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Reasons Nigeria Is Not In The Forefront Of Effective Corporate Inclusivity Approach/CSR

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ABSTRACT
That Nigeria is lagging behind in the corporate best practices and responsible, ethical practices when compared with what is obtainable in the advanced nations of the world is incontrovertible as the evidence abound. Employing doctrinal research methodology, this work aimed at discussing some of the socio-economic *cum* political and legal/judicial factors negatively affecting good and integrative corporate approach and much-needed CSR practices in the country. It observed that weak and corrupt institutions, amongst others, contributed to this ugly situation. It is suggested that strengthening these institutions, reorienting the corporate directors to be responsible, ethical and integrative, among other things, will go a long way to achieve the desired result.
Keywords: oil spillages, compensation claims CSR practices

INTRODUCTION

That there are notions in many places that a number of companies, especially the big oil companies operating in Nigeria is not being responsible, ethical and integrative enough in their corporate practice cannot be denied.[1] This is evident on the clashes some of those Oil companies are having with the local communities which has resulted to civil unrest, vandalism, kidnapping for ransom etc in that area. There are cases of preventable oil spillages in those areas some of which may be linked to the usage of out-of-date exploration equipments and machineries by those companies,[2] and the failure of those companies to adopt of corporate best practices as is obtainable in the advanced countries.[3] This has resulted to untold sufferings, economic hardships, health hazards and challenges, lost of means of livelihood, amongst others, to the inhabitants of those areas. Sometimes, these irresponsible corporate practices do result in avoidable but painful deaths of Nigerians as a number of people have been roasted to death by pipeline explosion in the country. This may have moved a lot of people to call for tougher legislations and regulations to minimise control and regulate the activities of these companies which is/are believed to be irresponsible, unethical, environmentally unfriendly and therefore unacceptable. There are also calls in some quarters for the corporate objective in Nigeria – which is currently, arguably rooted on shareholder primacy approach whereby maximisation of the economic returns for the shareholders is the cardinal objective of the company which has caused the companies to be indulging in aggressive wealth acquisition and maximisation practices which is most often unhealthy to the environment and inimical to the to the interests of the other non-shareholding corporate stakeholders – to a more inclusive and integrative stakeholding approach. The efficacy of such a legislation,

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[1] See works like: Okonmah, P. D (1997) "Right to Clean Environment: The Case for the People of Oil Producing Communities in Nigerian Delta" 41(1) Journal of African Law 43; Idemudia, U and Ite UE (2006) "Corporate-Community Relations in Nigeria's Oil Industry: Challenges and Imperatives" 13 Corporate Social Responsibility and Environmental Mgt 194. Manby, B (1999) "The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities" Human Right Watch, New York. Idemudia, U (2010) "Rethinking the Role of CSR in the Nigerian Oil Conflict: The Limits of CSR" 22(7) Journal of Int'l Development 833; Amao, O.O (2008) "Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling Multinationals in Host States" 52(1) Journal of African Law 89; Amaeshi, K *et al* (2006) "Corporate Social Responsibility in Nigeria: Western Mimicry or Indigenous Influences?" 24 Journal of Corporate Citizenship 83 and George, O.J *et al* (2012) "Corporate Social Irresponsibility (CSI) a Catalyst to the Niger Delta Crisis: The Case of Nigerian Oil Multinational Companies versus Militants of Niger Delta Region of Nigeria" 4(2) Journal of Mgt Research 1.

[2] No doubt, sabotage, pipeline vandalism and oil bunkering equally contribute to the said spillages.

[3] For instance, gas flaring which is still a very common practice by those oil companies operating in Nigeria is hardly practiced anywhere else outside Nigeria.

no matter how well, articulately and marvellously made, in effectively stopping the said corporate 'poor' practices in Nigeria is highly doubtful[4] as there are a lot of fundamental socio cum political and institutional challenges almost peculiar to Nigeria which militates against the judicious implementation of such legislations and rules. It is therefore a worthwhile venture to look into some of these challenges inhibiting the adoption of good, ethical and friendly corporate practices in Nigeria, starting with the country's judicial system which is rather allegedly expensive and complicated.

Weak, Expensive, Complicated Judicial System as Constraints to Effective Corporate Practices in Nigeria:

Though the enactments of legislation(s) to regulate corporate objectives and the activities of corporations in Nigeria is imperative, the need for those laws to be judiciously enforced and the redresses therein stipulated avail the victims of corporate irresponsibility remain even more important. Unfortunately however, oftentimes, this is not the case in Nigeria. This must have moved Ogbodo to bemoan that:

> Although these laws exist (in Nigeria), yet they have failed to adequately protect the environment and the victims from the deleterious consequences of (corporate irresponsible behaviours). Some of their shortcomings include the outdated penalty sections, the incapacitation of the enforcement officials, the attitude of prosecution lawyers with respect to such cases, the attitude of the courts, etc.[5]

The importance of good, strong, effective, efficient, accessible, affordable and corrupt-free court system to the effective working of 'inclusive' corporate practices (especially in those jurisdictions where integrative practices have been legally institutionalised) cannot be over-emphasised. Agreeably, such a judicial system is a *conditio sine qua non*[6]for any workable and reliable corporate governance system.[7] In the absence of a good court system and effective legal redresses for the victims of corporate abuses, the rights - social, economic, legal *etc* rights of the citizens - may be trampled upon with impunity by the big, almighty corporations in their endless and insatiable quest for economic success (for their shareholders). Emphasising this in its report, the International Commission of Jurists (ICJ) noted that "Access to justice and availability of effective legal remedies are crucial elements in strengthening good governance in any country, as they enhance respect for human rights by the state and its agencies, including statutory corporations and private bodies, including business corporations."[8] Continuing, the report added that "with respect to corporations, the ability of individuals, especially the most vulnerable, to access justice and effective legal remedies is crucial in holding corporations accountable for their human right abuses and providing effective redress to victims."[9]

The negative impact of this ugly trend in militating against effective and integrative corporate stakeholding/CSR practices, good corporate governance practices and respect for the rights of the citizenry in Nigeria calls for special attention as any change in the country's corporate legislation and corporate objective to bring about the much desired 'inclusivity' approach without holistically addressing corruption in the Nigerian judicial system and in other relevant institutions responsible for enforcing compliance with the

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[4] Of course, at present, such legislations and corporate guidelines/regulations are in their numbers in Nigeria without much appreciable effects.

[5] See Ogbodo, S.G "The Role of the Nigerian Judiciary in the Environmental Protection Against Oil Pollution: Is It Active Enough?" at p 4. Available at: www.nigerianlawguru.com/articles/environmental%20law/THE%20ROLE%20OF%THE%20NIGERIAN%20jUDICIARY%20IN%20THE%20ENVIRONMENTAL%20PROTECTIONS%20AGAINST%20OIL%20POLLUTION,%20IS%20IT$20ACTIVE%20ENOUGH.pdf.

[6] An indispensable condition or a pre-requisite.

[7] See Ruggie, J (2008) "Protect, Respect and Remedy: A Framework for Business and Human Right", A Report for the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, UN Human Right Council, 8th Session, Agenda Item 3 (7April, 2008). Available online at Business and Human Rights Resource Centre – www.business-humanrights.org

[8] The International Commission of Jurists Report, *Access to Justice: Human Rights Abuses Involving Corporations – Nigeria*, 20th February 2012, (Geneva, Switzerland), available at http://www.icj.org/Nigeria.pdf, at p 1.

[8] ICJ Report, ibid, at p 1.

[9] Cranston, R (1979) *Regulating Business: Law and Consumer Agencies*, London: Macmillan, at p 140.

legislation; the high costs of litigation; lengthy, and sometimes endless and inconclusive court cases *etc* will bear little or no fruits no matter how very well fashioned and articulated the legislation may be, as some of the recalcitrant companies in the country will (continue to) see it as 'business as usual' – paying little or no regards to the provisions of the legislation - as they are pretty aware and convinced that they will get away with any breach or abuse of the legislation. They may not see themselves as (even if not legally, but at least, morally) bound to obey the law - especially in situations where non-compliance will yield more profits to the company. As noted by Cranston, there are certain companies where "a commitment to commercial success takes precedence over obeying the law. These businesses find it worth-while to continue with trade practices which cause offences, and treat a degree of wrongdoing as incidental to continuing with their marketing and promotional activities."[10] Such companies, obviously, abound in Nigeria.

Presently, a pressing need undeniably exists for more effective access to justice for victims of corporate human rights abuse in Nigeria – a country where industrial activities, especially oil explorations, have grave effects upon the environment and human well-being. The Nigerian legal system provides but limited legal recourse to people claiming human rights abuse by companies. The shortcomings consist in legal deficiencies such as the non-justiciability of economic, social and cultural rights of the citizenries;[11] as well as in practical causes - such as a prevalence of corruption and inadequate provisions of legal aid to the poor victims of abuse.

Nigeria, like most other resource-rich but economically developing nations, upon gaining political independence,[12] made industrialisation a top priority as a means of promoting economic development and improving the quality of lives of her citizenry.[13] Nigerian successive governments, in their sustained desire to further this drive for industrialisation, (have) endeavoured to create an enabling environment aimed at ensuring either the attraction of foreign investments or the competitiveness of her industries *vis-a-vis* developed nations. In many instances, this entailed the "adoption of policies without paying adequate attention to the health and well-being of its citizens or the protection of the environment; thereby leading to human rights and environmental abuses by business corporations operating in Nigeria, including transnational companies."[14]

The big companies operating in the country then cashed in on these voids/loopholes created by poor corporate regulations,[15] weak institutions and the Nigerian government's reluctance[16] or inability to enforce stricter rules on their activities.[17] For instance, a comparison of the responses adopted by oil companies operating in

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[10] See the Constitution of Federal Republic of Nigeria 1999 (as Amended), Chapter Two.

[11] Nigeria gained her Independence from Britain in October 1, 1960.

[12] See Anago, I (2002) "Environmental Assessment as a Tool for Sustainable Development: The Nigerian Experience" FIG XXXII International Congress, Washington D.C. USA, 19-26 April 2002, at p 2-4, available at http://www.fig.net/pub/fig_2002/TS10_3_anago.pdf.

[13] See Odubela, M.T and Omoniyi, I.I "Compliance Monitoring in Nigerian Industries" Fourth International Conference on Environmental Enforcement, p 1, available at http://www.inece.org/4thvol/odubela&omoniyi.pdf; Herz, R.L (2000) "Litigating Environmental Abuses under the Alien Tort Claims Act: A Practical Assessment" 40 Vanderbilt J.I.L 545, at p 547-549.

[14] Reacting to the situation in the oil sector, Okonmah lamented that "Statutory regulation of oil industry activities in Nigeria provides little or no protection for victims of oil pollution." Okonmah, P.D (1997) "Right to a Clean Environment: The Case for the People of Oil-Producing Communities in Niger Delta" 41(1) Journal of African Law 43, at p 43.

[16] This is especially so in those companies operating in the oil sector in the country. The sector is the most vibrant industrial sector in the country, accounting for over 95 per cent of exports and over 77 per cent of Federal Government revenue. See Amao, O.O (2008) "Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling Multinationals in Host States" 52(1) Journal of African Law 94. The oil sector is dominated by the TNCs who work mostly in partnership with the Federal Government of Nigeria through the Nigerian National Petroleum Corporation (NNPC) - a statutory company, established on 1 April 1977. According to the corporation's website, the ownership agreements for the various MNCs are as follows: Exxon Mobil subsidiary is owned by NNPC (60%) and Mobil Oil (40%); Shell Petroleum Development Corporation – NNPC (55%), Shell International (30%), Elf Petroleum (10%) and Agip Oil (5%); Chevron Nigeria Ltd – NNPC (60%) and Chevron Texaco (40%); Nigeria Agip Oil Company – NNPC (60%), Agip Oil (20%) and Phillips Petroleum (20%); Elf Nigeria Ltd - NNPC (60%) and TotalElfFina (40%); Texaco Overseas (Nigeria) Petroleum Company – NNPC (60%), Chevron (20%) and Texaco (20%). See www.nnpcgroup.com/voperation.htm. It is deducible from the above the reason why the Nigerian Federal Government is generally unwilling to impose stiff regulations on the oil industry as it owns controlling/majority shares in the companies operating in the sector, as any strict regulations on them will gravely affect the revenue of the Government which, as seen above, accounts for over 77 per cent of its revenue.

[17] See the report of The ICJ (2012) (above, n 8), at p 3. In the words of Okpanachi, the regulation of corporate practices in Nigeria is often "whittled down by several factors, including the absence of authoritative, strong, and effective environmental laws and weak regulatory and supervisory frameworks. This has led to regulatory capture and the propensity

Nigeria with their counterparts in the developed countries in their mode of operations, as well as in cleaning-up, remediation and compensation for oil spillages shows a sharp contrast in their approaches.[18] While the latter do, most often, adopt international best practice to such issues, the former hardly do.[19] Two cases in point are – the BP/US and Total/French/EU responses to the *Deepwater Horizon* and *Erika* oil spills, respectively.[20] While BP instantly admitted overall responsibility for the *Deepwater* spill, accepted swiftly an initial multi-billion US dollar liability and established a formal institutional platform to handle compensation claims from victims of the spillage,[21] its Nigerian counterparts would adopt a "confrontational response"[22] to such claims; indulge in years of denial of any responsibility; alleging sabotage as the actual cause;[23] would be making claims and counter-claims in a bid to exonerate itself from any iota of responsibility and liability for clean-up and environmental remediation efforts; would refuse to pay compensation to the victims, and would be dragging their foot in cleaning-up the spills and pollutions.[24] In other words, IOCs operating in Nigeria adopt what can be termed 'delay, deny and derailing of local justice' approach to incidence of oil pollution or damage allegedly occasioned by their industrial operations.

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of oil multinational companies to evade Nigeria's environmental laws." Okpanachi, E (2011) "Confronting the Governance Challenge of Developing Nigerian Extractive Industry: Policy and Performance in the Oil and Gas Sector" 28(1) Review of Policy Research 25, at p 43.

[18] SPDC, for instance, has repeatedly been found liable for spills due to its failure to maintain and supervise the operation of its equipments. Again, it has been liable for failures to clean up and remediate. Thus, in his report, Prof Steiner concluded that SPDC is guilty of double standard as it continues operating far below internationally recognised standards to prevent and control spillages in Nigeria. It has also not employed the best available technology and practices that it uses elsewhere in the world. Steiner, R (2010) "Double Standard, Shell Practices in Nigeria Compared with International Standards to Prevent and Control Oil Spills and the Deepwater Horizon Oil Spill", Report on behalf of Friends of the Earth/Milieudefensie Netherlands, University of Alaska, Anchorage, Alaska, USA (November 2010) at p 35. Available at: www.milieudefensie.nl/publicaties/rapporten/double-standard. See also UNEP report which concludes that: "It is evident from the UNEP field assessment that SPDC's post-oil spill clean-up of contamination does not achieve environmental standards according with Nigerian legislation, or indeed with SPDC's own standards." UNEP, *Environmental Assessment of Ogoniland*, Nairobi (2011), at p 150. Available at www.unep.org/nigeria.

[19] This is notwithstanding the fact that relevant Nigerian legislation demands that operators of oil fields must observe internationally recognised standards with regard to 'good oil field practice'. For instance, Regulation 25 of the Petroleum Drilling and Production Regulations of 1969 requires operating companies to "adopt all practicable precautions including the provision of up-to-date equipment.....to prevent the pollution.....and where any such pollution occurs or has occurred, shall take prompt steps to control and, if possible, end it." Again, Regulation 37 requires them to ensure that all installations are (maintained) in good repairs so as to prevent "the escape or avoidable waste of petroleum", and to cause "as little damage as possible to the surface of the relevant area and the trees, crops, buildings, structures, and other property thereon." The official UNEP report on Ogoniland (Niger Delta) on SPDC has affirmed the company's lack of adherence to international best practice standards: "The control and maintenance of oilfield infrastructure in Ogoniland is clearly inadequate. Industry best practice and SPDC's own documented procedures have not been applied and as a result, local communities are vulnerable to the dangers posed by unsafe oilfield installations. The facilities themselves are vulnerable to accidental or deliberate tampering. Such a situation can lead to accidents, with potentially disastrous environmental consequences." UNEP Report (2011), ibid, at p 100.

[20] Another good example is Exxon Valdez oil tanker spill of 1989 in Alaska.

[21] It announced in 2010 that it would create a US$20 billion escrow account to satisfy claims of the victims.

[22] Ong, D.M "Remedying Oil Spills in the Niger Delta: Elements for Assessing Responsibility" in S Leader *et al* (eds.) Corporate Liability in a New Setting: Shell and the Changing Legal Landscape for the Multinational Oil Industry in the Niger Delta" An Essex Business and Human Rights Report, at p 69.

[23] "Blaming major oil spillages on sabotage is a lazy and pedestrian explanation of the obvious (improper) and archaic oil field practices of the oil firms in Nigeria." Aghalino, S.O (2009) "Corporate Response to Environmental Deterioration in the Oil Bearing Area of the Niger Delta, Nigeria, 1984-2002" 11(2) Journal of Sustainable Development in Africa 1, at p 6. Kaufman re-echoed a similar sentiment/doubt: "While it is undoubtedly true that local criminals and insurgent gangs have been known to purposely damage oil facilities, the notion that the lion's share of environmental damage in the Delta is self-inflicted by the actions of the local communities who have to live with the consequences is absurd." Kaufman, J "Stop Oil Companies from Denying, Delaying and Derailing Local Justice" *EarthRights International* 13 July 2010, available at www.earthrights.org/blog/stop-oil-companies-denying-delaying-and-derailing-local-justice. The reason for the oil companies' attempt to link spills to sabotage is not far-fetched: though they are responsible for the clean-up and remediation of the polluted site (irrespective of the cause – see sections 2.11.1 and 4.1 of the Environmental Guidelines and Standards for Petroleum Industry (EGASPIN) (2002)), the victims are not, by virtue of a Nigerian law, entitled to any compensation for any damages suffered when the pipeline or an ancillary installation is sabotaged by third parties. See Oil Pipelines Act 1990, s 11(5)(c).

[24] See Vidal, J (2010), Environment editor, "Nigeria's agony dwarfs the Gulf oil spill. The US and Europe ignore it: The Deepwater Horizon disaster caused headlines around the world, yet the people who live in the Niger Delta have had to live with environmental catastrophes for decades." *The Observer (UK) newspaper*, Sunday 30 may 2010.

Similarly, Total co-operated very well in the *Erika* oil tanker spill on the French coast of Brittany in 1999. It, as the charterer of the ship, accepted immediately the court's initial order for it to pay out millions of Euros in clean-up and remediation costs.[25]

Again corruption, which is prevalent in the country, is not helping matters in this regard - as it entrenches lack of respect for environmental, social, economic and human rights and well-being of Nigerians. The activities of transnational companies (TNCs) operating within the country's oil and gas sector bear testimonies to this.[26] The Nigerian oil sector is dominated by TNCs.[27] Unfortunately, most of the TNCs in the country are not "using and adhering to the same human rights and environmental standards applicable in their countries of origin. Instead, the TNCs have been accused of adopting operating standards that do not meet minimum human rights and environmental standards in their home countries."[28] This is not surprising though as there is always the high likelihood that managers who operate in a country like Nigeria with weak, lax, ineffective and inefficient judicial system, inactive social monitors or societal actors/activists[29] and low social expectations from the society will engage in corrupt and irresponsible corporate behaviours than those operating in a jurisdiction with better legal and institutional frameworks.[30] The excuse of the TNCs for adopting such poor operating standards in Nigeria is that it will be very costly for them to upgrade to international best practices, and will therefore affect jobs.[31]

The economic difficulties identified above also highlight related but also distinct difficulties arising from Nigeria's poverty where the high cost of litigation acts as a very significant barrier for a large section of its population. The victims of human rights abuse by companies in Nigeria are "too often defenceless" as they "face major obstacles when seeking justice."[32] This is traceable, *inter alia*, to: the fact that cost of litigation in Nigeria is very expensive, way beyond the reach of an average Nigerian;[33]

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[25] Shell also allegedly paid US$15 billion in environmental clean-up and remediation operations for spillages and other environmental damage caused by its petroleum activities on Sakhalin island II project in the Russian Far East region. See Leader, S *et al* "Corporate Liability in a New Setting: Shell and the Changing Legal Landscape for the Multinational Oil Industry in the Niger Delta" An Essex Business and Human Rights Report, at pp 17 and 103.

[26] This does not, however, mean that the indigenous companies have better human rights or environmental records than their TNC counterparts. For instance, there have been bitter complaints from the host community of the Kaduna Industrial Complex about the unhygienic condition of River Kaduna, the only source of portable water to the residence of the area, caused by the discharge of industrial waste and toxic water into the river by the textile mills in the complex - Anago, (above, n 13), at p 8; Ezekiel, E "In Mpampe, Residents Contend with Noise, Dust" *The Punch Newspaper*, Thursday, 24 June 2010, at p 38 (talking about the deplorable and environmental degrading activities of stone-mining companies in Mpampe, Abuja.

[27] The Nigerian Content Act, (Nigerian Oil and Gas Industry Content Development Act 2010) and the Petroleum Industry Bill, currently before the National Assembly are seeking to reverse this trend.

[28]ICJ Report (above, n 8), at pp 2-3. See also Eaton, J (1997) "The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Rights to a Healthy Environment" 15 Boston University Int'l L.J 261, at 266-270; Olukoya, S "Environmental Injustice from the Niger Delta to the World Conference Against Racism" CorpWATCH, 30 August 2001, available at http://www.corpwatch.org/issues/PRT.jsp?Articleid=18; and Carew, K.S.A (2002) "David and Goliath: Giving the Indigenous People of the Niger Delta a Smooth Pebble – Environmental Law, Human Rights and Re-Defining the Value of Life" 7 Drake Journal of Agricultural Law 493, at pp 496-498.

[29] See Eze, J..A (2021) "Social Monitors as Agents/Catalysts of Corporate Socially Responsible Behaviour 6(1) COOULJ 253.

[30] See Husted, B.W (1999) "Wealth, Culture and Corruption" 30 Journal of Int'l Business Studies 339.

[31] See Manby, B (1999) "The Price of Oil: Corporate Responsibility and Human Rights Violation in Nigeria's Oil Producing Communities" Human Rights Watch, January 1999, at pp 52-53; Shinsato, A.L (2005) "Increasing Accountability of Transnational Corporations for Environmental Harms: The Petroleum Industry in Nigeria" 4(1) Northwestern Journal of Int'l Human Rights 185, at 189; Rowell, A "Oil Companies Threaten Nigeria over Reform" Oilchange International, 24 February 2010, available at http://www.priceofoil.org/2010/02/24/oil-companies-threaten-nigeria-over-reforms/.

[32] See ICJ Report (above, n 8), at p 3. Obviously, there are asymmetries in power, influence, resources, technical and legal knowledge *etc* between the victims of industrial abuses in Nigeria and the big/rich defendant companies. The same thing can be said of the relationship between the Nigerian regulators and the companies they are meant to, or rather, attempting to regulate.

[33] Access to justice in Nigeria is partly driven by socio-economic factors, *e.g.* poverty which is still widespread in the country. Undoubtedly, poverty has adverse effect on victims' ability to hire and retain (quality) legal representation and use legal institutions. See Andersen, M "Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in the LDC", Paper for Discussion at WDR Meeting, 16-17 August 1999, at pp 9 & 18. Available at www.siteresources.worldbank.org/INTPOVERTY/Resources/WDR/DfiD-Projectpapers/andersen.pdf. He noted that ".....it is the litigants and their lawyers who determine which disputes will reach the courts, when and how often courts will be petitioned, and how intensively conflicts will be pursued." Ibid, at p 9. Though there is Legal Aid Scheme in Nigeria, it

inordinate delays[34] and unreasonable length of proceedings;[35] because of the level of illiteracy in the country, the (poor) victims may not even know their legal rights; complicated, cumbersome and complex court procedures; the investigating apparatus – the Nigerian Police Force (NPF) is under-equipped, under-staffed, and riddled with corruption – this sometimes affect the outcome of their investigation especially when it involves allegations of impropriety/abuse against the big companies; and some difficulties faced by the judgment creditor in enforcing the court's ruling.[36]

Some of the Nigerian courts are also not helping matters as they are sometimes not proactive in preventing further abuses and spillages through court orders (such as injunctions) halting operations until the faults are fixed; and ensuring that justice is done (and timely also) to the victims.[37] Allegedly, the courts have been "convinced that the overall revenue gains to the State from allowing operations to continue despite the damages outweigh the material losses to domestic populations."[38] This must have prompted J.A Odeleye – Shell's legal manager - to aver in 1998 that "The law is on our side because in the case of a dispute, we don't have to stop operations."[39] But, this sort of practice negates international human rights standard which opposes priority being too easily given to the goal of promoting national wealth when this is obtained at the expense of grave losses to local people.[40]

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suffers from chronic underfunding. A good number of victims are also unaware of the existence of the Scheme. As a result, it fails to be of much tangible help to the victims who are in need to access judicial redress. Again, it may be expensive and above the means of the poor victims to gather evidence – especially where technical or scientific evidence and testimonies/witnesses are required to support their case. On the other hand, the defendant companies, because of their rich pockets, usually have advantage over their victims in this respect as they can afford to hire specialists in the particular field to testify against and demolish/rebut the testimonies of the plaintiff's witnesses. See typically *Ogiale v Shell* ((1997) 1 NWLR (pt 480) 148; *Seismograph Services Ltd v Akpruoyo* (1974) 6 SC 119, at 136; *Chinda and 5 others v Shell-BP Petroleum Development Company* (1974) 2 RSLR 1; *Seismograph Services Ltd v Ogbeni* (1976) 4 SC 85; *Shell-BP Development Company v Chief W.W Amachree and 5 others* (2002) FWLR 1656. Osipitan painted the picture thus: "…..due to the financial powers, potential defendants in environmental law suits are in advantage positions to procure the services of experts to give uncontradicted evidence in rebuttal of the presumption of negligence." Osipitan, T "Problems of Proof in Environmental Litigation" in J.A Omotola (ed.) *Environmental Law in Nigeria Including Compensation* (Faculty of Law, University of Lagos, 1990), at pp 118-119.

[34] See *Ejama-Ebubu Community v SPDC* (2010). This is a case that was instituted in the Federal High Court, Asaba, Delta State in 2001 against Shell for nuisance. Apparently, in a bid to delay the proceedings, wear the plaintiffs out and frustrate the case, Shell tried to file 27 interlocutory appeals in the course of the matter. On each occasion the trial court decided the interlocutory appeal in favour of the plaintiff, Shell tried to suspend the proceedings in order to appeal to a higher court. The case was finally decided in 2010, after it has outlasted two judges: it was the third judge that concluded the matter. Shell, after the said High Court judgment of 2010, filed an application for a stay of execution, and appealed against the judgment alleging that the spill occurred during the Nigerian Civil War by troops and that the company was not operating in the area at the time because of the war. Kaufman came to the conclusion that Shell's action in this case "thus fits a disturbing trend in international oil company liability cases – first, blame others; second, avoid international scrutiny; and third, overwhelm local courts and governments with limited resources." Kaufman (above, n 23).

[35] The average duration it takes to conclude a matter in the Nigerian court is very long. See Olanipekun, W (2009) "Access to Justice and Legal Process: Making the Legal Institution Responsive", Paper Delivered at a Public Lecture Organised by the Hon. Justice Kayode Eso Chambers, Faculty of Law, University of Lagos, Nigeria, on Wednesday, 17th June 2009, at pp 9-12. A case in point is *SGBN v Aina* [1999] 9 NWLR (pt 619) 415. Here, a land suit was instituted in a High Court in 1991, and the ruling was delivered by the High Court on April 3, 1999. The case went on appeal to the Court of Appeal and the appeal judgment was delivered on July 8, 1999. The Court of Appeal set aside the judgment of the High Court for non-service of hearing notice on the defendant. Similarly, in *U.T.B. v Dolmetsch Ltd* (2007) 8 M.J.S.C. 1, at p 19, the Nigerian Supreme Court said "Once again we are faced with a very unfortunate situation in which an action commenced in February 1997 is yet to go beyond the stage of pleadings ten years after, due to interlocutory appeals on interim order of injunction.....Meanwhile, the substantive action still pends at the Federal High Court, Enugu..." Of course, justice delayed is justice denied.

[36] Sometimes, appeals, delay of execution order and other indirect means are used as a tactic to delay or deny the judgment creditor the enjoyment of the fruits of his successful suit. See Kaufman (above, n 23); Leader *et al* (above, n 25), at pp 3, 14. Shell employed the technique in *Chief Pere Ajunwa and Anor v Shell* (Suit No FHC/YNG/CS/3/05 (Unreported). There judgment was delivered by the Federal High Court on 24 February 2006. Shell appealed against the ruling to the Court of Appeal, and it took time for the appeal to be decided. Such a tactics is mostly witnessed by the victims of corporate human rights abuses if the government has interests in the operations of the defendant company, for example, TNCs operating in the oil industry. See ICJ Report, (above, n 8), at pp 58-60.

[37] See Ogbodo **(above, n 255)**

[38] Leader (above, n 25), at p 44. See also Frynas, J (1999) "Legal Change in Africa: Evidence from Oil-Related Litigation in Nigeria" 43(2) Journal of African Law 121, at pp 122-3.

[39] Interview reported in Frynas (ibid), at p 123.

[40] See Leader, S and Ong, D (2011) *Global Project Finance, Human Rights, and Sustainable Development*, Cambridge: CUP, ch 5.

These and other shortcomings do throw the local victims of corporate abuse off from maintaining legal actions against the companies involved. Commenting on the above, Carlos Lopez[41] said: "Poor rural victims of corporate human rights abuse are usually unaware of their legal rights and do not have the financial resources to file court processes, gather information and evidence, and afford legal services." The said shortcomings are evidenced by the low level of litigations against companies involved in human right abuses and other forms of corporate irresponsible behaviours, the small number of cases that reached a satisfactory conclusion for the victims, and poor enforcement of courts' decisions and rulings in Nigeria.[42]

Further barriers to good corporate practices and effective CSR practices in Nigeria are also apparent from the country's under-developed infrastructure. CSR practices, especially when viewed from corporate philanthropy perceptive,[43] depend, to a large extent, on the profitability of the business enterprises of the company involved. In other words, logically speaking, it is when the company makes (some) profit that it can be moved, or rather, triggered to contribute or invest some parts of it back to the community.[44] In Nigeria, the cost of doing business is generally high. This is attributable, among other, to dearth of infrastructure and lack of security in the country. For instance, there is poor road network. A number of the available ones are not in good condition. This makes the cost of transportation of industrial goods, raw materials and services to be high. Road accidents (often involving the companies' vehicles and goods) are also very frequent.[45] Rail transport (which is usually ideal, safer and cheaper for cargo transportation) is almost moribund. This has made most companies to rely on the road for moving their goods and services.

Most companies rely heavily on electricity generating sets for their power supply as Nigerian national power supplier – the sole source of electric power in the country[46] - is very epileptic and highly unreliable. Consequently, the cost of buying, fuelling and maintaining these generating sets add hugely to the (running) costs of doing business in the country. Furthermore, lack of personnel security and the security of property also present significant challenge for the companies. A lot of money, employees' lives, working hours and resources are lost annually by these companies to vandals and vandalism, hoodlums, armed robbers, fraudsters, and kidnappers (in form of payment of ransom).[47] All these having been said, it is also noteworthy that, when compared with most developed countries, the cost of labour is appreciably cheap in Nigeria,[48] so also is the (cost of) rent for business premises.

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[41] He is a Senior Legal Advisor for the Business and Human Rights Programme of ICJ. See http://www.icj.org/default.asp?nodeID=349&sessID=&language=1&myPage=legal...

[42] The trend may soon change: there are increasing prospects that the MNCs operating in Nigeria can be successfully sued abroad - within their parent companies' home jurisdiction. This possibility has recently been affirmed by UK courts. A case was tried in the UK court between Dodo Community of Delta State, Nigeria and Shell Petroleum Development Company of Nigeria Ltd (SPDC) for damage to the means of livelihood of the former occasioned by the corporate activities of the latter. See generally, Leader *et al* (above, n 25), at pp 56-59. Happily, these MNCs are not likely going to find it easy to manoeuvre their ways and get off the hook from their corporate irresponsibilities in these foreign courts as they do in Nigerian courts.

[43] This is usually the case in Nigeria. Thus, Amaechi found that CSR is essentially understood and practiced as corporate philanthropy in Nigeria: Amaeshi, K *et al* (2006) "Corporate Social Responsibility in Nigeria: Western Mimicry or Indigenous Influences?" 24 Journal of Corporate Citizenship 83.

[44] Thus, part of the findings in a research carried out by Silberhorn and Warren is that CSR policies vary with company's turn-over. See Silberhorn, D and Warren, R.C (2007) "Defining Corporate Social Responsibility: A View from Big Companies in Germany and the UK" 19(5) European Business Rev352. Similarly, in the words of Prof Kakabadse, ".....No matter what is being said at the top of the organisation, managers at the middle and lower down, were being driving by their ability to stick to budget....bonuses were being driven on that and the future in the organisation was dependent on that. Here emerged the tension between managing cost and actually spending on CSR – no matter what the policy was from the top – and inevitably what won? The costs." Quoted in Pedamon, C (2010) "CSR: A New Approach to Promoting Integrity and Responsibility" 31(6) Company Law 172, at p 178.

[45] The insurance system in the country is also not very reliable. The insurance companies most often do find a way of avoiding compensating for the losses suffered by the companies and their victims. Again, the shortcomings in the legal and the judicial systems highlighted above are application in equal force here.

[46] It was originally managed by a statutory company owned by the Federal Government of Nigeria called National Electric Power Authority (NEPA) which later changed to Power Holding Company of Nigeria (PHCN). It currently goes with different names, depending on the area concerned.

[47] According to Vanguard Newspaper, Shell PB spent almost 40 percent of its global security budget in Nigeria between 2007 and 2009. Vanguard Newspaper, Nigeria, Wednesday, 22nd August, 2012, available at www.vanguardngr.com/2012/08/police-kill-4-kidnappers-as-hostage-escapes/. Accessed on August 22, 2012.

[48] "There are critical constraints in Nigeria that impede the development of the non-oil sector. Some of the critical issues include electricity, which affects productivity and competitiveness of (Nigerian) enterprises. However, the labour cost in

A number of the companies also engage in 'corner-cuttings'.[49] All these make business activities to still be profitable in Nigeria.[50]

However, no matter how little the profit made may be, a 'smart' company operating in Nigeria should strive to indulge in some kinds of corporate philanthropy if it were to enjoy the loyalty of the community.[51] The reason is that communal life or sharing is a typical feature of a traditional African society. The 'haves' are (as a matter of tradition) expected to give or share with the less privileged ones.[52] It may therefore not be too surprising if Nigerians (as Africans) expect certain degree of 'giving back' to the community from the companies. Again, good CSR practices may temper the scale and intensity of violence against the company and its employees.

There are still other relevant factors – centrally social factors and ones associated with the markets for products and employment. As said earlier, Parkinson asserts that product, employment and investment markets can influence the standards of corporate responsibility by punishing poor performers and rewarding good ones[53]. This claim may be very true in developed countries. But, the question is: to what extent can it be applicable in an under-developed country like Nigeria? Eze highlighted how consumer boycott can help to keep companies, especially those with brand names, in check.[54] This measure may prove potent if well harnessed. Though it can work out properly in civilised, enlightened and developed countries, it is doubtful if that is the case in a developing country like Nigeria where level of enlightenment is still low. Co-ordinating such a boycott in such a society is definitely going to be an upheaval if not an impossible task.

Again, Nigerian market is import-driven. Majority of these branded companies do not have their companies in Nigeria. A great number of them also do not have sale/distribution outlets, owned and managed by them, in Nigeria. In other words, they do not usually have earmarked distributors in Nigeria. Most often, Nigerian traders go to foreign countries to buy and import those products in relatively small quantities. These importers (who are not licensed distributors of the companies) do not usually import or sale only a single branded product. They, most often, import and sale them with other allied/mixed products. So, even if a co-ordinated attempt is made to boycott such a branded product, the impact will not be huge on the importers as they can still earn their income through selling other unbranded products they imported. Again, as the local importers/sellers are not their authorised distributors, the manufacturers may not even be informed of the boycott let alone of feeling its impacts.

Many CSR advocates claim that one of the advantages a company has for being socially responsible is that it enables it to hire and retain the best workforce in the employment market. Conversely, irresponsible

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Nigeria is actually lower than most of Nigeria's competitors such as Brazil and South Africa.....": Ms. Marie Francoise Marie-Nelly, (the Country Director, World Bank, Nigeria), in the World Bank Assessment Report titled "Nigeria, An Assessment of the Investment Climate in 26 States", Abuja, Nigeria. See Vanguard Newspaper, Nigeria, Friday, August 10, 2012. Available at www.vanguardngr.com/2012/08/nigeria-remains-attractive-for-investors-but-says-w-bank-chief-2/

[49] They do engage in improper business conducts such as tax evasion, not following 'due process' in their business dealings, bribing to evade the law and for favour- for instance, to secure contract deals. World Bank issued a report recently averring that 80% of Nigerian businesses offer bribe to government officials to facilitate business deals/transactions. Although the World Bank decried the high proclivity for bribe and corruption among Nigerian businesses, it noted that Nigeria remains the most attractive investment destination in Africa. See Sahara Reporters, Wednesday, 15 August, 2012. Available at www.saharareporters.com/article/world-bank-responsible-grand-corruption-nigeria

[50] Thus, the World Bank rated Nigeria as one of the fastest growing emerging economies in the world. See www.leadership.ng/nga/articles/45118/2013/01/15/nigeria_among_fastest_growing_emerging_economies_world_bank.html

[51] But, it has to be pointed out that good CSR activities transcend charitable donations. Under all circumstances, a company's irresponsible behaviours cannot be paid for with such philanthropies. A tainted wealth remains a tainted wealth – no amount of generous philanthropies can remedy or cleanse it from those dents. See Ho, JKS (2008) Is Section 172 of the Companies Act the Guide to CSR?" 31(7) Company Lawyer 207, at p 208.

[52] Thus, Amaeshi posited that Nigerian concept of 'extended kinship' harbours and fosters a "communal philosophy of life and concern for the less privileged." This necessitates the extension of corporate profits beyond solely those involved in the corporation. Amaeshi *et al* (above, n 43), at p 18. Similarly, Visser stressed the impact of cultural expectations to CSR, noting that "philanthropy is an expected norm" in Africa. Visser, W (2007) "Revisiting Carroll's CSR Pyramid: An African Perspective", in A Crane and D Matten (eds.) Corporate Social Responsibility: The Three Volume Set, London: Sage, at p 12.

[53] Parkinson, J (2003) "Disclosure and Corporate Social and Environmental Performance/; Competitiveness and Enterprise in a Broader Social Frame" 3 JCLS 3, at p 11.

[54] See Eze, J.A (2021) Social Monitors as Agents/Catalysts of Corporate Socially Responsible Behaviours" 6(1) COOULJ 253, at pp 263-267.

Companies will find it hard to do so. But, in a country like Nigeria where unemployment is very high,[55] it is apparent that such (social) consideration will be the last thing in the list of factors considered by a potential employee when offered a job opportunity. This is a country where millions of university graduates are unemployed. Similarly, the difficulties being faced by others without jobs for years in securing one will also deter other employees who may not be very pleased with the (social) records and reputation of their companies from quitting the employment. Consequently, employers in Nigeria do have a field day in picking whoever they want to employ.

Understandably, this kind of a situation - where many potential employees (who are) ably qualified from every ramification are chasing very few available employment positions - can embolden companies to be treating their workers in socially unacceptable way(s),[56] especially where the legal/judicial system and the laws of the land and other relevant institutions are not very keen and effective in protecting the rights of the employees.[57] In a country like Nigeria – "an economy dogged by chronic unemployment"[58] - employment market may therefore not be very potent in causing companies to be socially responsible and stakeholder-oriented (especially in the area of employee welfare) in their corporate policies.

Lastly, it was highlighted earlier in this work that social monitoring can aid in redefining corporate ethical stand and inclusivity. We will now consider the extent to which it can do so in Nigeria.

Social Monitors:

As noted above, the importance of social monitors in making and/or forcing companies to be socially responsible cannot be over-emphasised.[59] There are in existence, a number of social monitors, especially NGOs, in Nigeria. This does not mean that it can, in any way, be compared with what is obtainable in developed countries, for instance, the UK.[60] In Nigeria, some of these monitoring groups are under-financed. Again, because of the corruption common in the country, the objectivity and dispassionateness of some of them in discharging this crucial role cannot be vouched.[61]

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[55] **According to the National Bureau of Statistics (NBS), Nigerian unemployment rate in *2011* is 23.9 percent. See NBS, "Nigerian Unemployment Report *2011*", available at www.businessdayonline.com/NG/index.php/economic-watch/32204. Many Nigerians will argue that the unemployment rate in the country is way more than that.**

[56] A number of the oil companies operating in the Niger Delta have been accused of gross violations of labour rights. They, for instance, engage a substantial number of their workers on temporary basis – employing them on short-term contracts – as casual workers. The contracts are then renewed as long as the company needs that very worker. Obviously, these are permanent workers who are treated as if they are casual, thereby denying them trade union rights, subjecting them to lesser wages than their permanent counterparts though they do the same work, and depriving them access to pensions and other entitlements enjoyed by their permanent colleagues. See "The Degradation of Work: Oil and Casualisation of Labour in the Niger Delta", a Publication of Solidarity Centre, Washington DC, (2010), available at www.solidaritycenter.org; Leader *et al* (above, n 309), at pp 42 & 110.

[57] See Husted, B.W (1999) "Wealth, Culture and Corruption" 30 Journal of Int'l Business Studies 339.

[58] Amao, O and Amaeshi, K (2008) "Galvanising Shareholder Activism: A Prerequisite for Effective Corporate Governance and Accountability in Nigeria" 82 Journal of Business Ethics 119, at p 128.

[59] See Eze, JA (above, n 54).

[60] Many of the internationally leading actors in the CSR field are based in the UK. UK is the home of a number of CSR think tanks, research institutions and CSR vanguard organisations like AccountAbility, Chatham House, Tomorrow's Company, Institute for Public Policy Research etc, and CSR campaigning NGOs like Friends of the Earth, Forum for the Future, Amnesty International, Oxfam and Christian Aid are examples of NGOs creating remarkable impacts as watchdogs in the UK. Again, a CSR consultancy industry has emerged in the country rendering consultancy services to corporations, policy makers *etc* on CSR issues. **(**See Moon, J (2004) "The Institutionalisation of Business Social Responsibility: Evidence from Australia and the UK" 5(1) The Anahuac Journal. Furthermore, extensive coverage of CSR issues by UK media is viewed to be of a competitive advantage. See Ward, H and Smith, C (2006) CSR at a Crossroads: Future of CSR in the UK to 2015" London Int'l Institute for Environment and Development 1, at p 5.

[61] Shareholder activism can be a veritable instrument in some countries in promoting stakeholder inclusivity approach, and also in enhancing good corporate governance by acting as a watchdog checking or monitoring managerial abuses. See Eze, J..A (2017) "Shareholder Activism as a Possible Catalyst for Corporate Non-Shareholding Stakeholder Inclusivity" 3(1) COOULJ 170. However, shareholder activism has, allegedly, been politicised in Nigeria making it to be less effective in actualising these targets. It now affords an opportunity for self-enrichment of the officials of those associations. Some of the officials of the associations (formed, with the support of the government, to monitor the activities of the corporate management team and to co-ordinate the activities of the passive and dispersed shareholders) collect bribes and other favours from the company's management whose activities they are meant to check. They also participate in numerous corrupt practices of the executives of the company. These obviously hinder their activism. See Adegbite, E, Amaeshi, K and Amao, O (2012) "The Politics of Shareholder Activism in Nigeria" 105 Business Ethics 389.

In the words of Parkinson, "availability of information is a pre-condition for effective public pressure for improved (corporate) performance."[62] It is beyond doubt that corporate information disclosure and social reporting are very essential in aiding these social monitors in playing their roles effectively. Corporate information disclosure through social reporting - especially when this is comprehensively and objectively done and not aimed merely to serve as a corporate image-enhancing mechanism - is a vital tool in stimulating and strengthening public pressure on companies to improve their social, ethical and environmental performance. Some of these social monitors, however, cannot function very well in Nigeria because of scarcity of relevant information. The activities of some of these corporations are shrouded in secrecy. Though the public liability companies are duty-bound under CAMA to publish their annual reports, the contents are mainly 'green washing'.

Again, when compared with a country like the UK, social awareness is generally low in Nigeria.[63] Many Nigerians tend to adopt 'I don't care attitude' to human right, socio-economic and political issues. Corporate irresponsible behaviours are usually greeted with the same nonchalant attitude. Illiteracy, obviously, is one of the contributory factors to this, so also is poverty. Ineffective law enforcement institution(s) is also to be blamed - as it discourages even the enlightened ones who know their rights from seeking legal redress.[64] These and other factors do make the activities and efforts of the few social monitors not to be adequate and effective enough in exposing and curbing the irresponsible behaviours of the big corporations.

CONCLUSION

From the discussions so far, one may be right to conclude that the fact that Nigerian corporate legislation (and corporate objective) is eventually reviewed and modelled towards stakeholder inclusivity approach will not, in reality, bring about much desired change in the country in the absence of necessary institutional changes/environment.[65] For companies operating in Nigeria to achieve the expected ethical standard and the desired adoption of corporate wider approach, there is the need to strengthen Nigerian's justice system to make it more effective, less cumbersome, less time consuming, cheaper and accessible to all and sundry, the rich and the poor. The law enforcement agents in the country need to be reinvigorated and repositioned for effective and efficient discharge of their duties. More officers need to be recruited and the officers need to be oriented and reoriented, trained and retrained on a regular basis to keep them abreast with the best practices expected of them. They should also be disoriented on bribe collections and from other corrupt practices. They should also be properly funded and well paid so as to reduce the incidences of corrupt practices amongst them. He social monitoring agents and agencies need to be strengthened, motivated, encouraged and properly funded to enable them discharge their roles efficiently and dispassionately. The consciousness of social awareness and social expectations need to be awoken amongst Nigerian. This will aid them to know when their rights are violated by these 'irresponsible' companies and the proper action to be taken on such an occurrence. The Legal Aid Council needs to be properly funded, more staff (especially experienced ones) recruited and more awareness created about its existence and the services it renders, especially to the indigent Nigerians. Finally, Nigerian corporate managers and directors need to be reoriented of the need to be integrative, responsible and responsive to their wider stakeholders and be divested or diffused of the notion that their chief if not sole object/target is to maximise profit for their shareholders.

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[62] Parkinson (above, n 53), at p 11.

[63] Generally, the level of social awareness in the UK is high. See, for instance, Buckley, C (2002) "UK 'Most Socially Aware'" *The Times* 18th June, 2002

[64] This has been treated in more details above.

[65] See Williams, C.A and Aguilera, R.V (2008) "Corporate Social Responsibility in a Comparative Perspective" in Crane *et al*, *The Oxford Handbook on CSR*: Oxford: OUP, 452.