

**ENVIRONMENTAL STAKEHOLDER IN THE LIGHT OF LEGAL PERSONALITY CONCEPT: LESSONS FROM INDIA AND NEW ZEALAND \***

**Abstract**

Globally, there have been grave concerns about the natural environment as the world has continued to reel through various environmental challenges. This is in spite of the fact that environment is considered as one of the pillars of the concept of sustainable development and/or sustainability principles. In developing countries, particularly those of Sub-Saharan Africa (SSA), environmental concerns are subsumed under the concept of corporate social responsibility (CSR), which is a business strategy of multinational companies in the region. Albeit this is only in principle as there is little or no evidence that CSR goes beyond corporate philanthropy. Corporate philanthropy is anchored on the idea of satisfying the needs of a stakeholder - local community. As such, the CSR strategy has not been effectively deployed to serve the interest of the natural environment in itself. One of the main challenges to safeguarding the environment appears to be centred on its uncertain status as a stakeholder with corresponding obligations, particularly in developing countries. Hence there are divergent views and contestations on the inclusion of the environment as a stakeholder. Therefore, the paper explores the concept of legal personality in attempting to conceptualize the idea of the natural environment as a stakeholder created by law, drawing on lessons from more developed jurisdictions. Consequently, this paper argues that in order to safeguard the natural environment, a different strategy that is underpinned by ecocentric sentiments has become necessary. With this perspective, the paper explores the implications for developing countries, particularly in SSA.

**Keywords:** Stakeholders, Legal personality, Legal personhood, Corporate Environmental Responsibility, Corporate Social Responsibility, Environment.

**1. Introduction**

The concept of corporate social responsibility is a topical issue in law and business literature. Due to various challenges facing businesses, its scope appears to be widening, thus it is believed to include ethical, social and even environmental responsibilities.<sup>1</sup> Environmental issues have been at the front burner of global discourse due to the different environmental challenges including climate change<sup>2</sup> and the degradation of the natural environment. As such, the United Nations General Assembly recognized environmental protection, economic development and social development as the three interdependent pillars or dimensions of sustainable development<sup>3</sup>. As a result, businesses are under pressure from stakeholders on the need to act ethically and as such consider the triple bottom line of their operations – economic viability, social responsibility and environmental soundness<sup>4</sup> in order to achieve sustainability. From this perspective, a firm's success is measured by a combination of all three aspects - economically, socially and environmentally<sup>5</sup>. This is consistent with Carroll's<sup>6</sup> conceptualisation of corporate social responsibility (CSR) in his pyramid of responsibilities where CSR is categorized into four aspects – economic, legal, ethical and philanthropic responsibilities, which a responsible business should undertake simultaneously.

In the heavily regulated context of developed countries, particularly in the area of human and labour rights and environmental protection,<sup>7</sup> CSR is anchored on the idea of voluntariness. This is promoted in different climes and by organizations including the European Commission,<sup>8</sup> which defines CSR as business's attempt to take responsibility for the impact of their operations on the environment. Accordingly, the standards set by law have a strong influence on establishing social expectations about responsible corporate behaviour.<sup>9</sup> With strong institutions and less institutional void<sup>10</sup> there are basic conditions and institutional arrangements that promote CSR. In this context, incentives or sanctions

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<sup>1</sup> NCS Ogbuanya, 'Legal status of Corporate Social Responsibility: From Philanthropy to Obligation' (2017) 1 *AJLHR*, 44 - 57.

<sup>2</sup> M Ahmed and BS Choudri, 'Climate change in Oman: Current knowledge and way forward' (2012) 5 *Education, Business and Society: Contemporary Middle Eastern Issues*, 228–236.

<sup>3</sup> V Barral, 'Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm' (2012) 23 *European Journal of International Law*, 377.

<sup>4</sup> M Epstein, 'Making sustainability work: Best practices in managing and measuring corporate social, environmental, and economic impacts' (2008, San Francisco: Greenleaf).

<sup>5</sup> J Rhodes, B Bergstrom, P Lok, and V Cheng, 'A Framework for Stakeholder Engagement and Sustainable development in MNCs' (2014) 5 *Journal of Global Responsibility* 82.

<sup>6</sup> AB Carroll, 'The pyramid of corporate social responsibility: Toward the moral management of organizational stakeholders (1991) 34 *Business Horizons* 39–48.

<sup>7</sup> K Buhmann, 'Corporate Social Responsibility: what role for law? Some aspects of law and CSR' (2006) 6 *Corporate Governance*, 188.

<sup>8</sup> European Commission, Corporate social responsibility: a new definition, a new agenda for action 25 October 2011, available at: [https://europa.eu/rapid/press-release\\_MEMO-11-730\\_en.htm](https://europa.eu/rapid/press-release_MEMO-11-730_en.htm) (accessed 6 January 2023).

<sup>9</sup> Carroll, above note 5 at 39. See also J. Graflaand and L. Zhang 'Corporate social responsibility in China: implementation and challenges' (2014) 23 *Business Ethics: A European Review*, 34-49.

<sup>10</sup> KM Amaeshi, BC Adi, C Ogbegie and OO Amao 'Corporate Social Responsibility in Nigeria: western mimicry or indigenous influences?' (2006) 39 *International Centre for Corporate Social Responsibility*, 1- 44.

are used to guide organisational behaviours and actions. In terms of sanctions, organisations are driven to conform to regulations to avoid penalties resulting from non-compliance, but still preserving the relationship with the government. Consequently, compliance with these regulations may be viewed as aligning with the prevailing social norms.

However, there are still questions as to the response of the industry given that there appears to be some contradiction between the rhetoric and the reality on ground.<sup>11</sup> As corporations attempt to manage their public image through symbolic and rhetorical<sup>12</sup> actions. Thus, some companies have been claiming to promote CSR and commit to sustainable development, the outcome has shown a different result. For the most part, widespread business failures and collapses and the perpetuation of harmful business practices in communities where businesses operate.<sup>13</sup> This has resulted in the accusation of the industry of ‘environmental rape and pillage’ and of sacrificing sustainable development in pursuit of short-term profit<sup>14</sup>.

In developing countries, the environmental aspect has been relegated to the background amidst under-development, poverty and other social issues. This was demonstrated in Visser’s<sup>15</sup> African pyramid, wherein he suggested a re-ordering of Carroll’s CSR responsibilities of priorities of economic, legal, ethical and philanthropic responsibilities in order to capture the complexities of the African context. He therefore proposed that economic responsibility take the highest priority, followed by philanthropy and then legal and ethical responsibilities. The low priority placed on environmental concerns in developing countries is indicative of the lack of environmental focus in CSR interventions in developing countries and why CSR reporting primarily focuses on socio-economic benefits.<sup>16</sup> Thereby relegating environmental issues to the background or only mentioning it as an appendage to community related issues. The effect is the failure of so-called CSR intervention programmes to address the peculiar challenges of the natural environment in any shape or form. As such, this approach that subsumes environmental issues in the broader concept of CSR has been ineffective in addressing environmental concerns. As a result, it has become imperative to refocus the narrative to distinguish the needs of the local communities from those of the natural environment. Given that the benefits to the environment may be beneficial to communities, but the benefits accruing to communities may not be of benefit to the natural environment, as has been the case. This can be achieved by establishing the natural environment as a stakeholder to whom an environmental responsibility or obligation is directly owed. The issue then become on what basis can the natural environment be considered or established as a stakeholder in its own right? It is suggested that in less regulated climes such as developing countries, the better approach may be through legal means or moving from philanthropy to obligation<sup>17</sup>. This may result in several implications including the shift from a voluntary CSR approach to a more mandatory approach. This is because a voluntary view necessarily implies self-regulation and is favourably disposed to the idea of wealth maximization of shareholders as opposed to stakeholders<sup>18</sup>. The implication is one of lack of inclusion and a limited view of stakeholder. The effect of this in operation in developing countries is an absence of environmental focus in CSR initiatives, which has resulted in the failure of voluntary CSR to address the challenges of the region. Under this view, the consideration of an environmental stakeholder is very slim and there are no direct responsibilities or obligations towards it. Consequently, the emergence of the fairly new concept, corporate environmental responsibility (CER) as an offshoot of CSR, provides the framework to characterize the responsibility to the natural environment from an ecocentric perspective. According to Michael Jacobs<sup>19</sup>, new concepts are necessary to get new arguments into the public arena. Thus, this article seeks to contextualize the concept of CER from a developing country perspective.

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<sup>11</sup> A Nurse, ‘Creative Compliance, Constructive Compliance: Corporate Environmental Crime and the Criminal Entrepreneur In Exploring Criminal and Illegal Enterprise’ (2015) *New Perspectives on Research, Policy & Practice*, 97-119.

<sup>12</sup> J Meyer and B Rowan, ‘Institutionalized Organizations: Formal Structure as Myth and Ceremony’ (1977) 83 *American Journal of Sociology* 340-363 Available at: <http://dx.doi.org/10.1086/226550> Accessed 10 December 2022.

<sup>13</sup> B Ikejiaku, ‘Consideration of ethical and legal aspects of corporate social responsibility’ (2012) 1 *Nordic Journal of Commercial Law*, (iii) 1-32.

<sup>14</sup> N Gunningham, ‘Shaping Corporate Environmental Performance: A Review’ (2009) 19 *Environmental Policy and Governance*, 215.

<sup>15</sup> W Visser, ‘Revisiting Carroll’s Pyramid- An African Perspective’ in M Huniche and ER Pederson, (eds) *Corporate Citizenship in Developing Countries- New Partnership Perspectives* (2006, Copenhagen Business School Press).

<sup>16</sup> U Idemudia and U Ite ‘Corporate–community relations in Nigeria’s oil industry: challenges and imperatives’ (2006) 13 *Corporate Social Responsibility and Environmental Management* 194–206. See also G Eweje, ‘Environmental Costs and Responsibilities Resulting from Oil Exploitation in Developing Countries: The Case of the Niger Delta of Nigeria’ (2006) 69 *Journal of Business Ethics* 27-56.

<sup>17</sup> Ogbuanya, *Legal Status of Corporate Social Responsibility*, above note 1.

<sup>18</sup> SK Park, ‘Social Responsibility Regulation and its challenges to Corporate Compliance’ (2019) 14 *Brook J. Corp. Fin. & Com. L.*, 39 at 42.

<sup>19</sup> M Jacobs, ‘The Environment as stakeholder’ (1997) 8 *Business Strategy Review*, 25-28 at 25.

## 2. Conceptual Framework

### Corporate Environmental Responsibility

Corporate Environmental Responsibility is regarded as a component, an important dimension or subset, sub-category, aspect or area<sup>20</sup> of CSR. It is becoming an integral part of CSR<sup>21</sup> and can potentially lead to the long-term value and sustainability of firms.<sup>22</sup> This is due to the increasing public concern of businesses CSR and sustainability methods<sup>23</sup> where in firms mostly reported on economic and social impacts.<sup>24</sup> CER as the environmental aspect of CSR may be regarded as the responsibility to cover the environmental implications of a company's operations, products and facilities, and to eliminate waste and emissions while maximising efficiency and productivity of its resources as well as minimising practices that might adversely impact on the enjoyment of a country's resources by future generations.<sup>25</sup> It is believed to have emerged partly in response to CSR's failure to ameliorate the impact of company operations.<sup>26</sup> This is a result of the massive environmental and social problems affecting the rights of local communities from the activities of corporations<sup>27</sup> and the failure to ameliorate their impact. In Developing countries such as Nigeria, this includes the loss of traditional sources of livelihood in host communities,<sup>28</sup> resulting in mistrust, conflict and mutual suspicion<sup>29</sup> between multinationals companies and their host communities.

The concept of corporate environmental responsibility has also been defined differently in ways that suggests actions inclusive of and beyond regulatory requirements. For Gunningham,<sup>30</sup> CER refers to practices that benefit the environment (or mitigate the adverse impact of business on the environment) that go beyond that which corporations are legally obliged to do. This definition takes the view that CER is a beyond-the-law obligation as is often the case in western climes. Nevertheless, the question is whether this narrow view should be applicable in less developed countries given the minimal level of compliance with law<sup>31</sup>. Non-compliance is achieved by taking advantage of lapses created by weak institutions in less regulated markets as often seen in the reluctance to take up CSR<sup>32</sup>. Besides, some have argued that this limited view is in contrast to the assumptions of management theory. Accordingly, Buhmann<sup>33</sup> argues that, at the very least, CSR involves abiding by the letter and even the spirit of the law. In this light, the lack of compliance in developing countries and any characterization of CER as going beyond purview of the law is rather untenable. As such, there is a demand for more accountability through partnership between hard law and soft law initiatives<sup>34</sup> in order to make corporations internalise their negative externalities<sup>35</sup> – the cost of doing business to other stakeholders.

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<sup>20</sup> P Mazurkiewicz, 'Corporate Environmental Responsibility: Is a common CSR framework possible?' (2004) Washington, D.C. : World Bank Group. <http://documents.worldbank.org/curated/en/577051468339093024/Corporate-environmental-responsibility-Is-a-common-CSR-framework-possible>. Accessed 6 January 2023; H Kim, K Park and D Ryu, Corporate Environmental Responsibility: A Legal Origins Perspective (2015) *Journal of Business Ethics*, Springer.

<sup>21</sup> RK Mitchell, BR Agle and DJ Wood, 'Towards a Theory of Stakeholder Identification and Salience: Defining the Principle of who and What Really Counts' (1997) 22 *Acad. Manage Rev.* 853-886.

<sup>22</sup> C Dögl and D Holtbrügge, 'Corporate environmental responsibility, employer reputation and employee commitment: An empirical study in developed and emerging economies' (2014) 25 *The International Journal of Human Resource Management* 1739-1762.

<sup>23</sup> C Xin, 'Corporate Environmental Responsibility's Lack and Fulfillment: Based on ISCT and Agency Theory' (2014) *Second International Conference on Enterprise Systems*, available at: DOI 10.1109/ES.2014.42 (accessed 8 January 2023).

<sup>24</sup> A Kolk and F Lenfant 'MNC Reporting of CSR and Conflict in Central Africa' (2010) 93 *Journal of Business Ethics*, 241-255.

<sup>25</sup> Mazurkiewicz *Corporate Environmental Responsibility*, above note 20.

<sup>26</sup> Kolk and Lenfant *MNC Reporting of CSR*, above note 24.

<sup>27</sup> A Adeyeye, 'Universal Standards in CSR: Are we prepared?' (2011) 11 *Corporate Governance: The International Journal of Business in Society* 107-119.

<sup>28</sup> AE Abuza, 'The Problem of Vandalization of Oil Pipelines and Installations in Nigeria: A Sociological Approach' (2006) 2 *Delsu Law Review, Environmental Law ed.*, 258-283; R Dode, 'The Political Economy of Resource Curse and the Niger Delta Crisis in Nigeria' (2011) 5 *Journal of the Centre for Niger Delta Studies*, 96-105.

<sup>29</sup> L Arugu, 'Oil Multinationals and Community Development: Reflections on SPDC and the Niger Delta' In: SI Ibaba, Niger Delta Research Digest, (2013) 7 *Journal of the Centre for Niger Delta Studies*, 42-66; U Idemudia, 'Rethinking the role of CSR in the Nigerian Oil Conflict: The Limits of CSR' (2010) 22 *Journal of International Development* 833-845; A Rwabizambuga, 'Negotiating Corporate Social Responsibility Policies and Practices in Developing Countries: An Examination of the Experiences from the Nigerian Oil Sector' (2007) 112 *Business and Society Review* 407-430.

<sup>30</sup> Gunningham, *Shaping Corporate Environmental Performance*, above note 14 at 215.

<sup>31</sup> BV Brisibe, 'Addressing Nigeria's Petroleum Sector Environmental Accountability: A stakeholder perspective' (2022) 10 *IJISSHR*, 113.

<sup>32</sup> AR Belal, SM Cooper and NA Khan 'Corporate environmental responsibility and accountability: What chance in vulnerable Bangladesh?' (2015) 33 *Critical Perspective on Accounting*, 44.

<sup>33</sup> K Buhmann, 'Integrating human rights in emerging regulation of Corporate Social Responsibility: the EU case' (2011) 7 *International Journal of Law in Context*, 139-179 at 139.

<sup>34</sup> A Adeyeye, 'Universal Standards in CSR: Are we prepared?' (2011) 11 *Corporate Governance: The International Journal of Business in Society*, 107; N Grant, 'Mandating Corporate environmental responsibility by creating new directors' duty' (2015) 17 *Environmental Law Review*, 252.

<sup>35</sup> This often refers to when the production and/or consumption of a product or service has a negative effect on a third party and in this case environmental pollution.

The foregoing underscores the importance of the role of law in the functioning of CSR for business and society.<sup>36</sup> CSR does serve as a tool in the hands of corporations to adopt international best practices that may not yet be applicable in developing countries. This is on the basis that the corporation can be viewed from two perspectives. Firstly, the corporation as the socio-economic organisation that creates wealth for its 'multiple constituencies' in which there may exist both common interest as well as potential conflicts. This also implies that businesses cannot be conducted successfully in a conflict torn environment<sup>37</sup> because it is dependent on the environment for its resources and survival. Secondly, for society at large, the inability to depend on a polluted environment for survival, the creation of meaningful job opportunities and reasonable remunerations, and generally addressing some major social and economic development needs<sup>38</sup> particularly in developing countries. As such, CSR attempts to balance the negative externalities of business operations and the interests of communities and the natural environment.

In developing countries, however, the natural environment is in a rather obscure and precarious position. On the one hand, it is viewed as essential to the survival of the communities yet environmental issues are relegated to the background. Given that socio-economic issues are considered more important and dominate the discourse while ethical and legal responsibilities generally have lower priorities.<sup>39</sup> As such, the concept of environmental responsibilities is not properly defined and is still associated with the obligations or so-called social responsibility to the communities, which rarely has an environmental component. To change this narrative, the position of the natural environment needs to be elevated to that of a stakeholder in order to strengthen its position. This could provide the impetus to properly articulate and define a differentiated set of environmental responsibilities. More so, this may imbue it with more visibility and obtain a higher ranking in the scheme of things, as business decisions or priorities are set based on stakeholder salience.<sup>40</sup>

### **Theories of CSR: Stockholder Theory versus Stakeholder Theory**

These two theories represent the two sides of a long standing debate on CSR. The stockholder theory was popularized by Nobel laureate Milton Friedman in his 1970 seminal publication in the New York Times often quoted as: 'the business of business is business'. This model is based on the idea of wealth maximisation based on contractual duties entered into with the owners of the firm - stockholders or shareholders.<sup>41</sup> According to this classical view, the only role that business has in society is profit-making through the production of goods and services.<sup>42</sup> The effect on the idea of CSR is that where there is corporate involvement in philanthropy, this not only distorts the market but also robs shareholders of their wealth.<sup>43</sup> For some others, the involvement of business in CSR could weaken their performance in their primary role and make people poorer<sup>44</sup> rather than creating wealth for its owners. As such, the only social responsibility function of business is to increase its profit.

On the contrary, in responding to the stockholder view, Freeman proposed the stakeholder theory. He argued that it is an anomaly for businesses to carry out their functions only taking into consideration the interest of its stockholders or shareholders without concern for others. This is due to the interrelatedness of business activities with social, environmental and political systems which may lead to a range of consequences, including pollution affecting communities, nations or society as a whole.<sup>45</sup> Thereby proposing the inclusion of both ethical and moral considerations into the practice of business. As such, business should strive to protect the interest of multiple stakeholders. It is believed that this has the potential to limit the company's exposure to corporate legal risks in every aspect of business operations. This include issues arising from compliance to the considerations of ethical issues, relationship with the host community and work force as well as the observance of best practices.<sup>46</sup> In this light, Freeman defined a stakeholder as those who can affect or is affected by the achievement of the firm's objectives. Consequently, a company's stakeholders include employees, shareholders, consumers, communities and the natural environment in which the company operates.

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<sup>36</sup> K Buhmann, 'Corporate Social Responsibility: what role for law? Some aspects of law and CSR' (2006) 6 *Corporate Governance*, 188. This article argued that CSR operates as informal law, just as important principles of law also function as part of a general set of values that guide much of the actions on CSR.

<sup>37</sup> Idemudia *Rethinking the role of CSR*, above note 29 at 833.

<sup>38</sup> *Ibid.*

<sup>39</sup> Ikejiaku *Consideration of ethical and legal aspects*, above note 13.

<sup>40</sup> Stakeholder salience refers to the extent to which managers give priority and attention to competing stakeholder claims. Salience depends on stakeholder attributes such as power, legitimacy, and urgency. This is critical to the decision-making process of corporations. See RK Mitchell, BR Agle and DJ Wood, 'Towards a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts' (1997) 22 *Acad. Manage Rev.*, 853-886.

<sup>41</sup> SN Brenner and PL Cochran, 'The stakeholder model of the firm: Implications for business and society research'. In: Mahon, J.F. (ed.) *Proceedings of the Second Annual Meeting of the International Association for Business and Society*, 1991, 449-467, Sundance, UT.

<sup>42</sup> Milton Friedman, 'The Social Responsibility of Business is to create its profit' *New York Times*, September 13 1970, p.2

<sup>43</sup> KK Aaron, 'New Corporate Social Responsibility Models' (2012) 12 *Progress in Development Studies*, 259- 273 at p.261

<sup>44</sup> *Ibid.*

<sup>45</sup> Rahim, M.M. 'Legal Strategies for Incorporating CSR Principles in Self- Regulation'. *CSR, Sustainability, Ethics and Governance*. Berlin Heidelberg: Springer-Verlag, (2013b) pp.95-128. Available from: DOI 10.1007/978-3-642-40400-9\_4.

<sup>46</sup> Ogbuanya, *Legal status of Corporate Social Responsibility*, above note 1 at 53.

There have been different views in support and against the natural environment as a stakeholder<sup>47</sup>. One of the main views against the inclusion of the natural environment as a stakeholder is that it does not have the capacity to exert its stakeholding influence and as such should not be considered a stakeholder. Michael Jacob's<sup>48</sup> philosophical view of the concept of stakeholding can provide a basis for the consideration of the environment as a stakeholder. To him, this deeper understanding of the philosophical level of stakeholding generally represents social inclusion in society or the economy, to which every citizen both benefits and contributes in a broader sense. In the application of the concept of stakeholding to the environment, he maintains that it refers to accountability beyond the formal owners including the employee and the local community. He proposed two ways that the concept may be operationalized - participatory and financial. Participatory stakeholding refers to the involvement in decision-making process of a company or organization by a wider group of interested parties. On the other hand, financial stakeholding is when a firm grants a financial stake in a company to the wider group to which it is accountable. In each of these levels, the environment is considered a stakeholder.

At the philosophical level, it is a principal contributor to economic performance through the provision of raw materials, life support services and is affected by the decision of both corporations and the economy, such as climate regulation and maintenance of genetic diversity. As such, the protection of the environment should be the responsibility of the companies and society as a whole. In practice given the inability of the environment to represent its interest (and that of future generations), representation in decision-making structures can be through appointments of specific individuals or groups to defend its interests in the processes of government decision-making. At the firm level, the consultative committees or non-executive directors can suffice.

In the area of financial stakeholding, the company or economic stakes can be established through direct or indirect means. Indirect means refer to where companies are charged for environmental damage. Thus, funds are hypothecated for future generations to spend or by way of a trust fund accumulated to clean up environmental damage.<sup>49</sup> Taxation in form of direct stakeholding refer to instruments that reduce environmental damage, which include pollution regulation, land use controls, product standards, which all have the effect of reducing the impact of companies and individuals on the environment. In other words, indirect means are a reactive approach as opposed to the more proactive direct means of controlling pollution.

From the foregoing, the natural environment has the potential to have both a participatory and/or financial stake. This concept also aligns with legal principles – polluter pays principle and the concept of distributive justice.<sup>50</sup> While the former mandates that polluters take responsibility for pollution through payment for environmental damage, the latter forms the basis for the requirement by the government or law for compensation from persons with pollution-causing activities, as an attempt to distribute the cost of pollution among them. Arguably, the concept of stakeholding constitutes one of the building blocks for an environmental responsibility. Consequently, there are practices worldwide that demonstrate a trend in the direction of an environmental responsibility through the concept of legal personality. This has some implications for corporations operating in developing countries and local communities, as will be considered later. The issue is whether there is any justification for granting legal personality to the natural environment.

Reddy<sup>51</sup> observes that wherever innovations are required in an existing paradigm of law or jurisprudence, there will be significant skepticism and questions about the same. This includes the idea of continuing to grant legal personality to inanimate objects in the face of legislations, such as various environmental protection legislations, pollution control and conservations laws etcetera. This has been explained on the basis of fundamental human rights provisions embedded in the constitution, including right to life, right to a healthy environment and right to dignity of human persons among others. However, these rights and environmental protection legislations to some degrees are promulgated based on anthropocentric motivations – for the benefit and protection of human concerns. Whereas the primary aim of such legislations or pronouncements by the courts in ascribing legal personality to features of the natural environment is for the benefit and protection of the natural environment in itself. Thereby taking into account mainly ecocentric

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<sup>47</sup> For Stead and Stead, it is the natural environment's fundamental difference from other groups and the key concept of Earth as the source and sink for all human activity that makes it the ultimate stakeholder (see M Jacobs, 'The Environment as stakeholder', above note 19); while for others such as Phillips and Reichart only regard humans as stakeholders because of their capability to interact in a manner that benefits all stakeholders (see RA Phillips and J Reichart, 'The Environment as a Stakeholder: A Fairness-based Approach'. *Journal of Business Ethics*, (1998) 23(2), pp. 185-197).

<sup>48</sup> Jacobs *The Environment as stakeholder*, above note 19 at 25.

<sup>49</sup> Where funds such as taxes are legally required through economic instruments, they can be a form of taxation, which can be regarded as a form of stakeholding, albeit indirect.

<sup>50</sup> An example is the Canadian Environmental damages fund, which is a specified purpose account that is administered by the Environment and Climate Change Canada to direct funds received from fines, court orders and voluntary payments to priority projects that will benefit Canada's natural environment. Available at: <[https://www.canada.ca/en/environment-climate-change/services/environmental-funding/programs/environmental-damages\\_fund.html#:~:text=The%20Environment%20Damages%20Fund%20\(EDF,will%20benefit%20Canada's%20natural%20environment](https://www.canada.ca/en/environment-climate-change/services/environmental-funding/programs/environmental-damages_fund.html#:~:text=The%20Environment%20Damages%20Fund%20(EDF,will%20benefit%20Canada's%20natural%20environment)> (accessed 27 September 2023). Thereby ensuring that funds are utilized for the benefit of the environment including payment for the restoration of damage caused by pollution.

<sup>51</sup> CBR Reddy, 'Legal Personality to Rivers: An In-depth Analysis' (2018) 3 *Pen Acclaims* 1

considerations, albeit on the backdrop of the shadow of anthropocentric considerations. The issue boils down to how this idea of the legal status of the natural environment can be operationalized in order to address some of the challenges and limitations identified by critics. This will be considered through the case studies of different approaches adopted around the world.

### **The Concept of Legal Personality**

The concept of legal personality refers to status of personhood conferred by the law to an incorporated company. This is premised on the doctrine of separate personality as established in the case of *Salomon v Salomon and Co.*<sup>52</sup> In this case, the court in applying the concept to one-man and private companies stated that in the absence of fraud and the company being properly constituted in law, Salomon's company was a distinct legal person from Salomon. As such his debentures, which entitled him to priority over the unsecured creditors in the company, were valid when the company wound up.<sup>53</sup> The effect of legal personality of a corporation, which has legal existence in its own right independent of its members, is that it has certain rights and obligations. These include contractual rights in its name, consequently the right to sue and be sued in its own name, proprietary rights to own property and assets, perpetual succession such that changes in membership have no effect on its status or existence, the company bears liability for its debts as members will not be liable for more than the amount they have agreed to contribute to its capital (liability is limited and cannot be extended without their consent)<sup>54</sup>. This has laid the foundation for the granting of legal rights to non-human entities, which involves the recognition of nature in its entirety or a feature of nature as a legal person. This not only confers on nature some basic set of legal rights that are distinct from human rights, but also duties and responsibilities.<sup>55</sup> Essentially, these rights comprise of three elements: the legal standing (the right to sue and be sued in court), the right to enter and enforce legal contracts, and the right to own property.<sup>56</sup> However, these legal rights exclude civil and political rights.

### **3. The Creation of Legal Stakeholders and its Justification**

A person or an association of persons can form an organization in order to carry out their functions and/or provide services. This can be achieved by compliance with the requirements for registration of a company as set out in appropriate legislation.<sup>57</sup> As a result, such companies acquire the status of a corporation<sup>58</sup> with a set of rights and duties akin to that possessed by a natural person. Thus, companies having no voice are granted a legal status and act through its agents. This creates a juristic person who acts, speaks and exercises its rights and discharges its duties and responsibilities through its agents. In other words, a company becomes a corporation where it follows the express requirements provided by law. It therefore has a legal status, a legal personality independent of its owners or members, and becomes a juristic person known to law. It has rights and responsibilities ensuing from the law, which protect its status and guide its operations. These also serve as a signpost to the whole world in dealing with the corporation. The implication is that the law in recognizing and granting legal status to a corporation, an inanimate thing, may have inadvertently created a category of stakeholder that may be referred to as a legal stakeholder. By extrapolation, the concept of legal personality may be extended to other inanimate objects. Where this happens, the inanimate object acquires the status of a legal or juristic person with rights protected by law. In the same vein, the natural environment, or features of the nature, can be granted legal personality in appropriate circumstances. In such instances, the law should expressly confer on the natural environment the legal status. It should also specifically establish rights and duties that provide guidance on how the whole world should relate to it. The question is what purpose should this serve and is there any justification for this amidst the criticisms levelled against the environment as a stakeholder?

Some of the criticisms challenging the status of the natural environment as a stakeholder can be addressed. Essentially, the main arguments against its stakeholder status are premised on its inanimate status. One such argument is that the natural environment cannot be a stakeholder because it possesses neither a mind nor has any need known to humans<sup>59</sup>. Another believes that only humans can be regarded as stakeholders because they are the only ones capable of partaking in an interaction that can benefit all parties involved<sup>60</sup>. In the same vein, it is also suggested that the failure to support the proposition is due to the natural environment's dependence on other stakeholders to exert its influence on the firm.<sup>61</sup>

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<sup>52</sup> [1897] AC 33.

<sup>53</sup> *Ibid.* See also: D Kelly, R Hammer, J Denoncourt and J Hendy, *Business law*, (4<sup>th</sup> ed, 2021, Routledge) 368.

<sup>54</sup> *Ibid.*

<sup>55</sup> N Naffine, 'Who are law's persons? From Cheshire Cats to responsible subjects' (2003) 66 *Modern Law Review*, 346-367. <http://dx.doi.org/10.1111/1468-2230.6603002>

<sup>56</sup> EL O'Donnell and J Talbot-Jones, 'Creating legal rights for rivers: Lessons from Australia, New Zealand and India' (2018) 23 *Ecology and Society*, 2; E O'Donnell and J Talbot-Jones, 'Legal rights for rivers: what does this actually mean?' (2017) 32 *Australian Environment Review*, 159-162; N Naffine, *Law's meaning of life: philosophy, religion, Darwin and the legal person*, (2009, Hart).

<sup>57</sup> In Nigeria, this legislation is the Companies and Allied Matters Act chapter C20 Laws of the Federation of Nigeria 2004; Companies Act, 2019 of Ghana; Companies Act 71 of 2008 in South Africa; Companies Act 2006 in the UK.

<sup>58</sup> D Kelly, A Holmes, and R Hayward (eds) *Business Law* (4<sup>th</sup> Ed., 2002, Cavendish publishing) 342.

<sup>59</sup> E Orts and A Strudler, 'Putting a stake in Stakeholder Theory' (2009) 88 *Journal of Business Ethics*, 605-615.

<sup>60</sup> RA Phillips and J Reichart, 'The Environment as a Stakeholder? A Fairness-based Approach' (2000) 23 *Journal of Business Ethics*, 185.

<sup>61</sup> RK Mitchell, BR Agle and DJ Wood, 'Towards a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts' (1997) 22 *Acad. Manage Rev.*, 853.

Though some of these criticisms may be valid concerns, they are also applicable to the corporation but do not change the status of the corporation. This demonstrates that these criticisms are mere limitations, some of which can be addressed but do not vitiate the fact and implications of being a legal person. In much the same way, a right is not vitiated by the fact of its unenforceability. From the standpoint of MacCormick's<sup>62</sup> conception of rights, the essential thing in legal or moral protection or the promotion of one's interest against others or the whole world is by the imposition on the latter [the whole world] duties, disabilities or liabilities with regard to the favoured party. The crucial point here is to the effect that such a duty or liability is imposed on someone else or the whole world on behalf of the favoured party for the purpose of protecting and promoting that party. This implies that someone has a duty, disability or liability with respect to another and the reason is for the protection and promotion of the other's interest.<sup>63</sup> In this instance, there is a legal duty to protect the environment for the 'protection and promotion' of its interest *per se* in an ecocentric sense, irrespective of whether it can be enforced or not. This principle was expounded in the 1968 case of *Beswick v Beswick*,<sup>64</sup> where it was stated that a third-party beneficiary under a contract has legal rights, even though they were unable to enforce it. Although, the environment may be unable to exert its interest as a stakeholder of the industry, this fact alone does not vitiate its interest. Given that the limitations of the natural environment in expressing its interest is not a sufficient criterion to deny it stakeholder status nor does it extinguish the legal, moral and ethical duty to protect the environment. In accordance with Natural law theory, everyone has reason to value all of the basic goods, including acting reasonably and being guided by the requirements of practical reasonableness. Thus, once the validity of a moral norm has been established, a corresponding duty follows immediately.<sup>65</sup> This is consistent with the ecocentric theories of justice that advocates for the rights of nature. This right seeks to confer rights and legal protection from injuries to sentient beings and life forms and to the entire ecosystems including rivers and have influenced formal legal systems such as New Zealand.<sup>66</sup> This is on the basis of ecocentric system of ethics which entails the intrinsic value of individuals and ecological communities alike, stemming from the internal functioning, interdependence and on-going processes of change among all living and non-living members.<sup>67</sup> Consequently, humans are believed to possess a duty to allow and nurture the ecosystem's functioning, integrity, stability, beauty and flourishing through direct caring relationships and formal rights of nature.<sup>68</sup> Thereby extending the concept of stakeholder to non-humans recognized by law. In this case, there is a moral duty to protect the environment and a corresponding duty not to cause harm to the environment in order to foster the common good or basic forms of human well-being. This implies that: 'acting reasonably and being guided by the requirements of practical reasonableness' would have created a moral norm and in turn a corresponding duty.

In the light of the foregoing, the concept of caring for the environment can be considered as one of the philosophical principles guiding the operations of the firms, for which it exerts its resources to protect. This can be partly achieved through the undertaking of its corporate environmental responsibility, which may be within and beyond the confines of law. Thus CER in developing countries may be defined as: actions aimed at redressing the negative environmental externalities of business operations, protecting and improving the natural environment for the benefit of all stakeholders. This calls for the extension of the concept of stakeholder to be more inclusive in accommodating the legal stakeholders, which includes future generations. As such, the natural environment may be regarded as a stakeholder as the limitations should be viewed as matters of operationalization, which can be addressed in due course.

#### **4. Lessons from India and New Zealand**

##### **Judicial Approach: India's Example**

The high court of Uttarakhand in India declared on the 20<sup>th</sup> of March 2017 that 'the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person'<sup>69</sup>. In creating these legal rights, the court assessed the status of the rivers and declared them as 'sacred and revered' while viewing them as 'central to the existence of half the Indian population.'<sup>70</sup> It therefore argued that the exposure of these 'sacred' rivers to environmental degradation was causing them to lose 'their very existence [and this] requires extraordinary measures to be taken to preserve and conserve Rivers Ganga and Yamuna.'<sup>71</sup> For the purpose of operationalizing the decision, the court used the guardianship model to create the legal personality for the Rivers by

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<sup>62</sup> N MacCormick, 'Rights in Legislation' in PMS Hacker and J Raz (eds) *Law, Morality and Society: Essays in Honour of HLA Hart* (1977, Clarendon Press) 189.

<sup>63</sup> JM Elegido, *Jurisprudence* (2004, Spectrum Law Publishing).

<sup>64</sup> (1968) A.C. 58.

<sup>65</sup> Elegido *Jurisprudence*, above note 63.

<sup>66</sup> BK Sovacool, M Burke, L Baker, CK Kotikalapudi and H Wlokas 'New Frontiers and Conceptual frameworks for energy justice' (2017) *Energy Policy*, 677-691.

<sup>67</sup> *Ibid*

<sup>68</sup> *Ibid*

<sup>69</sup> Indian Courts 2017:11; Mohd. Salim v State of Uttarakhand, Writ Petition (PIL) No.126 of 2014; Lalit Miglani v State of Uttarakhand, Writ Petition (PIL) No.140 of 2015.

<sup>70</sup> Indian Courts 2017:11

<sup>71</sup> Indian Courts 2017:4

establishing them as minors under the law. Thereby guaranteeing the legal status and rights of the rivers while recognising their inability to speak for themselves. Also following Stone's model,<sup>72</sup> the court further identified specific positions within the state government to act in *loco parentis* for the rivers. This included the Director NAMAMI Gange, the Chief Secretary of the State of Uttarakhand, and the Advocate General of the State of Uttarakhand. Their responsibilities as set by the court are to be 'the human face [and] to protect, conserve and preserve Rivers Ganga and Yamuna and their tributaries.'<sup>73</sup> However, on 7<sup>th</sup> of July 2017, the Supreme Court of India agreed to hear an appeal against this ruling, and in doing so, halted the effect of the original case. The appeal was lodged by the state government of Uttarakhand, who argued that their responsibilities as guardians of the rivers needed to be clarified because the rivers extend well beyond the borders of Uttarakhand into Bangladesh. Notably the Indian Supreme court overturned the decision of the lower court, which recognized the Rivers Ganges and Yamuna as legal personalities on the grounds that the legal status of the rivers was unsustainable in law. This was based on the uncertainty relating to the custodians and payment of damages to the families who drowned in the rivers.

The above issues bothered on the practical considerations for the applicability of the decision of the court. Given the nature of the rights being granted, some proposals have been put forward by some,<sup>74</sup> in order to promote the enforceability of these rights. These include: firstly, the appointment of an individual or organization to act on a river's behalf, to uphold its rights and speak for nature.<sup>75</sup> Secondly, the provision of capacity in the forms of time, money, and expertise should be made available to ensure that the rights of the river can be sustained in court. Thirdly, the river representatives and funding sources require some level of independence from state and national governments and sufficient real-world power to take action, particularly if such action is politically controversial.<sup>76</sup> This accounts for some practical issues that could support the enforceability of the legal rights of nature, given that the force of the law is in its enforceability. Some of these considerations have been addressed in the New Zealand's Te Awa Tupua (Whanganui River Claims Settlement) Act 2017<sup>77</sup>, which granted legal personality to the River Whanganui. This will be considered next in the legislative approach to the conferment of legal rights to natural features of the natural environment.

#### **Legislative Approach: New Zealand's Example**

Reddy<sup>78</sup> sets out a set of criteria that characterizes the legal rights of a river. First, there should be the subject of the right, owner of the right or person entitled to the right. Second, there should be a subject of the duty, which with respect to the nature of rights relating to inanimate objects, should be for the protection of the rights against society. Third, there should be the content of a right detailing the right. Fourth, there should be the object of a right. Fifth, the right should have a title as conferred by a statute, judicial pronouncement or the constitution. These characteristics of the legal rights were properly articulated in the New Zealand's Te Awa Tupua Act. Wherein the river is the owner of the right or subject of the right with a correlative duty against the society at large for its overall protection. Thus, all rights, duties and responsibilities must be exercised in a manner that is consistent with Its right. Hence the appointment of the human face of the River, the office of Te Pou Tupua,<sup>79</sup> to act and speak on Its behalf by promoting and protecting its health and well being.<sup>80</sup> As such it is the function of the office to act in the overall interest of the River, exercising its rights and promoting its interest in accordance with the Act. Thus, the subject of the right, the River is granted a legal status in s.14 (1) stating that: the 'Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person'. The legal effect of this declaration is stated as follows: 'Any exercise of power, duty and function must be carried out in a manner consistent with the Act particular with the recognition of the Te Awa Tupua status and Tupua te Kawa as determining factors.'<sup>81</sup>

The content of the right was properly espoused in the Whanganui Act, which also state the title of the right conferred on the river, Te Awa Tupua, declared to be a legal person. Generally, the protection and promotion of its health and wellbeing implies the abstention from pollution of the river. The object of the right is the river, which has a right to the water contained in it, underneath its soil among others, and no one can deprive the river of these rights without its consent. This is stated in the recognition of the river, Te Awa Tupua as follows: 'Te Awa Tupua is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical

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<sup>72</sup> CD Stone, *Should trees have standing? Law, morality and the environment* (2010, Oxford University Press). His work on legal standing for nature is regarded as pivotal to modern environment law.

<sup>73</sup> Indian Courts 2017:11-12

<sup>74</sup> SP Croley, 'Theories of regulation: incorporating the administrative process' (1998) 98 *Columbia Law Review*, 1-168.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid. EL O'Donnell and J Talbot-Jones, 'Creating legal rights for rivers: Lessons from Australia, New Zealand and India' (2018) 23 *Ecology and Society*, 3.

<sup>77</sup> The thoroughly drafted and well-considered legislation was after 140 years of legal battle by the Iwi (local inhabitants) regarded as the longest running litigation to recognize a River as a legal person. See Reddy (n28) 4.

<sup>78</sup> Reddy *Legal Personality to Rivers*, above 51 at 6.

<sup>79</sup> s.20

<sup>80</sup> s.19

<sup>81</sup> s.15



elements'.<sup>82</sup> This is followed by the recognition of the essence of the river, which is referred to as Tupua te Kawa. In section 13, the latter represents the intrinsic values that represent the essence of the River as the source of spiritual and physical sustenance of both life and natural resources within the Whanganui River as well as the health and well-being of the communities of the River. The significance of this is the recognition of the River's essence for itself and for the communities of the River thereby embracing both its ecocentric and anthropocentric significance. This approach is quite novel and balanced as opposed to the typical narrative that subsumes the essence of inanimate objects or things into the essence of humanity. Where as human beings should be viewed as a part of nature and not vice versa.

There are several other provisions that detail the contours of the legal rights. This includes limitations of the rights and the effect of other legislations that impact on the right of the River as well as its duties.

### **Constitutional Approach**

This approach is grounded in the constitution of a country wherein the legal rights of nature are generally conferred by the Constitution of a country. The Indian constitution provides legal backing for the protection of the natural environment in Article 51A (g), which reads: 'to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living things'. Similarly, Bolivia's Law of Mother Earth<sup>83</sup> gives recognition of rights of nature including right to life, biodiversity, regeneration, restoration, air and balance. In the same vein, Ecuador's constitution in Articles 71-74 confers rights to nature including rivers, which requires the right to the integral respect for existence and restoration. It sanctions 'all persons, communities, peoples and nations [to] call upon public agencies to enforce the rights of nature'<sup>84</sup> Equally, in the United States, through the effort of local grass-root movements, the legal rights of nature have been embedded in several by-laws in different towns, which include the right to existence and to flourish. For example, in the Bill of Rights Ordinance of the Grant Township, a community in western Pennsylvania, recognises the right of rivers, streams, and aquifers to naturally evolve and to flourish.<sup>85</sup> Thus the quality of such rights in the constitution not only creates the right but it protects and improves nature. This constitutional approach can give legal backing to the rights of nature but it does not meet the challenges of operationalization. As earlier detailed in Reddy's characterization of the legal rights of a river, such rights should include: the subject or owner of the right, the subject of the duty, the content of a right detailing the right, object of a right and the title of the right as conferred by a statute, judicial pronouncement or the constitution. Consequently, this approach is flawed to the extent that it cannot stand alone due to the lack of opportunity to properly define the right and to meet the exigencies of operationalization.

In the judicial approach, as in the Indian court's case, is fraught with challenges of operationalization. The Indian court lacked the power to extensively flesh out the contents of the rights conferred on the river in order to operationalize it. Following Reddy's criteria, the court could only confer the rights on the river but was unable to address a lot of the practical considerations, which would be better dealt with in a separate legislation. Though the constitutional and judicial approaches may be used to essentially confer rights on the natural features of the natural environment, the legislative approach complements the other two approaches in fleshing out the contents of the rights more comprehensively among other things. A similar approach was adopted by the South African Constitutional Court in the Grootboom's<sup>86</sup> case relating to the setting a minimum standard for the right to housing. The court declined to set this standard on the grounds that it did not have the right information, which was within the purview of the government. In this case the constitution recognized the right of access to adequate housing conferred by section 26 of its constitution. However, the court did not have the power to flesh out the 'minimum essential requirement'<sup>87</sup> under the International Covenant on Economic, Social and Cultural Rights (CESCR) for the right to housing granted to the citizenry. In the same vein, it was argued that sustainable development objectives (Social, Economic, Environmental and Educational objectives) in Chapter II of the 1999 Nigerian constitution are justiciable due to the establishment of the Niger Delta Development Commission Act which fleshed out the contents of the objectives.<sup>88</sup> Though these cases are not specifically related to the conferment of the rights on the natural environment, they illustrates the complementarity of the constitutional and legislative approaches as in the latter case and the constitutional and judicial approach in the former case.

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<sup>82</sup> s.12

<sup>83</sup> The 'Ley de Derechos de la Madre Tierra' (the 'Law of Mother Earth'), 2010.

<sup>84</sup> Constitution of the Republic of Ecuador, 2008, art. 71.

<sup>85</sup> P Burdon, 'The Rights of Nature: Reconsidered' (2010) 49 *Australian Humanities Review*, 69-89; M Troutman, Pennsylvania ecosystem fights corporation for rights in landmark fracking lawsuit, (2014) *Public Herald*, 10 December. [online] URL: [http://www.publicherald.org/archives/19582/invisible hand/](http://www.publicherald.org/archives/19582/invisible%20hand/) (accessed 6 January 2023).

<sup>86</sup> Government of the Republic of South Africa v Grootboom 2001 (1) SA 46,66 para 33 (CC)

<sup>87</sup> This also refers to the minimum core content of a right, (A core content of a right is the set of guarantees that constitutes the right. see Udu, Alisigwe & Afolabi, 'Employing International Standards in Advancing the Enforcement of Economic, Social and Cultural Rights in Domestic Jurisdictions: Nigeria in view' (2020) 2 *IRLJ*, 2, which is the intangible baseline that must be guaranteed for all persons in all context and indicates the minimum no government should go even in unfavourable conditions.

<sup>88</sup> BV Brisibe, 'The prospect of Justiciability of Sustainable Development in Nigeria as a Pathway to Accountability in Governance' (2021) 2 *Law and Society Justice Review*, 78.

### **5. Implications for Developing Countries in Sub-Saharan Africa**

Where communities in developing countries are seeking to address serious environmental challenges affecting their communities, a useful strategy to anchor such pursuit may involve seeking to confer rights to the natural environment. This involves the adoption of a combination of approaches depending on the circumstances. However, the likelihood of success gleaned from the New Zealand example appears to be that for communities to succeed, the natural features of the environment should be linked with their customary beliefs and traditions and considered sacred to the local communities. Given that local communities continue to perceive corporations as being complicit in disregarding their negative impact on the natural environment, the concept of legal personality could underpin a strategy to canvass support for an environmental stakeholder whose interest is protected by law. This could take the form of classification of certain features of the natural environment as legal personalities by the law or, in the absence of such legislation, by the court. For example, creeks, sacred rivers and lagoons, estuaries, and islands, among others. The central point appears to be that the essence of the features of the natural environment needs to be properly established as an integral part of the community that is not only interwoven with it but forms part of its fundamental belief system. However, the challenge of this approach is that the communities mostly affected by environmental degradation are themselves engaging in harmful practices for economic gains<sup>89</sup>. This is an aberration and a deviation from the cultural norms or traditional belief system of these communities, which have strong ties to nature and this can be attributed to 'westernisation'. Thus, the actions may be regarded as indefensible to the establishment of the sacredness of the natural environment to these communities.

In line with the concept of financial stakeholding of the natural environment, Nigeria has an ecological fund. This fund was established in 1981 under the Allocation of Revenue (Federation Account, etc.) Act.<sup>90</sup> The objective<sup>91</sup> of the funds is for the amelioration of ecological problems in any part of Nigeria. These include soil erosion, oil spillage, flood, droughts, desertification and general environmental pollution among others. The core mandate of the ecological fund office includes: the reduction of ecological problems nationwide to the barest minimum, facilitate quality. However, there are questions of mismanagement and misappropriation of the funds and inadequately disbursing the funds for projects to alleviate the suffering from disasters affecting the communities. It is also worthy of note that the tone of the act is reactive as it is intended to correct the harm already caused to the environment, which is the lowest standard of environment protection.<sup>92</sup> Thus, the Act should be amended to provide preventive measures and improve the natural environment. This initiative can also be extended to cater for the needs of future generations by hypothecating funds for their use to address environmental challenges, particularly those caused by the present generation. This idea is however some worth far-fetched for a developing country like Nigeria, still grappling with issues of poverty and under-development, corruption and serious environmental challenges.

Indeed, schemes such as ecological funds hint at the natural environment and future generations as stakeholders, which the law intends to protect or at least is concerned about. According to Jacobs,<sup>93</sup> the hypothecation of funds for addressing environmental damage can be viewed as a form of financial stakeholding through taxation. This is based on the idea that we are all part of the whole and have a responsibility to protect it. Consequently, an environmental responsibility can be considered a responsibility to the whole world to be accountable for your impact on the environment. Thus, responsible actions undertaken by businesses for the benefit of the environment can be considered their corporate environmental responsibility. In a broader sense, actions aimed at redressing the negative environmental externalities of business operations, protecting and improving the natural environment for the benefit of all stakeholders, and including the natural environment, can be considered corporate environmental responsibility. This has several implications for corporations doing business in communities, especially in developing countries. One of such implications may now be a corporate environmental responsibility.

### **6. Conclusion**

In a world in dire need of the protection of the natural environment from grave degradation, communities in developing countries who mostly feel the impact need to seek a different approach to addressing these challenges. Previously, the environment was viewed as an addendum to the needs of mankind and existed for the benefit of mankind. This meant that it could not be seen as a stakeholder on the basis that it is unable to represent itself. With the concept of legal personality, this view seems to exist as the natural environment could be elevated to the position of a stakeholder by law. In this light, a legal stakeholder created by law whose right can be enforced against the whole world should be protected for its own sake. Consequently, with this potential new status of the natural environment, individuals have an environmental responsibility, and corporations have a corporate environmental responsibility toward the environment. However, before this can be achieved in its entirety much still needs to be done. As communities in developing countries are seeking redress for serious environmental degradations, there is a need to fine-tune their strategy by adopting a combination of approaches depending tailored to their circumstances. The likelihood of success could depend on the sacredness of the natural features of the environment and its significance to the traditions and customary beliefs of the local communities.

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<sup>89</sup> Soot in one of the oil producing communities in the Niger Delta is as a result of indiscriminate and illegal combustion of fossil fuel. See C. Okafor, 'Investigation: Respiratory illnesses worsen, water pollution confirmed as Port Harcourt Residents battle with soot'. Available at: <https://www.premiumtimesng.com/investigationspecial-reports/543451-investigation-respiratory-illnesses-worsen-water-pollution-confirmed-as-port-harcourt-residents-battle-with-soot.html?tztc=1> (accessed 6 January 2023).

<sup>90</sup> Allocation of Revenue (Federation Account, etc.) Act Cap 16 Laws of the Federation of Nigeria 1990. This legislation has passed some amendments including Decree 36 of 1984, Decree 104 of 1992 and modifications by virtue of the Allocation of Revenue Federation Account, etc. (modification) order of 8<sup>th</sup> of July, 2002.

<sup>91</sup> Ibid at sec. 2(3).

<sup>92</sup> Brisibe *Addressing Nigeria's Petroleum Sector Environmental Accountability*, above 31 at 104.

<sup>93</sup> Jacobs *The Environment as stakeholder* above note 19 at 25.