

REINVENTING CORPORATE SOCIAL RESPONSIBILITY AS A TOOL FOR ENVIRONMENTAL PROTECTION IN EBONYI STATE*

Abstract

Environmental degradation plaguing the world at large and Ebonyi State in particular is largely caused by man acting through corporate bodies. To curb it, human societies including Ebonyi State established legal and institutional frameworks on environmental protection. Notwithstanding these, environmental degradation persists in Ebonyi State. This necessitated this study's search for solution to the aforesaid environmental degradation plaguing Ebonyi State. Therefore, this paper sought to establish the nexus between corporate social responsibility (CSR) and environmental protection in Ebonyi State. Doctrinal legal research methodology involving the use of primary and secondary sources of data collection was adopted in this work. This paper found that, in Ebonyi State: no statute makes CSR obligatory for corporate bodies operating therein; and that voluntary practices of CSR by corporate bodies do not enhance environmental protection therein. Consequently, it concluded that environmental protection will flourish in Ebonyi State once statutes compel the aforesaid corporate bodies to execute CSR projects that boost environmental protection directly. Therefore, this study *inter alia* recommended the use of statutes to compel every corporate body operating in Ebonyi State to spend 2% of its annual profits or budgetary allocations on CSR projects directed at catalysing environmental protection in Ebonyi State.

Keywords: CSR, environment, law, protection

1. Introduction

Prior to the era of man's unrelenting drive for development, the environment was largely pristine. Sadly, current global drives for advancement have made environmental degradation a norm in contemporary human societies¹ including Ebonyi State. Thus, man, acting through himself and diverse corporate bodies, engineers most environmental degradations plaguing the world at large² and Ebonyi State in particular. Corporate bodies indicted for this environmental degradation include registered companies, public corporations and public authorities.³ Having realized his folly, man, across nations of the world, now ferrets for solutions to the environmental degradation so caused⁴ by *inter alia* establishing diverse legal frameworks to check the said human-induced degradation.⁵ Notwithstanding the above measures, environmental degradation still flourishes in Ebonyi State, causing one to wonder how it can be effectively checked. A formidable answer lies in the tactical deployment of corporate social responsibility (CSR) and environmental law in environmental protection since, nowadays, CSR is now increasingly a legal obligation for corporations in many countries and under international law.⁶ However, current practices of CSR in contemporary Nigeria and Ebonyi State are largely voluntary and philanthropic.⁷ The few corporate bodies that even practice it genuinely in Nigeria seldom undertake CSR projects aimed at safeguarding the environment.⁸ Worst off is the lip service public corporations and government authorities pay to CSR in Nigeria. Thus, current voluntary practices of CSR have not improved environmental protection significantly in Ebonyi State.

However, given the potential of CSR to engender environmental wellbeing, this work will enjoin relevant actors to use legislation including environmental law to expressly compel all categories of corporate bodies operating in

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¹R Musbau, 'Achieving a Cleaner Environment in Nigeria' (2017) *P.M. News* <<https://www.pmnewsnigeria.com/2017/10/04/achieving-a-cleaner-environment-in-Nigeria/>> accessed 14 August, 2023; OC Eneh and VC Agbazue, 'Protection of Nigeria's Environment: A Critical Policy Review' [2011] (4) (5) *Journal of Environmental Science and Technology*, 490 at 490.

² OC Eneh and VC Agbazue, n 1, 492-494.

³ Nigerian Finder, 'Corporate Social Responsibility in Nigeria' (2019) <<https://nigerianfinder.com/corporate-social-responsibility-in-nigeria/>> accessed 20 September 2023.

⁴ KM Amaeshi, *et al*, 'Corporate Social Responsibility (CSR) in Nigeria: Western Mimicry or Indigenous Practices?' [2006] (39) *International Centre for Corporate Social Responsibility Research Paper Series*, 15.

⁵ OC Eneh and VC Agbazue, no 2, 494; R Musbau, no 1.

⁶ Nigerian Finder, n 3; NCS Ogbuanya, *Essentials of Corporate Law Practice in Nigeria* (Revised edn, Novena Publishers Ltd 2013) 53; O Adewale, 'The Role of Non-Governmental Organisations in Implementing Environmental Treaties in the Economic Community of West African States' [1997] *Nigerian Current Law Review*, 191 at 191 and 197.

⁷ L Osemeke, *et al*, 'Corporate Social Responsibility Initiatives in Nigeria' (2016) *SpringerLink* <https://link.springer.com/chapter/10.1007/978-3-319-21641-6_17> accessed 24 August 2023.

⁸ Rather, these bodies focus on CSR initiatives like sports sponsorship, construction of schools and medical facilities, provision of social amenities, *etc.* KM Amaeshi, *et al*, n 4, 27-28.

Ebonyi State to execute CSR projects that directly enhance environmental protection in Ebonyi State⁹ – and thereby precipitate environmental protection across Ebonyi State. Therefore, the problem this paper aims to solve is the worsening environmental degradation currently ravaging Ebonyi State largely on account of the irresponsibility of corporate bodies operating in Ebonyi State – despite the rhetoric of CSR being touted by the said corporate bodies. Against this backdrop, this study will seek to unravel the feasible ways relevant state actors and non-state actors can use environmental law and CSR to engender environmental protection in Ebonyi State. Doctrinal legal research methodology was employed in this study whilst primary and secondary sources of data collection were used therein. The scope of this work encompasses how CSR and environmental law can be effectively blended to engender environmental protection in Ebonyi State whilst drawing lessons on environmental protection from the practice of CSR in India. Other parts of Nigeria outside Ebonyi State fall outside the gamut of this study. The same applies to aspects of CSR unrelated to environmental protection.

2. Conceptual and Theoretical Frameworks on Environmental Protection and Corporate Social Responsibility in Ebonyi State

Conceptual Framework

Environmental Law

Environment means the ‘place of human, plant and animal existence.’¹⁰ Law is a set of rules made by a law-making authority ‘prescribing a rule of action or principle of conduct to be obeyed by all the citizens of the state, under pain of punishment and to be enforced in courts established for that purpose.’¹¹ Therefore, environmental law is ‘any rule or law, which is made or used for the protection, maintenance, conservation and improvement of the environment, including those for the redress for environmental harm.’¹² It is a body of laws designed to protect, preserve and police the environment and to compel/spur legal persons to relate favourably with the environment.

Environmental Protection

Environmental protection is ‘the totality of all measures that serve to protect nature and human health.’¹³ It includes ‘programs and services that are aimed at reducing risks to the environment from contaminants such as hazardous materials and wastes, fuels, and oils.’¹⁴

Corporation

A corporation is a ‘body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties ...’¹⁵ Two major kinds of corporations exist in Nigeria. The first, which is public corporation, is a ‘statutory body, usually owned by government, and established to provide certain goods, or render services, manage public assets, implement a law, regulate activities ..., advise government and so forth.’¹⁶ The second, which is registered company, is one incorporated via registration under the Companies and Allied Matters Act 2020 (CAMA) to undertake business activities with the aim of maximizing profit.¹⁷ Three major types of registered company are unlimited company, company limited by guarantee and company limited by shares. Unlimited company is one where the liability of every member thereof is unlimited, rendering him liable to pay the full amount of the company’s liability.¹⁸ Company limited by guarantee is one in which the liability of any member thereof is ‘limited to the amount which he has undertaken to contribute in the event of the company being wound up.’¹⁹ Company limited by shares is one ‘where the liability of a member to contribute to the company’s assets in the event of ... winding-up is limited to the amount, if any, unpaid on his shares.’²⁰

⁹ Cf. United Nations Industrial Development Organization, ‘What is CSR?’ [2023] <<https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr>> accessed 24 August 2023.

¹⁰ CA Omaka, *The Nigerian Conservation Law* (Lions Unique Concepts 2004) 1.

¹¹ CA Oputa, *The Law and the Twin Pillars of Justice* (Government of Imo State of Nigeria 1981) 1.

¹² AO Chukwu, *Municipal and International Environmental Law* (Lions Unique Concepts 2012) 23.

¹³ DHL Freight, ‘Environmental Protection’ *FreightConnections* [2024] <<https://dhl-freight-connections.com/en/logistics-dictionary/environmental-protection/>> accessed 20 May 2024.

¹⁴ Penn State, ‘Environmental Protection’ *Environmental Health and Safety* [2024] <<https://ehs.psu.edu/environmental-protection>> accessed 19 May 2024.

¹⁵ Merriam-Webster, Incorporated, ‘Corporation’ [2023] <<https://www.merriam-webster.com/dictionary/corporation>> accessed 19 August 2023.

¹⁶ E Malemi, *Administrative Law* (4th edn, Princeton Publishing Co. 2002) 477.

¹⁷ Olakanmi & Co, *Companies and Allied Matters Act, 2004 & Investments & Securities Act 2007* (2nd edn, LawLords Publications 2009) 4; JO Orojo, *Company Law and Practice in Nigeria* (5th edn, LexisNexis 2008) 6, 85.

¹⁸ Olakanmi & Co, n 17, 5.

¹⁹ Ibid.

²⁰ NCS Ogbuanya, n 6, 55-57.

Corporate Social Responsibility

Corporate social responsibility (CSR)²¹ is the ‘idea that a company should play a positive role in the community and consider the environmental and social impact of business decisions.’²² It requires corporate bodies to engage in activities that further social good beyond the interests of such corporate bodies and the requirements of the law.²³ Instructively, CSR is used in two senses this work: it requires every corporate body to (1) behave in a responsible and socially acceptable manner as a member of the society; and (2) give something back to the society in which it operates since it is a member of that society. Even though its implementation is largely voluntary in many climes, it is now a mandatory scheme in countries like India where laws compel companies to develop sustainable CSR practices.²⁴ Three major variants of CSR exist. The first, which is voluntary CSR, is a form of voluntary self-regulation where companies voluntarily exceed regulatory requirements in a bid to safeguard non-shareholder interests.²⁵ For instance, a company might voluntarily show concern for the environment beyond the stipulation of the law.²⁶ The second variant, which is compulsory CSR, is one wherein legislations are used by government to compel corporate bodies to become corporately responsible in their dealings with the various sectors of the economy.²⁷ It proposes that the coercive power of law should compel companies to factor environmental and diverse third-party interests in their decision-making processes.²⁸ The third, which is relational responsibility, refers to conscious and largely voluntary efforts made by a corporation to ‘promote the welfare of groups such as employees, customers, or neighbours, who are affected by the conduct’ of its mainstream activities.²⁹

Theoretical Framework: Theories of Corporate Social Responsibility

The dominant theories of CSR developed to guide the operations of corporations in most parts of the world are considered hereunder.

Shareholder Theory

This theory postulates that so long as companies comply with the law, their only duty is to ensure that their shareholders or investors receive the highest possible return on their investment whilst disregarding social objectives/ interests.³⁰ It accommodates governmental regulation where it is expedient for government to check conducts of corporations that unduly undermine non-shareholder interests.³¹ CAMA endorses this theory in Nigeria.³²

Stakeholder Theory

This theory says that the duty of a corporation ‘is to consider the effects its actions have on persons other than the stockholders.’³³ Its sole focus is not the exclusive maximization of profit for investors of such corporation; but the factoring of the interests of all its stakeholders³⁴ into its daily activities.³⁵

²¹ CSR is synonymous with corporate responsibility, corporate sustainability, corporate accountability, corporate conscience, corporate citizenship, social responsibility or responsible business. J Epstein-Reeves, ‘So You call this CSR? Or one of its Many Other Names?’ [2011] <<https://www.forbes.com/sites/csr/2011/07/28/so-you-call-this-csr-or-one-of-its-many-other-names/?sh=6829026d2d41>> accessed 23 August 2023.

²² BDC, ‘What is corporate social responsibility (CSR)?’ [2024] <<https://www.bdc.ca/en/articles-tools/entrepreneur-toolkit/templates-business-guides/glossary/corporate-social-responsibility>> accessed 19 January 2024.

²³ R Cresanti, ‘What Small Businesses know about Corporate Responsibility’ [2019] *Harvard Business Review* <<https://hbr.org/2019/10/what-small-businesses-know-about-corporate-responsibility>> accessed 24 March 2023; S Pax, ‘What does Corporate Responsibility really Mean?’ [2011] *Environmental Leader* <<https://www.environmentalleader.com/2011/05/what-does-corporate-responsibility-really-mean/>> accessed 22 August 2023.

²⁴ SU Yamusa II, ‘Multinationals and Human Rights in Developing Countries: What Role does Corporate Social Responsibility play in Nigerian Oil and Gas Sector?’ [2010] (3) *Nasarawa State University Law Journal*, 91 at 93.

²⁵ Here, non-shareholder interests include the interests of employees, consumers, environmental protection, *etc.* JE Parkinson, *Corporate Power and Responsibility: Issues in the Theory of Company Law* (Oxford University Press Inc. 1993) 277; RK Ako and OS Oyelade, ‘The Role of National Legislation in improving Corporate Social Responsibility in Nigeria’ [2007] (6) (1) *Unizik Law Journal*, 109 at 112.

²⁶ OT Umahi and TC Nwano, ‘Patent Law, Corporate Social Responsibility and Access to Medicines in Developing Countries’ [2014] (6) *The Justice Journal, A Journal of Contemporary Legal Issues*, 209 at 225.

²⁷ RK Ako and OS Oyelade, n 25, 112 and 116.

²⁸ JE Parkinson, n 25, 43; OA Osunbor, ‘Corporate Social Responsibility towards the Environment: The Limits of Law’ in JA Omotola (ed), *Environmental Laws in Nigeria including Compensation* (Faculty of Law, University of Lagos 1990) 76.

²⁹ JE Parkinson, n 25, 267.

³⁰ RK Ako and OS Oyelade, n 27, 113; PN Ahiaramunnah, ‘Oil Companies: Legislation on Corporate Social Responsibility and Peace in the Niger Delta’ [2007] (2) (1) *Ebonyi State University Law Journal*, 188 at 196.

³¹ OT Umahi and TC Nwano, n 26, 221.

³² KM Amaeshi, *et al*, n 4, 11.

³³ HR Cheeseman, *Study Guide: The Legal and Regulatory Environment* (2nd edn, Prentice Hall 2000) 13.

³⁴ Including shareholders, employees, suppliers, customers, host communities and the environment.

³⁵ RK Ako and OS Oyelade, n 25, 113.

Integration Theory

It posits that corporations ought to integrate social demands into their daily business activities because corporations depend on the society for their existence and continuity.³⁶

Corporate Citizenship Theory

This theory postulates that since a company is an artificial person enjoying benefits because it is a membership of the society, it is obliged to give back to the society via CSR undertakings and otherwise.³⁷

Moral Minimum Theory

This theory states that so long as a corporation makes profit without harming third parties or correcting any harm it causes, 'it has met its duty of social responsibility.'³⁸

Productivity/Social Separation Principle

It states that the impact of the operations of corporate bodies on the society and environment should be regulated only by competitive market forces and governmental regulations;³⁹ and that where market forces are efficiently competitive and governmental regulations are effective, companies should not be bound to address non-productive needs of the society.⁴⁰

3. Legal and Institutional Framework on Environmental Protection and Corporate Social Responsibility in Ebonyi State

Legal Framework on Environmental Protection and Corporate Social Responsibility in Ebonyi State

Hereunder are the major statutes that seek to protect the environment from human induced degradation in Ebonyi State. The first, which is the Constitution of the Federal Republic of Nigeria 1999 (as amended) (1999 Constitution), provides for environmental protection to wit, 'The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.'⁴¹ The Criminal Code, which is the second law, promotes environmental protection in Ebonyi State by punishing environmental pollution. For example, it provides any person who pollutes the 'water of any spring, stream, well, tank, reservoir, or place, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanour, and is liable to imprisonment for six months.'⁴² The third, which is Ebonyi State Environmental Protection Agency Law 1999 (EBSEPA Law),⁴³ also promotes environmental protection in Ebonyi State. For instance, it criminalizes the dumping of any waste/contaminant on any place that is not a landfill approved by Ebonyi State Environmental Protection Agency or in a manner likely to create water pollution.⁴⁴ It also compels certain convicts to restore the environment they had degraded with toxic substances to a standard comparable to its pre-pollution status.⁴⁵ EBSEPA Law further punishes natural and artificial persons convicted for harming the environment. For instance, it provides that any corporate body that is convicted for discharging a harmful quantity of any hazardous waste into the environment of Ebonyi State would be punished with a fine not exceeding ₦500,000.⁴⁶ It also provides that any person who is directly involved in the operation of a corporate body convicted for contravening section 30 thereof shall be liable to a fine of ₦10,000.00 or two years imprisonment or both such fine and imprisonment.⁴⁷ Some punishments prescribed by EBSEPA Law are timeless and flexible enough to accommodate the economic realities at every given time in Ebonyi State. For instance, the fine prescribed for any outlawed action which impacts adversely on a protected area is assessed to be not less than the sum of the quantified value of such adverse effect; in addition to the cost of mitigating such effect.⁴⁸ Gratifyingly, EBSEPA Law compels environmental offenders thereunder to pay their victims compensation.⁴⁹ Instructively, there is presently no domestic law that compels corporate bodies operating in Ebonyi State to execute CSR projects directly beneficial to the environment.

Institutional Framework on Environmental Protection and Corporate Social Responsibility in Ebonyi State

Certain institutions that have been established to entrench environmental protection in Ebonyi State are discussed hereunder. The first, which is Ebonyi State Ministry of Environment, oversees and strives to engender

³⁶ OT Umahi and TC Nwano, n 26, 226.

³⁷ HR Cheeseman, n 33, 13.

³⁸ Ibid.

³⁹ RK Ako and OS Oyelade, n 25, 121.

⁴⁰ Ibid.

⁴¹ 1999 Constitution, s 20. This section 20 is made non-justiciable by s 6 (6) (c) of the 1999 Constitution.

⁴² Criminal Code, s 245.

⁴³ Cap. 53, Laws of Ebonyi State of Nigeria, 2009.

⁴⁴ EBSEPA Law, s 22 (1) (d); s 24 (2) (a).

⁴⁵ EBSEPA Law, s 26 (6); s 44 (1) (c).

⁴⁶ EBSEPA Law, s 26 (5). Cf. s 32 (3); s 36 (2); s 43 (2).

⁴⁷ EBSEPA Law, s 30 (6) (a).

⁴⁸ EBSEPA Law, s 31 (3).

⁴⁹ EBSEPA Law, s 26 (7); s 44 (1) (b).

environmental protection in Ebonyi State. The second institution, which are the various courts in Ebonyi State, effectuate environmental protection in Ebonyi State via adjudicating over court actions that have bearing on environmental protection. For instance, Ebonyi State Environmental Protection Court has the exclusive jurisdiction to enforce the provisions of EBSEPA Law or any other law bordering on environmental protection in Ebonyi State.⁵⁰ The High Court of Ebonyi State also plays crucial roles in the context of this study given its broad constitutional jurisdiction.⁵¹ The third institution, which is Ebonyi State Environmental Protection Agency (EBSEPA), precipitates environmental protection in Ebonyi State by, for instance, (1) maintaining a healthy environment and biodiversity; (2) identifying, preventing and controlling diverse kinds of environmental pollution and damage; (3) enforcing proper waste management; and (4) where feasible, restoring any damaged environment in Ebonyi State.⁵² It is also empowered to: (1) seal up or shut down any facility/premises found to be polluting the environment; (2) arrest any person reasonably believed to have committed any offence under EBSEPA Law; and (3) impound any item, substance or equipment reasonably believed to have been used in the commission of such offence.⁵³ The fourth institution, which is the Local Government Environmental Protection Committee, is established for every Local Government Area (LGA) in Ebonyi State to identify environmental problems affecting its LGA and report same to EBSEPA for necessary actions.⁵⁴ Instructively, no institution superintends over the practice of CSR in Ebonyi State presently.

4. Nexus between Corporate Social Responsibility and Environmental Protection in Ebonyi State

Since there is no law in Ebonyi State that presently compels corporate bodies operating in Ebonyi State to undertake CSR projects that have bearing on environmental protection, current practices of CSR in Ebonyi State are totally voluntary,⁵⁵ and not directed at environmental protection. This explains why environmental protection is still elusive in Ebonyi State. Therefore, it is our thesis that environmental protection will blossom in Ebonyi State once: (1) environmental laws and other statutes force the aforesaid corporate bodies to factor environmental protection into their CSR undertakings; and (2) law enforcement causes adequate cum deterrent punishments to be meted out on the aforesaid corporate bodies and/or their alter egos whenever they contravene those statutes.⁵⁶ It then follows that environmental laws of Ebonyi State should force all corporate bodies (including registered companies, public corporations and public authorities) operating in Ebonyi State to execute CSR projects that directly boosts environmental protection in the State. For example, Government can amend extant environmental laws or enact new ones to introduce a new genre of tax for corporate bodies exclusively dedicated to providing funds for environmental protection.⁵⁷ The aforesaid statutes can also compel affected corporate bodies to remit a fixed percentage of their annual profits into a common purse earmarked for rectifying environmental harms caused by such corporate bodies. More so, the aforementioned laws should prescribe deterrent punishments commensurate to offences committed thereunder.⁵⁸ The punishments can be heavy fines for convicted corporate bodies and heavy fines and/or significant jail terms for convicted alter egos.⁵⁹ Of course, the aforementioned statutory measures will be academic if they are not enforced adequately by relevant state and non-state actors working in synergy.⁶⁰ This brings us to some roles state and non-state actors could play to catalyse environmental protection via strategic practice of CSR in Ebonyi State. The government can do the above by: prosecuting corporate bodies that refuse to execute CSR projects that are directly beneficial to the environment; publicly naming and shaming corporate bodies convicted following such prosecution;⁶¹ and deploying administrative enforcement measures in emergency situations to coerce companies to execute such projects.⁶² Non-state actors like ethically inclined investors and enlightened consumers can do same by: investing their resources exclusively

⁵⁰ EBSEPA Law, ss 48 and 51. Cf., EBSEPA Law, s 53 (1).

⁵¹ 1999 Constitution, s 272.

⁵² EBSEPA Law, ss 4, 5, 21, 24-27, 31-33.

⁵³ EBSEPA Law, s 21 (2) (c); s 35 (1).

⁵⁴ EBSEPA Law, ss 57 (1) and 58.

⁵⁵ Cf. V Aigbokhaevbo, 'Corporate Criminal Responsibility for Environmental Crimes in Nigeria: An Appraisal' [2010 – 2011] (4 and 5) *Ahmadu Bello University, Zaria Journal of Private & Comparative Law*, 114 at 117.

⁵⁶ Cf. RW Hamilton, *Corporations including Partnerships and Limited Partnerships, Cases and Materials* (3rd edn, West Publishing Company 1986) 519.

⁵⁷ Mirroring Nigeria's education tax which taxed companies 'to contribute to government's funding of the educational sector.' RK Ako and OS Oyelade, n 25, 125.

⁵⁸ S Ball and S Bell, *Environmental Law: The Law and Policy Relating to the Protection of the Environment* (3rd edn, Blackstone Press Limited 1991) 120; E Onyebor, 'Applying Criminal Penalties and Consequences in enforcing Environmental Protection Legislation' [2012] (1) *Journal of Nigerian & Comparative Law*, 42 at 42.

⁵⁹ Cf. *Newcastle City Council v Pace Farms Egg Products Pty. Limited* [2002] NSWLEC 66 cited in T Okonkwo, *The Law of Environmental Liability* (2nd edn, Afriqe Environmental Development and Education 2010) 82-83.

⁶⁰ AO Chukwu, n 12, 364-365; PN Ahiamunnah, n 32, 208; OC Eneh and VC Agbazue, n 1, 496.

⁶¹ N Parpworth, 'Enforcing Environmental Laws: The Role of the Private Prosecution' [2007] *Journal of Planning & Environmental Law*, 327 at 333.

⁶² L Astsegbua, *et al*, *Environmental Law in Nigeria: Theory and Practice* (2nd edn, Ambik Press 2010) 218; 'Making Enforcement Fit for Purpose: The Review of Enforcement in Environmental Regulation' [2007] (January) *Journal of Planning & Environment Law*, 3 at 4-5.

in companies whose CSR undertakings enhance environmental protection;⁶³ and boycotting goods produced by corporations indifferent about the aforesaid CSR projects.⁶⁴

5. Lessons on Environmental Protection from the Practice of CSR in India

India currently uses legislation to compel companies operating therein to undertake CSR activities.⁶⁵ As such, some Indian listed companies like the Tata Group consistently demonstrate healthy disposition towards CSR on areas such as healthcare, education, social welfare, sanitation programs, environmental protection, *etc.*⁶⁶ This is fallout of the Indian Companies Act 2013 (IC Act)⁶⁷ which translated CSR from a voluntary or philanthropic venture⁶⁸ to a legally enforceable obligation in India. To this effect, the IC Act requires every company with a net worth of US\$70,000,000 or more, or an annual turnover of US\$140,000,000 or more, or net profit of US\$699,125 or more, to spend 2% of its average net profits of three years on CSR.⁶⁹ Where such company fails to do so, it shall, unless the unspent amount relates to any on-going CSR project, transfer such unspent amount to its Unspent CSR Account within 30 days from the end of the financial year. Such amount shall be spent by the company in pursuance of its CSR obligation within a period of 3 financial years from the date of such transfer, failing which, the company shall transfer same to a Fund specified in the IC Act within a period of 30 days from the date of completion of the third financial year.⁷⁰ Thus, where the company is lethargic in its CSR expenditure, government will execute such company's CSR undertaking using the company's own funds! Furthermore, the IC Act requires every Indian company having net worth of rupees 500 crore or more, or turnover of rupees 1,000 crore or more or a net profit of rupees 5 crore or more during the immediately preceding financial year to establish a CSR Committee of its board of directors (Committee).⁷¹ This Committee shall: (a) recommend to the board of directors a CSR policy which shall indicate the CSR activities to be undertaken by the company as specified in Schedule VII to the IC Act;⁷² (b) recommend the amount of money to be expended on the company's CSR activities; and (c) monitor the said CSR policy from time to time.⁷³ The board of directors shall then: (a) approve the CSR policy so recommended and publish same on the company's website; (b) ensure that the activities included in the company's CSR policy are undertaken by the company;⁷⁴ and (c) ensure that, in every financial year, the company spends at least 2% of its average net profits made during the 3 immediately preceding financial years on CSR activities in pursuance of the company's CSR policy.⁷⁵ In spending the amount earmarked for its CSR activities, the aforesaid company shall give preference to the local area(s) around where it operates.⁷⁶

Contravention of the above provisions is expressly punishable with significant cum deterrent fine for any company and fine and/or jail term for such company's alter ego or officer.⁷⁷ The penalty for default by the company ranges from US\$700 to US\$35,000; whilst that of the aforesaid alter ego or officer is imprisonment for up to three years, or a fine up to US\$7,023 or both.⁷⁸ Expectedly, these mandatory legislative intervention saw Indian listed companies spend about US\$1 billion on CSR initiatives generally, and approximately 12% thereof on environmental sustainability in 2018.⁷⁹ Nonetheless, the Indian CSR regime failed to capture public corporations and public authorities explicitly in its mandatory scheme.

Flowing from the above, Nigeria and Ebonyi State in particular can draw lessons on environmental protection from the practice of CSR in India. The first lesson is that statutes can actually make CSR compulsory for every corporate body operating in Nigeria. The second lesson is that the proposed legislation can compel corporate

⁶³ Cf. PN Ahiamunnah, n 30, 205.

⁶⁴ S Schooley, *et al*, 'What is Corporate Social Responsibility?' (2023) *Business News Daily* <<https://www.businessnewsdaily.com/4679-corporate-social-responsibility.html>> accessed 2 November 2023.

⁶⁵ FICCI Aditya Birla CSR Centre for Excellence, 'Corporate Social Responsibility (CSR) in India' [2016] <<https://csrce.org/about-csr-in-india-public-policy/>> accessed 21 August 2023.

⁶⁶ D Shira & Associates, 'Corporate Social Responsibility in India' [2020] *India Briefing* <<https://www.india-briefing.com/news/corporate-social-responsibility-india-5511.html/>> accessed 17 October 2023.

⁶⁷ Act No. 18 of 2013.

⁶⁸ FICCI Aditya Birla CSR Centre for Excellence, n 65; D Shira & Associates, n 66.

⁶⁹ IC Act, s 135; D Shira & Associates, n 66.

⁷⁰ Indian Companies (Amendment) Act 2019, Act No. 22 of 2019, s 21; FICCI Aditya Birla CSR Centre for Excellence, n 65.

⁷¹ IC Act, s 135 (1).

⁷² Suggested areas in which Indian listed companies can channel their CSR funds to include environmental protection, disaster management, healthcare, sanitation, sustainable development, education, art, culture, research, poverty eradication, rural development, *etc.* FICCI Aditya Birla CSR Centre for Excellence, n 65.

⁷³ IC Act, s 135 (3); *ibid*.

⁷⁴ IC Act, s 135 (4) (a) and (b); FICCI Aditya Birla CSR Centre for Excellence, n 65.

⁷⁵ IC Act, s 135 (5). However, where such company has not completed the period of three financial years since its incorporation, it must spend at least 2% of its average net profits made during the applicable immediately preceding financial year(s). Indian Companies (Amendment) Act 2019, s 21.

⁷⁶ IC Act, s 135 (5), first *proviso*.

⁷⁷ Indian Companies (Amendment) Act 2019, s 21.

⁷⁸ D Shira & Associates, n 68. Cf. Indian Companies (Amendment) Act 2019, s 21 (7).

⁷⁹ D Shira & Associates, n 68.

bodies (including registered companies and public corporations) that meet certain economic benchmarks to inject a given percentage of their annual profits or budgets into environmental protection under the aegis of CSR.⁸⁰ Thirdly, the said statutes can compel affected corporate bodies to give priority to the immediate natural environment of their host communities in spending their CSR funds. The fourth lesson is that the said statutes can compel every corporate body to birth its own CSR committee to spearhead the corporate body's internal compliance with the obligatory CSR requirements of those statutes.⁸¹ The fifth lesson is that the proposed statutes can prescribe deterrent punishment for any corporate body and/or its alter egos that fail in its/their CSR obligations on environmental protection. The punishment for such corporate body could be staggering fines; whilst that of the alter egos would be substantial terms of imprisonment and/or heavy fines. The sixth lesson is that the aforementioned legislation can empower the government to seize any unspent CSR funds of affected corporate bodies and spend same on behalf of such corporate bodies on projects designed to protect the environment within which those corporate bodies operate.⁸² Lastly, the aforesaid statutes can specify or suggest aspects of the environment that should be prioritized by corporate bodies in the execution of their CSR projects designed to boost environmental protection in Ebonyi State.⁸³

6. Conclusion and Recommendations

Findings of this work are that: (1) there is presently no statute in Ebonyi State that makes CSR a legal obligation for corporate bodies operating in Ebonyi State; and (2) that a major key to environmental protection in Ebonyi State lies in efficient policing of corporate bodies via statutory compulsion in CSR practices. Therefore, this paper concludes that environmental protection will blossom in Ebonyi State once statutes compel all corporate bodies operating in Ebonyi State to execute CSR projects that boost environmental protection directly – with the assurance of deterrent punishment for any corporate body that fails in this obligation. With an eye on enhancing environmental protection in Ebonyi State exponentially, this study makes the following recommendations:

1. The Ebonyi State House of Assembly should enact new hard laws or amend extant environmental laws of Ebonyi State like EBSEPA Law and enabling laws of various public corporations to: compel all registered companies operating in Ebonyi State to execute CSR projects that would boost environmental protection directly; and make it a compulsory duty of every public corporation and/or public authority operating in Ebonyi State to execute such CSR projects.⁸⁴
2. More so, the said laws should compel every registered company, public corporation and public authority operating in Ebonyi State to spend not less than 2% of its annual profits or budgetary allocations respectively on the aforesaid projects; or to contribute the aforesaid 2% into a common pool (as green tax) from whence funds would be drawn centrally to address pressing environmental challenges plaguing Ebonyi State.
3. The aforementioned statutes should specify the aspect(s) of the environment the corporate bodies' CSR undertakings would be channelled to.
4. The aforesaid laws should ensure that the value of CSR undertakings executed by any corporate body would be substantial enough to remedy all environmental damages caused by such corporate body.
5. More so, the said laws should establish a Corporate Social Responsibility Commission to regulate and monitor CSR projects of all corporate bodies across Ebonyi State; and to ensure that such corporate bodies execute CSR projects that have direct bearing on environmental protection. They should also obligate every corporate body operating in Ebonyi State to have its own CSR committee to oversee the implementation of its CSR legal obligation.
6. The aforesaid laws should expressly confer on the common man the right to prosecute any public corporation or public authority that violates their provisions.
7. Punishments for the violation of the aforementioned laws should be adequate and severe enough to deter future violation and consequent environmental degradation by corporate bodies and/or their alter egos – whilst reflecting deterrence, restitution and retribution theories of punishment. For example, where a corporate body's refusal to obey the aforesaid laws leads to any person's death, that corporate body should be convicted of 'environmenticide'⁸⁵ and punished with compulsory winding up⁸⁶ or compulsory acquisition by the government. The said laws should also expressly provide for the punishment of the alter egos of such corporate body with a term of imprisonment without an option of fine or both term of imprisonment and fine.

⁸⁰ Cf. IC Act, s 135 (5), first *proviso*.

⁸¹ Cf. IC Act, s 135 (1) and (4).

⁸² Cf. Indian Companies (Amendment) Act 2019, s 21.

⁸³ Cf. IC Act, Schedule VII.

⁸⁴ After all, public corporations and public authorities should obey the law just like private individuals. AO Chukwu, n 12, 366.

⁸⁵ Contextually, environmenticide means murder caused by environmental degradation.

⁸⁶ Cf. OM Adefi, 'Modern Corporate Responsibility and the Doctrine of Lifting the Veil: A Desideratum' [2011] (15) (1) *The Nigerian Law Journal*, 114 at 137.

8. Where the aforesaid laws are violated by one or more companies within a group, it should treat all the companies within that group as a single legal entity for the purpose of punishment. By so doing, the parent companies and subsidiary companies would be jointly punished for offences committed thereunder by any or all them.⁸⁷
9. In the spirit of federalism, regulation of companies in Nigeria should be unbundled or decentralised by amending the 1999 Constitution to allow both the Federal and State Governments to legislate on corporate matters in Nigeria. This will enable Ebonyi State to have its own localized version of CAMA and strengthen its grip on environmental protection via CSR.
10. For meaningful environmental protection in to ensue in Ebonyi State, relevant state and non-state actors must enforce the aforementioned laws conscientiously, adequately and proactively.

The foregoing shows that corporate social responsibility can really be reinvented as a veritable tool for accelerating environmental protection in Ebonyi State of Nigeria.

⁸⁷ Cf. E Chianu, *Company Law* (Lawlords Publications 2012) 278 and 284.