

Corporate Social Responsibility and the Legal Regulation in Nigeria

Chima Mordi^{*}, Iroye Samuel Opeyemi^{**}, Mordi Tonbara^{***}, Stella Ojo^{*}

^{*} Brunel Business School, Brunel University, Kingston Lane Uxbridge, Middlesex UB8 3PH, United Kingdom

e-mail: chima.mordi@brunel.ac.uk, ibiyinka.ojo@brunel.ac.uk

^{**} National Open University of Nigeria, 14/16 Ahmadu Bello Way, Victoria Island, Lagos Nigeria

e-mail: samfliroy@yahoo.com

^{***} School of Law, The Liberty Building, University of Leeds, Leeds, LS2 9JT, United Kingdom

e-mail: lwtm@leeds.ac.uk

Abstract

This study examines corporate social responsibility (CSR) in Nigeria in the light of legal regulations, case laws and governmental policies. It will examine the existing role that the Nigerian law plays for the sustenance of the practise of CSR among its companies. A review of the literature on CSR reveals a dearth of knowledge on CSR policies and practices in Nigerian organisations. The study identifies how Nigeria views CSR, the growing importance of the CSR and the sources of CSR in Nigeria. The study also examines the range and scope CSR provided for by the laws and the emerging patterns of CSR in organisations operating in Nigeria. Lastly the article explores what are the forces driving or constraining or helping to shape the forms of CSR practices and policies. The findings reveal that there is diversity in terms of how CSR is understood and experienced in Nigeria. In addition, the study shows that environmental institutions affect how CSR is appreciated and utilised. The article suggests some policy implications in the form of support for CSR policies in this context.

Key words: *corporate social responsibility, laws and legislation, company laws*

JEL Classification: *K20*

Introduction

This study addresses the various factors and events that have given rise to the current policies and practices of corporate social responsibility in Nigeria corporate or organisational milieu. The work examines available legal provisions in Nigeria that provides for the compliance and enforceability of corporate social responsibility. The paper specifically addresses: (a) Notions of CSR (b) CRS laws in Nigeria c) the study also examines the emerging patterns of CSR in organisations operating in Nigeria and the forces driving or constraining or helping to shape the various forms of CSR practices and policies in Nigeria; d) CSR: Issue of law or morality e) The Challenges to CSR in Nigeria. The study discusses the implications and identifies areas for future research. The authors believe that this study would be useful to academics, business researchers, existing MNCs and MNCs wishing to operate in Nigeria in the foreseeable future.

To achieve the above objectives, this study is organised as follows. The second section presents the conceptual background of CSR. This is followed by an analysis of the evolving configurations of CSR in organisations operating in Nigeria and the dynamics that is helping to shape the various forms of CSR practices and policies in Nigeria. The third section explores the adequacy of Nigerian Laws in protecting CSR. The final section considers the conclusions and implications.

Conceptions of CSR

Corporate Social Responsibility refers to the moral obligation to promote viable societal values for the generation of a peaceful atmosphere within a given society by the firms carrying out their lawful operations in that society. For Helg (2007:7) “Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large”. Corporate social responsibility is sometimes described as being a tacit contract between business organizations and a hosting community, whereby the community permits the business to operate within its jurisdiction to create job opportunity for its residents and revenue through taxation. Additionally, the community expects the business to preserve the environment and to make the community a better place to live in and to work within through charitable activities (Hurst, 2004). The Concept of corporate social responsibility projects environmental friendly exploration, a positive impact on the field or locality of a business activity. It suggests incorporating community sustainable thinking in the positive and profitable ways while carrying out business activities (Makower 1994: 4). This concept also has to do with getting your employees to tune in to cutting waste, understanding the correct way to package company’s product in a way that is friendly to the environment, and adapting productivity to the challenges of the environment in a developing and changing world. It includes a company’s direction to task itself to be responsible to the people by allocating resources to deal with environmental and general development issues. The subject of CSR has been criticised on several fronts. This is because it is seen as a distraction from the fundamental economic role of business (Amaeshi *et al* 2006) or a nothing more than superficial window-dressing (Amaeshi *et al* 2006); CSR is seen as aiding business to pose ineffective market-based solutions to social and environmental crises, deflecting blame or problems caused by corporate operations onto the consumer and protecting their interests while hampering efforts to find just and sustainable solutions (Corporate watch 2012). It has also been argued that CSR is more of a Public Relation Issue where the companies act mainly in order to appeal to customers' consciences and desires but with the true intention of benefitting them. CSR helps companies to build brand loyalty and develop a personal connection with their customers. Many corporate charity tie-ins gain companies access to target markets and the involvement of the charity gives the company's message much greater power (Corporate watch 2012).

CRS Laws in Nigeria

Currently efforts are being made to discuss making a specific law which caters for CSR. However, it can be argued that there are several Nigerian legislations that incorporate within their provisions certain expectations that directly or indirectly regulate the observance or practice of CSR. For instance, Section 279 (4) Companies and Allied Matters Act 1990, points out that “the director of a company is to have regard in the performance of his functions includes the interests of the company’s employees in general as well as the interests of its members”. Note that companies in Nigeria are not in any way precluded from carrying out social responsibilities towards the environment, what they will be expected to do is to ensure that such intended social friendly policies are embedded in their Article and Memorandum of

Association. In order to reinforce responsible behaviour various laws have been put in place for the protection of the environment. These laws stipulate criminal sanctions for non-compliance as opposed to voluntary adherence. Examples of these laws include: a) National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007. This act provides for the standards of compliance with environmental protection. It also provides for offences and corresponding punishment as it relates to the environment. Sections 20 to section 29, states the expected standards of ensuring environmental protection. Section 20 particularly relates air quality of the environment. Section 27 deals with the discharge of hazardous substances and related offences. Section 30 provides for the powers of the Officers of the Agency to enter premises, take sample, investigate and even exercise right of seizure. Sections 31 and 32 provide for the offences.

Another Act that calls for social responsibility is the b) Harmful Waste (Special Criminal Provisions Act). This act prohibits the carrying, depositing and dumping of harmful waste on any land, terminal waters and matters relating thereto. In Section 1(1) prohibits all activities relating to purchase, sale, importation, transit, transportation, deposit and storage of harmful waste. Section 1(2) enumerates the offences. This act provides for the penalty of the imprisonment. The Act makes it a general offence for anyone to deal with harmful waste. It also has provision for the exclusion of diplomatic immunities to foreign nationals who will want to hide under the said Act to perpetrate this offence. Other laws that deal with the protection of the environment can be found in the criminal code. Certain sections of the code specifically provide for the protection of the public health. Sections 234 to 248 of the Criminal Code provides for offences against public health. Section 245 declares as offence the corruption or fouling of the water, spring, stream, well, tank, reservoir or place. Section 247 provides for noxious acts and section 243 provides for exposing and adulteration of food or drinks. Section 244 provides for offences relating to dealings with and in diseased meat and section 246 provides for offences against burial in houses. In spite of the stipulated laws and sanctions, the challenge for the Nigerian state has been a problem of enforceability i.e. the issue often comes down to concerns about how to make companies comply or to what extent could these penalties be enforced against an artificial person in law?

Currently, there is a bill on CSR which is presently before the Nigerian National Assembly (National Assembly of Nigeria 2012). The CSR Bill seeks to establish the Corporate Social Responsibility Commission ("CSR Commission"). The Commission will see to the formulation, implementation, supervision and provision of policies and reliefs to host communities for the physical, material, environmental or other forms of degradation suffered as a result of the activities of companies and organisations operating in these communities. The Bill proposes five main divisions which respectively provide for the establishment of the CSR Commission. Considering the provisions of this Bill, its successful passage in the house will be a welcome development and indeed a great reformation of the practise of CSR in Nigeria and will help in firmly establishing corporate ethics among the firms in Nigeria. Nonetheless it is important to point out that the proposed bill has a number of deficiencies. For instance, the bill does not provide for extensive enlightenment of the Nigerian society on the benefits of CSR and does not reiterate the minimum constitutional duties that are imposed on the Nigerian government. For The CSR Bill has been described as a reactive legislation as opposed to a proactive Law and therefore needs to be subjected to an amendment. It was also argued that CSR contributory charge could be a disincentive to investments in Nigeria in the light of the already existing high and multiple taxes at various strata of the Federal, State and local Governments (Oserogho Associates, 2008). It was therefore recommended that the proposed charge of 3½% could be reduced to a basic minimum charge for all companies and organisations whilst the penalty charge for non-compliance with the statutory requirements of the Law could be increased by the same margins of the CSR charge itself (Oserogho Associates, 2008). It has also been pointed out that CSR Bill has failed to follow recent legislative practices which impose criminal liability on both the corporation and all the directors and managers of any corporation or company who are aware of

the breach of an existing Law and this therefore should be subjected to the necessary amendment.

Emerging Patterns of CSR Practised in Firms Operating in Nigeria

There three key strands of CSR expression in Nigerian organisations they include Philanthropic, Economic Support and Compensatory. Philanthropic refers to a humanitarian and charitable service projected to the people by the corporate organisations. Firms through their benevolent activities make the people to feel good about their operations. The firms in the local communities have often embarked on donation of meagre sum to community development, cultural practises and celebrations. The other strand of CSR practised in Nigeria is tagged as economic support. In this case the corporate organisations help by providing social amenities like portable water, building and maintenance of schools, maintenance of parks, promotion of basic and primary health care scheme, launching of empowerment schemes for the less privileged etc. lastly, compensatory CSR strand is gradually gaining ground. Organisations compensate the Nigerian government, communities and individuals for certain operational breaches that have occurred during the production process. These three expressions or strand of CSR can be seen in the several organisations in Nigeria such as United Bank of Africa [UBA], and MTN Nigeria.

1. United Bank For Africa

UBA has a number of focus areas for its CSR agenda and constantly tries to focus on the basic needs of society, reaching as many people as possible through its CSR initiatives. The objective is to target all parts of the country with its CSR activities but UBA is presently using Lagos as a test area for its projects and initiatives. Regarding the internal CSR work the focus of the foundation is at present to gain commitment and understanding for the CSR initiatives. Some of the UBA CSR *initiatives* are presented as follows (Helg 2007) ²³:

- Micro credits - UBA has initiated micro credits to its customers. The Nigerian government has also introduced a micro credit finance programme but interest rates are still as high as 36 percent. The objective for UBA is therefore to give the opportunity for people to take a loan without interest or at least with very low interest rates.
- Scholarships - UBA also runs a scholarship programme. The objective is for 108 pupils to be examined each year through scholarships. UBA finds it important that the pupils don't feel like "second hand" students because of the scholarships. Therefore UBA has also introduced a grant that is being offered to the school in combination with the scholarship that makes the scholarship beneficial not only for the student but also for the school.
- Environment - UBA also works intensively on waste management and environmental issues. For example, a project has been run with the purpose of installing refuse collection centres as well as offering training for people to become refuse collectors. The vision is to create an environmental movement where all companies, large and small, contribute with something in the work of improving the environment.

2. MTN NIGERIA

MTN Nigeria Communications Limited provides telecommunication services. MTN Foundation was incorporated in July 2004 to offer a platform for MTN to drive its Corporate Social Responsibility initiatives in Nigeria. Through its efforts, the MTN Foundation has made huge impact and has become a model for good corporate citizenship, endorsed by a wide variety of stakeholders, Government, Regulators, Tax authorities, and the beneficiaries of its numerous projects. MTN Foundation portfolio covers: Economic Empowerment, Education, Health, and Working against Poverty. Some of the *activities* of the foundation include:

- economic portfolio project;

MTNF Rural Telephone Project and the International Finance Corporation (IFC) are projects designed to empower rural entrepreneurs through the provision of equipment to start their own telephone businesses. This is facilitated through micro-finance loans. The project helps to alleviate poverty and create wealth in those rural communities. Since inception to date over 4,500 beneficiaries have been empowered.

- health portfolio projects

The MTN Foundation Partners against Malaria and AIDS in the community. There is also Children-at-risk-empowerment scheme which was designed to provide integrated care and support (i.e. educational, nutritional and psychosocial support) for orphans and vulnerable children (OVC) in Nigeria.

CSR: Issue of Law or Morality?

In Nigeria, the debate on whether CSR should be catered for by law or one that should be left to individuals and organisations morality has long been disputed. While law is a coercive order, morality is a persuasive system. Law seeks to bring about a specific mode of human conduct by force, but morality appeals to the conscience of the individual required. A rule is a rule of morality if by common practice of the community, it applies only to the conscience of the addressee for ultimate compliance, but a rule is a rule of law if by the common practice of the community it will eventually be enforced by a power external to the addressee, i.e. the state or community. The extent to which law can be used to enforce morals has been the subject of expression in some decided cases. In England the House of Lords held that the Queen's Bench Division is the Custodian of good morals and that it has jurisdiction to punish a person for contravening the rules of morality (Corporate watch 2012) It was also held in another case that the Court is the custodian of public morals and it is its duty to preserve the moral welfare of the state (Chamila, 2007). It is worthy of note that the English court in a latter decision took a bold step to revert the position as expressed in the above cases. The House of Lords deciding on the Court's residual powers of enforcement of the supreme fundamental purpose of the law held that, the courts no longer have any residual power to supervise morality in the society. Lord Denning in *Shaw v. D.P.P.* (1962) A.C P.220 advocated the view that the society reserves the right to use criminal law to preserve morality in the same way as the society uses criminal law to preserve anything it considers essential for its survival. Prof Hart in *Knulier v. D.P.P.* (1973) A.C. P.435, on his part suggested that that it was wrongful to enforce morality through the criminal law without first ensuring that failure to do so will endanger the social fabrics. Notwithstanding the divergent views, both writers agreed to the fact that moral values are very important to the society and that there is need for law to uphold some moral position in the society on different grounds.

Under a democratic government the decision for the enforcement or the non-enforcement of moral values through the mechanism of the law lies strictly within the purview of the power of the law makers of that society. But in as much as such moral values have not been made to carry the force of law, it remains a moral obligation which is within the prerogative power of an individual expected to adhere to such values. An individual has the right to either carry out or neglect to carry out such moral obligations as expected of him. This therefore also applies to corporate organisations, especially as it relates to the societal expectation of carrying out activities that ensures the preservation of the environment as part of their corporate social responsibility.

As at present, there is no law in Nigeria that makes it mandatory for companies to either incorporate environmental preservation into their company policies or enforce the compliance thereto. If there is therefore no legal provision upon which the companies can be held

accountable for environmental protection, then no offence can arise and there can never be any sanction. Where there is no offence known to law, a conviction cannot be sustained. This position has been upheld in a Nigeria case where the High Court sitting on appellate jurisdiction held that there was no written law upon which the lower Court convicted the appellant. The court held that the conviction of the appellant was contrary to the provisions of Section 21 (10) of the Constitution of the Federation 1960, which provides that a person shall not be convicted of a criminal offence unless the offence is defined and the penalty therefore is prescribed in a written law. The conviction of the appellant was thereafter quashed.³⁴ Going by the above, it is obvious that the issue of corporate social responsibility is solely a matter of discretion and one within the powers of the Directors of the company who may refuse to so act. A company may or may not incorporate social responsibility into their fiscal policy. Whichever way it goes, the failure of a company to comply with the social responsibility of environmental protection will not merit any legal consequence because it would not have resulted in the commission of any offence known to law. Notwithstanding the above, there is an instance when an offence will arise against a company for not complying with the environmental standard of the place of its operation. This can arise under the doctrine of vicarious liability, when the company will be held liable for the offence of its employee.

The Challenges to CSR in Nigeria

There are several challenges to CSR in Nigeria. These includes the adherence to the conventional business principle which states that the business of an organisation is strictly to benefit its shareholders, meaning that business organizations' major motive and target is the ability to make profit, and maximise profit even at the expense of the environment of their operation. This orthodox norm affects negatively all aspects of the society especially as it affects environmental protection. Another challenge to CSR is the inefficiency of legislations. There is little legislation in the area of corporate social responsibility and the ones that are available are either poorly managed or unenforceable. Legislations are made to order the cause of life and event within a society, but when such legislations when made are not adequate not in terms of the volume or variety but in terms of specification, the effect becomes insignificant. Some of the provisions of the existing laws most especially on environmental protection are not adequate in safeguarding the life and rights of the people. For example, the Nigeria Federal Environmental Protection Agency Act which provides for the spiller's liability. It makes it unlawful to discharge such harmful quantities of any hazardous substances in to the Air, or upon the land and the waters of Nigeria or at the adjoining shoreline (see *Hutton .v. West Cork Rail Co.*, (1883) 23 Ch. D. 654, p. 673). The violation of this provision has a criminal sanction with the penalty of fine or imprisonment for an individual offender and fine alone for a corporate offender⁴³. The question is, if the pollution has caused grievous damaged to a citizen will the fine or damages awarded, be sufficient to remedy the harm done to such individual.

Also, the commission of some of the offences provided for by the existing legislations can only be prosecuted by the State, especially those offences that fall under the public nuisance. Private persons are not given the power to so do, notwithstanding the fact that such an individual might have suffered severely from a grievous harm occasioned by corporate activities. Another challenge to CSR in Nigeria is poor enlightenment within the Nigerian society. The lack of awareness as to the need to be socially responsible to the environment makes people to be ignorant of the effect of their negative or improper dealings to the environment. The insincerity and insensitivity of the Nigerian Government has also been implicated. For instance, the responses of Nigerian Government to negative corporate activities like gas flaring has not portrayed the government to be sincere enough in ensuring the practise of social responsibility in Nigeria. Insincerity and insensitivity on the path of the government has to do with the system of government that encourages the passive attitude of the corporate organizations towards their

corporate social responsibility to the people. In Nigeria, the government seems to concentrate more on generating income from the default or failures of the corporate organizations in meeting up with their social/legal responsibility to the environment. The fund generating drive of the Nigerian government encourages the non-compliance of the companies to environment laws. Monetary compensations are being accepted in lieu of the companies' obnoxious acts of environmental degradation at the expense of the preservation and conservation of the environment.

Conclusions and Recommendations

This article addressed the various conceptions of CSR and laws regulating CSR in Nigeria also examined the emerging patterns of CSR in organisations operating in Nigeria and the forces driving CSR practices and policies in Nigeria. It is obvious that the legal regime on the practice of CRS is not yet effective as the provisions are not yet adequate and it needs to continually undergo several amendments, developments and reformation until a considerable result is achieved. This notwithstanding, the present continuous outcry by both local and international communities, for the need to promote corporate social responsibility's values is becoming widely created and extensively acceptable to all. Therefore, the success of the compliance will be largely determined by the positive attitudinal change of firms to societal needs as opposed to the orthodox posture of maximum profit making at the expense of the society.

It is noteworthy that present operations of the corporate organizations in Nigeria have become marred with several negative identities such as insensitivity, corruptions and segregation of the society, thus to crusade a change might pose certain challenges, but this notwithstanding, change is inevitable. Therefore, in order to ensure a safe and easy landing for necessary positive change towards ensuring adequate and efficient practise of corporate social responsibility, there is a need to set out certain recommendations that could help to aid easy and considerable compliance of laws. For instance, there is a need for more laws to be enacted to protect CSR and the need for firm monitoring of the system of laws. Several of the Nigerian legislations that protect CSR, do not provide for strict compliance modality of its provisions. Such monitoring expectations should include regular audit and review of firm practices and policies. It would be necessary for the government and its agencies responsible for environmental protection to make concerted effort in creating awareness to the general citizenry on the need to be socially responsible to the environment. In order to ensure absolute compliance of the corporate organizations to their social responsibility to environmental protection, the government will have to create a forum for partnership with the companies by encouraging the companies to install pollution abatement policies. The government can also provide fiscal incentives such as tax relief and soft loans to the industries to invest in employing clean and environmental friendly production methods. In ensuring adequate protection of the environment by corporate organisations the government must weigh the capacity of an intending entrepreneur company and consider their ability of meeting up with the standard of ensuring the safety of the environment before a license of operation is issued to such prospective company. For future studies it will be interesting to examine CSR policies and practices in specific sectors such as the oil industry. It will also make for an interesting study to examine the impact of CSR on communities surrounding the oil sector firms.

References

1. *** Hutton v. West Cork Rail Co., (1883) 23 Ch. D. 654, P673.
2. *** Shaw v. D.P.P. (1962) A.C P.220.
3. *** *What's Wrong with Corporate Social Responsibility* (2012), retrieved from, www.corporatewatch.org/?lid=2688

4. Amaeshi, K., Adi, B., Ogbechie, C., Amao, O. (2006) *Corporate Social Responsibility (CSR) in Nigeria: western mimicry or indigenous practices?* Research Paper Series, International Centre for Corporate Social Responsibility, ISSN 1479-5124, No. 39-2006 ICCSR Research Paper Series - ISSN 1479-5124.
5. Helg, A. (2007) *Corporate Social Responsibility from a Nigerian perspective*, retrieved Feb.2010 from gupea.ub.gu.se/bitstream/2077/4713/1/07-23.pdf – Similar.
6. Hurst, N. (2004) *Corporate ethics, governance and social responsibility: Comparing European Business Practices to those in the United States*. Retrieved Sept., 12 2006 from www.scu.edu/ethics/hurst/comparitive_study.pdf - United States.
7. Makower, J. (1994) *The E-Factor*, Penguin Books Limited, Middlesex England.
8. Oserogho Associates (2008) Corporate Social Responsibility Bill. Retrieved Feb. 2012 from http://www.oseroghoassociates.com/pdf/2008_10.pdf
9. Perera, L., Hewege, C. R., Rathnasiri, C. (2007) *Three types of corporate social responsibility engagement; self-interest & altruism on sustainability*, International Conference on Business and Information , (11-13 July 2007, Intercontinental Hotel Tokyo – Japan).
10. Section 279 (4) Companies and Allied Matters Act 1990.
11. Senate of the Federal Republic of Nigeria. Retrieved Feb. 2012, from, www.nassnig.org/nass/ordersenate.php?id=652
12. The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007, No. 25. The Act officially commenced on 30 July, 2007; Section 36, NESRE Act expressly repealed the FEPA Act cap F 10 LFN, 2004.

Responsabilitate socială corporatistă și norme legale în Nigeria

Rezumat

Studiul de față examinează responsabilitatea socială corporatistă (CSR) din Nigeria prin prisma normelor legale, jurisprudenței și politicilor guvernamentale. Va fi examinat rolul actual pe care legea nigeriană îl joacă în susținerea CSR printre companii. O privire de ansamblu a literaturii de specialitate privind CSR dezvăluie lipsa cunoștințelor legate de politicile și practicile CSR în organizațiile nigeriene. Studiul identifică modul în care Nigeria privește CSR, creșterea importanței CSR și a surselor CSR în organizațiile care funcționează în Nigeria. În final, articolul explorează forțele care conduc, constrâng sau contribuie la conturarea tipurilor de practici și politici de CSR. Rezultatele indică existența unei diversități în ceea ce privește modul în care responsabilitatea socială corporatistă este înțeleasă și experimentată în Nigeria. În plus, studiul arată că instituțiile din mediu afectează modul în care CSR este apreciată și utilizată. Articolul sugerează câteva implicații politice în forma sprijinului acordat politicilor CSR în acest context.