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Sustainable Development and Corporate Social Responsibility under the 2018 Petroleum Host and Impacted Communities Development Trust Bill: Is Nigeria Rehashing Past Mistakes?

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ABSTRACT

The 2018 Petroleum Host and Impacted Communities Development Trust Bill before the Nigerian National Assembly was proposed to foster sustainable development (SD) and embed corporate social responsibility (CSR) in the oil and gas corporate activities within host communities. From the backdrop of SD and CSR as regulatory concepts, this article scrutinizes the Bill for its viability to realize its objectives in its current form. It raises concerns about: (i) perceived negligence by the government to provide social services and public goods, seeming to outsource such responsibilities to the business community (ii) the reduction of CSR to capital or community development projects; and (iii) the absence of useful delimitation criteria to determine host and impacted communities. The article argues that past mistakes are being rehashed and queries the capacity of the Bill to live up to stakeholders' expectations. Using the normative contributions of global templates such as the United Nations Guiding Principles on Business and Human Rights, the article recommends policy and regulatory changes to the Bill's governance structure towards embedding effective CSR and engendering SD in the Nigerian oil and gas industry.

Keywords

Corporate Social Responsibility, Host and Impacted Communities, Oil and Gas Companies in Nigeria, Sustainable Development.

1. INTRODUCTION

Conscious efforts have been made by the Nigerian government to diversify the economy towards the promotion of the non-oil sectors such as agriculture and manufacturing, and while the oil sector contributed only 9.14% to the nation's total real gross domestic product (GDP) in the first quarter of 2019, the non-oil sector contributed 90.86% to the nation's GDP, higher than recorded in the first quarter of 2018.¹ The Nigerian economy is still reliant on the oil and gas industry however. Exports trade is still dominated by crude oil exports, and in the first quarter of 2019, the oil sector contributed N3,376.73 billion or 74.45% to the nation's value of total exports.² Business activities in the industry are still crucial to the economy, and the host communities where many of these businesses operate are still restive over perceived irresponsibility on the part of the corporations, and perhaps negligence, on the part of their government.³

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¹ See generally, 2019 first quarter gross domestic product (GDP) statistics by the National Bureau of Statistics (Nigeria); available online at <https://www.nigerianstat.gov.ng/> last accessed 10 September 2019.

² See generally, 2019 first quarter foreign trade in goods statistics by the National Bureau of Statistics (Nigeria) available online at <https://www.nigerianstat.gov.ng/> last accessed 10 September 2019.

³ TK Cheruiyot and P Onsando „Corporate Social responsibility in Africa: Context, Paradoxes, Stakeholder Orientations, Contestations and Reflections“ in A Stachowicz-Stanusch (ed.) *Corporate Social Performance in the Age of Irresponsibility – Cross National Perspective* (Information Age Publishing Inc, Charlotte, 2016) 104.

The Petroleum Industry Bill⁴ (PIB) was therefore proposed and touted as some sort of a messiah legislation, which almost all stakeholders look up to, towards solving the myriad of challenges in the Nigerian oil and gas industry. This includes the potential to entrenching the principles of good governance, corporate social responsibility (CSR) and sustainable development (SD) in the interests of all stakeholders, including the business community, the host communities and the government. However, tensions created by competing interests appear to have forestalled the passage of the PIB by successive government administrations. With a view to achieving what its predecessors were unable to achieve, the 8th National Assembly of the Federal Republic of Nigeria decided to unbundle the PIB, dividing it into the four different but interrelated bills namely: the Petroleum Industry Governance Bill (PIGB), the Petroleum Industry Administration Bill (PIAB), the Petroleum Industry Fiscal Bill (PIFB), and finally the Petroleum Host and Impacted Communities Development Trust Bill (PHICDTB or the “Bill”).

This article appraises relevant provisions in the Bill to ascertain its viability to live up to the expectations of various stakeholders regarding the promotion of SD and corporate responsibility and accountability in the industry. But then, what do the concepts of CSR and SD really mean? Are there any generally accepted definitions or conceptions of these terms across different jurisdictions around the world? Are the CSR and SD provisions within the Bill consistent with widely accepted definitions or conceptions, especially in industrialized systems around the world? How are these terms conceptualized in this article? For the purpose of effective analysis and discussion, the article is divided into six sections. Section one contains this introduction. Section two provides conceptual clarifications on the key constructs in the article and lays the background for further analysis in the succeeding sections. An overview of the Bill together with the interpretations of key provisions in the proposed legislation are discussed in section three. The fourth section raises a few concerns and queries following an interrogation and juxtaposition of relevant provisions in the Bill against similar SD and CSR framework including: (i) within the framework of the Guiding Principles on Business and Human Rights: Implementing the United Nations „Protect, Respect and Remedy“ Framework (hereinafter simply

⁴ The Petroleum Industry Bill (PIB) evolved from the year 2000 when the Oil and Gas Sector Reform Implementation Committee was inaugurated by the Federal Government of Nigeria to carry out holistic reforms of the oil and gas industry covering the upstream, midstream and downstream sectors of the industry.

called „UNGPs“); (ii) the 2002 English Corporate Responsibility Bill; and finally (iii) under the 2013 Indian Companies Act. The juxtaposition is done to draw appropriate lessons, where necessary, for Nigeria. In section five, the article addresses seriatim the concerns earlier identified in section four and recommends an alternative CSR and SD approach towards promoting corporate responsibility and harmonious coexistence between the business community and the host communities in the Nigerian oil and gas industry. The article concludes in section six.

2. CONCEPTUAL CLARIFICATIONS

To begin with, there is no generally accepted definition or conception of CSR⁵, and some have argued that a definitional or conceptual consensus is, simply, impossible.⁶ In many developing economies, CSR is largely reduced to engaging in voluntary corporate charity, and capital or community development projects (CDP).⁷ Therefore, companies⁸ operating in such economies

⁵ A Scherer and G Palazzo “The New Political Role of Business in a Globalized World: A Review of a New Perspective on CSR and Its Implications for the Firm, Governance, and Democracy” (2011) 48 (4) *The Journal of Management Studies* 899–931, 904.

⁶ B Horrigan *Corporate Social Responsibility in the 21st Century – Debates, Models and Practices Across Government, Law and Business*, (Edward Elgar, Cheltenham, UK, 2010) 34.

⁷ S Medarevic “Environmental Corporate Social Responsibility and the Carbon Economy: A case for CSR, the Triple Bottom Line and Obliquity”, (2012) *Corporate Governance eJournal* available at: <http://epublications.bond.edu.au/cgej/25> last accessed 19 August 2019; N Amodu “The Responsible Stakeholder Model: An Alternative Theory of Corporate Law” (2018) 5 *Journal of Comparative Law in Africa* 1; and N Amodu “Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria” (2017) 61 *Journal of African Law* 105 (hereinafter “Amodu JAL”).

⁸ Despite sometimes very abstract meaning attributable to words such as company, business, or corporation in different jurisdictions around the world, the terms are interchangeably used in this article to connote a legal entity or an incorporated association of persons - regardless of size - carrying on commercial activities using the

take pride as responsible corporate citizens when, for instance, they donate some sums of money in reaction to a disaster, or having provided pipe-borne water, hospitals, schools or giving scholarships *et cetera*. However, this does not reflect the CSR construct in many developed societies where it connotes a business governance and management model which broadens the responsibility of businesses to manage the social, economic and environmental impacts of their activities. This article adopts the more widely acceptable CSR conception being a construct which transcends voluntary giving back to the society or philanthropic corporate actions done beyond the requirements of the law.⁹ It underscores CSR as the exercise of social responsibility in how profits are made.¹⁰ The article proceeds on the basis of the CSR conception that businesses are now expected to be intrinsically responsible and create returns for their shareholders, good products and services for their customers, good job and wages for their employees and communities, benefit the public together with the natural environment and generally demonstrate responsibility in the exercise of corporate power by effectively balancing different stakeholder interests in the course of making profits.¹¹ As an evolving subject matter, CSR has evolved into incorporating, as its core values, issues bordering on the triple bottom line of planet, people and profit,¹² the green product manufacture and management,¹³ and SD.¹⁴

corporate form. Needless to add that this article has discussed its subject matter largely from corporate law and governance perspective.

⁹ AO Adeyeye *Corporate social responsibility of multinational corporations in developing countries: perspectives on anti-corruption* (Cambridge: Cambridge University Press, 2012) 9.

¹⁰ D McBarnet “Corporate Social Responsibility Beyond law, Through Law, for Law” in D Augenstein ed. (*University of Edinburgh School of Law Research Paper No 3, 2009*) 1 and 18.

¹¹ AM Cherry and JF Sneirson “Chevron, Greenwashing, and the Myth of „Green Oil Companies“” (2012) 3 *WASH. & LEE J. ENERGY, CLIMATE & ENV'T* 133, 141; C Villiers “Corporate Law corporate power and corporate social responsibility” in N Boeger, R Murray and C Villiers (eds.) *Perspectives on Corporate Social Responsibility*, (Cheltenham, Edward Elgar 2008) 97.

¹² R Mullerat “Corporate Social Responsibility: New Trends” (2006) *American Bar Association Section of International Law* 3.

¹³ IO Smith “Corporate Social Responsibility towards a Healthier Environment” (2000) 4 *MPJFIL* 22 - 40.

¹⁴ See generally, World Business Council for Sustainable Development (WBCSD), *Corporate social responsibility: making good business sense* Geneva: Switzerland (2000).

Relatedly, CSR and SD are intertwined concepts. CSR constitutes an integral part of, or the business pursuit of sustainable development.¹⁵ SD or sustainability are terms which appear to have been so heavily overused, and sometimes with varying meanings, that they may have become effectively meaningless.¹⁶ Nonetheless, an almost universally accepted definition of SD is contained in the 1987 Brundtland Report.¹⁷ In the report, SD is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs. This article conceptualizes SD on the basis of the three major pillars of economic growth, environmental protection and social equality.¹⁸ It can also be said that SD 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.¹⁹

In essence, CSR (or corporate sustainability) is a tool of corporate governance which encourages responsible business conduct in all spheres of business operations, and has become inextricably linkable to sustainability for both business and society. Overtime, it is therefore no longer strange for the consideration of the following headings, *inter alia*, in any CSR or SD discourse: (i) carbon footprint and its attendant consequences of global warming and climate change;²⁰ (ii) depletion of primary resources on which the business community rely such as oil,

¹⁵ M Kerr R Janda and C Pitts *Corporate Social Responsibility- A legal Analysis* (LexisNexis, 2009) 23.

¹⁶ G Aras and D Crowther "Sustainable Practice: The Real Triple Bottom Line" in G Aras and D Crowther (eds.) *Development in corporate governance ad responsibility - the governance of risk* (Bingley: Emerald Group Publishing Limited 2013) 5.

¹⁷ World Commission on Environment and Development (WCED), *Our Common Future*, Report of the WCED (1987) annexed to United Nations General Assembly, document A/42/4271.

¹⁸ *Id.*

¹⁹ S Murphy "Business and Philanthropy Partnerships for Human Capital Development in the Middle East" (Corporate Social Responsibility Initiative, Harvard Kennedy School Research Paper No.52, 2009) 4, available at http://www.ksg.harvard.edu/m-rcbg/CSRI/research/publications/workingpaper_52_murphy.pdf last accessed 19 August, 2019.

²⁰ Carbon footprint is the total amount of carbon di oxide attributable to the actions of that individual (mainly through their energy use) over a period of one year. Greenhouse gases (carbon content) released as by-products during energy conversion process reaches the atmosphere, depletes the ozone layer and acidify the oceans and cause global warming, and eventually climate change. Aras and Crowther, note 16 above at 11.

water, trees *et cetera*;²¹ (iii) sweatshops, child labour and other human rights violations;²² (iv) consumer protection;²³ (v) systemic failures of the free market system and the lax application of systems of governance and regulations.²⁴

It is important to clarify that this article discusses CSR, as intertwined with SD, as a neutral regulatory concept, about the acceptance or imposition of constraints in the otherwise narrow pursuit of profit goal in the wider public interest.²⁵ In other words, these concepts are neutral in corporate regulation and governance discourse as there is nothing inherently voluntary or mandatory about making businesses behave responsibly and accountably. Therefore, different regulatory techniques or systems may be adopted across different jurisdictions - either as rule based,²⁶ principle based,²⁷ soft law,²⁸ hard law²⁹, voluntary, mandatory or a smart combination of all - depending on the significance or priority attached to the values of these constructs at any given time. In rounding off on this, it would appear inaccurate to discuss the constructs of CSR and SD as matters which, intrinsically, must be engaged in, on a voluntary basis, or that needs to be mandatorily enforced. Governments, the business community and practitioners across

²¹ Worldometers, Worldometers *Real World Statistics* available on line at <http://www.worldometers.info/> last accessed 19 August 2019.

²² Aras and Crowther, note 16 above at 12.

²³ *Ibid*, 13.

²⁴ *Id*.

²⁵ JE Parkinson “Corporate Governance and the Regulation of Business Behaviour” in S Macleod (ed.) *Global Governance and the Quest for Justice* Volume II, *Corporate Governance*, (Oxford and Portland: Hart Publishing, 2016) 3 and 4.

²⁶ The Rule-Based approach to implementing concepts involves adoption of prescriptive regulatory modes containing clearly defined enforcement mechanisms and predictable remedies for victims in cases of violations. Amodu JAL, note 7 above at 110.

²⁷ Adoption of principle-based approach entails usually non-prescriptive guidelines Amodu JAL, note 7 above at 110.

²⁸ Soft law approach to implementing concepts involves non-legally binding regulations usually containing aspirational goals, lofty ideals and other best practices expected to govern or regulate certain behaviours. Amodu JAL, note 7 above at 109.

²⁹ Hard Law approach is the exact opposite of soft law. Hard law adoption entails a positive, legally binding regulation with clear and predictable enforcement mechanism usually in domestic legislations. Amodu JAL, note 7 above at 109.

different jurisdictions around the world may consider what regulatory approach is best suited, on case by case basis, towards ensuring responsible business practices within the society.

For the purpose of further analysis in this article, it is important at this juncture to underscore the regulatory implications of CSR/SD core values within the governance structure of an internationally accepted framework such as the UN Guiding Principles on Business and Human Rights (UNGPs).³⁰ The UNGPs represent an acknowledgement by the international community that businesses can, and do in fact, violate human rights (including the rights of members of host communities) either by themselves or in complicity with states. The principles are also a clarification of the relationship and respective roles played between states and the business community in promoting SD in the society. The UNGPs are hinged on three pillars. The first principle under the first pillar is that states must protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.³¹ The second pillar states that the business community should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. Very importantly, the UNGP clarified that the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.³² The third pillar provides that as part of their duty to protect against business-related human rights abuse, states must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective

³⁰ J Ruggie "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 ("UNGPs").

³¹ UNGPs Principle 1.

³² UNGPs Principle 14.

remedy.³³ Very importantly, the UNGPs also provide that with a view to making it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.³⁴ This aspect of the third pillar is crucial because such establishment or participation in grievance mechanisms is a demonstration of stakeholder engagement which is an important element of CSR and sustainable development management. The above framework appreciates that one size does not fit all,³⁵ and therefore expects states to adopt a smart-mix of measures³⁶ in adapting the initiatives and a due diligence exercise from the business community whereby they, on individual basis, „identify, prevent, mitigate and account for how“³⁷ they address the adverse impacts of their operations. It should be emphasised that the division of roles within the UNGPs between states and the business community should not be interpreted that such roles are mutually exclusive of one another. The roles and responsibilities are indeed complementary,³⁸ if the values of CSR and sustainability are to be entrenched.

As rosy as the above framework appears to be, a few criticisms have trailed it. The framework was criticized for its categorical statement that states actually owe the primary duty to *protect* rights and not the business community which is only *enjoined to respect* them. The statement is said to have fallen short in reality having proceeded on a faulty assumption that all states can actually protect. It is now a notorious fact that, in recent times, many companies have become more powerful and influential than some group of states put together and advantage is usually taken by the large companies to influence and lobby weak CSR and sustainability

³³ UNGPs Principle 25.

³⁴ UNGPs Principle 29.

³⁵ Introduction to UNGPs para 15.

³⁶ Commentary to Principle 3 of the UNGPs.

³⁷ UNGPs Principle 17.

³⁸ The principles embedded within the three pillars ensure the pillars form a complementary whole in that each supports the others in achieving sustainable progress and development. See JG Ruggie “Protect, Respect, and Remedy: The UN Framework for Business and Human Rights” in MA Baderin and M Ssenyonjo (eds) *International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate Publishing Limited, Surrey, 2010) 519, 520.

regulations in such states.³⁹ There are different factors responsible for the inability or reluctance of state authorities to actually protect stakeholder rights (such as the rights of host and impacted communities). It could be complicity of the 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;⁴⁰ 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;⁴¹ or in Nigeria over the involvement of Shell in human right abuses in the oil rich Niger-Delta region of Nigeria.⁴²

Very importantly however, and despite the perceived challenges associated with the UNGPs, this framework is still useful.⁴³ As noted by professor John Ruggie, the UNGPs have become firmly embedded in the regulatory ecosystem for business and human rights, and rather than seeking to create new international law obligations, the stated normative contribution of the UNGPs was in elaborating the implications of existing standards and practices for states and businesses, and integrating them into a single comprehensive template providing a global

³⁹ S MacLeod *Towards normative transformation: Reconceptualising Business and Human Rights* (Unpublished, PhD thesis submitted to the University of Glasgow 2012) 166; OK Fauchald and J Stigen “Corporate Responsibility before International Institutions” (2009) 40 *The Geo. Wash. Int’l L. Rev* 1057.

⁴⁰ 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).

⁴¹ S MacLeod “Maria Aguinda v. Texaco Inc.: Defining the Limits of Liability for Human Rights Violations Resulting from Environmental Degradation” (1999) 2 *Contemporary Issues in Law* 189 - 209.

⁴² *Wiwa v. Royal Dutch Petroleum Company* 226 F.3d 88 (2d cir 2000), 532US 941(2001).

⁴³ The UNGPs constitute a valid and reliable source of principles because, beyond the Human Rights Council, they have been endorsed or employed by individual governments, business enterprises and associations, civil society and workers’ organizations, national human rights institutions, and investors. They have also been drawn upon by such multilateral institutions as the International Organization for Standardization (ISO) and the Organization for Economic Cooperation and Development (OECD) in developing their own initiatives; see the Introduction to the UNGPs, para 7.

common platform for action.⁴⁴ For the purpose of this article, the UNGPs provide justification for the government, through relevant and appropriate legislation, to prescribe obligation on companies to effectively balance competing stakeholder interests (e.g., economic interests of their shareholders, interests of employees and those of the host and impacted communities). This is because such is only a confirmation of the primary duty imposed on states to protect rights. On the side of business community, the UNGPs also provide justification for companies to respect such stakeholder interests further to the legal obligation prescribed by states. They also provide justification that the government should ensure effective remedy to victims whose interests and rights may have been violated by the business community.

It will be interesting at this juncture to examine and understand how the drafters of the Bill have conceptualized CSR and SD, and by extension, how are the SD or CSR inspired provisions are structured towards achieving set objectives.

3. OVERVIEW OF THE PETROLEUM HOST AND IMPACTED COMMUNITIES DEVELOPMENT TRUST BILL

The reason behind the enactment of the Bill appears contained in Part 1 of the proposed legislation. The objectives of the Bill as contained in its section 1 include: fostering sustainable shared prosperity amongst host and impacted communities; providing direct social and economic benefits from petroleum operations; and enhancing peaceful and harmonious coexistence between settlor and host and impacted communities, among others. From the foregoing, the objectives of the Bill to foster sustainable prosperity, social and economic benefits together with enhancing harmonious coexistence between the business community [(settlor companies) operating in the oil and gas industry] and host communities are clear indications of attempts to align the Bill with principles and concepts of SD and CSR as earlier described in section two of this article. In other words, the legislature clearly intends to use the Bill to ensure that businesses, operating within certain host and impacted communities, do so responsibly, sustainably and accountably for the economic, social or environmental impacts of their activities on these communities and their residents. Part 2 of the Bill describes the “settlor” as a company or

⁴⁴ See generally, N Jagers “Access to Justice for Victims of Corporate-Related Human Rights Abuse: An Echtermach-Procession” (2015) 33 (3) *Netherlands Quarterly of Human Rights* 269-273.

collectivity of companies with an interest in a licence to prospect for and/or produce petroleum or licensee of designated midstream assets or designated downstream assets whose area of operations are located in or appurtenant to any community or communities. Usually within 12 months from the commencement date of the Bill,⁴⁵ a settlor is required to incorporate a Petroleum Host and Impacted Communities Development Trust (hereinafter the “Trust”) for the benefit of the community or communities within its area of operations. The settlor is also required to appoint and authorize a body of trustees (hereinafter the “Board of Trustees” or the “BOT”) who will apply to the Corporate Affairs Commission (CAC)⁴⁶ for registration as a trust in the manner stipulated under Part C of the Companies and Allied Matters Act 1990 as amended (CAMA). In terms of the general structure and governance framework, the Bill creates a Trust which, *inter alia*:

1. Is governed by a Board of Trustees (BOT);⁴⁷
2. Has a constitution which states, amongst others:

⁴⁵ Section 3 of the Bill. It is interesting to note that while existing oil mining lease and holders of Designated Midstream and Downstream Assets (petroleum terminals, crude oil and gas pipelines, refineries, petrochemical plants, gas processing plants) are expected to incorporate the Trust within twelve (12) months of the commencement of the Bill, holders of Designate Midstream and Downstream Assets and existing oil prospecting licences, and upstream licences granted pursuant to the provisions of the Petroleum Industry Administration Bill are expected to incorporate the Trust prior to the application for Field Development Plan. Failure to incorporate the Trust will be a ground for suspension of the licence by the Nigerian Petroleum Regulatory Commission (“Commission”), the body responsible for issuing and administering licenses and leases by virtue of the Petroleum Industry Governance Bill.

⁴⁶ This is the agency of government established under the principal company legislation in Nigeria (Companies and Allied Matters Act 1990 as amended, hereinafter simply called “CAMA”) and under section 7 of CAMA, charged with the responsibility of the general administration of CAMA. CAMA, Cap C20, Laws of the Federation of Nigeria (LFN), 2004.

⁴⁷ Sections 2(3) and 9 of the Bill. While the BOT approves budgets, receives and manages all funds together with oversight of all projects under the Trust, it is interesting to note that the settlor is in full control of the BOT. The settlor determines the BOT membership, criteria for their appointment, any selection process, procedures for BOT meeting, financial regulations, administrative procedures, their discipline, qualification, disqualification, suspension, removal and any other matters related thereto. The BOT members serve a tenure of four (4) at the first instance and may be reappointed by the settlor for another term. The settlor is also empowered to appoint a secretary for the BOT. Sections 9 and 10 of the Bill.

- (a) That the Trust is responsible for the management and supervision of the application and utilization of the annual contribution and all other sources of funding therefrom;
- (b) That the objectives of the Trust include the following five main elements:⁴⁸
 - (i) To finance and execute projects for the benefit and sustainable development of the settlor's host and impacted communities;
 - (ii) To undertake infrastructural development of the settlor's host and impacted communities within the scope of funds available to the BOT for such purposes;
 - (iii) To facilitate economic empowerment opportunities in the settlor's host and impacted communities;
 - (iv) To advance and propagate educational development for the benefit of members of the settlor's host and impacted communities;
 - (v) To support healthcare development for the settlor's host and impacted communities;
- (c) Has an Endowment Fund⁴⁹ with the following sources of funding:⁵⁰
 - (i) An annual contribution of an amount equal to 2.5% (two and a half percent) of the actual operating expenditure (Opex) of the settlor for the accounting period of the preceding year relating to the settlor's operations in the licence or lease area for which the Trust is established;
 - (ii) Donations, loans, grants or honorariums that are extended to the Trust for the attainment of its objectives;
 - (iii) Incomes derived from the interest or profits of Reserve Funds;⁵¹
 - (iv) Any other income granted to the Trust for the attainment of its objectives.

⁴⁸ Section 6 (3) (a) to (e).

⁴⁹ In terms of utilization or allocation of the Endowment Fund (hereinafter simply the "Fund"), 70% thereof should be for capital funds; 20% as Reserve Fund (see fn 34 below) and 10% shall be for Special Project of the settlor itself on which full account ought to be rendered to its BOT thereof.

⁵⁰ Section 7 of the Bill.

⁵¹ This described under section 11 (1) (b) as the sum equal to 20% of the Endowment fund earmarked for investment and use by the Trust whenever there might be a cessation in the endowment payable by the settlor.

- (d) Has expressly specified in its constitution that its funds should be exclusively utilized for:⁵²
- (i) Infrastructure development;
 - (ii) Creation of employment opportunities;
 - (iii) Advancement and propagation of education and learning;
 - (iv) Empowerment programmes for any special groups;
 - (v) Training and skill acquisition of members of host and impacted communities;
 - (vi) Medical facilities and personnel;
 - (vii) Any other matters which may be approved by the settlor for the benefits of the settlor's host and impacted communities.
- (e) Has established⁵³ by the BOT, a Management Committee (MC) which primarily serves as the executive organ of the BOT. The MC⁵⁴ prepares budget for the Trust, determines and supervises projects execution, contracting processes, and nominates fund managers, among others;
- (f) Has a constitution mandating the MC to, in turn, establish⁵⁵ a Petroleum Host and Impacted Community Advisory Committee (AC). By design, the AC is expected to be the closest organ to the host and impacted communities in the Trust structure and will take responsibility for first line protection of facilities and ensure petroleum operations are not interrupted by members of their communities, and failing which, benefits from the Trust will be disallowed.⁵⁶

⁵² Section 8 of the Bill.

⁵³ Sections 14 and 15 of the Bill.

⁵⁴ The MC comprises of representative of the Host and Impacted Community and an unspecified number of executive members selected by the BOT who are citizens of Nigeria from any part of the country but with high integrity and professional standing. The BOT essentially controls the MC. Section 14 of the Bill.

⁵⁵ Section 16 of the Bill.

⁵⁶ Other functions of the AC include nomination of members to represent the host and impacted community on the Management Committee; articulating and determining community development projects to be transmitted to the MC for execution; monitoring and reporting progress of projects being executed; and advising the MC on activities that will lead to improvement of security of infrastructure. Section 17 of the Bill.

- (g) Has a constitution providing that the BOT is to keep account of the Trust’s financial activities and appoint auditors to audit the accounts.⁵⁷

The ultimate governance framework and the regulatory mechanism adopted in relation to the Trust appears typified by section 20 of the Bill requiring the submission of annual reports. While the MC is expected to submit its reports to the BOT, the BOT submits its report to the settlor who in turn submits an annual report to the Regulator.⁵⁸ This reporting line is captured in the graphical representation below:



**Nigerian
Petroleum
Regulatory
Commission
(Regulator)**

⁵⁷ Section 19 of the Bill.

⁵⁸ The regulator remains the Nigerian Petroleum Regulatory Commission (hereinafter simply the “the Commission” or the “Regulator”).

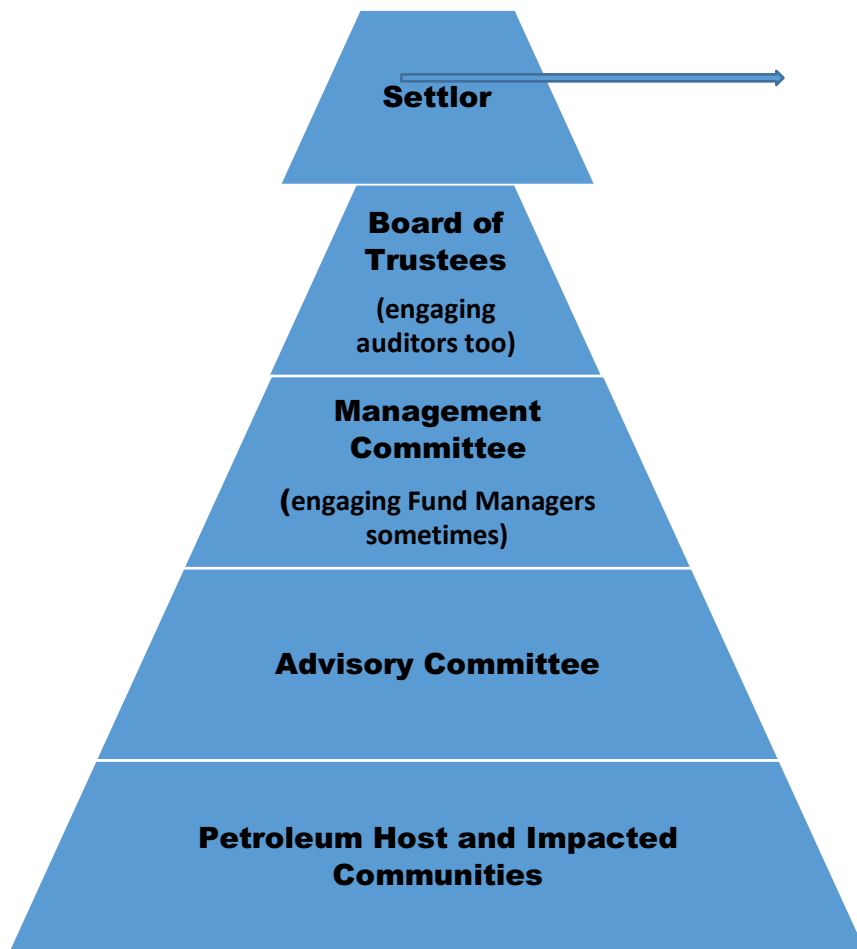


Figure 3.1 – *Hierarchical Arrangement of Organs within the Trust Framework.*

It is important to mention that the funds of the Trust are tax-exempt and any contributions of the settlors pursuant to the Fund shall constitute deductibles while calculating their Petroleum Income Tax and Company Income Tax.⁵⁹

In respect of dispute resolution, part five of the proposed law provides that in the event a dispute arises between persons subject to the Bill and between such persons and other persons regarding any matter under the Bill, Parties are obligated to resolve such dispute first through negotiation. The Commission (Regulator) is empowered to resolve such disputes and shall make regulations setting out the principles and procedures for conciliation, mediation or arbitration that it may adopt in resolving disputes referred to it. An opportunity for judicial review is

⁵⁹ Sections 21 and 22 of the Bill.

provided under section 24 whereby a party dissatisfied with the determination of the Commission has a right to appeal to the Federal High Court. However, determinations subsist and remain binding on the parties until an order of court is granted expressly reversing such determinations.

In summary, the promoters and drafters of the Bill appear to have touted the corporate sustainability framework adopted under the Bill to be efficient and government-friendly as it requires no financial expenditure on the government in respect of the incorporation of the Trust under Part C of CAMA or in its management, operations and other related activities. To what extent this is true and the actual price the government may be paying in the entire governance structure of the Trust as a truly efficient sustainability and CSR-inspired legislation will be addressed in subsequent sections of this article.

4. INTERROGATING THE SD AND CSR-INSPIRED PROVISIONS IN THE BILL

The author is privileged to have attended and participated in a few of the public hearings at the Nigerian National Assembly in the process of passing the Bill. During these hearings, different viewpoints were presented, issues were raised, and recommendations were suggested in areas thought requiring revisiting. Some raised concerns in relation to the lack of definition of what Capital Fund⁶⁰ constitutes, others suggested the word “impacted” ought to be revised as it appears to connote undue prejudice against the business community and in favour of the host communities as it, in any event, already assumes some form of harm or effect on any host community arising from oil and gas business activities.

Assuming but not conceding the above issues, these issues probably constitute only tips of the issue ice-bergs. The author believes there are other significant and critical concerns which can be gleaned from the provisions of the Bill. Before the article proceeds to such critical issues, the author offers some comments about retaining the word “impacted” or qualifying the communities as “impacted”.

⁶⁰ See note 49 above, for earlier mention and description of Capital Fund.

The fact is that, any host community, properly so identified,⁶¹ stands the high probability of becoming impacted by the business operations of any company operating in such community. The author's understanding of "impact" is that it needs not be restricted to issues of environmental degradation as popular connotation would suggest. Impact (as may be interpreted in its different grammatical forms and derivatives) could simply mean "effect" or "affect" the host community. It is almost impossible for a company to operate within a community without some form of impact, whether social, legal, economic or environmental on the host community. Such a company would most likely have a carbon footprint⁶² as it operates in the area, raise the noise pollution level in the area (whether within a level legally acceptable or not); likely increase human and vehicular traffic within such area and attendant effect on the community access roads; probably raise the value of commodities and assets in such area as a result of increase in demand; probably also affect the chances or likelihood of host community residents becoming gainfully employed; and generally one way or the other, affect the human rights of the host community residents.⁶³

As a matter of fact, the word "impact" lies at the foundation of any discussion on corporate responsibility or sustainability. According to the first man to use the phrase "corporate social responsibility", Howard Bowen, companies and corporate executives must perform the ethical duty and ensure that the broader social impacts of their decisions are considered (including on host communities) and that all companies failing to give due regard to the social impacts of their activities ought not to be seen as legitimate.⁶⁴ Even at the level of the European

⁶¹ This qualification is necessary because the definition or description of what constitutes host community especially in relation to any company is a different but significant factor in this discourse.

⁶² See note 20 above.

⁶³ LE Mitchell *Progressive corporate law* Lawrence E. Mitchell ed. (1995) *Preface*, XIII; Fauchald and Stigen, note 39 above at 1027.

⁶⁴ HR Bowen *Social responsibilities of the businessman* New York: Harper and Row (1953). Further, Tom Campbell had also defined CSR as the "obligations (social or legal) which concern the major actual and possible social impact of the activities of the corporation in question, whether or not these activities are intended or do in fact promote the profitability of the particular corporation". T Campbell "The Normative Grounding of Corporate Social Responsibility: A Human Rights Approach" in D McBarnet A Voiculescu and T Campbell (eds.) *The new corporate accountability: corporate social responsibility and the law* (Cambridge: CUP 2007)

Union, corporate responsibility is defined as “the responsibility of enterprises for the impact on society.”⁶⁵

It is important to note that the requirement for the business community (especially companies operating within the extractive industry) to consider, manage and balance the social, economic and environmental impacts of their activities also has significant effect on the company’s so-called *social license*⁶⁶ to operate. Little wonder, nowadays, that before these companies are granted statutory licenses by relevant government agencies involved or as a condition precedent to begin operations, the companies are required to sign community development agreements (CDA)⁶⁷ which constitute framework design to enable the businesses manage their impact on the society (and communities).

In light of the above, and against the background that the principles of corporate (social) responsibility and sustainability are largely about impact, it is important the word “impacted” is retained in the title and the general framework of the Bill. Having said this, it appears retaining the word “impacted” would also have some interesting dimension from the viewpoints of the business community. The author reckons that using the word “impacted” could be referring to different levels or degrees of impacts or effects; it could be minimal or significant impact. It will be important for the business community to advocate that the Bill creates some mechanism for the level of impact which could be within legally acceptable threshold, and for other impacts

532 - 533, and 541 - 542; see also, Institute of Directors in Southern Africa, “King IV Report on Governance for South Africa 2016” replacing the “King III Report on Corporate Governance for South Africa 2009”.

⁶⁵ European Union, Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Region: *A Renewed European Union Strategy 2011-14 for Corporate Social Responsibility*, COM (2011) 681 Final 6.

⁶⁶ U Idemudia “Corporate Social Responsibility and Development in Africa: Issues and Possibilities” (2014) 8/7 *Geography Compass* 421, 424.

⁶⁷ Under section 71 (1) (c) of the Nigerian Minerals and Mining Act 2007 (NMMA), a signed CDA as approved by the Mines Environmental Compliance Department (MECD) is a condition precedent to mining activities. By the combined effect of sections 16 and 18 of the NMMA, the MECD is a department responsible for monitoring and enforcing compliance with environmental requirements and liaising with relevant agencies of government with respect to social and environment issues in mining operations The CDA is subject of review every 5 years. Section 116 (5), NMMA. This concept of CDA is relatively new as it was not contained in the repealed Minerals and Mining Decree No. 34 of 1999.

which will not be acceptable and on which basis the business community may become accountable to the host communities, and before the Regulator and courts.

As earlier mentioned, the article has identified certain critical concerns. These are now discussed below.

4.1 State Responsibility

Further to discussions in section three above, towards the promotion of SD and CSR, the Bill relies on corporate disclosure as its regulatory approach and requires the delivery of annual reports to the Regulator. While the MC is expected to submit its reports to the BOT, the BOT submits its report to the settlor who then prepares and submits its annual report to the Regulator. However, the purport or usefulness of the annual report eventually submitted to the Regulator (whether intended for use by the company's shareholders or stakeholders alike), or what exactly the Regulator is expected to do with the report has not been mentioned in the Bill. Perhaps, the relevant questions are: of what use is the annual report to the Petroleum Host and Impacted Communities? To what extent are the statements or claims by the settlers in their reports scrutinized by the Regulator? Again, to what extent can these claims be verified or challenged by the communities? If the settlers make unfounded, untrue and greenwashing statements⁶⁸ therein the reports just to satisfy statutory requirements, what effective remedies are available to any

⁶⁸ Around the world, although the quantity of corporate sustainability narrative in annual reports may have increased, the quality and usefulness of information disclosed is in doubt as most companies tailor their disclosures towards enhancing shareholder value and do not demonstrate how CSR is actually an integral part of their businesses. Further, the majority of the CSR reporting have become boilerplate disclosures which do not provide a meaningful discussion of potential impacts or mitigation strategies and that most companies still approach the way they communicate on governance as a box ticking exercise. S Thomsen "The Convergence of Corporate Governance Systems and European and Anglo-American Standards" (2003) 4 *EUR. BUS. ORG. L. REV.* 31; LM Fairfax "The Rhetoric of Corporate Law: The Impact of Stakeholder Rhetoric on Corporate Norms" (2006) 31 *J. Corp. L.* 675, 676; and LM Fairfax "Easier Said Than Done? A Corporate Law Theory for Actualizing Social Responsibility Rhetoric" (2007) 59 *FLA. L. REV.* 771; Financial Reporting Council, *Effective Company Stewardship: Enhancing Corporate Reporting and Audit* <https://www.frc.org.uk/Our-Work/Publications/FRC-Board/Effective-Company-Stewardship-Enhancing-Corporate-File.pdf> last accessed 27th September, 2018.

member or group of members of the host and impacted communities who might have suffered any wrong thereby?

Further, during the public hearing sessions at the National Assembly, some promoters of the Bill have suggested that the Bill will achieve its objectives as it contains an efficient and government budget-friendly framework, without any financial burden or obligations on the government of the Federal Republic of Nigeria. It is difficult to fathom exactly how the government and/or its agencies will be effectively involved in the governance⁶⁹ framework of the Bill, and yet have no modicum of financial obligations whether immediate or remote. The author queries any approach seeking to shift the constitutional, fundamental and internationally recognized obligations on the state (for the management and governance of the relationship between settlers and the host/impacted communities) to the business community, in the guise of promoting efficiency. The likely argument by businesses in the circumstance appears summarized in the statement below:

Governments, which are accountable to their electorates, should decide matters of public policy. Managers, who are accountable to their shareholders, should run their business ... businesses should not try to do the work of governments.⁷⁰

But then, the above comment appears no longer tenable, and perhaps, of little impetus, if any, in more recent times.⁷¹ This article aligns with the view that responsibility and sustainability are neither the exclusive preserve nor only desirable on the part of the business community but also required on the part of the government. In other words, the traditional strict dichotomy between state duty to provide public goods and social services on the one hand, and that the business responsibility should focus on enhancing shareholder value seems to no longer hold sway. If anything, the earlier discussed UNGPs have provided a common global governance structure

⁶⁹ Essentially, this will be through the Regulator, the Nigerian Petroleum Regulatory Commission.

⁷⁰ “The Good Company: A Survey of Corporate Social Responsibility”, *The Economist*, 22nd January, 2005 at 14 and 16.

⁷¹ On a global level, neither states nor private businesses alone can provide public goods. Scherer and Palazzo, note 5 above at 900.

recognizing that both the state and the business community have, although different, but complementary roles in achieving sustainability.⁷²

Despite the above, the business community may still be inclined to maintaining the traditional argument that businesses should as far as possible be insulated from dabbling into government responsibilities and that businesses should not be detracted and made to assume the traditional functions and responsibilities of states and governments in the provision of public goods and social services.⁷³ It is therefore the submission of this author that the fact that the business community has not notably made this argument in respect of this Bill which essentially hinges its governance structure on the business community appears strange, and may not be unconnected to the weak corporate sustainability framework proposed in the Bill.

Considering the foregoing, the article recommends against government abdicating its responsibility to the business community in the guise of promoting efficiency in the industry; such will likely boomerang, and one can reasonably expect businesses to take full advantage of the situation. The government, through an important legislation such as the Bill, must ensure the CSR and sustainability framework therein are carefully designed, closely administered and efficiently monitored towards the provision of effective remedy to victim host communities who are impacted by the settlor business operations. This article further submits that, within the Bill's present governance structure which appears to lack a viable CSR and SD framework, and regardless of the best intentions of settlors or the Regulator, the host and impacted communities will always hold the short end of the stick as their lot may not really change for the better under the current regime. In summing up, the author believes that issues bordering on corporate responsibility, SD and maintenance of the balance of biodiversity and by extension, good ecosystem health in the host and/or impacted communities (prior to corporate interference by business operations) are simply too important to be managed under a framework essentially designed to be controlled and directed by the business community. The author submits that government needs to take the front seat in the management of CSR and SD related issues within its jurisdiction and cannot afford to be complicit on such matters. Finally, using the principles enunciated within the first pillar of the UNGPs, it will not be out of place to conclude that it will

⁷² See note 38 above.

⁷³ Macleod note 39 above at 59 and 60.

amount to government irresponsibility, if it allows its globally recognized responsibility (howsoever to be complemented by the business community) to safeguard host community interests or provide public good and social services, to be shifted to the private sector whose primary target has always been, and will remain, enhancing shareholder values (whether or not, at the detriment of the host and impacted communities).

4.2 Reduction of Sustainability and CSR to Community Development Projects

As earlier hinted in the introduction to this article, literature review depicts a fundamental challenge surrounding CSR and SD discourse in Nigeria. While SD remains largely confined to environmental degradation issues, CSR⁷⁴ is still restrictively conceived in terms of corporate charity and the idea of giving back to the society.⁷⁵ Companies in this part of the world are still laying claims to being champions of sustainability, CSR, and good corporate citizenship simply because they have provided to host communities some pipe-borne water, hospitals, schools or have given scholarship opportunities *et cetera*. Put differently, the constructs of SD and CSR have been reduced to gratuitous activities of the business community beyond the requirements of the law.⁷⁶

Although the objectives of the Bill were set to include fostering sustainable prosperity, social and economic benefits together with enhancing harmonious co-existence between the business and host communities, traces of reducing the SD and CSR provisions in the Bill to mere

⁷⁴ KM Amaeshi and others “Corporate Social Responsibility in Nigeria: Western Mimicry or Indigenous Influences?” (2006) 24 *JCC* 83 - 99; H Ijaiya “Challenges of Corporate Social Responsibility in the Niger Delta Region of Nigeria” (2014) 1 *Journal of Sustainable Development Law and Policy* 60, 62; see amongst others, “Corporate Social Responsibility (CSR) Activities in 2015”, *The Guardian*, 19th January, 2016; “Is CSR worth the trouble for companies? (1)” *Punch*, 26th July, 2015; “Building Equity through CSR: The Grand Oak Example” *Thisday*, 22th March, 2013; “CSR: Groups Hail Nigerite’s Efforts”, *Thisday*, 14th May, 2010.

⁷⁵ The Nigerian Companies and Allied Matters Act (CAMA) 1990, Cap C20, Laws of the Federation of Nigeria, 2004 did not prohibit corporate gifting or donation with the exception of donations to political associations or parties. Section 38 thereof.

⁷⁶ D Vogel *The Market for Virtue. The Potential and Limits of Corporate Social Responsibility* (Washington, Brooking Institution Press 2005); K Davis “The Case for and against the Assumption of Social Responsibilities” (1973) 2 *Academy of Management Journal* 312 - 322; K Davis and others, *Business and society: concepts and policy issues* (4th ed. New York: McGraw-Hill 1980) 50 - 57.

corporate charity and giving back to the society abound. For instance, going by the contents of section 6 (3)⁷⁷ of the Bill, examples of items mentioned, on which settlors, the Management Committee, and the Advisory Committee of the Trust are mandated to invest the Endowment Fund rather show the seeming confinement of corporate sustainability and SD to execution of capital (community) development projects. Further, item number 2 of the explanatory memo of the Bill also confirms the intendment of the proposed legislation to conceptualize and discuss corporate responsibility in Nigeria as corporate charity; the Trust concept and framework envisaged under the Bill is to be run like charitable trusts⁷⁸ under Part C of the Companies and Allied Matters Act (CAMA) 1990 as amended. This is simply evidence that such all-important constructs of SD and CSR are already reduced to mere tokenism, corporate charity and at best, execution of capital or community development projects.⁷⁹

To further underscore the author's point, it appears pertinent the above restrictive approach is contrasted with the approach to sustainability issues by the United Kingdom parliament under a 2002 SD and CSR-inspired bill.⁸⁰ The UK Corporate Responsibility Bill sought to create a government agency which will be directly and primarily responsible for

⁷⁷ See note 48 above.

⁷⁸ Under section 591 (1) (b) of Companies Allied Matters Act (CAMA), associations registered under Part C are usually registered towards the advancement of religious, educational, literary, scientific, social, development, cultural, sporting or charitable purposes.

⁷⁹ There is little difference between this conception and that under the aborted 2007 Nigerian CSR Bill and under section 135 of the 2013 Indian Companies Act with effect from 1st April, 2014, where corporate responsibility is largely perceived in terms of voluntary philanthropic community development. Schedule vii of the 2013 Indian Company's Act; and J Mukthar and S Pavithran "Corporate Social Responsibility in Birla Group of Companies" (Conference Proceedings, ISSN 2048 – 0806, 12th International Conference on Corporate Social Responsibility, Niteroi and Rio de Janeiro, Brazil, June 2013).

⁸⁰ 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 11 November, 2016.

coordination, regulations and enforcement of corporate sustainability activities within the UK business community and thereby institutionalize the CSR concept by way of hard law and mandatory regulation in the UK.⁸¹ Although this Bill appears abandoned now, but it is still useful as there is a marked difference in approach when compared to the Nigerian approach under the Bill. To start with, there is nothing in the bill suggesting a confinement of the corporate sustainability issues to giving back to the society or community development project. The bill contains provisions bordering on economic, environmental, social and even board governance issues. Although the bill was never passed (probably in alignment with the overarching EU CSR framework), its approach may be described as confirming the political will of the government to engage and participate;⁸² rather than imposing some externalized rules on the business community about capital development projects or setting up some endowment fund, the UK government essentially facilitates corporate sustainability through a distinct government department headed by designated ministry-level officials which department is known as the UK *Department for Business Innovation and Skills*.⁸³ Further, as a member of the EU, the UK system, in the provisions of sections 417 and 423 amongst others of the English Companies Act 2006, are clear implementation of the EU Fourth Directive on annual accounts (popularly called the Accounts Modernization Directive)⁸⁴ which imposes obligations on companies to consider and report on non-financial (social and environmental) matters in their annual reports. The Modernization Directive states that companies in member states shall report annually on „non-financial key performance indicators relevant to the particular business, including information relating to environment and employee matters“ in relation to the worldwide operations of that company.⁸⁵ Furthermore, the UK government is improving on the non-financial-matter

⁸¹ Section 9 of the English Corporate Responsibility Act 2002.

⁸² VH Ho “Beyond Regulation: A Comparative Look at State-Centric Corporate Social Responsibility and the Law in China” (2013) 46 *Vanderbilt Journal of Transnational Law* 375, 394.

⁸³ R Smerdon *A Practical Guide to Corporate Governance* (3rd edn, London: Sweet & Maxwell 2007) 462.

⁸⁴ Council Directive, 2003/51/EC, 18th June, 2003 amending Directives 78/660/EEC, 83/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings, OJ L178/16, 2003.

⁸⁵ T Lambooy *Corporate Social Responsibility: Legal and Semi-legal Frameworks Supporting CSR Developments 2000-2010 and Case Studies* (Kluwer, 2010) 235.

disclosure requirements through its 2013 amendment of the 2006 English Companies Act expecting qualified companies to produce a Strategic Report informing their shareholders and helping them assess how the directors have discharged their duty under section 172⁸⁶ of the Companies Act in actually promoting the success of the company.⁸⁷ From the foregoing, this article is not suggesting that the UK approach to managing issues relating to sustainability is perfect. It is only saying that going by the conception of SD and CSR in the UK, it would appear the Bill requires some revisiting and further consultation in terms of its approach to CSR and SD issues and towards ensuring the Bill truly creates an effective, efficient and sustainable framework for the realization of its set objectives.

4.3 Defining “Petroleum Host and Impacted Communities”

Now, any corporate sustainability practitioner especially closely working with the business community will confirm the challenges surrounding proper identification of communities who may be considered “host” or “impacted” communities. While there will always be genuine cases of residents of certain communities constituting host or being impacted by corporate activities, other communities might simply be too remote to the settlor operations or would likely be less significantly impacted by a particular settlor business operation. Considering the foregoing therefore, the absence of a clear definition or description of what constitutes a “petroleum host and impacted community” (PHIC) is a shortfall towards an effective and efficient sustainability framework under the Bill. Even if a clear definition of PHIC which will be generally acceptable may be difficult to propose, one would have been expected that the drafters of the Bill would have offered the settlors some criteria towards identifying those communities who may qualify as PHIC. This is a real challenge. For instance, a company involved in the construction of pipelines, traversing a long distance, would find it extraordinarily challenging to define or determine if any community (however satellite it might be) adjacent or adjoining the settlor

⁸⁶ Section 172 contains the adoption of the Enlightened Shareholder Value principle stating that directors and corporate managers are enjoined to have regards to the interests of employees, local communities, customers, suppliers, and other related stakeholder concerns in working for the success of the company.

⁸⁷ Section 414C, the Companies Act 2006 (Strategic Report and Directors’ Report) Regulations 2013, Statutory Instrument 2013 No. 1970, available online at http://www.legislation.gov.uk/uksi/2013/1970/pdfs/uksi_20131970_en.pdf last accessed 29 August 2019.

facilities qualifies as PHIC and within the contemplation of areas to which the Endowment Fund may be utilized.

5. RECOMMENDATIONS AND ALTERNATIVE APPROACH TO SD AND CSR PROVISIONS UNDER THE BILL

Having appraised the relevant provisions of the Bill in the preceding section, a few queries in relation to some provisions were raised including: (i) the seeming negligence by the government of its fundamental role of providing social services and public goods and shifting such responsibilities to the settlors; (ii) the reduction or confinement of SD and CSR to the execution of CDPs; and finally (iii) the absence of useful definition or description of what areas should constitute Host and Impacted Communities in relation to settlor operations in the oil and gas industry. This article submits that the corporate sustainability framework under the Bill will be better enhanced if the recommendations in this section are considered. The three below recommendations address seriatim the earlier identified concerns in section four.

5.1 Effective Safeguards for Host and Impacted Community

As presently constituted, the settlor is not only in charge of the management and administration of the Endowment Fund but also has control of the Trust since the Board of Trustees (BOT), the Management Committee (MC), any Fund Managers (if appointed) and the Advisory Committee (AC), whether directly or indirectly, ultimately report to the settlor. Consequently, even though the Regulator would eventually receive an annual report from the settlor, the present framework is slightly skewed in favour of the private sector who pays the piper (making contributions to the Endowment Fund) and at the same time, dictates the tune in terms of controlling and managing the Trust. The settled principle of natural justice is that one cannot be a judge in his own cause (*nemo iudex in causa sua*), but in the circumstance, it appears this is the case for the business community. The regulatory approach to be adopted in the Bill should contain further clarifications of the Regulator's responsibilities, as the Nigerian state needs to take the front seat in the effective governance and management of CSR and SD in its oil and gas industry, and beyond.

It is also recommended that that if the Bill will provide effective safeguards for host communities, and generally facilitate harmonious coexistence in the Nigerian oil and gas industry, then, just as the settlors understand the tax benefits⁸⁸ of any payments they are making under the Trust scheme, the Bill should also provide some clear benefits to the host and impacted communities in relation to the usefulness of the eventual annual reports submitted by the settlors. Consequently, the article argues that residents or members of the Host and Impacted Communities should be given an express right under the Bill (notwithstanding the provisions contained in any extant enactment of the National Assembly) to seek appropriate redress with the Regulator (and if not satisfied with that, at the Federal High Court) for any wrong, injury, damage or even false and untrue statements by the settlor company made in the annual reports. Depending on the nature of the case instituted by the members of the host and impacted communities, effective remedies, should be accessible to any member or group of members of the host and impacted communities victimized by the actions or omissions of the settlors flowing from the contents of the published reports. As recommended within the framework of the UNGPs, such remedies may be judicial or non-judicial and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.

It is important to quickly mention that the above recommended approach may have its challenges. How will the Bill, for instance, deal with cases of meddlesome interlopers, busybodies who may take undue advantage of this community member right of action and open the floodgates of frivolous litigation and petitions? The author proposes that a mechanism to qualifying genuine cases for members of the PHIC with reasonable and legitimate claims against the settlor company needs to be designed. Therefore, this article proposes that the framework will work in such a way that whenever any qualified⁸⁹ community member with legitimate

⁸⁸ See note 59 above.

⁸⁹ Again, it is important to clarify that under this framework, a host and impacted community member or group of members capable of maintaining a petition has to be qualified to avoid needless open-ended floodgate of litigations by meddlesome interlopers and busy-bodies. Such qualified members will have a “genuine and legitimate” interest which shall be important to the success and long-term survival of the company even going by the contents of the annual report submitted by the settlor. While determination should be on case-by-case basis,

interest (as so determined by the Regulator or the court as the case may be) alleges oppression, injury, maltreatment, violation or disregard to his or her interests as relevant to the success of the corporation in the long term, (e.g. in cases of environmental degradation of local community infrastructure in the course of business operations or violations of executed community development agreements or corporate sustainability agreements with local communities) then, in addition to (or as an alternative to) any other remedy or respite afforded in other aspects of the law, recourse should be had to this remedy for redress. In measuring the relevance and legitimacy of a stakeholder's interest as against a particular corporate decision or action mentioned in the annual report of the settlor, the success of the settlor business should be broadly interpreted in terms of the survival of the settlor company as a whole (i.e. its shareholders and stakeholders alike) in the long run and not the myopic interests of the residual claimants of the settlor (its shareholders).⁹⁰

As a corollary to the foregoing, and in terms of corporate sustainability for the benefit of the host and impacted communities, this article also proposes a policy imposition under the Bill of a presumption of corporate irresponsibility on the settlor companies such that whenever an infringement of the rights of the members of the host communities is alleged by a member and which had resulted in some verifiable damage or injury to the established stake or interest of such member, the onus should lie on the company to prove, on a scale of probability, that it acted responsibly in due regard to the host and impacted community member and having effectively balanced all other relevant stakeholder's interest in the circumstance. Again, in contrast to a

host community members should likely find it easy to establish their legitimate interests. Despite the pointers suggested in this article, the author nonetheless appreciates the anticipated difficulty that may be encountered by the Regulator and the judiciary in determining what constitutes legitimacy or genuineness in host community interests in view of the decisions in *O'Neill & Anor v. Phillips & Anor* (1999) 2 B.C.L.C. 1 HL, *Re Saul D Harrison & Sons Plc* (1995) 1 B.C.L.C. 14 at 19 and *Ebrahimi v. Westbourne Galleries* (1973) AC 360 at 379 amongst others showing that the determination of "legitimacy" or otherwise of interests are wide or vague considerations which may be very difficult to assess even using the objective test of a hypothetical reasonable bystander.

⁹⁰ Amodu note 7 above at 1 - 36.

mandatory or permissive rule, the Bill should make this a default and presumptive⁹¹ rule which automatically applies to settlor companies operations regardless of the contents of their memorandum or articles of association, and may only be avoided by establishing its sustainable and responsible business conduct in the circumstance to the reasonable satisfaction of the Regulator or the court as the case may be.⁹²

5.2 Broadening the Scope of the Trust Utilization

Now, once a settlor makes its contribution to the Endowment Fund and submits the annual report to the Regulator, there are tendencies that such settlor may become complacent as it would simply consider its corporate responsibility obligations discharged having made requisite tax-deductible contributions to the Endowment Fund. This is clearly contrary to the true meaning of the CSR and SD constructs as earlier described in section two above. Corporate responsibility and sustainability transcend giving back to the society or corporate donations and charity.

It will therefore be useful if the Bill considers broadening the scope of the Trust and the application of the Endowment Fund beyond provision of healthcare facilities or educational advancement and related capital or community development projects. For effective corporate responsibility and sustainability, the Bill needs to enjoin the settlors, as they control the Trust, to consider other stakeholder interests and responsibly balance such competing interests in the day to day management and administration of not only the Trust but also their entire business operations. Just as businesses in other jurisdictions such as in the United Kingdom are expected to behave responsibly, the Bill should also broaden its corporate sustainability scope by similarly enjoining the settlors to give regard to the interests of their employees, customers, suppliers, and not leaving out safeguarding the interests of the host and impacted communities.⁹³

⁹¹ BR Cheffins *Company Law: Theory, Structure and Operation* (Oxford: Clarendon Press 1997) 218, 219 *et seq.*;
JH Farrar and others *Farrar's Company Law* (3rd edn, Butterworths 1991) 96.

⁹² Details of the full analysis of the theoretical and regulatory ambits of this proposal has been discussed elsewhere in Amodu note 7 above.

⁹³ Section 172 of the UK Companies Act 2006.

5.3 Defining Host and Impacted Communities

Having not proposed a clear definition to operators within the industry or suggesting criteria towards identifying those communities who qualify as host or impacted communities, the author submits that, in any event, a one-size-fits-all definition of host and impacted communities will probably not work. It is important the Bill creates a mechanism through which individual settlor is given the opportunity, using international best practices and in consultation with the Regulator, to set reasonable and acceptable parameters towards defining areas which will fall within its host and impacted community. Ordinarily, the parameters will vary from one area or location to the other. The nature of the business undertaking by the settlor will also condition what areas may constitute its host and impacted community. Finally, the major note of caution to be sounded will be that the Regulator needs to behave more like a modern-day insider⁹⁴ regulator by engaging and working closely with the business community in the determination of which areas will reasonably constitute host and impacted communities. There is no reason for the Regulator to unnecessarily drag settlors into recognizing areas too remote to them as part of their host communities. This will not only detract from the commercial focus of businesses, likely negatively impacting the settlor's bottom line, but may eventually also stifle investments in the industry. The diagram below properly captures what the alternative conceptual and regulatory framework should look like in comparison to figure 3.1 above:

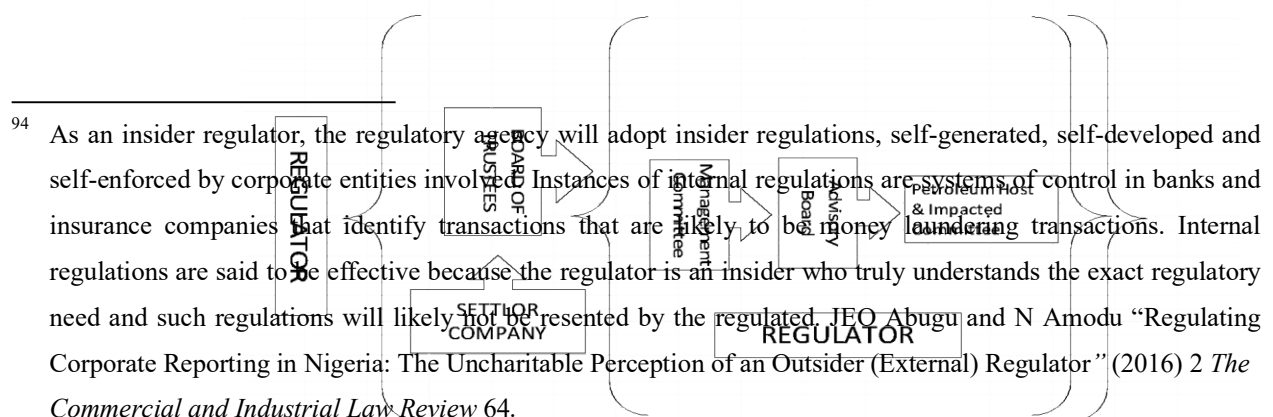


Figure 5.1 – *Proposed alternative SD and CSR framework for the Trust scheme.*

The above framework projects a scenario whereby although the settlors are afforded the opportunity to set up the Trust on their own, appointing the Board of Trustees and other organs of the Trust towards ensuring corporate sustainability, the structure nonetheless positions the regulator as an insider agency which may provide guidelines in the course of the running the Trust. For instance, the settlors will be able to invite the Regulator to participate and supervise corporate activities towards safeguarding host and impacted community interests (whether in the process of awarding certain contracts with likely environmental pollution consequences or in the normal course engaging the host and impacted communities as vital stakeholders to business operations) and the Regulators will be able to make objective observations in such processes which may forestall victimisation of relevant stakeholders. It is important to stress that the role of the Regulator at this stage is simply to provide guidance and not to impose its views on the settlors. It is simply there to ensure that rather than wait for the settlors to violate legitimate stakeholder interests in the host communities, and subsequently slamming the hammer on the settlor for infringements, it nips same in the bud as much and quickly as it can. Such involvement at this stage might also be useful for the settlors as a mitigating factor in any (judicial) hearing of eventual violation of the host and impacted community stakes. It should be clarified however that the involvement of the Regulator does not absolve the settlor of its responsibility if such is eventually established either before the Regulator or the law courts.

The above framework clearly shows the role of the government and its agencies at an early stage of the operations. With this proposal, while the government may be seen to have rightly assumed its responsibilities of ensuring that the business community pays adequate respect to all stakeholder interests; it does not necessarily portend any extra-ordinary or humongous financial implications to the government.

The article strongly believes the proposed framework offers the host communities, the settlers and the government real opportunity towards managing the economic, social environmental impacts of corporate actions in our societies. Further revisiting of the provisions of the Bill is therefore recommended towards the adoption of the proposals in this article.

6. CONCLUSION

This article interrogated relevant provisions in the Petroleum Host and Impacted Communities Development Trust Bill as underpinned by the concepts of sustainable development (SD) and corporate social responsibility (CSR). From a regulatory viewpoint, it clarified the concepts of SD and CSR within the contexts of well-established and almost universally accepted principles as opposed to their confined description in terms of environmental degradation issues, or matters bordering on community development projects. Following its appraisal and juxtaposition with established principles, the article raised a few concerns, and queries the viability of the Bill to achieve its objectives within the ambits of its present conceptual and governance framework.

Against the clamour that the word “impacted” ought to be removed from the title of the Bill, the article argued for its retention considering the seeming indispensability of the general theme of “impact” in any corporate sustainability or CSR discourse. Further, towards avoiding a rehashing of past mistakes, the article recommended active involvement by the Nigerian government which, it argued, cannot afford to leave the control and general administration of the Trust scheme to the business community, (settlers) if an efficient SD and CSR framework which promotes harmonious coexistence between the settlers and the communities will be realized. The article concluded urging further consultations with stakeholders, and consideration of the recommendations in this article before the passage of such an important Bill, or its assent by the executive.

REFERENCES

- “Building Equity through CSR: The Grand Oak Example” *Thisday*, 22 March 2013.
- “Corporate Social Responsibility (CSR) Activities in 2015” *The Guardian* 19 January 2016.
- “CSR: Groups Hail Nigerite’s Efforts”, *Thisday*, 14 May 2010.
- “Is CSR worth the trouble for companies? (1)” *Punch*, 26 July 2015.
- “The Good Company: A Survey of Corporate Social Responsibility” *The Economist*, 22 January 2005.
- 1990 Companies and Allied Matters Act, 1990 as amended (Nigeria).
- 2002 Corporate Responsibility Act 2002 (England).
- 2002 Sarbanes-Oxley Act (US).
- 2007 Corporate Social Responsibility Bill (Nigeria).
- 2007 Nigerian Minerals and Mining Act.
- 2013 Company’s Act (India).
- 2016 Companies Act (England).
- 2018 Petroleum Host and Impacted Communities Development Trust Bill (Nigeria).
- Abugu, J.E.O. and Amodu, N. 2016. “Regulating Corporate Reporting in Nigeria: The Uncharitable Perception of an Outsider (External) Regulator” 2 *The Commercial and Industrial Law Review* 64.
- Adeyeye, A.O. 2012. *Corporate Social Responsibility of Multinational Corporations in Developing Countries: Perspectives on Anti-Corruption* (Cambridge University Press).
- Akinsulore, A. 2016. “The Effects of Legislation on Corporate Social Responsibility in the Minerals and Mines Sector of Nigeria” 1 (7) *Afe Babalola University Journal of Sustainable Development Law and Policy* 97 – 115.
- Amaeshi K.M. *et al.* 2006. “Corporate Social Responsibility in Nigeria: Western Mimicry or Indigenous Influences?” 24 *JCC* at 83 to 99.
- Amao, O. 2008. “Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling Multinationals in Host States” 1 (52) *Journal of African Law* 83.

- Amodu, N. 2017. "Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria" 61 *Journal of African Law* 105.
- Amodu, N. 2018. "The Responsible Stakeholder Model: An Alternative Theory of Corporate Law" 5 *Journal of Comparative Law in Africa* 1.
- Aras, G. and Crowther, D. 2013. "Sustainable Practice: The Real Triple Bottom Line" in Aras, G. and Crowther, D. (eds.) *Development in Corporate Governance Ad Responsibility - The Governance of Risk* (Bingley: Emerald Group Publishing Limited).
- Bowen, H.R. 1953. *Social Responsibilities of the Businessman* (New York: Harper and Row).
- Branson, D. 2001. "Corporate Governance „Reform“ and the New Corporate Social Responsibility" 62 *University of Pittsburgh Law Review* 605.
- Campbell, T. 2007. "The Normative Grounding of Corporate Social Responsibility: A Human Rights Approach" in McBarnet, D., Voiculescu, A., and Campbell T., (eds) *The New Corporate Accountability: Corporate Social Responsibility and the Law* (CUP).
- Cheffins, B.R. 1997. *Company Law: Theory, Structure and Operation* (Oxford: Clarendon Press).
- Cherry, A.M. and Sneirson, J.F. 2012. "Chevron, Greenwashing, and the Myth of „Green Oil Companies“" 3 *WASH. & LEE J. ENERGY, CLIMATE & ENV'T* 133.
- Cheruiyot, T.K., and Onsando, P. 2016. "Corporate Social responsibility in Africa: Context, Paradoxes, Stakeholder Orientations, Contestations and Reflections" in Stachowicz-Stanusch, A, (ed.) *Corporate Social Performance in the Age of Iresponsibility – Cross National Perspective* (Information Age Publishing Inc, Charlotte).
- Cowe, R. 2001. "Investing in Social Responsibility: Risks and Opportunities *Association of British Insurers' research report* London.
- Davis, K. 1973. "The Case for and against the Assumption of Social Responsibilities" 2 *Academy of Management Journal* 312 to 322.
- Davis, K. et al. 1980. *Business and society: concepts and policy issues* (4th ed. New York: McGraw-Hill).
- 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).
- Ebrahimi v. Westbourne Galleries (1973) AC 360.

- European Union. 2011. "Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Region: *A Renewed European Union Strategy 2011-14 for Corporate Social Responsibility*". COM (2011) 681 Final 6.
- Fairfax, L. M. 2007. "Easier Said Than Done? A Corporate Law Theory for Actualizing Social Responsibility Rhetoric" 59 *FLA. L. REV.* 771.
- Fairfax, L.M. 2006. "The Rhetoric of Corporate Law: The Impact of Stakeholder Rhetoric on Corporate Norms" 31 *J. Corp. L.* 675.
- Farrar, J.H. *et al.* 1991. *Farrar's Company Law* (3rd edn, Butterworths).
- Fauchald, O.K. and Stigen, J. 2009. "Corporate Responsibility before International Institutions" 40 *The Geo. Wash. Int'l L. Rev.*
- Financial Reporting Council. 2018. *Effective Company Stewardship: Enhancing Corporate Reporting and Audit* <https://www.frc.org.uk/Our-Work/Publications/FRC-Board/Effective-Company-Stewardship-Enhancing-Corporate-File.pdf> last accessed 27 September 2018.
- Ho, V.H. 2013. "Beyond Regulation: A Comparative Look at State-Centric Corporate Social Responsibility and the Law in China" 46 *Vanderbilt Journal of Transnational Law* 375.
- Horrigan, B. 2010. *Corporate Social Responsibility in the 21st Century – Debates, Models and Practices Across Government, Law and Business*, (Edward Elgar, Cheltenham, UK).
- Idemudia, U. (2014) "Corporate Social Responsibility and Development in Africa: Issues and Possibilities" 8/7 *Geography Compass* 421 - 435.
- Ihugba, B. U. 2012. "Compulsory Regulation of CSR: A Case Study of Nigeria" 5 (2) *Journal of Politics and Law*, 68 – 81.
- Ijaiya, H. 2014. "Challenges of Corporate Social Responsibility in the Niger Delta Region of Nigeria" 1 *Journal of Sustainable Development Law and Policy* 60.
- Institute of Directors in Southern Africa. 2016. "King IV Report on Governance for South Africa 2016".
- Jagers, N. 2015. "Access to Justice for Victims of Corporate-Related Human Rights Abuse: An Echternach-Procession." 33 (3) *Netherlands Quarterly of Human Rights* 269-273.
- Kerr, M., Janda, R. and Pitts, C. 2009. *Corporate Social Responsibility- A legal Analysis* (Ontario, LexisNexis).

- Lambooy, T. 2010. *Corporate Social Responsibility: Legal and Semi-legal Frameworks Supporting CSR Developments 2000-2010 and Case Studies* (Kluwer).
- MacLeod, S. 1999. "Maria Aguinda v. Texaco Inc.: Defining the Limits of Liability for Human Rights Violations Resulting from Environmental Degradation" 2 *Contemporary Issues in Law* 189 to 209.
- MacLeod, S. 2012. "Towards normative transformation: Reconceptualising Business and Human Rights" Unpublished, PhD thesis submitted to the University of Glasgow.
- McBarnet, D. 2009. "Corporate Social Responsibility Beyond law, Through Law, for Law" in Augenstein D (ed.) *University of Edinburgh School of Law Research Paper No 3*.
- Medarevic, S. 2012. "Environmental Corporate Social Responsibility and the Carbon Economy: A case for CSR, the Triple Bottom Line and Obliquity" *Corporate Governance eJournal* Available online at: <http://epublications.bond.edu.au/cgej/25> last accessed 19 April 2019.
- Meehan, J. Meehan, K., and Richards, A. 2006. "Corporate Social Responsibility: the 3C-SR Model" 33 *International Journal of Social Economics* 386.
- Mitchell, L. E. 1995. *Progressive Corporate Law* Lawrence E. Mitchell ed. at *Preface*.
- Mukthar, J. and Pavithran, S. 2013. "Corporate Social Responsibility in Birla Group of Companies" (conference proceedings, ISSN 2048 – 0806, 12th International Conference on Corporate Social Responsibility, Niteroi and Rio de Janeiro, Brazil).
- Mullerat, R. 2004. "The Still Vague and Imprecise Notion of CSR" *International Business Lawyer* 236.
- 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*. Available online at http://www.ksg.harvard.edu/m-rcbg/CSRI/research/publications/workingpaper_52_murphy.pdf last accesses 29 August 2019.
- National Bureau of Statistics. 2019. Nigerian Gross Domestic Product Report (Q1 2019). Available online at: [https://nigerianstat.gov.ng/elibrary?queries\[search\]=gdp](https://nigerianstat.gov.ng/elibrary?queries[search]=gdp) last accessed 29 August 2019.
- National Bureau of Statistics. 2019. Foreign Trade in Goods Statistics (Q1 2019). Available online at: [https://nigerianstat.gov.ng/elibrary?queries\[search\]=foreign](https://nigerianstat.gov.ng/elibrary?queries[search]=foreign) last accessed 29 August 2019.

O'Neill & Anor v. Phillips & Anor (1999) 2 B.C.L.C. 1 HL.

Parkinson, J.E. 2016. "Corporate Governance and the Regulation of Business Behaviour" in Macleod, S. (ed.) *Global Governance and the Quest for Justice Volume II, Corporate Governance*.

Re Saul D Harrison & Sons Plc (1995) 1 B.C.L.C. 14.

Ruggie, J. 2011. "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.

Ruggie, J. 2014. Closing Plenary Remarks, 3rd UN Forum on Business & Human Rights (Geneva, December 3).

Ruggie, J.G. 2010. "Protect, Respect, and Remedy: The UN Framework for Business and Human Rights" in Baderin, M.A. and Ssenyonjo, M. (eds) *International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate).

Scherer, A. and Palazzo, G. 2011. "The New Political Role of Business in a Globalized World: A Review of a New Perspective on CSR and Its Implications for the Firm, Governance, and Democracy." 48 (4) *The Journal of Management Studies* 899–931.

Smerdon, R. 2007. *A Practical Guide to Corporate Governance*, (3rd edn, London: Sweet & Maxwell).

Smith, I.O. 2000. "Corporate Social Responsibility towards a Healthier Environment" 4 MPJFIL at 22 -40.

Thomsen, S. 2003. "The Convergence of Corporate Governance Systems and European and Anglo-American Standards" 4 *EUR. BUS. ORG. L. REV.* 31.

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).

Villiers, C. 2008. "Corporate Law Corporate Power and Corporate Social Responsibility" in Boeger, N. Murray, R. and Villiers, C. (eds.) *Perspectives on Corporate Social Responsibility* (Cheltenham, Edward Elgar).

Vogel, D. 2005. *The Market for Virtue. The Potential and Limits of Corporate Social Responsibility* (Washington, Brooking Institution Press).

Wiwa v. Royal Dutch Petroleum Company 226 F.3d 88 (2d cir 2000), 532US 941(2001).

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World Business Council for Sustainable Development (WBCSD) 2003. "CSR: Meeting Changing Expectations" 1st WBCSD Report on CSR.

World Business Council for Sustainable Development (WBCSD). 2000. *Corporate social responsibility: making good business sense* Geneva: (Switzerland).

World Commission on Environment and Development (WCED). 1987. *Our Common Future*, Report of the WCED annexed to United Nations General Assembly, document A/42/4271.

Worldometers. 2019. *Real World Statistics*. Available online at <http://www.worldometers.info/> last accessed 29 August 2019.