

Companies' Corporate Social Responsibility and Its Sustainability among Developing African Countries like Nigeria

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ABSTRACT: Drawing empirical evidence from legal practitioners, firms, law-maker, judge and Nigerians, this study explores the issue of meager practice of corporate social responsibility among companies in Nigeria. It was found that Nigeria is one of the countries in the world that is experiencing problem in prosecuting multinational oil companies because the laws in existence are weak. Youths in the Niger Delta Area of Nigeria, are protesting against the non practice of corporate social responsibility by multinational companies in their communities. The nature of practice in corporate social responsibility among multinational companies in developing countries could be tricky. In developing African countries and with regards to corporate social responsibility, multinational companies may argue that it is not the fault of companies that proper steps to ensure corporate social responsibility was not taken but rather it is the fault of regulatory agencies in these developing African countries.

In some countries, the nature of a joint venture agreement signed by both the host government and multinational companies to some extent could be the deterrent to the practice of corporate social responsibilities by these companies. This finding confirms that the nature of corporate social responsibility, especially with respect to sustainable development is still at its infancy stage in developing African countries. Specifically, it is necessary to discover ways by which the application of CSR yields the required performance. It is anticipated that this paper will add to the body of knowledge firstly on educating the host communities, the host government and indeed multinational companies on the advantage of corporate social responsibility.

Through the use of focused group case study research technique, this journal article identified the current culture with regards to practice of corporate social responsibility in developing African countries like Nigeria caused by lack of awareness to practice of corporate social responsibility. This article suggests that having corporate social responsibility in place especially for companies doing business in developing countries as Nigeria for all to learn from (the courts, the host government and its agencies and the citizens) will help minimize barbaric acts like jungle justice. This article assesses the sustainability of corporate social responsibility in developing African countries and that multinational companies breaching corporate social responsibility is wrong.

KEYWORDS: Corporate Social Responsibility (CSR)

OBJECTIVES OF THIS ARTICLE: To discuss the lacuna in corporate social responsibility among companies in developing African countries like Nigeria

To state that corporate social responsibility is not just voluntary but also legal.

To state that a strong law will educate all and sundry of corporate social responsibility and instill corporate social responsibility among companies

I. INTRODUCTION

The World Business Council for Sustainable Development (WBCSD) (1999) defines CSR as the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workers and their families as well as the local community and society at large¹. In theory, CSR is seen as a way of guaranteeing the sustainable development of business in society². However, the case of business and society in the Nigerian petroleum industry challenge this theory. Specially, it is necessary to discover ways by which the application of CSR yields the required performance. To do this, the scholarly call

¹ The World Business Council for Sustainable Development 1999 in Lance Moir "what do we mean by Corporate Social Responsibility?" (2001) 1(2) Corporate Governance, 16-22

² Güler Aras and David Crowther, eds. *Global perspectives on corporate governance and CSR*. (Gower Publishing Ltd, 2009)

for a performance based perspective of CSR³, is adhered to. In exploring this performance based perspective. It follows therefore that there is likelihood that charges will be brought and the probability that punishment will be received.⁴The board of directors needs to evaluate the organization's current strategies, policies and procedures and investigate whether they encourage ethical behavior and reflect the organization's ethical values. Does the organization have a code of conduct and who knows about it? Are all employees involved in the development and implementation of ethical guidelines? Are relevant training programmes established that promote the organization's stand towards ethical behavior? Are relevant structures and processes for monitoring and improving ethical behavior established? Is the organization's focus on ethical behavior embedded in the organization's culture? Corporate social responsibility during heightened globalization and a depressed world economy is increasingly important today.

II. LITERATURE REVIEW

What this article intends to achieve are:

- (1) Is there a lack of awareness in the application of corporate social responsibility in developing African countries
- (2) Are there challenges for corporate social responsibility practice from multinational companies?

THE SITUATION WITH REGARDS TO CORPORATE SOCIAL RESPONSIBILITY IN DEVELOPING AFRICAN COUNTRIES AND COMPANIES

Ghana for example which is also developing oil producing country in West Africa, youths fight over jobs without considering health and safety measures, an investment in health and safety will yield improved working condition⁵. Developing countries like in Africa which are proposing to introduce a law on corporate manslaughter can learn and include stakeholder's rights that defines their duties, rights and remedies to punish companies operating in their country (for failure in being CSR) in the event of death. This right includes helping to solve the issue of sabotage. In developing oil-producing countries in Africa like Nigeria and Cameroon, the culture is to lay oil pipelines under the ground but exposed. This could cause oil spillage⁶ making poor people to tap oil resources at the cost of their lives.⁷ Similarly, the Nigerian government agencies tend to rely entirely on, what multinational oil companies tell them. According to Shell Nigeria over 90% of the Niger Delta's oil spillages are caused by Nigerians sabotaging oil pipelines rather than pipeline burst, breach of duty of care (failure in maintenance and servicing) and failure to provide safe working machineries.⁸ During this time, the host-communities of these oil companies witnessed an irregular (good, better, worse) deterioration of their social, economic and environmental wellbeing.⁹ The most poignant was the oil pollution of streams and rivers with crude oil where fish farmers fish for fish and other aquatic creatures for their daily bread.¹⁰ As a result, the

³ Donna .J. Wood "Corporate social performance revisited" (1991) 16(4) *Academy of management review* 691-718

⁴ Sally Simpson, *Corporate Crime, Law and Social Control (Cambridge Studies in Criminology)* (Cambridge University Press, 2002)

⁵ Kwesi Amponsah- Tawiah and Kwasi Dartey- Baah "Occupational Health and Safety: Key issues and Concerns in Ghana" (2014) 2(14) *International Journal of Business and Social Science* 119-126

⁶ Ike Okonta and Oronto Douglas, *Where Vulture Feast Shell, Human Rights, and Oil* (Verso, 2003)

⁷ C. C. S Okeke "Environmental Pollution in the Niger Delta Region of Nigeria: A Case of Oil Companies and Corporate Social Responsibility" (2011) 30(3) *Journal of Development Alternatives and Area Studies* 43-59 in Onyeka Osuji "Corporate social responsibility, juridification and globalization: 'inventive interventionism' for a 'paradox'" (2015) 11(3) *International Journal of Law in Context* 265-298

⁸ Amnesty Nigeria: *Petroleum, Pollution and Poverty in the Niger Delta 2009* London Amnesty International

⁹ Babatunde Bayode and Adebisi Adebola "Strategic Environmental Scanning and Organization Performance in a Competitive Business Environment" *Economic Insights-Trends and Challenges*" (2012) 64(1) 24-34

¹⁰ Chidi Ibe, Min Wang, Shoon Ling Kwek and Kai Yui, Exploring the impact of strategic proactivity on perceived corporate social responsibility in Nigeria's petroleum industry? A structural equation modelling approach (2015) 11(4) *Asian Social Science* pp.275 -297

members of the host-communities of oil companies saw them as being exploitative¹¹. This led to protests that were initially peaceful, but became violent as these oil companies more and more showed selfishness under the protection of military governments¹². This was when social activism began in the Niger-Delta region of Nigeria¹³. It was described by academicians as having developed from the shared experience and aspirations that stemmed from the deprivation of social good by the activities of oil companies.¹⁴ However in 1999, Nigeria transitioned to democratic leadership. The Nigerian government, under civilian control called for more social responsibility from oil companies.¹⁵ The oil companies reacted by hearkening to the request of their host-communities. They started to practice different corporate social responsibility (CSR) initiatives¹⁶ like building schools, primary health centers to mention just a few.

THE PROBLEM CREATED BY JOINT VENTURE AGREEMENT WITH REGARDS TO CORPORATE SOCIAL RESPONSIBILITY IN DEVELOPING AFRICAN COUNTRIES

Problem occurs when multinational companies are recognized as chief contributor to Nigerian economy. The Nigerian government might fear to punish it. Some readers might call this a 'hole in the system'. The Nigerian government through the Nigerian National Petroleum Corporation (NNPC) is in a joint venture agreement (JVA) with all the multinational oil companies in Nigeria and gets 60% of revenue generated from oil exploration in the Niger Delta Area of Nigeria. The Nigerian government can level up with these MNCs by reducing its share in partnership to enable companies with money to perform their corporate social responsibility without opting to give bribe while neglecting to clean up oil spills and reduce gas flaring. There can be no doubt that the protests by the Nigerian youths in the Niger Delta accounts for the negative activities of multinational oil companies causing death.

One of the political tendencies affecting corporate social responsibility enforcement in Nigeria is whose liability it will be haven signed a joint venture agreement. In Oguru's case¹⁷, the court reasoned that the question now is whether the arguments referred to at ground are relevant, or more specifically, decisive, for the assessment in the main actions¹⁸. In the court's opinion, Oguru et al. have not as yet made this sufficiently plausible. Oguru et al. have up to now not substantiated that a parent company has acted unlawfully according to Nigerian law if it is aware of, and has influence and authority over, the inadequate environmental policy of a subsidiary, yet fails to intervene (arguments at a and b). Contrary to what Oguru et al. argue, an oil company's environmental policy cannot provide a definitive answer to the question of whether acts have been lawful or unlawful in relation to a

¹¹ Shola J.S., Omotola "The next gulf? Oil politics, environmental and rising tension in the Niger Delta" 2006 1(3) *Accord occasional paper series*, 1(3), pp.1-31 In Chidi Ibe, Min Wang, Shoon Ling Kwek and Yii, D.S.K. Exploring the impact of strategic proactivity on perceived corporate social responsibility in Nigeria's petroleum industry? A structural equation modelling approach (2015) 11(4) *Asian Social Science* pp.275 -297

¹² Shola J.S., Omotola "The next gulf? Oil politics, environmental and rising tension in the Niger Delta" 2006 1(3) *Accord occasional paper series*, 1(3), pp.1-31

¹³ Chidi Ibe, Min Wang, Shoon Ling Kwek and Kai Yii Exploring the impact of strategic proactivity on perceived corporate social responsibility in Nigeria's petroleum industry? A structural equation modelling approach (2015) 11(4) *Asian Social Science* pp.275 -297

¹⁴ Teddy Jike "Environmental Degradation, Social Disequilibria, and the Dilemma of Sustainable Development in the Niger Delta" (2004) 34(5) *Journal of Black Studies* 686-701

¹⁵ Chidi Ibe, Min Wang, Shoon Ling Kwek and Kai Yii "Exploring the impact of strategic proactivity on perceived corporate social responsibility in Nigeria's petroleum industry? A structural equation modelling approach" (2015) 11(4) *Asian Social Science* 275 -297

¹⁶E. E Ibok and K. S. Mboho "Corporate Social Responsibility Towards Host-Communities in Nigeria: Focus on ExxonMobil in Akwa Ibom State" (2011) 3(1) *Journal of Sociology, Psychology and Anthropology in Practice* 110-119

¹⁷ *Oguru et al. v. Royal Dutch Shell PLC* [2011] 365498 / HA ZA 10-1677

¹⁸ *Oguru et al. v. Royal Dutch Shell PLC* [2011] 365498 / HA ZA 10-1677

specific oil leakage¹⁹. It has also not as yet been substantiated that a legal person can be ordered to implement a Different (environmental) policy under Nigerian law, as claimed by Oguru et al. in the main actions at VII (argument at c)²⁰. Neither has Oguru et al. substantiated that the management of an oil pipeline must provide security for it under Nigerian law, or that the management may be obliged to replace an inadequately maintained oil pipeline under Nigerian law, regardless of whether this inadequate maintenance situation has led to leakages (argument at d)²¹. Finally, Oguru et al. have explained how the relationships of ownership and authority within the Joint Venture are relevant under Nigerian law to the liability of the participating enterprises (argument at e)²². The implication of this case is that the position of the law in Nigeria as it relates to corporate criminal liability remains undesirable. This is true as the issue of holding a company liable for offences with mental elements including murder and manslaughter remains neither here nor there²³. The situation makes claimant to file for civil suit abroad. In abroad, the defense counsel will raise the issue of joint venture agreement between the Nigerian government and multinational oil companies in court abroad. This is unacceptable considering first that the United Kingdom from where Nigeria borrowed the corporate criminal liability approach has since moved on to a point where companies can be held liable for corporate manslaughter²⁴. This is the case Under the UK Corporate Manslaughter and Corporate Homicide Act 2007 the effect of which in summary is that an organization is guilty of the offence of “corporate manslaughter” (corporate homicide' in Scotland) where the way in which its activities are managed or organized causes the death of a person; and amounts to a gross breach of a relevant duty of care owed to the deceased and where the way in which the organization’s activities are managed or organized by its “senior management” is a “substantial element” of the gross breach of the relevant duty of care²⁵. The important thing here is that the emphasis is not necessarily on a manager or any individual but on the organizations activity²⁶. By implication, what matters is that looking at what the organization has done, it can be inferred that there has been a breach of a relevant duty of care owed to the deceased person and that this breach emanated from the senior management of the organization and is the cause of the deceased’s death²⁷. This is very commendable. Since it is the activity of the company that is in question, the senior management principle is uncalled for²⁸. In the United Kingdom the offence of corporate manslaughter is clearly stipulated and prosecution plus conviction are much easier since there is no joint venture agreement (JVA). The colonial masters Britain knew the trick of joint venture agreement and insisted on it when they began oil exploration in Nigeria in the mid 1950s.

¹⁹ *Oguru et al .v. Royal Dutch Shell PLC* [2011] 365498 / HA ZA 10-1677

²⁰ *Supra* at 4.14

²¹ *Ibid* at 4.14

²² *Oguru et al .v. Royal Dutch Shell PLC* [2011] 365498 / HA ZA 10-1677

²³ Callistus .N. Iyidobi “Rethinking The Basis of Corporate Criminal Liability in Nigeria” (2015) 13 *The Nigerian Judicial Review* 103-130 at 117

²⁴ *Supra* at 117

²⁵ Callistus .N. Iyidobi “Rethinking The Basis of Corporate Criminal Liability in Nigeria” (2015) 13 *The Nigerian Judicial Review* 103-130

²⁶ *Supra* at 118

²⁷ Callistus .N. Iyidobi “Rethinking The Basis of Corporate Criminal Liability in Nigeria” (2015) 13 *The Nigerian Judicial Review* 103-130 at 118

²⁸ Callistus .N. Iyidobi “Rethinking The Basis of Corporate Criminal Liability in Nigeria” (2015) 13 *The Nigerian Judicial Review* 103-130 at 118

THE DESIRED LEGAL CHANGE FOR CORPORATE SOCIAL RESPONSIBILITY : CSR is increasingly important in the strategic management of organizations given the interconnected, intensely competitive, global arena in which many of them operate²⁹. Laws like corporate manslaughter law in Nigeria for example can help stimulate corporate accountability³⁰. This will take some time especially in developing countries where corruption is still a major issue. In the western world, just as the Deepwater incident made president Obama to mandate oil companies in America to regularly prepare and file mandatory environmental and social reporting³¹, it will work as a collateral that law can have effect on CSR. This can be introduced in developing African countries but what works in developed countries may not necessarily work in developing African countries like Nigeria, Cameroon, and Ghana etc. As a solution, developing countries should recognize the rights of stakeholders whom are directly affected by the failure of companies to practice CSR. The question then is why has CSR become so desirable for oil company's production in Nigeria and why is the law taking a back seat?³²The issue in Nigeria for example is the widespread community demands by community youths for relevant, direct, and sustained benefits from oil and gas companies in Nigeria. According to this writer, neither the government institutions nor companies or communities themselves have been equipped to respond to this community demands leading to protests even though Nigerian government generate a lot of money from oil business. These stakeholders like villagers, consumers etc should be granted rights and be protected under the new Corporate Manslaughter Bill 2015 Nigeria for example to demand that oil companies in Nigeria remedy the situation which destroyed their social and economic lives and livelihoods (environment) even though CSR is partially voluntary.

Table 1 The Government, MNCs and the issue of applying CSR in developing Countries (for example Nigeria)

Market Failure	Regulatory Failure	Property Rights
Pressure	Weak/ Inadequate enforcement	Injurious Use, Limited Information Right
Pressure	Corruption	
Weak Civil Society	Standards	Low Compensation
Weak Stakeholder	Regulatory Capture	Limited Ownership/ Use
Weak Institutional	Regulatory loopholes	Inadequate Remedy For Lack of Safety Standard Practices

Source: Onyeka Osuji K "Corporate social responsibility, juridification and globalisation: "interventive interventionism" for a "paradox"" (2015) 11(3) International Journal of Law in context 1-31 p.17

Companies have entrenched the tenets of sustainable development in their policy frameworks, and have channeled funds to the improvement of their host-communities, while creating active organizations to deal with negative occurrences from their production activities.³³ In spite of these efforts the stakeholders in their host-communities still engage in protests, riots, militancy and sabotage, which jeopardizes the continuous advancement of both the oil companies and the societies within which they operate.³⁴ This problem has raised

²⁹ Michele Gee, and Sue Norton "Corporate social responsibility: Strategic and managerial implications" (2013) 10(3) Journal of Leadership, Accountability and Ethics 37-43

³⁰ Samson Erhaze and Daud Momodu "Corporate criminal liability: call for a new legal regime in Nigeria" (2015) 3(2) Journal of Law and Criminal Justice 63-72

³¹ PM Clarkson, Y Lie, G D Richardson and F P Vasvari "Revisiting The Relationship between Environmental Performance and Environmental Disclosure: An Empirical Analysis" (2008) 33(4/5) Accounting, Organizations and Society 303-327

³² Olufemi Amao *Corporate Social Responsibility, Human Rights and the Law Multinational Corporations in Developing Countries* (Routledge 2011)

³³ S. O Aghalino and B. Eyinla "Oil Exploration and Marine Pollution: Evidence from the Niger Delta, Nigeria" (2009) 28(3) Journal of Human Ecology 177-182

³⁴ Omotola J.S. Shola "The next gulf? Oil politics, environmental and rising tension in the Niger Delta" 2006 1(3) Accord occasional paper series 1-31

Questions about corporate culpability of oil companies and the nature of corporate social responsibility, especially with respect to sustainable development. The law provides under Section 8(1C) of the Corporate Manslaughter and Corporate Homicide Act 2007 of The United Kingdom that a court which convicts an organization of corporate manslaughter may make a “remedial order” requiring the organization to take specified steps to remedy-(c) any deficiency, as regards health and safety matters, in the organization’s policies, systems or practices of which the relevant breach appears to the court to be an indication. This is an indication that there are laws in these colonial master’s country to enforce corporate social responsibility and their multinational companies operating in these former colonized developing countries in Africa knows about it but the problem to not having ethical policy for corporate social responsibility could lie in the nature of the joint venture agreement signed by multinational companies and the host governments.

Strategic decisions and actions of organizational leaders transcend the borders of many nations with potentially serious consequences, direct and/or indirect, for billions of people³⁵. Having an ethical policy in place (in ensuring socio-economic responsibility of CSR) especially for companies doing business in developing countries as Nigeria will help minimize barbaric acts like jungle justice (kidnapping of oil workers by indigenes of Niger Delta). The interconnectedness of nations, economies, and financial markets combined with serious issues such as climate change, political conflicts, and pandemics all call for more corporate social responsibility in businesses operating around the world.³⁶ In United Kingdom for example, the court directs the company to remedy the situation. This prevents unnecessary protests by the indigenes. Section 8 (2) CMCHA 2007 requires the jury, in making this decision, to consider evidence showing that ‘the organization failed to comply with any health and safety legislation that relates to the alleged breach’ in terms of ‘how serious that failure was’ and ‘how much of a risk of death it posed’. Ormerod & Taylor suggest that some juries are likely to conclude from the fact of a breach of health and safety regulations causing death as conclusive evidence of a gross breach of duty³⁷. Secondly, the UK government have benefit package (where the government pay money to unemployed indigenes).

The idea is for the indigene not to resort to immoral acts, violence or protests. In a philanthropic sense, it is only desired that companies extend hands of charity to the affected community. According to Wright, it is also important to remind ourselves that even though it is true that when the company is fined for corporate manslaughter, the shareholders and owners of the company will always continue to worry and remind the company of the effect of being punished for corporate manslaughter to improve companies’ corporate social responsibility practices. Still, applying philanthropy in a courtesy manner to the total business plan brings into view the idea to the local communities and the government that there is something to benefit in terms of creating jobs and provision of social amenities other than the companies just making money. This gives them preferences over other companies thinking of investing in their land who do not have such package³⁸. Oyefusi argue that with corporate philanthropy in Nigeria, oil companies say that they pay enough due to Nigerian government for rent as a tenant³⁹ on the basis of its joint venture agreement. This writer believes that it can only be desirable to include liability of Nigerian government officials for example for lack of accountability and transparency to live up to its expectation by reviewing any joint venture agreement and enact laws that will promote corporate social responsibility among companies. As a solution to encouraging philanthropy (because it is voluntary) and in educating Nigerian officials, Nigeria should implement a law that will marry the interest of the community especially in the Niger Delta with the interest of oil companies for sustainable growth⁴⁰ for the oil company and

³⁵ Kevin Lynch and Julius Walls *Mission, Inc.: The Practitioners Guide to Social Enterprise* (Berrett-Koehler Publishers, 2009).

³⁶ Marc Epstein and Adriana Rejc Buhovac, *Making Sustainability Work: Best Practices in Managing and Measuring Corporate Social, Environmental and Economic Impacts* (Routledge 2014)

³⁷ David Ormerod and Richard Taylor “The corporate manslaughter and corporate homicide Act 2007” (2008) 8 Criminal Law Review 589-611

³⁸ Li Feng, Rong Zhang and Dennis McCornac “An analysis of restrictive mechanisms on director behaviour regarding corporate philanthropy in China” (2016) 58(3) International Journal of Law and Management 246-257

³⁹ Aderoju Oyefusi Oil-Dependence and Civil Conflict in Nigeria University of Benin, Nigeria June 2007

⁴⁰ Aderoju Oyefusi Oil-Dependence and Civil Conflict in Nigeria University of Benin, Nigeria June 2007 20-21

An increased standard of living for Nigerians. However, record shows that after all efforts like pushing down prices; company managers still complain they cannot find money to sponsor these services.⁴¹ This writer believes that this difficulty is as a result of poor development strategy. A company which plan to stay long term should have a strategy to contribute to worker's safety and welfare. It is important to note that companies should continue to practice ethics, obey health and safety law, and channel money towards safety equipment. It is only desirable that it will be better that senior managers directly are punished by disqualification if the law is to have relevance⁴².

Similarly, businesses are largely responsible for creating the wealth upon which the well-being of society depends. As businesses create wealth, their actions impact societies comprised of multiple stakeholders. In turn, societies and their governments create laws, regulations, and expectations impacting business operations. The interaction between businesses and society is a major concern of corporate social responsibility (CSR). There is therefore need for a more stringent treatment to revive corporate social responsibility practices like procurement of safe working equipment to reduce oil spills and gas flaring, oil production platform explosion (near Ibeano in rivers State) killing villagers⁴³, disclosure of information, staff training to mention just a few is needed. This can only be achieved through a strong corporate manslaughter law that makes provision for community stakeholder participation, provision of health and safety in the new law, empowering police and health executives to conduct corporate manslaughter investigation, training of the Nigerian police and Nigerian health executives on matters of corporate manslaughter, independence of judiciary. This may not be achieved by reviewing incidences of death at workplace, oil spillage, gas flaring and human right abuses only.

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⁴² Frank Wright "Criminal liability of directors and senior managers for deaths at work" (2007) Criminal Law Review. 949-968

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