

THE LEGAL REGIME FOR ENVIRONMENTAL PROTECTION AND CORPORATE SOCIAL RESPONSIBILITY IN NIGERIA: WHAT NEXUS.

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Abstract

The relationship or interdependence between man and the environment cannot be questioned. This relationship is symbiotic in nature whereby one cannot do without the other. There is therefore a duty imposed on man by nature to protect the environment so that it does not fall into extinction. However, the quest for economic development, technological and scientific advancements have adversely affected the environment. In this context, if nothing is done, the environment cannot be sustained. The degradation of the environment particularly in Nigeria is primarily tied to the activities of the corporations who fail or neglect to strike a balance between their actions and the consequences of such actions on the environment. It is on this note that this article advocates for a corporate social responsibility adopting ethical values for sustainable development of the environment that will bring

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about the sustainable development and economic development of the corporations. To highlight this, the article looked at Nigerian National Policy on Environmental Protection, sustainable development, some theories on environmental protection, some environmental issues, corporate social responsibility and what corporations should do as corporate social responsibility. In conclusion, this research found that corporations cannot exist in isolation of other factors that play vital role in its sustainability. The work recommended adoption of precautionary principle which entails that action should not be implemented until the actors are certain about their major consequences. This work also recommended the application and practice of law of balance by companies which promotes the principle of giving and taking. It has been observed that in the complex web of relationship among living things, this principle remain at work.

Keywords: Law, Environmental Protection, Corporations, Corporate Social Responsibility, Economic Development

1.1 Introduction

The earth's environment is drastically and continually drifting in an unusual and deteriorating way. The degrading nature of the environment is attributable to the misuse of the scarce

resource. Our activities respectively as individuals and corporately have inarguably contributed to the degeneration of the earth's environment.

Various organizations have been sounding the alarm about the threat the earth is subjected to. Could anything be done to improve its health condition? Environmental experts have alarmingly posited that:

Human beings and the natural world are on a collision course. Human activities inflict harsh and irreversible damage on the environment and critical resources. If not checked, many of our current practices put at serious risk and future that we wish for human society and the plant and animal kingdoms and may so alter the living world that it will be unable to sustain life in the manner that we know. Fundamental changes are urgent if we are to avoid the collision our present course will bring about.¹

This research therefore look into the activities of corporations within the Nigerian environment and considers whether there are things they could do towards checking the consequences of their actions noting that the world has gone past the traditional shareholders' interests. There are other components that need to be considered if the corporation must have a sustainable growth.

¹ Union of Concerned Scientists, Cambridge, Massachusetts, USA December 1992 quoted in Stephen Lampe, *Building Future Societies The Spiritual Principles* Ibadan: (Millennium Press, 1994) p. 195.

2.2 The Concept of Environment

The word environment means respective things to so many people and the definition is understood from the context in which it is made. In other words, the outcome of the definition is dependent on who the definer is and the use to which the word is being put.

A sociologist views environment from anthropological perspective and therefore defines environment within the context of man. To him environment is divided into social, work environment, leisure environment and so on.

Black's Law Dictionary defines environment as the totality of physical, economic, cultural, aesthetics and social circumstances and factors which surround and affect the desirability and values of property and which also affect the quality of people's lives.²

The Environmental Impact Assessment Act defines environment as the component of the earth which includes land, water, air including all layers of the atmosphere, all organic and inorganic matters and living organisms and interacting natural system.³On the other hand the National Environmental Standard and Regulation Enforcement Agency Act 2007 defines environment as inclusive of 'water, air, land

² Black's Law Dictionary; Article 24 of the African Charter on Human and People's Right also adopted the same definition.

³ Environmental Impact Assessment Act, Cap E 12 Laws of the Federation of Nigeria 2004. Section 63.

and all plants and human beings or animals living therein and the interrelationships which exist among these or any of them.’

Ikpeze (2010) sees environment as the totality of all living and non-living organisms relied upon by man for their survival.⁴ The activities of man and other organism within the environment has occasioned danger and call by environmental experts to protect the environment.⁵

From the foregoing definitions, we can sum up to say that environment is the composition of lands, air, water and all the flora and fauna that make up the external conditions in which an organism interact. Environment as a system formed by various component parts which its survival is premised on the symbiotic existence of all, must therefore work or interact harmoniously for the benefit of all interacting parties.

3.1 What is Environmental Protection?

The earth’s environment has been described as a patient with multiple symptoms.⁶ Thus:

His breath is noxious. He has fever, higher than ever before. Efforts to bring it down are not working ...when symptoms are treated in one area more pop up in other parts. If this were to be a usual patient, doctors would be inclined to

⁴ Nnamdi G. Ikpeze, ‘Criminalisation of Environmental Degradation in Nigeria: A Comparative Analysis’ *African Journal of Law and Human Rights*, Vol.2, June 2010.

⁵ *Ibid.*

⁶ Awake Magazine, ‘Can We Save Our Environment’ Nov. 22, 2003, p 3.

declare the multiple sickness as chronic and terminal. Not knowing what else to do, they would just take steps to make the patient as comfortable as possible until the end came⁷

However, this is not a human patient. It is our home –the earth. The above scenario painted by the *Awake* magazine about the critical state of our human environment is a signal and caution to humanity that something needs to be done urgently to resuscitate our earth.

The emergence of international attention of environmental protection is borne out of the 1972 United Nations Conference on Human Environment held at Stockholm. This conference recognized the importance of environmental protection as a new focus of legislation so as to avoid crises, but laid emphasis on connection between the environment and development.⁸ Environmental protection refers to the deliberate maintenance of a certain level of environmental quality. This is achieved through environmental management.⁹

Discourse on environmental protection focuses on these areas namely: why environmental protection? What is to be protected? The level of protection that should be available; and the manner the protection should take place.

⁷ *Ibid.*

⁸ K. M. Mowoe, 'Quality of Life and Environmental Pollution' in J.A. Omotola (ed), *Environmental Law Including Compensation* (Lagos: Mayodele Ajayi Enterprises, 1990)p.171.

⁹ IUCN The World Conservation Union NEWSLETTER Issue 1, 2003.

Nigeria, in conjunction with other countries of the world in effort to protect and conserve her environment has enacted various principles of international environmental law, and some provisions of various treaties and conventions on the environment have been adopted in the National Policy on the Environment.¹⁰ The policy is targeted to enable the achievement of sustainable development concept in Nigeria through appropriate management of the environment; to obtain standard environmental quality adequate for good health and well-being of her citizenry; to ensure sustainable living through conservation and use of the environment and natural resources; to restore, maintain and enhance the ecosystems and ecological processes essential for the functioning of the biosphere; to preserve biological diversity and the principle of optimum sustainable yield in the use of living natural resources and ecosystems.¹¹ To meet the objectives as enumerated above, the policy integrates environmental issues into major economic decision-making processes; environmental remediation costs are built into major development projects; and an environmental impact assessment is mandatorily carried out before any major development project is embarked on.¹² To accomplish the above objectives, the policy adopts some international environmental principles namely ‘precautionary principle’; ‘polluter pays principle’; ‘pollution prevention pays principle’; ‘user pays principle’; ‘principle of intergenerational

¹⁰ The Nigerian National Policy on the Environment(1998) available at <http://www.nesrea.org/images/National%20Policy%20Environmental.pdf> [accessed September 30, 2020]

¹¹ *Ibid*, para 1&2.

¹² *Ibid*,para 1.

equity’; ‘principle of intra-generational equity’; and the ‘subsidiary principle’.¹³

4.1 The Legal Regime for Environmental Protection.

The position of legislative documents in environmental protection cannot be over emphasized, as no meaningful advancement or even assessment will be made in achieving a protected environment without enacting laws checkmating our activities on the environment. After the Koko toxic waste dump in 1988, Nigeria has made conscious efforts to articulate and make laws to protect our environment. We therefore have plethora of laws on environmental protection but the implementations of those laws is our grave problem. The highlight of those laws include:

1. The Petroleum Act¹⁴: This Act became effective on the 27th of November 1969, to provide for the exploration of petroleum from territorial waters and the continental shelf of Nigeria.
2. Petroleum (Drilling and production) Regulations¹⁵: Regulation 25 deals with prevention of pollution, the licensee or lessee shall adopt all practicable precautions, including the provision of up-to-date equipment approved by the Director of Petroleum Resources, to prevent the pollution of inland waters, rivers, water courses, the territorial waters of

¹³ These principles were discussed in detail in the course of this research.

¹⁴ Petroleum Act Cap P10 Laws of the Federation of Nigeria.

¹⁵ Petroleum (Drilling and Production) Regulations, Cap P10, Laws of the Federation of Nigeria, 2004.

Nigeria or the high seas by oil, mud or other fluids or substances which might contaminate the water banks or shoreline or which cause harm or destruction to fresh water or marine life, and where any such pollution occurs or has occurred, shall take prompt steps to control and, if possible, end it.

3. The Oil in Navigable Water Act¹⁶: The Preamble to this Act describes the Act as

“An Act to implement the terms of the International Convention for the Prevention of Pollution of the Sea by oil 1954 to 1962 and to make provisions for such prevention in the navigable waters of Nigeria”.

This Act became operational from 22nd April, 1968 and is to be retained as Cap 337 LFN 1990 Cap. This Act created “anti-pollution” offences as follows:

Section 1(1) Discharge of oil into prohibited sea areas

Section 3 forbids the discharge of oil into Nigerian waters

Section 5(5) failure to install oil pollution prevention equipment on ships

Section 7(1) applies to failure to keep records of oil matters

¹⁶ Oil in Navigation Waters Act, Cap 06, Laws of the Federation of Nigeria, 2004.

Section 8(8) punishes a harbours authority for failure to provide “oil Reception Facilities”.

Section 10 punishes a polluter who fails to report the prescribed of oil in harbour waters.

The Act made elegant provisions towards protecting Nigerian environment from oil pollution but with defenses¹⁷ which have watered down the effect and strength of the provisions of this Act. The Act has too many gaps through which an offender may defend himself out of the statutory offences. It is therefore submitted that it is as good as not having any statute in this area.

4. The Oil Pipeline Act: This Act was enacted in 1956, mainly targeted towards the control of evacuation and transportation of both crude and refined Petroleum Product. The Act was promulgated immediately after oil production became a commercial venture.

This paper submits that inspite of the fact that the activities envisaged in the process will affect the environment. There are sketchy provisions touching on environment. Therefore the Act did little in prevention of oil pollution notwithstanding the high probability of spills resulting from oil pipelines and ancillary installations.

¹⁷ Section 4.

However, section 11(5) a, b and c in particular provide for compensatory reliefs to persons who may suffer damages.

Section 17(1) is another effort made by the Act to protect the environment. This sub section fixed the life span of every pipe line for 20years.

Section 17(4) on the other hand enjoins licensee of Oil Pipe line to avoid interference with works of Public utilities whether in, over or under the land. The licensee is also enjoined to prevent pollution of such land and any water ways within the areas of permits.

5. The Associated Gas Re-Injection Act¹⁸: This Act compels every company producing oil and gas in Nigeria to submit preliminary programs for gas re-injection and detailed plans for implementation of gas re-injection. The purpose of this Act is stop oil companies in Nigeria who engaged in gas flaring which happens naturally in the course of Petroleum exploitation. Gas flaring poses a serious threat to the environment in the communities where these oil companies carry out their activity.

4.2 The Constitution of the Federal Republic of Nigeria 1999¹⁹

In Nigeria, the constitution of the Federal Republic of Nigeria is above all other laws of the land and is binding on all

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¹⁹ As amended.

authorities, institutions and persons within its polity. Section 1(1) and section 1(3) of the Constitution provides expressly for the supremacy and binding force of the constitution. Any law that is inconsistent with the Constitution shall to the extent of the inconsistency be void and this constitution shall prevail. This position was clearly highlighted in the case of *Abacha v Fawehinmi*²⁰ where the Supreme Court held among other things that;

“It is necessary to get our bearings right. The Constitution is the supreme law of the land, it is the grundnorm. Its supremacy has never been called to question in ordinary circumstances...”

Section 16 of the Constitution deals with economic objectives. It is on the understanding of how will a country whose economic growth is shaky and a stooge in the hand of international community that the provision was made. Section 16(1) subsections (a) – (d) highlighted the manner Nigerian economy will be organized to achieve governments ideals and objectives.

A foreign court has given a judicial interpretation of similar provision in the case of *Velasquez Rodriquez v Honduras*²¹ where inter American Court of Human Rights decided that when a state allows private persons or groups to act freely and with impunity to the detriment of the rights of its citizens it would be clear violation of its obligations to protect the human

²⁰ (2001) 51 WRN 29.

²¹ 1988 series C No. delivered on 19th July, 1988.

rights of those citizens. Hence, when the economy is thrown open to heartless multinationals in the name of liberalization and globalization by a government, this aspect of the economic objective is not being pursued at all.

Section 20 of our constitution provides that ‘The States shall protect and improve the environment and safeguard the water, air, and land, forest and wildlife of Nigeria.’ This provision appears in chapter 11 of the Constitution. These objectives in chapter 11 are not subject of any litigation by the implication of section 6(6)(c) of the same constitution. Is the government keen on protecting the environment? Why is this provision in a list of items that are non-justiciable? In *Social & Economic Rights Action Centre & Anor v Federal Republic of Nigeria*,²² the importance of suitable and sustainable environment in the enjoyment of human rights was stressed by the African Commission. It indicted the Nigerian government for environmental degradations in Ogoni land.

It has also been held by the Supreme Court of Nigeria that the main object of section 20 of the Constitution is to protect the external surroundings of the people and ensure that they live in a safe and secure atmosphere free from any danger to their health or other conveniences.²³ The question is whether it is right for the government to talk about environmental protection and sustainable development while still having rights on environmental protection under chapter II of the constitution.

²² (2002) 2 CHR 1988.

²³ *A.G. Lagos State v A.G Federation* (2003) 12 NWLR (Pt.833)1.

This provision is too simple and its natural interpretation is that the state is empowered to protect and improve the environment and safeguard its components. But the query is how? A proactive statement would have been a positive directions on the needful to control oil exploration, exploitation and oil spillage, the main cause of environmental degradation particularly in Niger-Delta area of Nigeria.

4.3 Companies and Allied Matters Act 2020

As far as our extant Company and Allied Matters Act is concerned, there is no obligation on a company to act as a good corporate citizen toward the environment where it is cited. The impetus of this discourse is that the object clause of companies witnessed in the recent times is that the scope is couched so widely as to allow the directors to carry on any business or activity that will promote the interest of the company.

In Section 305(3) provides that:

A director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful act in the circumstances and, in doing so, shall have regard to the impact of the company's operations on the environment in the community where it carries on business operations.

It also recognized old principle of law that:

“The directors are a body to whom is delegated the duty of managing the general affairs of the company. A corporate body can only act by agents, and it is of course the duty of those agents so to act as best to promote the interests of the corporation whose affairs they are conducting...”

Lord Cranworth LC in *Aberdeen Rly Co v Blaikie Bros*²⁴

There has not been any decision in our jurisdiction with respect to this provision. However, what will constitute practices that would be regarded to be in the best interest of the company, must be acts that would lead to the progress and economic growth of the company. A director must carry out its functions so as to preserve the assets of the company, further its business, and promote the purposes for which it was incorporated.

4.4 Environmental Impact Assessment Act

The impact assessment emanated from the desire for profound change in both the philosophy and methodology of carrying out projects. Impact assessment is a process adopted for predicting the environmental consequences of a proposed developmental project and making appropriate and adequate plan to ameliorate adverse effects on both the human and physical

²⁴ (1853) 15D (HL) 20 .

environments. Environmental Impact Assessment is a structural process for gathering information about the potential impacts on the environment of a proposed project and using the information, alongside other considerations, to decide whether the projects should or should not proceed, either as proposed or with modifications²⁵

In Stockholm conference 1972, EIA is reviewed as an essential tool for reconciling development and environmental needs and applying it to human settlements with a view of avoiding adverse effects of such development on the environment and obtaining maximum social, economic and environmental benefits for all²⁶

Agenda 21 highlights the need for EIA and calls on all countries to “assess environmental suitability of infrastructure in human settlement to ensure that relevant decisions are provided by EIA and also take into account the cost of any ecological consequences and integrate the environmental consideration in decision making at all levels.”²⁷

Principle 17 of Rio Declaration and Development enjoins all nations to enact laws that will emphasize the need for an EIA before a project takes off. Perhaps pursuant to the above

²⁵ Theodore Okonkwo, *The Law of Environmental Liability* (Lagos: Afrique Environmental Development and Education (AEDE) 2003) P.217.

²⁶ Principles 14 and 15.

²⁷ Para 7(4)b and Para 8(4).

injunction Nigeria on the 10th of December 1992 by Decree No. 86 promulgated Environmental Impact Assessment Act.²⁸

Section 1 of this Act highlights the goals and objectives of the environmental impact assessment Section 1(a) provides that the Act shall be;

“to establish before a decision taken by any person, authority, corporate body, or unincorporated body including Government of the Federation, State or Local Government intending to undertake or authorize the undertaking of any activity that may likely or to a significant extent affect the environment or have environmental effects on those activities shall first be taken into account”.

This paper observes that this Act was promulgated to protect and preserve the environment for sustainable economic growth. The Public and Private sector of the economy shall not undertake, embark or authorize project activities without prior consideration at an early stages, of their environmental impacts²⁹.

It is the corporations responsibility to adhere to the dictates of this Act and where their activity will significantly affect the environment to re-strategize or stop the project entirely.

²⁸ Now Environmental Impact Assessment Act 1992 Cap E12 Laws of the Federation of Nigeria 2004.

²⁹ Section 2(1).

Considering the state and quantum of environmental degradation caused in our communities particularly in the Nigeria Delta region this paper questions whether some of these Oil and Gas projects sited in these areas have really carried out the provisions of this legislation. This assessment is not a one off exercise, not merely an exercise prior to the commencement of the project, but a continuing assessment and evaluation as long as the project was in operation. To this end has all the multinational corporations (MNC) been in continuous assessment of the level of harm done in communities they are located and have a rethink of the ways of terminating grievous harm done to this community.

4.5 The Nigerian National Policy on Environmental Protection.

This research acknowledges that this is the most comprehensive policy on environmental protection in Nigeria. Environmental protection was in place before the advent of the British in Nigeria which was evidenced in our values, taboos and some cultural dictates in our local communities.

The institution and adoption of National Policy on the Environment in 1989 marks the beginning of a clear and well defined and articulated national policy geared towards protecting the environment.³⁰ The policy core concern is to achieve sustainable development in Nigeria which it expresses thus:

³⁰ M. T. Okorodudu Fubara, *Law of Environmental Protection*, (Ibadan: Caltop Publications Limited 1998) p.56.

“secure quality environment adequate for good health and well-being; conserve and use the environment and natural resources for the benefit of future and present generations; restore, maintain and enhance the ecosystems and ecological processes essential for the function of biosphere to preserve biological diversity and principle of optimum sustainable yield in the use of living natural resources and ecosystems; raise public awareness and promote understanding of the essential linkages between the environment, resources and development, and encourage individual and community participation in environmental improvement efforts; and co-operate in good faith with other countries; international organizations and agencies to achieve optimal use of trans boundary natural resources and effective prevention or abatement of trans boundary environmental degradation.”

The preventive actions in the policy is mainly directed at;

“social, economic and political origins of the environmental problems, abatement, remedial and restorative activities directed at specific problems arising from industrial production processes; and problems caused by rapid population growth and the attendant excessive pressure of the population on the land and other resources; and problems due to growth of urban cities; design and application of broad strategies

for sustainable developmental protection and management at systemic levels; enactment of necessary legal instruments designed to strengthen the activities and strategies recommended by the POLICY and establishment/emplacement of management organs, institutions and structures designed to achieve the policy objectives.

The Nigeria's policy on the Environment adopts a holistic approach towards resolving environmental problems. It is a holistic and comprehensive policy that captures diverse sectors which include; human population, culture, housing, and urban settlement, biological diversity, natural resources conservation, land use and soil conservation, agriculture, water resources, forestry, wild life and protected natural areas, marine and coastal areas resources, mining and mineral resources, industry, energy, oil and gas, construction, health, education, transport and communication systems, trade, tourism, science and technology.³¹

Other notable areas/issues highlighted in the policy are sanitation and waste management, toxic, hazardous and radioactive substances management, air and noise pollution as well as occupational health and safety issues.³²

³¹ *Ibid*, 5-33.

³² *Ibid*, 34-37.

To put things in proper perspective it is correct to state that we have comprehensive laws on environmental protection, beautiful and all-embracing Nigeria environmental policy but there are still massive and current environmental problem that has not been addressed using the dictates of the statute and policy. The myriad of these problems include waste management issue and oil spills from petroleum industries.

The aftermath of Koko toxic dump in Nigeria is the realization that there is no comprehensive and environmental protection legislation in Nigeria.³³ The vulnerability and unsustainable approach of relying on common law tortious liability and some statutory provisions not purely targeted at addressing environmental protection led to the era of promulgating comprehensive environmental protection legislation.

5.1 Sustainable Development

It should be borne in mind that one cannot discuss environmental protection without adverting one's mind to the concept of sustainable development which is the very essence of environmental protection.

³³ Prior to the Koko toxic waste incident in 1988, environmental protection legislation in Nigeria were scattered in statutes whose main purpose were not targeted at environmental protection. Some have similitude of environmental protection but not having environmental protection in mind. Some of those statutes include Criminal Code Act of 1916, Public Health Act of 1917, Water Works Act; some have environmental protection flavour but targeted a particular aspect of the environment such as The Mineral Ordinance, The Oil in Navigable Waters Act, Petroleum Act, The Associated Gas Re-injection Act.

The World Commission on Environment and Development defines the concept of sustainable development as development that meets the demands of the present generation without jeopardizing the ability to meet the needs of future generations.³⁴ It is a concept that advocates a process of change whereby exploitation of resources, the direction of investments, the orientation of technological developments and institutional change are all in an agreement and enhance both present and future potentials to meet human needs and aspiration.³⁵

The World communities seeing the necessity of striking a balance between economic development and environmental protection in 1983 inaugurated the World Commission on Environment and Development which major agenda is to help the world in making progress with regards to economic development and the environment. The Commission was chaired by Norwegian Prime Minister Dr Gro Harlem Brundtland and the final report of the Commission known as the Brundtland Report contained in a book titled *Our Common Future* was published in 1987.

The United Nations Commission on Environment and Development organized in 1992, reaffirmed the principles of sustainable development and in addition admits the link between poverty and environmental protection. This recognition led to their adoption of a plan to fight poverty and

³⁴ Brundtland Report 1987 World Commission on Environment and Development (WCED).

³⁵ *Ibid.*

preserve the environment. Its emphasis on environment originated a document referred to as the Declaration on Environment and Development³⁶ which according to some authors,³⁷ ‘Marked a conceptual breakthrough in that the natural world was added to the social and economic dimensions of ‘development’ to produce the concept of sustainable development.’³⁸

The Rio Declaration produced a statement of 27 principles which all border on sustainable development. The principles of sustainable development are encapsulated in Agenda 21 of the 1992 Rio Declaration, which was adopted by the United Nations World Commission on Environment and Development (WCED) at Rio De Janeiro, Brazil in 1992. Whilst others are global action plan for all states on development and the environment³⁹ which was accepted by participating states, Rio Conference highlighted how different social, economic and environmental factors are interdependent and evolve together.⁴⁰

Sustainable development principles are combination of policies for environmental protection, economic development and poverty eradication. The concept of sustainability admits that protection of the environment cannot be discussed in

³⁶ June 16,1992, UN Doc. A. CONF. 15/15 (Rio Declaration).

³⁷ J. Thornton & S. Beckwith, *Environmental Law*, 2nd ed. (London: Thomson, Sweet and Maxwell, 2004) p.6 referred to by I.A. Aniyie in ‘What is the Much Ado About Environmental Law: Another Addition to the Rhetorics?’ *Nigerian Current Law Review* 2007-2010,178.

³⁸ *Ibid.*

³⁹ Agenda 21

⁴⁰ <https://sustainable.environment.org> accessed 30th September 2021.

isolation from economic and development decisions.⁴¹ In other words, equal attention should also be apportioned to environmental protection as economic, social, cultural and other conditions in the development process, and ensure a periodic review of developmental policies vis-a-vis environmental policies with a view to balancing the two by means of national legislation.

5.2 Theories on Environmental Protection.

It has been rightly expressed that: the idea that we need to seek environmental protection at the same time as we seek to advance other goals is a guiding principle of sustainable development. Sustainable development provides a powerful and realistic basis to be hopeful about the future. This is particularly true because we have a very good idea of the legal and policy tools that we need to put in place to navigate a transition to sustainability.⁴² Similarly, there is a synergy between sustainable development and environmental protection. Sustainable development is premised on economic growth, social development, and security which invariably needs environmental protection and restoration.⁴³ There are also some theories on environmental protection which tend to project the need for protection of the environment.

5.3 Anthropocentric Theory

⁴¹ J. Thornton & S. Beckwith *op cit* p.46 referred to by I.A. Aniyie *op cit*, p.179.

⁴² J.C. Dernbach, 'Sustainable Versus Unsustainable Propositions' Vol. 53, No. 2, 2002 Case Western Reserves Law Review, 449,450.

⁴³ *Ibid.*

This school of thought sees man as the central and the focal point of the universe. Their construction of environment is basically on man and his values. This school is of the firm belief that the environment and all that it contains are made by the creator and that environment exists for human beings maximum use and therefore must be utilized to its maximum. They are of the belief that ethical principles apply to humans only and that human needs and interests are of the highest value and importance.⁴⁴ This school incorporates three defined elements namely: Resource exploitation, Maximum capacity utilization; and No responsibilities.⁴⁵ The third principles of resource exploitation posits, that the available natural resources should be utilized to the fullest for the benefit and advantage of humanity. It further expounds that there would be no economic growth and development where sovereign states are barred from exploiting the natural resources in their territory. The implication of the second principle is that it is only when the natural resources have been put to maximum use that a nation can attain economic independence and development. The third principle lays weight to the exploitation of natural resources exclusively for the present generation, not taking cognizance of future generations.

If we define environment as including water, air, land and all plants and human beings or animals living therein and inter-relationship which exist among them or any of them then this school of thought has questions to address. An ecosystem is

⁴⁴ [www.encyclopedia.com>history](http://www.encyclopedia.com/history) accessed September 30, 2020.

⁴⁵ P.A.K. Adewusi, *The Environment: Law and Management in Nigeria*, (Lagos: Hybrid Consult Publishers Ltd, 2011), 17-20.

interaction or relationship between organisms⁴⁶ and their physical environment. It is worthy of note that all the components in an ecosystem live a symbiotic life. In other words, they depend on one another and cannot survive in isolation.⁴⁷ A balance is achieved in the environment through the recycling matter and the flow of energy within an ecosystem so as to ensure continuous supply or availability.⁴⁸ Their theory is equally a contrast to the position of World Commission on Environment and Development (WCED) report of 1987, the Brundtland Report that gave the definition of sustainable development as ‘the development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.’⁴⁹ In an anthropocentric ethics, nature deserves moral consideration because how nature is treated affects humans.

Environmentally concerned writers have contested that anthropocentrism is ethically wrong and at the root of ecological crises. Their philosophy is selfish considering benefits to humankind as the ultimate criterion of every development or process.

5.4 Ecocentric Theory.

Aldo Leopold is acknowledged as the earliest ecocentrist as a result of his writings in the late 1940s. In his book titled *A Sand*

⁴⁶ Both plants and animals.

⁴⁷ O. A. Iwena, *Essential Geography*, (Lagos: Tonad Publishers Ltd, 2017)p.465.

⁴⁸ *Ibid* p.466.

⁴⁹ Brundtland Report *op cit* p.27.

County Almanac, he introduced the concept of land ethic. By 'land', Leopold refers to the whole ecological community of a place or of natural settings in its entirety. His two most notable quotes in support of a land ethic are as follows;

That land is a community is the basic concept of ecology, but that land is to be loved and respected is an extension of ethics; and

A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.

This is a philosophical extension of environmental ethics that is premised on the value of the environment and the relationship of humans to that environment. Its focus is on the interests of all species and natural features of Earth's ecosystems, refusing to place any species above the others. Their information is backed by ecological sciences and their study of interspecies relationships, natural processes, and the interrelationships between natural features and biological organisms.⁵⁰ They place special attention on the intrinsic value of all these species in their own right while acknowledging their instrumental value to one another as part of the natural process.⁵¹

This school of thought has a complete contrary belief of humans being the central focal of the environment. They

⁵⁰ www.study.com>academy>egocentrism Ecocentrism in Environmental Ethics accessed September 30, 2020.

⁵¹ *Ibid.*

observe the symbiotic existence between humanity and the environment. In other words, they co-exist for the benefit of each other. Their philosophy is nature centred, as opposed to human centred.

5.5 The Theory of Common but Differentiated Responsibility.

This is the international efforts to address the issue of climate change.⁵² The principle is in recognition of the world community that parties vary both in their levels of responsibility for climate change and in their capacities to cope with it. The principle provides a platform for differentiating among parties.

Rio Declaration 1992 in its Principle 7 states that in view of the different contributions to global environmental degradation, states have common but differentiated responsibilities.

This concept acknowledges the fact that although all countries of the world both developed and the underdeveloped share the same environment and that they have a common responsibility to preserve it but that the degree of the responsibility and commitment should vary. This is premised on the understanding that industrial activities are on the high level in developed countries than in underdeveloped countries. Thus this concept places more responsibility on industrialized nations if sustainable development is to be achieved. It also enjoins developed countries to assist developing countries in

⁵² Lavanya Rajamani, 'Differentiation in Emerging Climate Change Regimes Theoretical Inquiries in Law', 14,1,(2013) pp. 152-171.

meeting their costs of achieving sustainable development. Some conventions have adopted this theory.⁵³

5.6 The Theory of Common Concern for Humanity

The theorists in this school are of the view that environmental issues cannot be managed solely at regional or national levels. They encourage international efforts to be geared towards protecting and preserving the environment which in most cases affect the principles of state sovereignty.⁵⁴ It advocates that states should surrender some of their sovereign rights for the interest of the entire human race which is normally done through adoption of treaties. This theory therefore addresses some basic issues which are of common concern to humanity.

5.7 Theory of Environmentalism

This theory sees environment as an important factor in the development of the cultural and intellectual capacities of an individual or group.⁵⁵ It comprises work or advocacies by Non-Governmental Organisations (NGOs) for the preservation, restoration, or improvement of the natural environment; particularly the collective crusade to control pollution through Public Interest Litigation processes.

⁵³ 1992 United Nations Framework Convention on Climate Change (UNFCCC); Article 10(2) of the 199 Basel Convention on the Control of Transboundary Movements of Hazardous Waste.

⁵⁴ Rio Declaration p.121.

⁵⁵ M. Webster, 'Environmentalism', available at www.merriam-webster.com/dictionary/environmentalism. >accessed December 3 2014. Professor John B. Watson was acclaimed for having contributed substantially to the evolution of this theory through his academic works.

(a) Public Nuisance and Environmental Issues

The main goal of the economy is to provide for the material well-being of people. However, whatever economic activity being undertaken must be conducted in a manner that would preserve the environment and maintain ecological balance.⁵⁶ The gamut of environmental problems being experienced globally is hinged upon massive economic activities going on in the world. Hence the need for environmental protection or striking a balance to cushion the effects of man's activities in his environment.

Stephen Lampe laments that:

the state of our environment alerts thinking humanity to the fact that we have reached a most critical turning point, indeed, a turning point of cosmic proportions. Either we make the right turn and begin to walk on a new path of spirituality and sustainable development or we continue on our present path of reckless materialism, narrow-mindedness, and selfishness (at the personal, community, and national level), and plunge inexorably into the abyss of ruin and possible extinction.⁵⁷

⁵⁶ Stephen Lampe, *Building Future Societies The Spiritual Principles*, (Ibadan: Millennium Press 1994) p.97.

⁵⁷ Ibid p.193.

What then are those environmental issues confronting and starring us in our respective eyes globally? They range from water pollution, land pollution, air pollution, atmospheric pollution, and forests and biodiversity and may not be exhaustive. These issues are examined below.

(b) Environmental Issues and Species of Pollution

i. What is pollution?

Pollution is defined as ‘an undesirable change in the physical chemical or biological characteristics of air, land and water that may, or will harmfully affect human life or that of other desirable species, industrial processes, living conditions and cultural assets...’⁵⁸

Land Pollution

Land pollution results from improper disposal of waste. Waste can be effectively and efficiently disposed of only after usable resources have been claimed from it and once it has no adverse effects on the environment. Land or soil pollution is mostly through uncontrolled and poorly planned disposal of waste. Land pollution is therefore the injection of non-recyclable or non-renewable substances into the land in quantities that it becomes harmful to the environment. For waste to be efficiently disposed of, it should have no harmful impacts on the environment. Most hazardous chemical waste products come out as liquid or in sludge form, some are radioactive. The discharge of these hazardous chemicals and radioactive waste

⁵⁸ Frank P. Grad, *Environmental Law*, Chapter 1, p.7.

is destructive to land and therefore make it harmful for human existence.

Air Pollution

This is a mixture of solid particles and gases in the air.⁵⁹ It has also been described as the presence of substances in the atmosphere that are harmful to the health of humans and other living beings, or cause damage to the climate or to materials. It is any physical, chemical or biological change in the air. 'Air pollution is the release of pollutants such as gases, particles, biological molecules, etc. into the air that is harmful to human health and the environment.'⁶⁰ It is the contamination of air by harmful gases, dust and smoke which affect the plants, animals, and humans drastically.⁶¹ The biggest cause of air pollution are the combustion of fossil fuels like coal, petroleum and other factory combustibles. Large quantities of sulphur dioxide is emitted from the combustion of fossil fuels. Also carbon monoxide is released as a result of incomplete combustion of fossil fuels. Factories and industries are the major agents of air pollution. Their activities release carbon monoxide, organic compounds, hydrocarbons, and chemicals. They degrade the quality of air in the environment when they are discharged.⁶² The hazardous effects of air pollution on the environment include; several respiratory disorders and heart diseases, global warming, acid rain, and ozone layer depletion.

⁵⁹ Medliplus.gov>air pollution accessed on September 30, 2020.

⁶⁰ <http://byjus.com/biology/air-pollution> accessed on September 30, 2020.

⁶¹ Byjus.com/biology/air-pollution...accessed on September 30, 2020.

⁶² *Ibid.*

The anthropocentric belief is that God created the earth for mans' enjoyment. However the consequences of air pollution on man cannot be separated from the effect on the whole ecosystem. In other words, the biosphere and the various natural ecosystems that make up is viewed as the base for human life support.⁶³ The consequences of air pollution is not just restricted to human health, it is a problem that transcends to other components of the natural environment. This is predicated upon the fact that polluted air has been described as an agent, active and fast moving agent of pollution of the environment.⁶⁴ It is also observed that when wind disperses polluted air, the end result is the transportation of pollution abroad; in most cases, clean air areas thereby creating dangers to the environment and not just man.⁶⁵

In 1979, 32 countries of pan-European region united to minimize air pollution. They signed UNECE Convention on Long range Trans-boundary Air Pollution making it the first international treaty to handle the issue of air pollution on a broad regional basis. The Convention became operational in 1983 and established general principles of international cooperation for air pollution abatement.⁶⁶The Convention has

⁶³ I.C. Prieto and Paul Nocedal (ed), *Legal Protection of the Environment in Developing Countries* (the colloquium of the International Association of Legal Science, Mexico, August 25-28,1974) p.21 cited by E.O. Akanki , 'Air Pollution Control Law' in J.A. Omotola (ed), *Environmental Laws Including Compensation* (Lagos: Mayodele Ajayi Enterprises, 1990) p.191.

⁶⁴ E.O. Akanki, 'Air Pollution Control Law' in J.A. Omotola(ed), *ibid*, pp.191-192.

⁶⁵ *Ibid*.

⁶⁶ [www.unece.org>env/lrtawelcome](http://www.unece.org/env/lrtawelcome) [accessed on September 30, 2020].

largely contributed to the development of international environmental law and has created a framework for checking and reducing the harm to human health and the environment caused by trans-boundary air pollution.

Water Pollution

Water is very essential in human existence. It constitute about 70% of the composition of human body. Life will be impossible without water. In other words, water is the life wire of the environment. Water pollution is said to occur when water is altered to the extent that it becomes less suitable for any or all of the functions and purposes for which it is usually suitable in its natural state.⁶⁷

The major causes of water pollution include increased population; industrialization; urbanization; unplanned or unimplemented urban scheme.

The quality of water is reduced or polluted by organic substances from people who use water for various human activities. In other words, water pollution occurs when there is drastic and undesirable alteration in the quality and characteristic of water in a manner that it adversely affects its normal usage.

ii. Deforestation

This is incessant felling of trees in our rich wild forests and other vegetation for agricultural, ranching, commercial and other purposes without replanting or giving adequate timing for

⁶⁷ WHO Report 1974 Health Hazards of the Environment- Water ch.2.

regeneration. Amongst the devastating effects of deforestation include the destruction of the natural habitats of many plants and animal species and the deterioration of the environment leading to desertification. This contributes to the green house effect and global warming. It also aids the depletion of the ozone layer that protects us from direct and dangerous ultra violet rays of the sun and so many others.

There is need to balance the activities we undertake in the environment. This is the essence of most of the convention to which Nigeria is signatory.

6.1 Corporate Social Responsibility (CSR)

The invasion of foreign capital transfer to the developing world and the pursuit of world economic control by the developed countries of the world is the origin of melancholy, economic catastrophe and environmental injustice in the economically underdeveloped nations of the world.⁶⁸

This concept became topical in USA in the 1970s when the concept of the 'social contract' between business and society was declared by the Committee for Economic Development in 1971. Businesses have to provide jobs and economic growth through well run businesses ⁶⁹What is a well- run business? This research submits that it is a business that is ethical and environmental friendly in the way and manner they are carrying on their business. It is business which its sole concern is not the amount of profits they make for the corporation but

⁶⁸ Adam Smith, *An Enquiry into the Rights of the East-Indian Company*, (London: Walter Shropshire and Samuel Bladon 1772).

⁶⁹ www.accprof.org>Blog accessed on September 29, 2020.

how all the persons affected by their activities are considered in the quest to make such gains.

The Legal Regime for Corporate Social Responsibility

There is no common definition of the concept of corporate social responsibility. This is premised on the fact that each definition though of importance but tries to define it from the organization the definer is coming from. However, some definitions of the concept have been proffered. Thus, Corporate social responsibility has been described as a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders⁷⁰This is the way a corporation achieves a balance among its economic, social and environmental responsibilities in its operation so as to address shareholder and other stakeholder expectation⁷¹

Corporate social responsibility has also been defined as a concept that:

recognizes that the private sector's wider commercial interests require it to manage its impact on society and the environment in the widest sense. This requires it to establish an appropriate dialogue or partnership with relevant stakeholders, be they employees, customers, investors, suppliers or communities. CSR goes

⁷⁰ www.unido.org>our focus accessed on September 28,2020.

⁷¹ Quizlet.com>ch-7 corporate-social-responsibility accessed September 30, 2020.

beyond legal obligations, involving voluntary, private sector-led engagement, which reflects the priorities and characteristics of each business as well as sectorial and local factors.⁷²

The above definition by the UK's government recognizes that corporate governance should adhere to a wider scope of stakeholders. It requires actors of a corporation to recognize its stakeholders and blend their needs and values in the day to day decision making process.⁷³

Currently CSR has no law expressly codified to regulate it in Nigeria. It remains an ethical or moral code of a company with no specific force of law. As a moral code, companies are not bound to act in a particular manner in pursuit to their CSR. However, it is believed that if companies will apply ethical and moral code in their operations, it will lead to the progress and success of the companies. Hereunder are few legislations that have made provisions that could be inferred as responsibilities on corporations to take cognizance of the environment in their daily activities.

Companies and Allied Matters Act 2020

⁷² UK Government Response to European Commission Green Paper on Corporate Social Responsibility, 2001; http://europa.eu.int/comm/employmentsocial/soc.dial/csr/pdf2/013-GOVNET_United-Kingdom_UK_011221_en.pdf.>Accessed February 4,2012.

⁷³ A Guide to Corporate Social Responsibility <http://www.ecrc.org.eq/uploads/documents/articlesa%20guide%20%corporate%20social%20responsibility.pdf>>accessed July 18,2016.

As far as our extant Company and Allied Matters Act is concerned, there is no obligation on a company to act as a good corporate citizen toward the environment where it is sited. The impetus of this discourse is that the object clause of companies witnessed in the recent times is that the scope is couched so widely as to allow the directors to carry on any business or activity that will promote the interest of the company.

In Section 305(3) provides that:

A director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful act in the circumstances and, in doing so, shall have regard to the impact of the company's operations on the environment in the community where it carries on business operations.

It is recognized old principle of law that:

“The directors are a body to whom is delegated the duty of managing the general affairs of the company. A corporate body can only act by agents, and it is of course the duty of those agents so to act as best to promote the interests of the corporation whose affairs they are conducting...”

Lord Cranworth LC in *Aberdeen Rly Co v Blaikie Bros*⁷⁴

There has not been any decision in our jurisdiction with respect to this provision. However, what will constitute practices that would be regarded to be in the best interest of the company, must be acts that would lead to the progress and economic growth of the company. A director must carry out its functions so as to preserve the assets of the company, further its business, and promote the purposes for which it was incorporated.

Environmental Impact Assessment Act

The impact assessment emanated from the desire for profound change in both the philosophy and methodology of carrying out projects. Impact assessment is a process adopted for predicting the environmental consequences of a proposed developmental project and making appropriate and adequate plan to ameliorate adverse effects on both the human and physical environments. Environmental Impact Assessment is a structural process for gathering information about the potential impacts on the environment of a proposed project and using the information, alongside other considerations, to decide whether the projects should or should not proceed, either as proposed or with modifications⁷⁵

In Stockholm conference 1972, EIA is reviewed as an essential tool for reconciling development and environmental needs and applying it to human settlements with a view of avoiding

⁷⁴ (1853) 15D (HL) 20 .

⁷⁵ Theodore Okonkwo, *The Law of Environmental Liability* (Lagos: Afrique Environmental Development and Education (AEDE) 2003) P.217.

adverse effects of such development on the environment and obtaining maximum social, economic and environmental benefits for all⁷⁶

Agenda 21 highlights the need for EIA and calls on all countries to “assess environmental suitability of infrastructure in human settlement to ensure that relevant decisions are provided by EIA and also take into account the cost of any ecological consequences and integrate the environmental consideration in decision making at all levels.”⁷⁷

Principle 17 of Rio Declaration and Development enjoins all nations to enact laws that will emphasize the need for an EIA before a project takes off. Perhaps pursuant to the above injunction Nigeria on the 10th of December 1992 by Decree No. 86 promulgated Environmental Impact Assessment Act.⁷⁸

Section 1 of this Act highlights the goals and objectives of the environmental impact assessment Section 1(a) provides that the Act shall be;

“to establish before a decision taken by any person, authority, corporate body, or unincorporated body including Government of the Federation, State or Local Government intending to undertake or authorize the undertaking of any activity that may likely or to

⁷⁶ Principles 14 and 15.

⁷⁷ Para 7(4)b and Para 8(4).

⁷⁸ Now Environmental Impact Assessment Act 1992 Cap E12 Laws of the Federation of Nigeria 2004.

a significant extent affect the environment or have environmental effects on those activities shall first be taken into account”.

This paper observes that this Act was promulgated to protect and preserve the environment for sustainable economic growth. The Public and Private sectors of the economy shall not undertake, embark or authorize project activities without prior consideration at an early stages, of their environmental effects⁷⁹.

It is the corporation responsibility to adhere to the dictates of this Act and where their activity will significantly affect the environment to re-strategize or stop the project entirely. Considering the state and quantum of environmental degradation caused in our communities particularly in the Nigeria Delta region, this paper questions whether some of these Oil and Gas projects sited in this area have really carried out the provisions of this legislation. This assessment is not a one off exercise, not merely an exercise prior to the commencement of the project, but a continuing assessment and evaluation as long as the project is in operation. This paper therefore advocate that these corporations should be in continuous assessment of the level of harm done in communities they are located and have a rethink of the ways of terminating grievous harm done to this community.

6.2 The Essence of Corporate Social Responsibility

⁷⁹ Section 2(1).

Corporations have been given right of existence and to benefit from the society. The benefits of establishing and running their businesses in a conducive platform provided by the society which ensures shareholders primacy. To ensure the smooth running and existence of these corporations in their respective locations, ‘they must also give something in return to the society by way of recompense and for further benefits.’⁸⁰ The corporate social responsibility is focused on ethical practices in the business and the responsiveness of a corporation to its stakeholders and the environment in which it operates.⁸¹ In other words, this is a pay back to the society part of what the corporation has earned as a result of siting and operating that company there. They can involve themselves in philanthropic causes and make provisions on social values.

6.3 Environmental Protection and Corporate Social Responsibility.

Company law should enhance public interests. Company law should involve and safeguard interests mainly ignored by the subject, which includes interests such as that of the employees, community and the protection of the environment from the impact of the corporate activity.⁸² This is the very essence of what law should seek to achieve in a corporate environment.

⁸⁰ G.L. Umoru, *Snergy Between Corporate Governance and Corporate Social Responsibilities in Nigeria*, Vol.2 No.2 September 2016 Port Harcourt Journal of Business Law, p 427.

⁸¹ *Ibid.*

⁸² J.E. Parkinson, *Corporate Power and Responsibility Issues in the Theory of Company Law*, (London: Oxford University Press 1993).

E. Merrick Dodd Jr.⁸³ has over eight decades ago declared what the objective of management of the company should be when he stated thus:

If the unity of the corporate body is real, then there is reality and not simply legal fiction in the proposition that the management of the unit are fiduciaries for it and not merely for its individual members, that they are...trustees for an institution (with multiple constituents rather than attorneys for the shareholders.

Some other authors and writers have equally held the same view as projected by Dodd Jr.

Stakeholder approach in corporate governance structure provides a wider scenario whereby the corporation is linked and has interdependency with all the participants in the corporation with a uniform aim of maximizing wealth.⁸⁴ He further stated that the current trend advocating for maximization of wealth for all stakeholders which comprises shareholders, creditors, suppliers, customers and employees; while the social participants cover the local community; society and global partners, local, state and federal governments and environmental matters.⁸⁵ Within the

⁸³ E. Merrick Jr, Harvard Law Review 1932 cited by Donaldson & Preston, The Stakeholder Theory of Corporation: Concepts, Evidence and Implications, Academy of Management Review 1996 vol.2o No.65-91.

⁸⁴ Zabihollah Razaee, *Corporate Governance and Ethics*, (John Wiley & Sons Publisher 2009).

⁸⁵ Ibid p.32.

understanding of advocates of social constituents, public companies while running the affairs of the company must be socially responsible- ‘good citizens granted the use of the nation’s physical and human capital, managed in the public interest.’⁸⁶ The learned author therefore stated that the assessment of public companies performance should be in terms of major financial indicators (earnings, market share, stock price), social indicator-(employment, customer satisfaction, fair trading with suppliers), ethical indicators (proper business culture, business code of conduct), and environmental indicators (antipollution, preservation of natural resources).⁸⁷ He therefore, defined stakeholders as ‘individuals or groups who affect the company’s strategic decisions, operations and performance, and are also affected by its decisions or activities.’⁸⁸

The problem of the environment is created by man’s technical activities in exploitation of nature. All of these problems are hinged on man’s quest and activities for economic development. However amongst the importance of the study of economics in the human environment is that it creates a platform for us to apply reason prior to making any decision. This is based on the understanding that every activity involves cost, the individual should be able to resolve these practical problems by applying economic principles and avoid

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

mistakes.⁸⁹ This now takes us on major reasons for environmental protection.

The quest for environmental protection is borne out of the need to balance man's activities in the environment which has gravely degraded the environment. Environmental protection is focused on stopping of unwanted environmental changes. It became very necessary as a result of growing environmental issues resulting from past neglect. Some topical environmental issues have arisen over the years from man's activities particularly from the activities of companies in the environment. They are namely: Ozone layer depletion; global warming; climate change; bio diversity destruction; trans boundary movement and dumping of hazardous substances; urban waste management.

6.4 Corporations and CSR – What Legal Nexus?

Applying the principle of ecological balance

Ecological balance refers to the balance between living beings and also the non-living environment. Ecological balance is maintained through preservation and conservation of the environment. Conservation is the planned, controlled exploitation or judicious use of the natural resources to ensure their continuous availability and to preserve the quality or original nature of the environment. It should be the elementary CSR that their policies should conserve the natural resources which include water, soil, forest, air, wildlife and mineral

⁸⁹ C.N. Attah, *Standard Economics*, (Enugu: Computer Edge Publishers, 2014) p2.

resources to ensure sustainability. They should as a matter of necessity apply caution in the usage of these resources not making any one of them fall into extinction or become unfit for usage.

Conscious recognition and application of precautionary principle

This principle entails that if there is a strong suspicion that a certain activity may have environmentally harmful consequences, it is better to control that activity now rather than wait for incontrovertible scientific evidence. This principle envisages two circumstances namely the anticipation of harm before its occurrence and the responsibility of the proponent to establish that the proposed activity will not or is unlikely to result to significant harm.⁹⁰ This implies a social duty or responsibility to protect the environment from exposure to harm when scientific investigation had found plausible risk, except where it proves otherwise that there is sound evidence that no harm will result. The precaution in this circumstance is viewed as ‘caution in advance’ or caution practiced within the context of precaution.⁹¹ The Rio Declaration addressed this issue when it declared thus:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there is threat of serious or irreversible damage,

⁹⁰ C.A. Omaka, *Municipal & International Environmental Law*, (Lagos: Lions Unique Concepts,2012) p.38.

⁹¹ *Ibid* pp.31-32, citing the Rio Declaration on Environment and Development of 1992.

lack of full scientific uncertainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.⁹²

In Nigeria section 21(2) of NESREA Act is most complementary to this principle it provides that ‘The agency shall in collaboration with other relevant agencies embark on programmes for the control of any substance, practice, process or activities, which may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, when such effect may reasonably be anticipated to endanger public health or welfare’.

This principle was applied in the *New Zealand v France*⁹³ and in *Vellore Citizens Welfare Forum v Union of India*.⁹⁴

This research submits that CSR should go beyond the social obligations to the host communities. Their social obligations come in the form of philanthropic projects which the communities have benefited from. They should graduate to engaging moral obligations which is a more viable functional and enduring CSR. There are more to it which is making strategic policies that will enhance that all precautions are taken to protect the environment in every of their undertaking. This is premised on the understanding that without a protected and sustainable environment, their philanthropic CSR would be useless and most writers have interpreted this as a cosmetic attempt to sustain corporation reputation and not adopted to

⁹² Principle 15 of Rio Declaration.

⁹³ (1974) ICJ 457.

⁹⁴ (1996) 5SCC 647.

render assistance in tackling endemic economic, environmental and social issues. The business itself will not be sustained where the environment is destroyed. Where they took all precautionary measures and it failed or appears to them that environmental degradation may occur, it is their duty to notify the environmental harm that is caused or might be caused to the appropriate authority and even to landowners.

Polluter pay principle

Where the environment is by any means polluted it is duty of the polluter to pay adequate compensation to the persons affected by such act adequate compensation and also be held liable to off set the cost of remedying harm inflicted on the environment occasioned by the pollution. This is a corrective measure and also preventive in the sense that the cost of preventing further pollution is incorporated into the internal cost of the polluter.⁹⁵

Unfortunately, NESREA the legislation which is regarded as comprehensive on environmental protection, there is no provision on this principle to check the activities of polluters in Nigeria. Notwithstanding this lacuna, corporations should take it upon themselves to work in line with this principle once pollution occurs as part of their corporate social responsibility.

Principle of Preventive Action

⁹⁵ Principle 16 of Rio Declaration; Oil Pipeline Act, Cap O7, LFN,2004, Petroleum(Drilling and Production) Regulation and Harmful Wastes (Special Criminal Provisions) Act.

This principle calls for preventive approach to the management of the human environment. States should avoid actions in their development plans and policies that would transgress the environment. Corporate actors and managers should therefore avoid actions, policies, strategies and plan that will have adverse effect on the environment. Corporate actors should in the course of their businesses take actions that will protect and improve the environment and safeguard the water, air, land, forest and wildlife of our environment. One of their duties is that they should not conduct their activities in a manner that would cause harm to the environment without taking measures to prevent or minimize the harm as much as possible.

Advancement and development of the community where their company situates

This is also one of CSR. They should after they have addressed the above issues make conscious attempts to engage in projects for the development and advancement of the host communities.

Environmental Balance

The above enumerated issues are topical and have created great concern globally. Man's economic activities and particularly corporations' industrial activities have fast forwarded degradation of our environment which is evident in air pollution, water pollution, land degradation and their attendant effects in the environment. This calls for corporations ethical operations. The hallmark of sustainable development is that environmental quality should be our benchmark as regards renewable resources, biodiversity and pollution. It is proposed

that renewable resources should not exceed the regeneration of renewable resources.

The responsibility of the board of directors includes the responsibility to conduct the affairs of the company in a lawful and efficient manner in such a way as to ensure that the company is constantly improving its value creation as much as possible.⁹⁶ This responsibility is based on the shareholders' primacy which is on the understanding that the responsibility of corporation is to maximize profits and for shareholders and the sole responsibility of managers is to seek to maximize shareholders' profits and to advance their interests.⁹⁷ The implication of this is that the whole essence and activities of a corporation must be geared towards interests and adding value to the shareholders. The managers of a corporation must heavily concentrate on realizing the primary objective of the company which is profit maximization. Shareholders theorists proposition is that it is only democratically elected governments that are legitimately authorized to solve social problems. To them corporations diverting their attention to "pursue social ends" is viewed "as theft of funds belonging to its shareholders"⁹⁸

⁹⁶ Code of Best Practices on Corporate Governance in Nigeria accessed 31/7/2021.

⁹⁷ Uchechukwu Nwoke "Two Complimentary duties under corporate social responsibility Multinationals and the moral minimum in Nigeria's Delta region" *International Journal of Law and Management* Vol.58 No.1 2016 p.4.

⁹⁸ A.B. Smith "Making the case for the competitive advantage of corporate social responsibility" 2007 *Business Strategy Series*, Vol.8 No.3 pp.186-187.

On the other hand the promoters of stakeholders interests advocate that corporation should add value to all those whose interests are affected by corporate activities. They are not exhaustive but include the interests of the employees, creditors, customers, communities and governments. Majority of the stakeholders' interests concede that corporations have economic duties which must have to be satisfied, including that owed to the shareholders. But have yet argued that corporate actors should take into cognizance the interests of other constituent members outside shareholders. To them corporation is part of the social institution, part of the society with the wide obligations which logically is derived from its existence in the environment. Consequently, equity insists that those affected, either directly or indirectly, by corporate activities should be considered when developing corporate strategies.⁹⁹

Another up- coming theory is that that seeks to balance the shareholder and stakeholder theories. This is referred to as "business case" theory. This persuades the corporation and corporate actors to integrate CSR policies into core strategic decision-making processes on the grounds that it is the best long- term financial interest of the shareholders. They argue that considering CSR issues in decision-making will forestall long-term financial and reputational risks, and also allow

⁹⁹ R.A. Philip, *Shareholder Theory and Organizational Ethics* (San Francisco: Barrett-Koehler 2003).

corporations to have “set of rules by pre-empting change in the turbulent environment.”¹⁰⁰

The question is can a corporation exist in isolation of other factors that play vital role in its sustainability? The ecoecentric understood and highlighted the symbiotic nature of man, other living, non-living things and environment. Aldo Leopold opined and rightly so that ‘a thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.’¹⁰¹

Companies should adopt precautionary principle which entails that action should not be implemented until they are certain about their major consequences.¹⁰² Environmental codes of practices for corporations should include having pollution inventory; environmental impact assessment of major development in an area;¹⁰³ waste management; commitment to meeting environmental obligations and duties; water is also a scarce resource businesses should aim for long-term water

¹⁰⁰ Boninier al “When Social issues become strategic: executives ignore socio-political debates at their own peril”.(McKinsey Quarterly, Vol.2006 No.2 pp.20-31s.

¹⁰¹ A SandCunty Almanac.

¹⁰² This is the spirit of our Environmental Impact Assessment Act Cap E 12 Laws of the Federation of Nigeria 2004.

¹⁰³ Bringing the environmental impact of your business will lead to the sustainability of your business. It has also been observed that that a business less dependent on natural resource than your competitors and have strategized ways to handle with the rising cost due to climate change, your business will a greater chance of long- term success. (the Benefits of an environmentally friendly business. www.business.qld.gov.au accessed31/7/2021.

efficiency. Using water efficiently makes good business practice and helps to preserve a vital natural resource.

This research advocates the practice of law of balance which posits the principle of giving and taking. Every natural process and relationship is distinguished by this principle. It is never one-sided. It has been noted that ‘In the complex web of relationships among living things, this principle is forever at work, unless disturbed by man’s thoughtless interventions.’¹⁰⁴ It is in acknowledgement of this principle that scientists enunciate ‘ecological balance’¹⁰⁵ Balance is the normal and innate state of natural ecosystem. A state of imbalance is unsustainable and portends danger for the environment. We must as a matter of necessity seek to restore balance between the needs, relationships of human beings and other species; strike balance between needs of the present generation and that of the future generations; balance between the needs of the different peoples of the world; balance between the resources we generate and those we consume.¹⁰⁶

7.1 Conclusion and Recommendation

This research has attempted to highlight the connection between environmental protection and corporate social responsibility. Corporations are not distinct from the environment. What affects the environment invariably will affect corporations and their activities hence the need to exert

¹⁰⁴ Stephen Lampe, *op cit* p. 202.

¹⁰⁵ This advocates balance between the relationship of animals, plants and their environment.

¹⁰⁶ Stephen Lampe, *op cit* p. 202.

caution in their activities. Environmental protection is the responsibility of all persons – individuals, companies or government departments. Government as the custodian of society's interests should ensure an enabling environment necessary for environmental protection. In this wise, governments have these areas to address:

Legislation which comprises legal rules that would provide for environmental use. Strong laws that seek to prescribe how corporations should carry out their businesses in the communities to ensure that social, ethical and environmental standards are maintained. Development cannot be at the expense of the environment. "Sustainable development" implies the preservation of natural resources for the benefit of the present and future generations, the exploitation of natural resources without compromising the environmental rights of the people, the integration of environmental factors into economic and other development programmes.¹⁰⁷ To achieve sustainable development, economic growth or otherwise, environmental protection shall form an integral part of the development process and cannot be considered in isolation from it. There is also the Consultative approach such as consultations and negotiations with villages or economic sectors can be helpful in this regard. Government may sit down with representatives from villagers to negotiate and discuss sustainable development strategies in the village area. It should also be the duty of the government to sit down with the corporations particularly with the chemical companies to agree

¹⁰⁷ Olu Awolowo, *Environmental Rights and Sustainable Development in Nigeria*, in Olabisi Onabanjo University, *Journal of Public Law*. Olabisi Onabanjo University Ago-Iwoye, Nigeria p. 191.

on a morally based corporate responsibility which is the spirit of Environmental Impact Assessment Act. Notwithstanding the position of our corporations in the economic growth and development in the under developed nations like ours, there is need to apply caution and restraints in the method adopted in these companies and industries. The fundamental root of the existence and improvement in the value of their businesses is the sustainability of nature and our environment as a whole. They should grow out of philanthropic gesture of CSR and apply moral principles of CSR which will lead to long-term success of their companies and its sustainability. The balance this work advocates is that enterprise should recognize variant stakeholders interests particularly the environment which is our home in the web of corporate activities. Hence, the need to balance them.