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THE EFFICACY OF THE EXTANT LAWS ON NIGERIA'S CORPORATE SOCIAL RESPONSIBILITY: AN EXAMINATION

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ABSTRACT

It is the responsibility of government to enact laws that seek for the attainment of social justice, security and welfare of its citizens. The legal framework for Corporate Social Responsibility (CSR) is a branch of laws enacted by the Nigerian government through its legislative arm to regulate the activities of business corporations in Nigeria with a view to minimizing the negative impacts of their activities on the society and the environment. The paper examines the efficacy of the extant laws on corporate social responsibility in Nigeria.

Keywords: CSR, Efficacy, Extant Laws, Examination

1. INTRODUCTION

The efficacy of the extant laws in Nigeria's Corporate Social Responsibility, implementation has been somehow controversial.[1] The controversy is predicated partly on the evolving nature of the CSR concept in Nigeria. While it is the view of most legal writers that CSR implementation in Nigeria is based purely on the international legal instruments[2] as

[1] The controversy stems from the fact that most legal instruments that are geared towards the engagement of corporate social responsibility in Nigeria are internationally based. The Companies and Allied Matters Act 2004, the primary legislation that regulates the activities of Companies among other things in Nigeria failed to stipulate in unequivocal terms, the social and environmental responsibilities of companies and the negative effects of their harmful practices. The present situation has led to endless controversies as to whether or not the concept of corporate social responsibility is statutory in Nigeria. The situation is further compounded by certain provisions of the company Act by virtue of its section 297 (3) which has acceded to, at all times the duties of directors of the company to act in what he believes to be the best interest of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it is formed, and in such manner as a faithful, diligent, careful and ordinary skilful director would act in the circumstances. This is one of the statutory inhibitions militating against the engagement of corporate social responsibility in Nigeria due to the fact that the welfare of society and the environment upon which the company situates were never contemplated upon by the Act.

[2] The International Legal Instruments for CSR, believed to be driving the Implementation of CSR in Nigeria are the World Business Council for Sustainable Development (WBCSB) which brought the first wave of industrial world leaders proactively calling for workable strategies that would allow companies to assume responsibilities; the Organisation for Economic Co-operation and Development which issued guidelines for multilateral Enterprises; the United Nations (UN) Global Compact; the 1998 OIL Declaration on Fundamental Principles and Rights at Work are all international legal

against the municipal laws, others are of the view that there is sufficient local legislation that drives CSR implementation in Nigeria.[3] The argument for, and against the above controversy is outside the purview of this paper. That may be found in the works of this author in subsequent editions. There was a drastic shift away from regulations in the 1990s, which was hitherto the sole answer to an aggressive quest on how environmental management could be used as a tool for competitive advantage.[4] It was against this background that prompted the first Earth summit in 1992 that led to the creation of the World Business Council for Sustainable Development (WBCSD). The Earth summit paved the way for the first wave of industrial world leaders calling for workable strategies that would allow companies to assume responsibilities for their externalities beyond regulatory compliances.[5] Initially, CSR was randomly expressed by industries through industrial associations by means of traditional lobbying, but ever since the first Earth summit, different frameworks, guidelines and codes of conduct of corporations have been developed as a way of interpreting the current business model by corporations being more responsive to their operating environment. No doubt the stakeholders' interest in the development of the CSR agenda, including governments, non-governmental organisations, researchers and consultants are on the increase. It is our respectful view that environmental policies and regulatory instruments are not lacking in Nigeria but needs harmonization for better enforcement. We submit that there are relevant legal frameworks for CSR engagement and implementation in Nigeria. The paper examines the extant laws on Nigeria's corporate social responsibility implementation by way of appraisals, highlighting their strengths and weaknesses.

2. THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999

The Constitution of the Federal Republic Nigeria provides that security and welfare of the people shall be the primary purpose of government.[6] This is further predicated on the basis that democracy and social justice shall be the anchor hold of governance.[7] The environmental concern of the Nigerian State is eminently provided for when it holds that "the state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.[8]

By their business operations, companies doing business in Nigeria are enjoined to observe a high level of corporate responsibility for the security and welfare of the citizenry. In line with the other provisions in chapter two of the Constitution of the Federal Republic of Nigeria 1999, which fall within the provisions of the Fundamental Objectives and Directive Principles of State Policy, breaches or non-compliance of these sections, are non-justiciable in Nigerian courts, being only advisory. The point being made is that, the provisions on CSR

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instruments believed to be the major instruments that drive CSR in Nigeria. Nonetheless these laws are classified as soft laws that are merely declaratory without positive sanction for non-compliance by companies.

[3] Hakeem Ijaiya, "Challenges of CSR in the Niger-Delta Region of Nigeria", Journal of Sustainable Development Law and Policy, Afe Babalola University (2014) 3:1 see also the work of Okon E, "Corporate social Responsibility by Companies: The Liberal Perspective" op.cit, Smith 1.0, "Corporate Social Responsibility Towards a Healthier Environment" op.cit.

[4] Steger, U, "Perspectives for Corporate Social Responsibility: where are we coming from? Where Are we Going?" I. M. D. S. Research Project on Corporate Sustainability Management (May, 2008) at www.ind.org/about/faculty staff/steger.cfm, Accessed 28/12/2010.

[5] Section 17(1) Constitution of the Federal Republic of Nigeria 1999.

[6] Section 14(2(b) Constitution of the Federal Republic of Nigeria 1999.

[7] Section 20, Constitution of the Federal Republic of Nigeria 1999.

[8] Section 43 and 44 of the Constitution of the Federal Republic of Nigeria, these sections made provisions for the rights to acquire and own immovable property in Nigeria and the right for prompt compensation if property is compulsorily acquired.

under the Nigerian Constitution is presently, neither compellable nor attract sanctions to defaulters before the Nigerian Courts. This position is contrary to what is obtainable in certain other jurisdictions[9] where rights are conferred on individuals or citizens to satisfactory and sustainable healthy environment with the requisite duty to defend it while the state supervises the protection and the conservation of the environment. In other words, in such other jurisdictions, it is a right which can be challenged in courts by citizens with the corresponding duties also on the part of the government to see to the conservation of the environment for a quality and healthy life of the people.

3. THE COMPANIES AND ALLIED MATTERS ACT 2004 (CAMA)

This is the major legal instrument regulating the activities of companies in Nigeria. The Act, which consists of four parts A, B, C and D, has in its part A, the provisions that regulate the activities of companies in Nigeria. Several provisions of the Act empower the companies doing business in Nigeria to engage on Corporate Social Responsibility with a view to enunciating policies for the socio-economic development of Nigeria.[10] Traditionally, the primary concern of business is to make a profit and so, the moral obligation to promote social and environmental values are viewed with utmost reluctance. The concept of Corporate Social Responsibility was not emphatically mentioned as one of the primary concerns of companies under the Nigeria's Companies and Allied Matters Act, but by deductive reading a window was created in the Act that confers on the company the powers of a natural person of full capacity for the furtherance of the company's authorised business or objects. It aptly provides thus:

> "Except to the extent the company's memorandum or any enactment otherwise provides, every company shall, for the furtherance of its authorized business or objects, have all the powers of a natural person of full capacity."[11]

By this section, a window of opportunity was created for company directors to be in a position to perform their corporate social responsibility obligations to the society provided there are no statutory inhibitions or contrary provisions in the company's memorandum. By the above provision, the company is equated to having powers of a natural person of full capacity to engage on those meaningful ventures, it considers appropriate for both the company's profit and the advancement of the environment. This is considered imperative judging from the background and philosophy behind the floatation of most business corporations.[12] The point being made above is that, where the engagement of corporate social

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[9] The Constitution of Congo 1992 for instance provides that every person shall have the right to a satisfactory and sustainable healthy environment. See also Article 35 of the Ugandan Constitution 1995 which provides for a right to clean and healthy environment, to protect and preserve the environment from abuse, pollution and degradation, to manage the environment for sustainability. The Malian Constitution 1992 by Article 15 equally provides that every person has a right to a healthy environment and defence of the environment for the promotion of quality life. This duty rests on both the individuals and the state to preserve.

[10] Part A of Companies and Allied Matters Act 2004 deals with the formation, registration, administration, and the regulation of companies in Nigeria.

[11] See section 38(1), Companies and Allied Matters Act 2004

[12] Most business corporations are formed for maximization of profits. Besides, companies unlike natural persons are fixed and do not always possess the likelihood to mend their ways to suit particular circumstances having been confined within the limits of its memorandum of association. By being conferred with the power of a natural person of full capacity it can now engage on activities outside its object clause provided such activities will further the advancement of its authorised objects.

responsibility is outside the company's objects as stated in its memorandum of association, it becomes difficult for the directors to engage in it. Hence, the relevance of the provision under review is that, it gives an ample opportunity for such directors in the absence of anything to the contrary to engage on corporate activities that are socially responsible without falling foul of the rules of corporate game. In other words, the Act has vested companies with the powers to cater for the interests other than those of shareholders and profit maximization.[13] Besides, it is our view that while it may be true that no Nigerian company has a legal obligation to assume social responsibility, it may equally be inaccurate to assert that the company is not vested with the power to do so by the Act.[14] In line with the above, Nigerian companies could give donations towards cushioning the negative effects of corporate activities to the society and the environments.[15]

The competence and justification of companies in being saddled with CSR engagement and responsibilities have been a vexed issue.[16] This is due to the rivalry between the General Meeting and Board of Directors prior to the enactment of CAMA as to which is the main organ involved in the management of a company. Again, the scope of the supervisory powers of the General Meeting over the Board of Directors and as well, the unhealthy distinction between the problems of management of a company was a great concern and the initiation of litigation by the company. In addition, the scopes to which the Board of Directors or General Meeting can delegate their powers to a managing director as well as other officers of the company were all matters of great concern. This invariably entails the application of the Agency doctrine in corporate management. The point being made is that, initially, the relationship between the General Meeting and the Board of Directors was shrouded with uncertainty until the enactment of the Companies and Allied Matters Act 2004. The misconception that the General Meeting is the company while the Directors are merely the agents of the company subject to the whims and caprices of the company in General Meeting was rife. This was the position in an old case of *Isle of Wight Rly V Tahourdin*.[17] The court in that case refused the application by Directors of a company for an injunction to restrain the holding of a General Meeting. One of the agenda of the meeting was to appoint a committee to re-organize the management of the company. The court in that matter was of the view that the Directors were mere agents of the General Meeting.

However, in a later case of *Automatic Self Cleansing Syndicate V Cunningham*[18] where the company's Article vested the power of management of the company generally on the directors with special powers also, to sell the property of the company as they may deem fit, the court held that the General Meeting had no power or any say in the matter as the power of management, with a special power to sell the company's property was vested on the Board of Directors and not the General Meeting. The raison rationale of the court being that where the power of management is vested on the Board, they alone can exercise that power and that the only way by which the General Meeting can control or interfere with the exercise of such

[13] Smith, I. O., "Corporate Social Responsibility Towards a Healthier Environment", MPJFIL, Vol. 4, No. 1 (2000) P.28.

[14] Ibid.

[15] Okon, E. "Corporate Social Responsibility by Companies: The Liberal Perspective", MPJFIL, Vol. 4, No. 2, (2000) P. 257.

[16] The supervisory role of the General Meeting has its origin in Article 80 Table A to 1948 English Company Law to which Nigerian Company Law and Practice originated. This section was re-enacted under section 70 Table A of the 1985 English Company Act. It is noted that the attitude of the English Courts had been to distinguish between the power of the General Meeting to supervise the exercise of management powers which is carried out in two ways viz, (a) supervisory power over management per se, and (b) supervisory power over control of the company's litigation. The above position has been clarified under section 63 of CAMA on which organ that controls the company.

[17] (1915) A.C. 706. See also Truculent (1952) p. 1

[18] (1957) 1 Q. B. 159.

powers is by altering the Articles or removing the directors.[19] This latter position was handsomely provided for, under the Companies and Allied Matters Act 2004 under review.

Under our present consideration of the powers of the company to engage on CSR policies, the Act has made some clear cut provisions under section 63 of CAMA whereby a distinction is clearly drawn on the division of powers between the General Meeting and Board of Directors. Under its subsection 1, a company shall act through its members in General Meeting or its Board of Directors or through Officers or Agents, appointed by, or under authority derived from, the members in General Meeting or the Board of Directors. The stated position shall be determined, however, by the company's Articles.[20] But in the absence of such provisions of the Article, the business of the company shall be managed by the Board of Directors who may exercise all such powers of the company as are not by the Act or Articles required to be exercised by the members in general meeting.[21] The most important aspect of this section borders on the engagement of CSR by directors of companies which is provided in subsection 4 of section 63. It provides thus:

> "Unless the articles shall otherwise provide, the board of directors when acting within the powers conferred upon them by this Act or the articles, shall not be bound to obey the directions or instructions of the members in general meeting: provided that the directors acted in good faith and with diligence."

When the above provisions in section 63 of CAMA is juxtaposed with sections 38(1), 79 and 279 of the Act, one has little or no difficulties in agreeing that the Company's Act has created enough windows of opportunity to the directors to determine the holistic affair of the company notwithstanding the fact that the directors shall act at all times in what it believes to be the best interest of the company as a whole so as to preserve its assets, further its business, and promote the purpose for which it was formed and in such manner as a faithful, diligent, careful and ordinary skilful director would act in the circumstances.[22]

Originally, corporate social responsibility was not perceived as a corporate priority for companies since social issues were considered primarily to be the concern of governments and not of companies. The companies were formed to maximize profit for the shareholders while the government is traditionally responsible for the welfare of citizens by way of providing the necessary infrastructures for a modern living, security and provision of basic amenities. However, such pattern of corporate perception has become otiose. The impact of strategic literatures on CSR and its relationship with the market outcomes,[23] although empirical evidence of market outcomes of CSR is still inconclusive, there was enough rationalization of account that both institutional investors and shareholders have begun to see that the adoption of CSR could lead to financial rewards in the long run.[24] Currently, corporate social responsibility has become associated with the broader organisational goals. It now represents a complete and holistic relationship between the company and its stakeholders. It goes further to show that the employees' behaviour reflects the company's ethical principles in dealing with its stakeholders. It has become a set of standards to which most companies subscribe to, in

[19] Note however that detailed examination of the law of agency on which this topic toudies on, is outside the confines of this work.

[20] See section 63(2) Companies and Allied Matters Act 2004

[21] See section 63(3) Companies and Allied Matter Act, 2004.

[22] Sections 279(3) Companies and Allied Matters Act 2004.

[23] Harts, S, "A Natural Resource-Based View of the Firm", (Academy of Management Review, 1995) vol. 20, pp.986-1014.

[24] Paul Lee, M. "A Review of the Theories of Corporate Social Responsibility: Its Evolutionary Path and the Road Ahead", International Journal of Management Review, Vol. 2, Issue 1, 2008.

order to make its impact on the society felt. It has the great potentials to contribute to sustainable development and poverty reduction in Nigeria and the world at large. Presently, companies engage in CSR interventions to promote the welfare and development of communities at the grassroots and at national levels as against the misconceptions of the past, where profit maximization was the main focus of corporate organisations.

In aiding the already discussed provisions of the Nigerian's Company Act, and in seeking ways of making it to be more efficacious, we shall further recommend for the amendment of the Act with particular reference to the sections highlighted[25] that militate against the full and outright participation of companies in corporate social responsibility ventures. Such amendments would enable companies to contribute to the social needs of their operating environments.

4. THE NATIONAL ENVIRONMENTAL STANDARDS AND REGULATION ENFORCEMENT AGENCY (ESTABLISHMENT) ACT 2007 (NESREA)

The (NESREA) Act was promulgated into law on 30th July 2007 to provide for the establishment of an Agency charged with the responsibility for the protection and development of the environment in Nigeria. The effective enforcement of standards, regulations and all national and international agreements, treaties, conventions and protocols on environment to which Nigeria is a signatory are all provided in this Act.[26] The Act is of imperative importance to the concept of corporate social responsibility policies and implementations in Nigeria. The holistic character of the Act is geared towards the enhancement of the society and environment for the welfare of mankind. The environment constitutes one of the three major components of corporate social responsibility, the other two being the economic and social concerns. The (NESREA) Act represents the most comprehensive legislative step to a legal framework that effectively deals with the environment and Nigerian society. The Act makes copious provisions on the negative effects of harmful practices of corporate bodies, including punitive measures for corporate breach in the areas of discharging hazardous substances and related offences.[27] The enactment of the Act and its provisions seek to address holistically, the protection of the Nigerian environment.

However, in spite of the robust provisions, the Act is silent as to the manner of conduct required for corporate liability. Whether negligence could provide such basis for criminal liability or whether it is out rightly an offence of strict liability. Again, a number of fundamental issues touching on corporate social responsibility were not properly articulated in the Act. For instance, the Act failed to include specific clauses that would instill on corporations, the desire and power to be socially responsible citizens. Worst still, is the legislative impediment that limits the jurisdiction of the regulatory agency for oil and gas pollution-related matter.[28] This impediment is more crucial as experience has shown that at least, 80 per cent pollution from corporations, particularly in the Niger-Delta areas are oil and gas related. The implication of such omission is that, once pollutions emanating from oil and gas constitute an environmental and social challenge, the Agency is likely to ignore it no matter the intensity since it lacks the jurisdiction to do so having been made a subordinate to

[25] Sections 79, 279(3) of the Companies and Allied Matters Act 2004.
[26] See Explanatory memorandum of the NESREA Act, P.A 654.
[27] See Section 27(1), (3), 22(4), 23(4) and 25(5) of NESREA Act 2007, for fines as punitive measures to stem the tide of a healthier environment.
[28] See Section 29, NESREA Act 2007.

other agencies.[29] It is our view that an Agency mandated to collaborate with other agencies on environmental and social matters may lack the administrative autonomy as the principal regulatory Agency in the discharge its functions.

Furthermore, it may be absurd to note that a principal regulatory Agency mandated to collaborate with other agencies on environmental and social protection on one hand is to be hampered by the same Act prohibiting the Agency from being involved in tackling waste substances emanating from oil and gas Subsector. Discerning from the above, the implication is that, the game of passing buck will be imminent where an unaddressed environmental challenge emanating from oil and gas constitute a serious health hazard to the society. We recommend for the amendment of section 29 which provides that NESREA shall cooperate with the other government Agencies for the removal of any pollutant excluding oil and gas-related ones discharged into the Nigerian environment. Such amendment would give the Agency unfettered operational access to the effective management and control of Nigeria's social and environmental issues. Based on the comprehensiveness of the Act it becomes difficult to share the views of most scholars that there are no local legislations in Nigeria towards the engagement and successful implementation of CSR policies in Nigeria.[30] For instance, the Act provided for wide ranging powers to the Agency (NESREA) for the control of emission of chemical substances discharged into the stratosphere by companies thereby checking Ozone layer depletion. This is done in collaboration with other relevant international agencies by way of obtaining data and intelligence for the identification of relevant scientific technologies. The capacity of NESREA to carry out these modern and sophisticated scientific functions is outside the ambit of this work.

Given the unique status of the Act as a principal legislative enactment towards the society and the environment in Nigeria,[31] it is our view that the Agency, being the principal regulatory body towards the society and environment in Nigeria should not be subordinated to other agencies charged with similar responsibilities in their respective areas of operation. Rather, such similar agencies should be made to be accountable to NESREA or, to operate on behalf of NESREA by entering into a memorandum of understanding between her and the principal Agency established by the Act. In the alternative, where such memorandum of understanding is not reached, the NESREA Act ought to have repealed the various provisions of the laws enabling such other similar agencies. This would certainly minimize unnecessary acrimonies and rancour usually associated with the Nigeria situation, over such overlapping. For example, under the Mineral Mining Act 2007, certain establishments of various departments were provided.[32] One of such departments is the Mines Environmental Compliance Department.[33] The duties of this department overlap with that of NESREA and yet these are two distinct ministries. The only nexus between the two distinct bodies so far, is as provided under sections 7 and 8 of the Minerals and Mining Act 2007 which states that the department should liaise with relevant agencies of Government with respect to the social and environmental issues involved in mining operations, mine closure and reclamation of land.

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[29] Section 29 provides that the Agency NESREA, shall co-operate with other Government agencies for the removal of any pollutant excluding oil and gas related ones discharged into the Nigerian environment.

[30] See the work of Hakeem Ijaiya "Challenges of CSR in the Niger Delta Region of Nigeria", Journal of Sustainable Development Law and Policy, 2014, Afe Babalola University. The learned Author was of the view that the laws regulating environmental impacts of the oil subsector are different patchwork of laws that have not directly addressed CSR issues in Nigeria.

[31] See the Preamble to National Environmental Standards and Regulation Enforcement Agency (Establishment) Act 2007, Act No. 25 of 30th Day of July 2007.

[32] See section 16, Minerals and Mining Act 2007.

[33] See section 18, Minerals and Mining Act 2007.

It could be gathered from the above that, the Government's desire to effectively tackle the challenges of social and environmental concerns is dependent on interdisciplinary approach, collaboration and cooperation amongst the various organs of the institutional bodies in Nigeria. To our view, this approach is more advisory in nature with the likelihood of generating ego tussles between the various ministries involved which invariably may deny Nigerians the benefits of such agencies that are established and sustained by the tax payers' money. The writer is not unmindful of the enormity of social and environmental challenges to be handled by a single agency and does not seek to suggest same but that it would be tidier if the various bodies with similar responsibilities are made to carry out their functions on behalf of NESREA as the Principal Institutional Mechanism to social and environmental challenges in Nigeria.

5. ENVIRONMENTAL IMPACT ASSESSMENT ACT 2004 (EIA)

The Environmental Impact Assessment Act 2004 sets out the general principles, procedures and methods designed for a prior consideration of environmental impact assessment on certain public or private projects.[34] The goals and objectives of the Act are amongst others stated thus:

> "To establish, before a decision is taken by any person, authority of the federation, state or local government intending to undertake or authorize the undertaking of any activity, those matters that may likely or to significant extent affect the environment or have an environmental effect on those activities and which shall first be taken into accounts."[35]

As implicit in the above provision, the public or private sector of the economy shall not undertake or embark on or authorize projects or activities without prior consideration, at early stage, of their environmental effects. Where the extent, nature or location of a proposed project or activity is such that it is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provisions of the Act. The criterion and procedure under the Act shall be used to determine whether an activity is likely to significantly affect the environment and is therefore subject to an environmental impact assessment. The criteria and procedure which constitutes the minimum content of environmental assessment is as contained in paragraphs (a) – (h) of section 4, Environmental Impact Assessment Act 2004.[36]

Of imperative importance to, the goals and objectives of the Environmental Impact Assessment Act is the need to ensure that any economic undertaking likely to impact on the society and environment in one way or the other by anybody, governmental organs and

[34] See the preamble to Environmental Impact Assessment Act 2004.

[35] See the preamble to EIA Act 2004.

[36] A description of the proposed activities, a description of the potential affected environment, including specific information necessary to identify and assess the environmental effect of proposed activities, a description of the practical activities, as appropriate, an assessment of the likely or potential environmental impacts of the proposed activity and the alternatives, including the direct or indirect cumulative short-term and long-term effects, an identification and description of measures available to mitigate adverse environmental impacts of the proposed activity and assessment of those measures, an indication of gaps in knowledge and uncertainty which may be encountered in computing the required information, an indication of whether the environment of any other state or local government area or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives, a brief and non-technical summary of the information provided under paragraphs (a) to (g) of this section.

particularly corporate bodies, the major concern of this work, must have such activity subjected to serious scrutiny to determine their likely or potential impacts to the society. To us, this is an invaluable legal framework for the engagement and implementation of corporate social responsibility in Nigeria from its incipient stage.

The Act did not provide for the establishment of an Agency to oversee the implementation of the Act. It is believed that the Agency responsible for its implementation at the time the Act was initially enacted in 1992 was the Federal Environmental Protection Agency of 1988. This Agency has been repealed by virtue of section 36 of National Environmental Standards and Regulation Enforcement Agency Act 2007 and its responsibilities now taken over by a different Agency NESREA as the Agency responsible for its implementation. This is absurd. We recommend that the E. I. A. Act be amended to reflect NESREA as the Agency currently responsible for carrying out the obligations under the Act. One other area of contention in our respectful view is the offences and penalty provisions of the Act which provided that any person who fails to comply with the provisions of the Act shall be guilty of an offence and liable to conviction of N100,000 fine for individuals or five years imprisonment, and in the case of firms or corporations, N500,000 and not more than N1,000,000.[37] It is further submitted that the amount is ridiculously inadequate to deter corporate bodies from being socially and environmentally irresponsible. This is because the amount cannot instill the required fear to be socially and environmentally responsible as such amount can easily be parted with, by companies in view of their financial muscles. Again, the Act is silent as to the manner of conduct required for corporate liability. Whether negligence could provide such basis for criminal liability or whether it is out rightly, a strict liability offence. This is a legislative absurdity. It is hereby submitted that the inability to carry out social obligations as provided under the Act due to the above legislative lapses would impact negatively on the overall well being of the society and the environment, and as well, limit the proper entrenchment of corporate social responsibility in Nigeria.

6. NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY (ESTABLISHMENT) ACT 2006 (NOSDRA)

The National Oil Spill Detection Response Agency Act (NOSDRA), was passed into law on the 18th day of October, 2006. The Act primarily vests the Agency with the power to play a lead role in ensuring timely, effective and appropriate response to oil spills, as well as clean up and carry out remediation of all impacted sites resulting from oil spills to all best practical extent. Again, for the implementation of the National Oil Spill Contingency Plan (NOSCP) for Nigeria in accordance with the international convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) 1990, to which Nigeria is a signatory.

A far reaching provision is made by the Act in safeguarding the environment and the society through the timely, effective and appropriate response to major or disastrous oil pollution resulting from oil spill.[38] Apart from the lead functions of the Agency as provided under the Act, special functions outstretching the national frontiers to safeguard the society and the environment are also made. Such provisions like the implementation of the plan within Nigeria including 200 nautical miles from the baseline for which the breath of the territorial waters of Nigeria is measured, to undertake surveillance, reporting and other response activities as they relate to oil spill, encourage regional cooperation among member States of West African sub-region amongst others.[39]

[37] Section 60, E.I.A Act 2004.
[38] Section 5 NOSDRA Act 2006.
[39] Sections 6 and 7 NOSDRA Act 2006.

In spite of the elaborate provisions geared towards safeguarding the society and environment, the Act suffered some legislative defects. For instance, the Petroleum Inspectorate Department of the Ministry of Petroleum Resources was responsible for monitoring pollution in the petroleum sub-sector before the creation of Federal Environmental Protection Agency Act (F.E.P.A) of 1998 (now repealed). After the creation of F.E.P.A, the Inspectorate Department entered into a memorandum of understanding with FEPA and continued to monitor pollution, on behalf of FEPA.[40]

As at 2006, when NOSDRA Act was enacted, the responsibility of monitoring oil and gas pollution was still under F.E.P.A Act 1988. The FEPA Act was not repealed by NOSDRA Act of 2006 or any other Act in 2006. This means that the Agency under the NOSDRA Act 2006 was still discharging her social and environmental protection responsibilities under petroleum pollution protection on behalf of FEPA. Of note is, it is not until 2007 when FEPA was repealed by section 36 of NESREA Act.

Again, the Act failed to provide for inter-Agency cooperation and collaboration in spite of the public knowledge that the Oil and Gas sub-sector is acclaimed to be the major violator of the Nigeria's social and environmental resources. It is contended that the Act should have provided for clauses or directives that would compel NOSDRA to interface and collaborate with other national agencies involved in social and environmental management in Nigeria. An interdisciplinary approach, cooperation and collaboration amongst the various organs of institutional bodies in Nigeria is imperative as against the pluralities of co-operation with the sub-regional West African member states, international Maritime organizations and similar bodies.[41] While cooperation with the international bodies is not out of place, a provision for national cooperation and collaborations is highly commendable.

7. HARMFUL WASTE (SPECIAL CRIMINAL PROVISIONS, ETC) ACT 2004

The Harmful Waste Act is deemed to be the first-ever environmentally conscious enactment in Nigeria which acted as a pivot to other numerous environmental and social legislations in Nigeria. Its enactment was orchestrated by the toxic waste dumping in Koko town of Delta state of Nigeria in 1987 by an Italian company. The country was before this incident, ill-equipped to manage environmental crises as Nigeria lacked both the institutional and legal capacity to address such issues. The episode brought the lack of coordination and enforcement of environmental matters into focus in Nigeria for the first time ever.

Harmful waste has been defined as any injurious, poisonous, toxic or noxious substance and in particular, includes nuclear waste emitting any radioactive substance if the waste is in such quantity, whether in any other consignment of the same or if different substance, as to subject any person to the risk of death, fatal injury or incurable impairment of physical or mental health.[42] The fact that the harmful waste is placed in a container shall not by itself be taken to exclude any risk which might be expected to arise from the harmful waste.[43]

Any person found guilty of carrying, depositing and dumping of harmful waste on any Nigeria's land, territorial waters shall on conviction be sentenced to imprisonment for life.[44] In addition to imprisonment for life, any carrier, including aircraft, vehicle, container and any other thing whatsoever used in the transportation or importation of the harmful waste; and any

[40] Okorodudu-Fubura, M, Law of Environmental Protection, (Ibadan, Caltop Publications Nigeria Ltd, 1998) p. 207 Print.
[41] Sections 5 (c), (e) etc NOSDRA Act, 2006
[42] Ibid
[43] Ibid
[44] Section 6, Harmful Waste Act 2004

land on which the harmful waste was deposited or dumped, shall equally be forfeited to and vest in the Federal Government without any further assurance other than the Act.[45] Where the crime is committed by a body corporate and is proved that it was committed with the consent of or connivance of or is attributable to any neglect on the part of a company director, manager, secretary or other similar officer or person purporting to act in the capacity of a director, manager, secretary, shall as an individual member as well as the company be guilty of the crime and shall be liable to be proceeded against and punished accordingly.[46]

There is also the civil liability provision where any damage has been caused by any harmful waste which has been deposited or dumped on any Nigeria's land or territorial waters or contiguous zone or exclusive economic zone or water ways[47] which caused harm to anybody, shall be liable for a damage except where the damage was caused due wholly to the fault of the person who suffered it, or was suffered by the person who voluntarily accepted the risk thereof.[48] "Damage" under the section includes the death of, or injury to any person including any diseases and any impairment of physical or mental condition.[49]

The penalty meted out to offenders under the criminal provision is commendable in view of the fact that the Act has stemmed the tide of what could have made Nigeria a dumping ground for the disposal of Harmful Wastes by most developed countries. As earlier noticed, and before the Harmful Waste (Special Criminal Provisions, etc) Act 2004,[50] was promulgated, an Italian company in 1987 flagrantly dumped toxic waste in Koko town of Delta State. Before this incident, there was no legal framework regulating environmental issues in Nigeria. It was as a result of such incident that Nigerian government took the frantic step to curtail and regulate toxic and injurious wastes disposed by persons and companies by promulgating the Harmful Waste (Special Criminal Provisions) Act of 2004. But then, the civil liability provision does not specify monetary damages for injured persons. The proof is on the balance of probabilities. It is our respectful view that the damage for such grave civil wrongs that carry a criminal penalty of life imprisonment should be clothed with some compensational minimal monetary sum were proved. The present position leaves much to be desired. Apart from the provisions respecting land, territorial water, waterways, contiguous zones and exclusive economic zones, the Act failed to address issues respecting social and environmental concerns.

8. NIGERIAN MINERALS AND MINING ACT, 2007

The Nigerian Minerals and Mining Act were signed into law on the 29th day of March 2007. It is a six-chapter legislation containing 165 sections. The Act repealed the Minerals and Mining Act 1999. The essence of the Act is to regulate all aspects of the exploration and exploitation of solid minerals in Nigeria; and for related purpose.[51] Under its Mines Environmental Compliance Department, the Minister is to liaise with relevant agencies of government with respect to the social and environmental issues involved in mining operations, mine closure and reclamation of land and to monitor and enforce compliance by holders of

[45] Section 6 (a) and (b) Harmful Waste Act 2004
[46] Section 7, Harmful Waste Act 2004
[47] Section 12 Harmful Waste Act 2004
[48] Ibid
[49] Ibid
[50] An Italian Company, in 1987, dumped toxic waste in Koko town of Delta State prompting the then Federal Military Government to promulgate the Harmful Waste Act of 1988 of Decree 42 now an Act retained as Cap Hi LFN 2004.
[51] See the Preamble to the Nigerian Minerals and Mining Act 2007.

mining title with all environmental requirements and obligations established pursuant to the Act.[52]

The Act has made some far reaching provisions to the engagement and implementation of corporate social responsibility by corporations in Nigeria. For instance, under the Mines Inspectorate Department,[53] holders of mineral title make reports to the department where in the course of mining activities, radioactive substances are discovered or may be reasonably suspected to be present. In such situation, the department is expected to remove such radioactive substances safely for the safety of the society. This is a commendable provision for the enhancement of corporate social responsibility engagement in Nigeria. The Act further made provisions for the prohibition of pollution of water courses, sale of plant, animals and water obtained in the mining lease areas. For instance, the majority of rural communities still depends on river water as their major source of drinking water, fishing and other domestic chores. Companies must ensure that water used in connection with industrial operations does not contain injurious substances in quantities that are likely to undermine the health of such communities where the company is located. In spite of its elaborate provisions in championing corporate social responsibility related activities, the limitation of the Act to mining of solid minerals in Nigeria is a big minus. The establishment of the Mines Environmental Compliance Department overlaps with NESREA responsibilities as a primary institutional body charged with environmental challenges in Nigeria. It is our respectful view that it is the responsibility of NESREA to set social and environmental standards, issue regulations and guidelines and as well, provide enforcement matters in Nigeria. Nonetheless, the Act provided a more realistic penalty against individuals and corporate environmental violators. It provides that where a mineral title holder is guilty of an offence under the Act, he shall be liable to have his license revoked, and on conviction at the first instance, to a fine not less than N20,000,000; and imprisonment of not less than five years.[54] This is far more commendable than the earlier reviewed cases in other environmental laws. The penalty it is believed, instil obedience to the law while at the same time, deter violators.

9. EVALUATION OF LEGAL FRAMEWORK ON CSR

By virtue of the Constitution of the Federal Republic of Nigeria 1999, and in the pursuit of its social objectives, the sanctity of the human person and dignity shall be recognised while the exploitation of both the human and natural resources in any form other than for the good of the community shall be prevented.[55] Besides, the state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife in Nigeria.[56] Business operations by corporations in Nigeria are enjoined to observe a high level of corporate responsibility for the security and welfare of the populace in achieving the economic and social justice by corporations.

However, we observe that the provisions for attaining the social objectives of the Nigerian state are contained in chapter II of the Constitution under the Fundamental Objectives and Directive Principles of State Policy. In other words, the provisions in chapter II of the Constitution are not justiciable and cannot be challenged in any court in Nigeria. They are merely advisory in character, having the semblance of soft laws in international law. Nonetheless, regard may be had by invoking other legal instruments under the common law such as nuisance, negligence and rule in *Ryland V Fletcher* under the law of torts or better

[52] Section 18(b), (c) and (d) Nigerian Minerals and Mining Act 2007.
[53] Section 16(a) Nigerian Minerals and Mining Act 2007.
[54] See section 133, Nigerian Minerals and Mining Act 2007.
[55] See section 17(2) (b) and (d) of the Constitution of the Federal Republic of Nigeria 1999.
[56] Section 20 CFRN 1999.

still, by invoking the African charter instrument on economic, social and cultural rights which has been domesticated in Nigeria.

The companies and Allied Matters Act 2004 CAMA has also made far reaching provisions as examined above except for the fact that serious issues bordering on the welfare of the society and the environment should not be based on conjectural deductions as presently constituted. Matters respecting the concept and engagement of CSR practices by companies doing business in Nigeria should be consciously and conspicuously provided for, in the Act. This will make for easy understanding, appreciation and engagement by corporate managers. The present ambivalence of the provisions of CAMA does not confer outright legitimacy on directors to engage on CSR practices on behalf of companies. This is because a mere equation of a corporate body to the powers of a natural person of full capacity as observed above does not confer adequate power to be sufficiently armed to engage on CSR practices. It is submitted that directors should be statutorily empowered by amending the inhibiting provisions with particular reference to section 279(3) CAMA, 2004. We suggest that the section should be amended to read thus:

> "A director shall act at all times in what he believes to be the best interest of the company and the society so that while preserving its assets and furthering its business, it should also promote both the welfare of society and the purpose for which it was formed and in such manner as a faithful, diligent, careful and ordinary skilful director would act in the circumstances."[57]

The NESREA Act represents the most comprehensive legislative step in Nigeria to an effective framework that deals with the environment and corporate social responsibility. A careful perusal of the Act indicates that quite a number of fundamental issues touching on CSR are articulated. For instance, the Act makes copious provisions on negative effects of harmful practices of corporate bodies in Nigeria. The penalty measures for corporate breach in areas of discharging hazardous substances and related offences.[58] Regrettably, the adequacy or otherwise of punishment provided under the Act and most of the environmental legislation in Nigeria has been a subject of grave concern to writers and stakeholders. It was against this backdrop that a learned author lamented that the simplistic nature of the concept of environmental laws at the time actually provided ridiculous punishment for some of the violators.[59] The punitive measures are worrisome and inadequate as such could hardly deter violators in view of the ridiculous amount of fines when compared with the gravity of the offences and the corporate financial muscles of corporations.

It has been observed that the Companies and Allied Matters Act 2004, (CAMA), the foremost statute book regulating corporate activities in Nigeria, has not provided profound and articulated policy provisions for the appropriate engagement of corporate social responsibility to Nigerian corporations. There is so far, no ethical code of conduct for corporate social responsibility in Nigeria. The engagement of corporate social responsibility principles is

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[57] Our suggested amended version to section 279 (3) of Companies and Allied Matters Act, 2004 in order to statutorily empower directors to engage on corporate social responsibility practices in Nigeria.

[58] Section 27(1) NESREA Act 2004, provides that the discharge in such harmful quantities of any hazardous substance into the air, upon the land, the waters of Nigeria and the adjourning shorelines is prohibited, except where such discharge is permitted or authorised under any law in force in Nigeria. The section further provides that where the offence is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding N1,000,000 and additional fine of N50,000 for every day the offence subsists.

[59] Atsegbua, L. Akptaire, V, etal "Environmental Law in Nigeria: Theory and Practice", Ababa Press Limited, 2003.

optional as individual companies may choose and pick whatsoever is deemed desirable for them as corporate social responsibility.

Presently, corporate performance is constantly viewed in Nigeria from the three – layer concept of profit, shareholder value and philanthropy resulting from the gap in the extant laws. So far, what most companies do is to throw money at the society's problems in the form of corporate philanthropy as against a meaningful stakeholder partnership approach to achieve the desired results.

In the light of the multifaceted institutional frameworks examined, none is specifically charged with the responsibility and assessment of social and behavioural impacts of corporations and appropriate reporting for policy guidelines to be made to protect the society and the environment of business negative impacts. There is no stakeholders' coordination for the purposes of forming a front in redressing the negative social impacts of companies doing business in Nigeria. Rather, there are fragmentations of stakeholder interests who are easily bought over for peanuts in the form of corporate philanthropy and menial assistances.

10. CONCLUSION

Corporate social responsibility is a call for companies to advance the public's interest as well as their economic pursuits. New roles and responsibilities of businesses are presently pursued under the purview of corporate social responsibility with a view to adopting CSR as a core requirement for attaining growth and sustainable development. Nigeria, the most populous black African nation has, in response to this evolving and challenging business practice enacted laws to advance the welfare of its citizens in the face of corporate negative impacts to the society and the environment. The work has examined the legal framework for corporate social responsibility in Nigeria with a view to finding the efficacy of such laws. The work has shown that there are several legal frameworks for corporate social responsibility in Nigeria but has noted that such an imperative concept of growth and development is not provided in the guaranteeing rights' section of the Nigerian Constitution, but rather in its advisory section of the Fundamental Objectives and Directive Principles of State Policy which is non-justiciable in the Nigerian Courts. The need for provisions respecting the welfare of society and the environment has been canvassed to be made justiciable in the Nigerian Courts particularly under the present democratic dispensation. Furthermore, the work has observed that, in spite of the existing legal frameworks, no specific institutional body has been charged with the regulation, monitoring and reporting of the activities of companies in their operating environments and the society in Nigeria which has grossly impeded the efficacy of the extant laws. It is against this background that, the harmonization of the laws, regulations and guidelines on corporate social responsibility in Nigeria has been canvassed as one of the ways of making the various laws relevant irrespective of the companies' diverse business entrepreneurships. The work strongly submits that, with the amendment of the several provisions identified, the extant legal instruments would be more effective to drive corporate social responsibility practice that addresses simultaneously, the planet, people and profit for the growth and development of the Nigerian nation.

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