate Life and Corporate Law' 68 *Texas Law Review* 865, 934. *cf.* Miller, R. T. (2014) 'The Coasean Dissolution of Corporate Social Responsibility' 17 (2) *Chapman Law Review* 28, 23 and 26.

<sup>76</sup> Companies and Allied Matters Act, Cap C20 Laws of the Federation of Nigeria, 2004, sections 279, 314 and 315; all to the effect that the interests of shareholders should be held paramount by directors and state regulators with little or no regard for societal or community concerns from companies' activities. *cf.* section 279 (4);

### 3.3 Government's Inaction and Business Complacency cum Complicity

In a trend which is not peculiar to Nigeria, another factor nesting dodgy CSR activities of rogue companies has been government/state inaction, reluctance and sometimes sheer indifference towards ensuring an effective regulatory CSR framework. There are different factors in turn responsible for the inability or reluctance of state authorities to regulate business practices towards avoiding human rights violations, improper labour practices or environmental degradation using the corporate form. Sometimes, it could be complicity of government such as in Burma/Myanmar where the government was instrumental in the provision of forced labour for the construction of infrastructure for a gas pipeline,<sup>77</sup> or in Ecuador, where a state-owned company had further compounded human right abuses after some oil concessions were granted to US oil companies such as Texaco whose operations ravaged the environment as a result of sub-standard technology which caused untold damage to the indigenous population.<sup>78</sup> Similar scenarios have played out in Nigeria as in the complacency and complicity of the Nigerian government and Shell in human right abuses in the oil rich Niger-Delta region of Nigeria.<sup>79</sup>

Another causative factor observed has been CSR antipathy in implementing what some corporate managers and even government agencies consider as a 'western idea.'<sup>80</sup> Other issues relate to economic pressures and the fear<sup>81</sup> of losing out on foreign investments as multinational companies may desert the country in protest of over-regulation of corporate behaviour.<sup>82</sup>

## 4. REFORM PROPOSALS AND CONCLUSION

---

<sup>77</sup> UNOCAL litigation, California, USA: John Doe et al. v. Unocal Corp et al. 963 F. Supp. 880 (March 25 1997); 27 F. Supp. 2d 1174 (November 18 1998); Doe v. Unocal 963 F.Supp. 880 (C.D. Cal. 1997) (Unocal I), 110 F.Supp. 2d 1294 (C.D. Cal 2000) (Unocal II), on appeal, 2002 WL 31063976 (9th Cir. 2002).

<sup>78</sup> MacLeod, S. (1999) 'Maria Aguinda v. Texaco Inc.: Defining the Limits of Liability for Human Rights Violations Resulting from Environmental Degradation' 4(2) Contemporary Issues in Law 189–209.

<sup>79</sup> Lambooy *supra* note 26 at 304; see also, US District Court, New York, *Wiwa v. Royal Dutch Petroleum (Shell)*, 28 February 2002, LEXIS 3293.

<sup>80</sup> CSR as a concept originated from the United States of America. See generally Branson *supra* note 5 at 608.

<sup>81</sup> See Zerk, J. (2010) 'Extraterritorial Jurisdiction: Lessons for Business and Human Rights Sphere from Six Regulatory Areas' Corporate Social Responsibility Initiative Working Paper No. 59 Cambridge, MA: John F. Kennedy School of Government, Harvard University at 88 citing Giles, A. 'SOX: What does it mean for UK companies?' quoting the Chairman of UK telecommunications firm BT.

<sup>82</sup> MacLeod *supra* note 64 at 167; see also Lambooy *supra* note 26 at 233.

It must be noted that this article has not argued for a CSR framework deemed to be a solution to every developmental challenge in the society. At least, on this point, the writer agrees with Wolf that:

The role of well-run companies is to make profits, not save the planet. Let them (corporate manager and businesses) not make the error of confusing the two.<sup>83</sup> Words in parenthesis mine.

However, the current CSR regime in corporate Nigeria underpinned by the dysfunctional shareholder primacy and the contractarian ideological foundations and therefore replete with dodgy and haphazard practices is unsustainable. Developmental targets of the CSR construct including social and financial inclusion, human capital development, environmental protection and sustainable development will remain a tall order to achieve under such setting. By way of reform proposal therefore, it is the submission of this author that an efficient CSR framework within the Nigerian business community will be facilitated by addressing the causative factors militating against effective CSR and adopting a few of the recommendations provided below.

#### **4.1 Political Will for a Universal CSR**

To begin with, it is arguable that CSR is a universal subject. It is both multidisciplinary and interdisciplinary and now cuts across many jurisdictions. It is commonly known as ‘Corporate Responsibility’ (CR) in the United Kingdom (a term now understandably receiving wider adoption amongst commonwealth countries)<sup>84</sup>, ‘Corporate Citizenship’ (CC) in the United States of America, ‘Maatschappelijk Verantwoord Ondernemen’<sup>85</sup> (MVO) in the Netherlands, ‘Responsabilite Social des Enterprises’ (RSE) in France,<sup>86</sup> ‘Responsabilidad Social Empresarial’

---

<sup>83</sup> Wolf *supra* note 34.

<sup>84</sup> Smerdon, *supra* note 33 at 429; see also, *Corporate Responsibility: Managing Risk and Creating Value*, Parliamentary Joint Committee on Corporate and Social Responsibility, Parliament of Australia, 2006 at xiii; cf: Osuji, O. ‘Corporate Social Responsibility, Globalisation, Developing Countries and International Best Standards: The Incoherence of Prescriptive Regulation’, Conference Paper, (12<sup>th</sup> International Conference on Corporate Social Responsibility, ISSN 2048 – 0806, Niteroi and Rio de Janeiro, Brazil, June 2013). At footnotes 41 to 46 and accompanying texts, Osuji appears to differentiate between CSR and CR, conceptualising CSR largely as a moralistic ethical concept beyond legal requirements and CR as underpinned by legal requirements.

<sup>85</sup> Lambooy *supra* note 26 at 10.

<sup>86</sup> *Id.*

(RSE) in Spain,<sup>87</sup> Responsabilita Sociale delle Imprese' (RSI) in Italy,<sup>88</sup> 'Unternehmerische Gesellschaftsverantwortung' (UG) in Germany<sup>89</sup> and in India, a company involved in its practice known as "Socially Sensitive Corporation",<sup>90</sup> amongst other nomenclatures in other countries. Therefore, CSR should no longer be seen as a western idea. There is no CSR peculiar to the west or the east, north or the south. It is a simple neutral idea seeking to check raw exercise of corporate power by broadening the responsibilities of businesses beyond the traditional focus of enhancing shareholder value and making businesses conscious of the environmental, social and legal consequences of their operations. Therefore, the principles of CSR have become universally applicable. Although the individual issues and developmental agenda may differ from one country to the other, nonetheless, CSR core values including stakeholder management, human capital development, and environmental protection amongst others remain the same. Antipathy towards the CSR subject as a western idea therefore appears misplaced.

Furthermore, a strong political will to implement effective regulatory CSR framework is also crucial even in the wake of the notorious risk of capital flight by multinationals from destinations considered over-regulated. In reality the fear and predictions of capital flight do not always hold sway. Jennifer Zerk gave an example in the fear and predictions trailing the introduction of the 2002 US Sarbanes Oxley Act after the massive corporate scandal involving Enron and people had thought such government intervention will lead to massive avoidance of the US capital market but instead, investors confidence ultimately became restored and there was indeed no capital flight out of the US as a result. Investors were quoted to just 'grit our teeth and get on with it.'<sup>91</sup>

## **4.2 Refocusing Companies as Social Institutions**

---

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* However, by virtue of the Indian Companies Act 2013, the most widely used term of *Corporate Social Responsibility* appears to have been endorsed; see sections 134 and 135 thereof.

<sup>91</sup> Zerk *supra* note 81 at 88.



Advocates of CSR have always argued for the reconceptualization of companies as *social institutions* or social enterprises and with attendant proposals over the years to broaden the duties of directors, and ensuring that corporate managers do not only focus on short term enhancement of shareholder value but rather ensuring the right balance of interests of a larger group now popularly referred to as stakeholders.<sup>92</sup> Therefore, the prevalent business (corporate) law ideology in corporate Nigeria whereby businesses are considered the private assets of some owners in whose exclusive interest the companies are to be run must be revisited. Interestingly, the shareholder primacy theory has perhaps been rendered ideologically baseless on the ground that its fundamental assumption of taking the shareholders as the ‘owners’ of the businesses is after all not unassailable. While John Parkinson characterized such assumption as a *technical error* and invincibly circular as it assumes the very point it seeks to prove<sup>93</sup>, Paddy Ireland demonstrated with the aid of historical evidence on the meaning of ‘shares’ that it is hardly correct to state that businesses are ‘owned’ by shareholders.<sup>94</sup> It has also been argued that the idea that the shareholders own the company does not sit well with the concept of the company being a separate legal entity. Shareholders actually own ‘shares’ as their private properties and cannot claim to own the company itself. Corporate properties belong to the company itself as a separate legal personality.<sup>95</sup> Furthermore, even the contractarian theory has been criticized as a being simply *difficult to defend*,<sup>96</sup> and ‘does not correspond with a realistic picture of the

---

<sup>92</sup> See generally Dodd, M.E. (1932) ‘For Whom Are Corporate Managers Trustees’ 45 *Harvard Law Review* 1145 to 1163; Parkinson *supra* note 2 at 492, 493 and 500.

<sup>93</sup> Parkinson *supra* note 2 at 483 and 484.

<sup>94</sup> Ireland, P. (1996) ‘Capitalism without the Capitalist: The Joint Stock Company Share and the Emergence of the Modern Doctrine of Separate Corporate Personality’ 17 *Journal of Legal History* 40; see also Ireland, P. (1999) ‘Company Law and the Myth of Shareholder Ownership’ [1999] 62 (1) *Modern Law Review* 32-57.

<sup>95</sup> As held in plethora of cases such as *Bligh v. Brent* (1837) 2 7 & C Ex 268, *Salomon v. Salomon* (1897) AC 22, *Short v. Treasury Commissioners* (1948) 1 KB 116 and *Marina Nominees Ltd. v. Federal Board of Inland Revenue* (1986) 2 N.W.L.R. 48, shareholders have no proprietary interest in the company but in shares as the company has a separate personality of its own with which it can sue or be sued. See generally also, Irene Lynch-Fannon, *Working within Two Kind of Capitalism: Corporate Governance and Employee Stakeholding: US and EU Perspectives* (Hart Publishing, 2003) 82.

<sup>96</sup> Foster, N.H.D. (2000) ‘Company Law Theory in Comparative Perspective: England and France’ 48 (4) *American Journal of Comparative Law* 573, 587; see also Bolodeoku, I.O. (2005) ‘Contractarianism and Corporate Law: Alternative Explanations to the Law’s Mandatory and Enabling/Default Contents’ (13) 2 *Cardozo Journal of International and Comparative Law*, 433 at pp.437, 438 *et seq.*



corporation, even at the level of metaphor.’<sup>97</sup> Also, the contractarian is criticized to have missed the whole gist of the essence of a company. It is said that rather than being a *Nexus ‘of’ Contracts*, a company is actually a *Nexus ‘for’ Contracts* as it provides the platform through which series of contractual interrelations involving the company, the owners, the employees and other constituents are formed.<sup>98</sup>

As gradual shift is already taking place in other jurisdictions (the UK<sup>99</sup> inclusive), there is therefore need for a shift to a more progressive Stakeholder theory of business (corporate) law in Nigeria. The Stakeholder ideological foundation is a business management model which assumes that companies ought to exist for the mutual benefit of those with relevant ‘stakes’ or ‘interests in or against’ the company as a going concern.<sup>100</sup> The Stanford Research Institute in 1963 defined *stakeholders* as ‘those groups without whose support the organization would cease to exist.’<sup>101</sup> Compared to the shareholder primacy model, this writer recommends this theoretical foundation as it is better favourably disposed to embedding the core values of CSR and the achievement of development goals since the businesses can act and/or omit to act in the interest of not just the business investors (today’s needs) but also in the interest of all stakeholders including the environment and the needs of future generations. Although the stakeholder model appears to have a shortfall in its assumption that shareholder interests and other stakeholder rights or interests are equal<sup>102</sup> (no priorities) in any existence or survival discourse of businesses, however, this realm of debate on whose interests should override the other transcends the scope of this article.

---

<sup>97</sup> Hayden and Bodie *supra* note 70 at 1134; see also Bratton Jr, W.W. (1989) ‘The “Nexus of Contracts” Corporation: A Critical Appraisal’ 74 *Cornel Law Review* 407, 445 saying that (‘If the Corporation really is contract, as the new economic theory tells us, then the last doctrinal vestiges of state interference should have withered away by now ... but the sovereign presence persists.’).

<sup>98</sup> Armour, J. Hansmann, H. and Kraakman, R. (2009) ‘The Essential Elements of Corporate Law: What is Corporate Law?’ Harvard John M. Olin Discussion Paper Series, No. 63, 7 available at [http://www.law.harvard.edu/programs/olin\\_center/](http://www.law.harvard.edu/programs/olin_center/) at 25 last accessed on 16<sup>th</sup> February, 2016.

<sup>99</sup> See section 172 of the 2006 UK Companies Act.

<sup>100</sup> Parkinson, J. (1993) *Corporate Power and Responsibility* Clarendon Press, Oxford, 310.

<sup>101</sup> Donaldson and Preston *supra* note 70 at 72 citing Freeman, E. (1984) *Strategic Management: A Stakeholder Approach* Pitman, Boston, 31.

<sup>102</sup> Parkinson *supra* note 2 at 495.

Finally, the potentials of the CSR construct as an instrument for growth and sustainable development in corporate Nigeria are very high. However, the current CSR practice and the policy framework constitute serious hindrance to realizing such potentials. Developments in the UK whereby the traditional shareholder primacy model has become refined into the Enlightened Shareholder Value should constitute some encouragement for paradigm shift in corporate Nigeria. A commendable step in Nigeria towards realizing the developmental potentials of effective CSR practices in Nigeria was the rejection of the 2007 proposed CSR bill in Nigeria<sup>103</sup> as a 2002 Corporate Responsibility Bill<sup>104</sup> was similarly abandoned in the UK although for different reasons.

In view of such encouraging steps already taken, it is hoped that the reform proposals in this article are adopted by both the Nigerian government and the business community towards the realization of the full potentials of an efficient CSR framework.

---

<sup>103</sup> It had the title: 'A BILL FOR AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE CORPORATE SOCIAL RESPONSIBILITY COMMISSION'. The Bill passed the second reading in the National Assembly. It was introduced by Senator Uche Chwukwumerije. The Bill had some controversial provisions including in respect of a mandatory 3.5 % contribution of each and every firm. See section 5 of the draft bill.

<sup>104</sup> See the English Corporate Responsibility Act 2002, A Bill to make provision for certain companies to produce and publish reports on environmental, social and economic and financial matters; to require those companies to consult on certain proposed operations; to specify certain duties and liabilities of directors; to establish and provide for the functions of the Corporate Responsibility Board; to provide for remedies for aggrieved persons; and for related purposes. It was presented by Linda Perham, supported by Mr Barry Sheerman, Mr Tony Colman, Mr Frank Field, Mr Martin O'Neill, Mr Tony Banks, Sue Doughty, Mr Simon Thomas, Glenda Jackson, Mrs Jackie Lawrence, Sir Teddy Taylor and Mr John Horam available at <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmbills/145/2002145.pdf> last accessed on the 16<sup>th</sup> February, 2016.

## REFERENCE LIST

- Abugu, J. (2013) 'Primacy of Shareholders' Interests and the Relevance of Stakeholder Economic Theories' 7 *Company Lawyer* 201.
- Agary, K. (2015) 'Is CSR worth the trouble for companies? (1)' *Punch*, 26<sup>th</sup> July.
- Akingbolu, R. (2010) 'CSR: Groups Hail Nigerite's Efforts', *Thisday*, 14<sup>th</sup> May.
- Akingbolu, R. (2013) 'Building Equity through CSR: The Grand Oak Example', *Thisday*.
- Amaeshi, K., Ogbechie, C. and Amao, O. (2006) 'Corporate Social Responsibility (CSR) in Nigeria: Western Mimicry or Indigenous Practices?' 39, *ICCSR Research Paper Series*, Nottingham University Business School.
- Amao, O. (2007) "Reconstructing the Role of the Corporation: Multinational Corporations as Public Actors in Nigeria" 29 *Dublin University Law Journal* 312.
- Amodu, N. (2013) 'Broadening Access to Finance through CSR: the Guaranty Trust Bank Plc Case' *International Bar Association Legal Practice Division, African Regional Forum Newsletter* at 12.
- Amodu, N. (2013) *Effective Corporate Social Responsibility in Corporate Nigeria: Understanding the Matters Arising*, Conference Proceedings ISSN 2048 – 0806 (12<sup>th</sup>

This is the version of the chapter accepted for publication in Stakeholders, Governance and Responsibility: Developments in Corporate Governance and Responsibility published by Emerald Publishing Limited [doi.org/10.1108/S2043-052320180000014010](https://doi.org/10.1108/S2043-052320180000014010)

Accepted version downloaded from SOAS Research Online: <http://eprints.soas.ac.uk/31972>

International Conference on Corporate Social Responsibility, Universidad Federal Fluminense, Niteroi and Rio de Janeiro).

Amokaye, O. (2004) *Environmental Law and Practice in Nigeria* University of Lagos Press, Lagos 3.

Aniyie, (2007) “What is the much ado about Environmental Law: Another addition to the Rhetoric’s” *Nigerian Current Law Review* 165.

Armour, J. Hansmann, H. and Kraakman, R. (2009) ‘The Essential Elements of Corporate Law: What is Corporate Law?’ Harvard John M. Olin Discussion Paper Series, No. 63, 7 available at [http://www.law.harvard.edu/programs/olin\\_center/](http://www.law.harvard.edu/programs/olin_center/) at 25 last accessed on 16<sup>th</sup> February, 2016.

Atkinson, A. and Marlier, E. (2010) *Analysing and Measuring Social Inclusion in a Global Context* United Nations Publications, New York.

Bainbridge, S., Director Primacy: The Means and Ends of Corporate Governance, 97 NW. U. L. Rev. 547.

*Bligh v. Brent* (1837) 2 7 & C Ex 268.

Bolodeoku, I.O. (2005) ‘Contractarianism and Corporate Law: Alternative Explanations to the Law’s Mandatory and Enabling/Default Contents’ (13) 2 *Cardozo Journal of International and Comparative Law*, 433.

Bowen, H. (1953) *Social Responsibilities of the Businessman*, (Harper and Row, New York).

Branson, D. (2001) ‘Corporate Governance “Reform” and the New Corporate Social Responsibility’ 62 *University of Pittsburgh Law Review* 605.

Bratton Jr, W.W. (1989) ‘The “Nexus of Contracts” Corporation: A Critical Appraisal’ 74 *Cornel Law Review* 407.

Carroll, A. B. (1979) ‘A Three – Dimensional Conceptual Model of Corporate Performances’, 4 *Academy of Management Review* 499.

Carroll, A. B. (1991) ‘The Pyramid of Corporate Social Responsibility – Toward the Moral Management of Organizational Stakeholders’ (1991) 34 *Business Horizons* 39, reprinted in Craine, A., Matten, D., and Spence, L.J., eds, *Corporate Social Responsibility: Readings and Cases in a Global Context* (Routledge, Abington 2008) 60.

Dodd, M.E. (1932) ‘For Whom Are Corporate Managers Trustees’ 45 *Harvard Law Review* 1145 to 1163.

Donaldson, T. and Preston, L. E. (1995) 'The Stakeholder Theory of the Corporation: Concepts, Evidence and Implications' 20 *The Academy of Management Review* 65.

Elhauge, E., (2005) 'Sacrificing Corporate Profits in the Public Interest' 80 N. Y. U. L. Rev. 733;  
Eric, H. and Wobman, L., (2007) *Education Quality and Economic Growth* (The World Bank Washington, D.C.).

Fagbohun, O. (2010) *The Law of Oil Pollution and Environmental Restoration: A Comparative Review* Odade Publishers, Lagos, 39.

Fairfax, L. (2007) 'Easier Said Than Done? A Corporate Law Theory for Actualizing Social Responsibility Rhetoric', *University of Maryland School of Law Legal Studies Research Paper No. 39*, at 779.

Farrar, J. (2008) *Corporate Governance: Theories, Principles and Practice*, 3<sup>rd</sup> edn, Oxford University Press, Melbourne, 502.

Foster, N.H.D. (2000) 'Company Law Theory in Comparative Perspective: England and France' 48 (4) *American Journal of Comparative Law* 573.

Freeman, E. (1984) *Strategic Management: A Stakeholder Approach* Pitman, Boston.

FSDH Merchant Bank Limited, (2016) 'Corporate Social Responsibility (CSR) Activities in 2015', *The Guardian*.

Geva, A. (2008) 'Three Models of Corporate Social Responsibility: Interrelationship between Theory, Research and Practice', (2008) *Business and Society Review* 5.

Harmful Waste (Special Criminal Provisions) Act, Cap H1 LFN, 2004.

Hayden G.M. and Bodie, M.T. (2011) 'The Uncorporation and the Unraveling of the "Nexus of Contracts" Theory' 109 *Michigan Law Review* 1129.

Ijaiya, H. (2014) 'Challenges of Corporate Social Responsibility in the Niger Delta Region of Nigeria' 3 (1) *Journal of Sustainable Development Law and Policy* 60.

Ireland, P. (1996) 'Capitalism without the Capitalist: The Joint Stock Company Share and the Emergence of the Modern Doctrine of Separate Corporate Personality' 17 *Journal of Legal History* 40.

This is the version of the chapter accepted for publication in Stakeholders, Governance and Responsibility: Developments in Corporate Governance and Responsibility published by Emerald Publishing Limited [doi.org/10.1108/S2043-052320180000014010](https://doi.org/10.1108/S2043-052320180000014010)  
Accepted version downloaded from SOAS Research Online: <http://eprints.soas.ac.uk/31972>

Ireland, P. (1999) 'Company Law and the Myth of Shareholder Ownership' [1999] 62 (1) *Modern Law Review* 32-57.

Irene Lynch-Fannon, (2003) *Working within Two Kind of Capitalism: Corporate Governance and Employee Stakeholding: US and EU Perspectives* (Hart Publishing) 82.

John Ruggie, (2011) Final Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, 'Guiding Principles on Business and Human Rights: Implementing the United Nations' 'Protect, Respect and Remedy' Framework,' A/HRC/17/31, 21 March 2011 <<http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>> last accessed 30<sup>th</sup> June, 2015.

Johnson, L. (1990) 'The Delaware Judiciary and the Meaning of Corporate Life and Corporate Law' 68 *Texas Law Review* 865.

Kasky v. Nike, Inc. 45 P.3d 243 (Cal. 2002).

Lambooy T, (2010) *Corporate Social Responsibility: Legal and Semi-legal Frameworks Supporting CSR Developments 2000 - 2010 and Case Studies*, Kluwer, 15.

MacLeod, S. (1999) 'Maria Aguinda v. Texaco Inc.: Defining the Limits of Liability for Human Rights Violations Resulting from Environmental Degradation' 4(2) *Contemporary Issues in Law* 189-209;

MacLeod, S. (2012) 'Towards normative transformation: Reconceptualising Business and Human Rights', PhD thesis submitted to the University of Glasgow, United Kingdom.

*Marina Nominees Ltd. v. Federal Board of Inland Revenue* (1986) 2 N.W.L.R. 48.

McCorquodale, R. (2009) 'Corporate Corporate Social Responsibility and International Human Rights Law' 87 *Journal of Business Ethics* 385-400.

McInerney, T. (2007) 'Putting Regulation Before Responsibility: Towards Binding Norms of Corporate Social Responsibility' 40 *Cornell Int'l L.J.* 171-200.

Miller, R. T. (2014) 'The Coasean Dissolution of Corporate Social Responsibility' 17 (2) *Chapman Law Review* 28.

Muchlinski, P. (2007) *Multinational Enterprises and the Law*, (2<sup>nd</sup> edn, Oxford University Press) 359 to 383.

This is the version of the chapter accepted for publication in Stakeholders, Governance and Responsibility: Developments in Corporate Governance and Responsibility published by Emerald Publishing Limited [doi.org/10.1108/S2043-05232018000014010](https://doi.org/10.1108/S2043-05232018000014010)  
Accepted version downloaded from SOAS Research Online: <http://eprints.soas.ac.uk/31972>

Mukthar, J., and Pavithran, S. (2013) 'Corporate Social Responsibility in Birla Group of Companies' Conference Paper, 12<sup>th</sup> International Conference on Corporate Social Responsibility, ISSN 2048 – 0806, Niteroi and Rio de Janeiro, Brazil.

Mullerat, R. (2006) 'Corporate Social Responsibility: New Trends' American Bar Association Section of International Law 3.

Murphy, S (2009) 'Business and Philanthropy Partnerships for Human Capital Development in the Middle East' Corporate *Social Responsibility Initiative*, Harvard Kennedy School Research Paper No.52 at page 4, available at [http://www.ksg.harvard.edu/mrcbg/CSRI/research/publications/workingpaper\\_52\\_murphy.pdf](http://www.ksg.harvard.edu/mrcbg/CSRI/research/publications/workingpaper_52_murphy.pdf) last accesses 15th February, 2016.

National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007.

Nelson II, W.A., (2012) 'Post-Citizens United: Using Shareholder Derivative Claims of Corporate Waste to Challenge Corporate Independent Political Expenditures', (13) *Nevada Law Journal* 134.

Nike Inc. v. Marc Kasky, 539 US 654.

Nwete, B. (2006) 'Corporate Social Responsibility and Transparency in the Development of Energy and Mining Projects in Emerging Markets; Is Soft Law the Answer?' Paper presented at the International Bar Association SEERIL Conference, Lagos.

Nwete, B. (2007) 'Corporate Social Responsibility and Transparency in the Development of Energy and Mining Projects in Emerging Markets; Is Soft Law the Answer?' 8 *German Law Journal* No. 4, 324.

Ollong, K. A. (2013) 'Corporate Social Responsibility and Community Development in Cameroon' Conference Paper, 12<sup>th</sup> International Conference on Corporate Social Responsibility, ISSN 2048 – 0806, Niteroi and Rio de Janeiro, Brazil.

Organization for Economic Cooperation and Development (2001) *The Well-Being of Nations: The Role of Human and Social Capital* OECD Paris.

Osuji, O. 'Corporate Social Responsibility, Globalisation, Developing Countries and International Best Standards: The Incoherence of Prescriptive Regulation', Conference Paper, (12<sup>th</sup> International Conference on Corporate Social Responsibility, ISSN 2048 – 0806, Niteroi and Rio de Janeiro, Brazil, June 2013).



This is the version of the chapter accepted for publication in Stakeholders, Governance and Responsibility: Developments in Corporate Governance and Responsibility published by Emerald Publishing Limited [doi.org/10.1108/S2043-052320180000014010](https://doi.org/10.1108/S2043-052320180000014010)

Accepted version downloaded from SOAS Research Online: <http://eprints.soas.ac.uk/31972>

Owen, G. (2002) ‘Time to Promote Trust, Inside the Company and Out’, *Financial Times*, (August 30th).

Parkinson, J. (1993) *Corporate Power and Responsibility* Clarendon Press, Oxford, 310.

Parkinson, J. (2003) ‘Models of the Company and the Employment Relationship’ *British Journal of Industrial Relations* 481.

Prno, J. (2013) ‘An analysis of factors leading to the establishment of a social licence to operate in the mining industry’ 38 (4) *Resources Policy* 577- 590.

*Salomon v. Salomon* (1897) AC 22.

Schwarz, H. and Carroll, A.B. (2003) ‘Corporate Social Responsibility: A three – Domain Approach’ 13 *Business Ethics Quarterly* 503 - 530.

Sheikh, S. (2006) *A Practical Approach to Corporate Governance* Tottel Publishing, West Sussex, 310.

*Short v. Treasury Commissioners* (1948) 1 KB 116.

Smerdon, R. (2007) *A Practical Guide to Corporate Governance*, 3<sup>rd</sup> edn, Sweet & Maxwell, London, 470.

The International Bank for Reconstruction and Development, (2008) *Finance for All? Policies and Pitfalls in Expanding Access*, A World Bank Policy Research Report.

The National Oil Spill Detection and Response Agency Act 2006; Environmental Impact Assessment Act, CAP E12 LFN, 2004.

Tuppen, C. (2002) in “BT, Responsibility and the triple bottom line” interview in *Ethical Corporation Magazine*, Issue 2.

Raynard, P. and Forstater, M. (2002) *Corporate Social Responsibility: Implications for Small and Medium Enterprises in Developing Countries*, United Nations Industrial Development Organization UNIDO, Vienna at 11.

Villiers, C. (2008) ‘Corporate Law corporate power and corporate social responsibility’ in *Perspectives on Corporate Social Responsibility*, Boeger, N., Murray, R., and Villiers, C., eds. Edward Elgar, Cheltenham, 85, 97, 98 *et seq.*

This is the version of the chapter accepted for publication in Stakeholders, Governance and Responsibility: Developments in Corporate Governance and Responsibility published by Emerald Publishing Limited [doi.org/10.1108/S2043-052320180000014010](https://doi.org/10.1108/S2043-052320180000014010)  
Accepted version downloaded from SOAS Research Online: <http://eprints.soas.ac.uk/31972>

WBCSD, (2000) 'Corporate Social Responsibility: Making Good Business Sense', Geneva, Switzerland.

Whellams, M. (2007) 'The Role of CSR in Development: A case Study Involving the Mining Industries in South Africa', (unpublished) Thesis submitted to Saint Mary's University, Halifax, Nova Scotia, in Partial Fulfillment of the Requirements for the Degree of Masters of International Development Studies at 27.

Whitehouse, L. (2005) 'Corporate Social Responsibility as Regulation: The Argument from Democracy' in J O'Brien (ed), *Governing the Corporation, Regulation and Corporate Governance in an Age of Scandal and Global Market*, Wiley Publications.

Wolf, M. (2001) 'Sleep-walking with the Enemy: Corporate Social Responsibility distorts the Market by Deflecting Business from its Primary Role of Profit Generation', *Financial Times*, (May 16th).

World Business Council for Sustainable Development, (2003) 'CSR: Meeting Changing Expectations' 1<sup>st</sup> WBCSD Report on CSR at 3.

World Commission on Environment and Development (1987) *Our Common Future*, Report of the World Commission on Environment and Development, document A/42/427.

Wouters, J. and Chanet, L. (2008) 'Corporate Human Rights Responsibilities: A European Perspective,' 6 *Nw U.J. Int'l Hum. Rts* 262.

Zadek, S. (2001) *The Civil Corporation. The New Economy of Corporate Citizenship* Earthscan, London.

Zerk, J. (2010) 'Extraterritorial Jurisdiction: Lessons for Business and Human Rights Sphere from Six Regulatory Areas' Corporate Social Responsibility Initiative Working Paper No. 59 Cambridge, MA: John F. Kennedy School of Government, Harvard University.

Zur, A. (2007) 'Corporate Social Responsibility Orientation and Organizational Performance within the Retailing Sector' *Melbourne Business School, Australia* 5.