

A CRITICAL ASSESSMENT OF THE NATURE OF CORPORATE SOCIAL RESPONSIBILITY AND ENFORCEMENT POSSIBILITIES FOR CORPORATE MANSLAUGHTER PUNISHMENT IN NIGERIA*

Abstract

Enforcing Corporate Social Responsibility (CSR) has been mainly contentious. This is largely due to questions of whether legitimate claims can arise since social responsibility can be lacking in established legal rights and obligations. This paper assesses the issues with enforcement of corporate social responsibility for corporate manslaughter punishment of multinational companies and people's thought on what the practice of corporate social responsibility in Nigeria really is. This finding confirms that the nature of enforcement of corporate social responsibility in Nigeria can be tricky. Critics have argued that corporate social responsibility in Nigeria is a distraction for business from meeting its primary goal of profit making¹. The idea is to establish a fundamental nexus between lack of institutional framework for the enforcement of law in Nigeria and lack of legitimacy of institutions for the enforcement of law in Nigeria. The research achieves the outcome by evaluating the mechanism in place for enforcement of corporate social responsibility. This finding confirms that Nigerians, government and its institutions do not know of the efficiency with regards to enforcement of corporate social responsibility among companies operating in Nigeria thereby making companies in Nigeria not to be corporate socially responsible. As a result, the study seeks to resolve the question of whether there is still misunderstanding in Nigeria and in the world with regards to practice and enforcement of corporate social responsibility among companies and what corporate social responsibility should be. The aim is to conceptualize and broaden understanding of companies in the oil rich Niger Delta Area of Nigeria incorporating social and environmental concerns in their business operations. There needs to be a legal framework in Nigeria and in the world for enforcement of corporate social responsibility between multinational companies (MNCs) and the host government. It argues that the cultural gaps in Nigeria, at the level of enforcement of corporate social responsibility and law through government institutions, it is not there but in the United Kingdom at the level of administrative rules and enforcement, it is there. This means that in the United Kingdom (UK), there is a certain level of enforcement that goes on in terms of companies having to comply and explain. Initial findings reveal a strong connection between defective systems design in terms of culture for enforcement of corporate social responsibility and government institutions in Nigeria's oil and gas sector by MNCs. This has implications for the government and its institution doing little or nothing to ensure the enforcement of corporate social responsibility among companies operating in Nigeria.

Keywords: Corporate Social Responsibility, Corporate Manslaughter, Enforcement Possibilities, Punishment, Nigeria

1. Introduction

The absence of a working system for enforcement in Nigeria is worrisome. With regards to enforcement of corporate social responsibility in the United Kingdom, it is evident from decided court cases that their government is ensuring that companies in the United Kingdom continues to perform its corporate social responsibility duties, but in Nigeria, there has been so many cases of environmental degradation (corporate manslaughter cases) and Nigerian government institutions are not very vocal in terms of investigation and ensuring that companies in Nigeria complies with its corporate social responsibility. Similarly, businesses are largely responsible for creating the wealth upon which the well-being of society depends. As businesses create wealth, their actions impact societies comprised of multiple stakeholders. In turn, societies and their governments create laws, regulations, and expectations impacting business operations. The interaction between businesses and society is a major concern of corporate social responsibility (CSR). This study in section 2 explores the institutional differences with enforcement (to lead to a possible punishment for corporate manslaughter) in Nigeria. It assesses whether there is a system for enforcement in Nigeria. This is because the policy, legal and regulatory framework within which natural resources are exploited determines whether or not the resource owner maximises the benefits from their resources².

In Nigeria, at the level of enforcement of corporate social responsibility and law through government institutions, it is not there but in the United Kingdom at the level of administrative rules and enforcement, it is there. This means that in the United Kingdom (UK), there is a certain level of enforcement that goes on in terms of companies having to comply and explain. For example, the UK government can ask company why they spill oil since such oil spills can catch fire causing death. But in Nigeria, the government and its institution does little or nothing to ensure the enforcement of corporate social responsibility among companies operating in Nigeria. It evaluates the problem to be encountered in Nigeria because Nigeria as a country does not have a political/enforcement structure with regards to enforcement of corporate social responsibility. This research evaluates the challenge that lies in lackadaisical enforcement culture in Nigeria. This creates an avenue for unenforceability of corporate manslaughter related laws in Nigeria due to the laissez faire attitude multinational companies have with human institutions in Nigeria set out in Section 2. This journal article will explain the solution in relation to change with regards to how enforcement should be.

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¹ Milton, Friedman *Capitalism and Freedom* (University of Chicago Press, 1962); Milton Friedman, The Social Responsibility of Business is to increase its Profits, New York Times Magazine September 13 1970 P33; Henderson, D. Misguided Virtue: False Notion of Corporate Social Responsibility, (2001) New Zealand Business Roundtable, the terrace, Wellington, New Zealand; Theodore, Levitt 'The Danger of Social Responsibility,' (1958) 36(5) Harvard Business Review 41-50

² S. Manteaw, Making oil and gas governance work for democratic development A civil society perspective from Ghana. In Michael Roll (Ed.), *Fuelling the world Failing the Region?: Oil governance and development in Africa's Gulf of Guinea* (Friedrich-Ebert-Stiftung, 2011) 182-191

2. The Enforcement Culture in the United Kingdom: A Case for Nigeria

In Nigeria, at the level of enforcement of corporate social responsibility and law through government institutions, it is not there but in the United Kingdom at the level of administrative rules and enforcement, it is there. This means that in the United Kingdom (UK), there is a certain level of enforcement that goes on in terms of companies having to comply and explain. For example, the UK government can ask company why they spill oil since such oil spills can catch fire causing death. But in Nigeria, the government and its institution does little or nothing to ensure the enforcement of corporate social responsibility among companies operating in Nigeria. Nigeria as a country does not have a political/ enforcement structure with regards to enforcement of corporate social responsibility. Amodu said that the challenge lies in lackadaisical enforcement by regulators³. This shows that government investigators lack the technical capacity⁴ to undertake inspections. According to the Corporate Manslaughter and Corporate Homicide Act 2007 in the United Kingdom, the nature of human institution like the court in a case of corporate manslaughter is that an organisation convicted of corporate manslaughter or corporate homicide can be ordered by the court to publish particulars of its conviction in a newspaper, requiring it to take specific steps to remedy the breach; any matter the court believes to have resulted from the breach and caused the death; and any deficiencies in the organisation's constitution with regards to health and safety policies, systems or practices which may have stemmed from the breach⁵. However corporate social responsibility is unenforceable in Nigeria and due to the laissez faire attitude multinational companies have with human institutions in Nigeria (built on corruption and denial of legal obligation). The end product is failure by the multinational companies for example to review their health and safety policies.

Ordinary Nigerians experience its government and government institution get greedy and corrupt thereby ignoring the fact that the negative activities of companies like oil spillage or gas flaring can cause terminal illnesses (like cancers, or gas explosions leading to death) of its employees and community members leading to their death. The company on their own part may compromise health and safety seeing a non-challant government and its institutions who do nothing to ensure that companies comply with its corporate social responsibilities (ethical corporate social responsibility for example which is immediate clean-up of oil spillage by companies operating in Nigeria. Even the Nigerian government is busy making money by negotiating with oil companies in places like Bayelsa State of Nigeria (an oil producing state in Nigeria) from incidence of oil spillage. This could not be so if both oil companies and the Nigerian government choose to remind themselves or understand the implication of compromising ethics in business or health and safety or welfare of its employees and village members being affected by oil spillage or gas flaring. Oil companies in Nigeria are not doing well to reduce the damage it causes to the environment.

3. Institutional Differences with Enforcement in Nigeria (The Need for Active Participation by the Nigerian Government)

Following from the issues raised in section one, section 2 discloses that there are gaps or inconsistencies in the mode and method of implementation of corporate manslaughter laws. These gaps are a product of the deficiencies and the cultural differences (institutional differences in terms of enforcement) in the ways in which different countries have developed their framework with regards to the implementation of corporate manslaughter laws. As speaking with regards to the enforcement of corporate social responsibility when companies fail to abide by their corporate social responsibilities (leading to an offence of corporate manslaughter and corporate homicide), the case even goes deeper in terms of the discrepancies and inconsistencies in the way that it has been handled. In Nigeria, so many researchers have accused oil companies (like Shell Nigeria for their activities in Niger Delta) of oil spillage, pipeline leaks; its resultant effect like fire outbreak⁶, death from activities of Shell and explosions causing death (Mobil Nigeria), failure in duty of care as occupiers of premises. The reason for these inconsistencies is not far from the difficulty in achieving a universal framework for the enforcement of corporate manslaughter laws especially as it relates to corporate social responsibility. The difficulty in achieving a universal consensus could have its basis from different economic philosophies. Some countries, adopt a system of economic theory or philosophy that encourages profit maximization and as such the idea of punishing corporate organizations which does business in a particular country is far removed from the enforcement framework in the host in other not to make the business environment unfavourable for it. This particular framework of doing business is to the detriment of the environment and people within those environments. For other jurisdictions, they consider the environment and the way of life of their people and the health and welfare of their people far above the monetary gains they can get or whatever monetary support they can get from these companies and as such, the differences in economic philosophies, tends to point to the variations in the ways these laws are enforced especially in corporate manslaughter.

In developing African countries and with regards to corporate social responsibility, multinational companies may argue that it is not the fault of companies that proper steps to ensure corporate social responsibility was not taken but rather it is the fault of regulatory agencies in these developing African countries. The United Kingdom's legal system has been able to weave in corporate social responsibility into the corpus of its governance structure because of their level (in progression) of administrative rules and their system of comply and explain which Nigeria is still to have and operate. Third, and perhaps least recognised, is that once one departs from a view of state–corporate relations as characterised by externality, then it becomes clear that 'the' state at its various levels is implicated in the production of corporate crime through the complex inter-dependence of these

³ Nojeem Amodu 'Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria' (2017) 61(1) *Journal of African Law* 105-130 at 105

⁴ Azubuike I. Smith and Ondotimi Songi 'A Rights-based Approach to Oil Spill Investigations: A Case Study of the Bodo Community Oil Spill in Nigeria' (2020) 1(1) *Global Energy Law and Sustainability* 28-54 at 30

⁵ Corporate Manslaughter and Corporate Homicide Act 2007 United Kingdom Section 9(1)

⁶ Orhioghene Akpomuvie 'Tragedy of Commons: Analysis of Oil Spillage, Gas Flaring and Sustainable Development of the Niger Delta of Nigeria' (2011) 4(2) *Journal of Sustainable Development* 200-210

apparently separate sets of entities⁷. This writer believes that this excuse will be used to hook any government if they refuse to pass into law and enforce law on corporate punishment otherwise its citizens will think that it mingles with corporate politics shunning the welfare of workers and the health and safety of its citizens. To achieve a solution to the problem of enforcement of corporate social responsibility in Nigeria, there should be a re-orientation for government institutions in Nigeria like the police who should carry out investigations (on the failure by companies to clean up oil spillage or reduce gas flaring for example claiming lives and Nigerians as a whole of the effect of oil spillages and gas flaring for example on human lives. This goes to show that these specific institutions do not even have the institutional understanding of the elements required for enforcement of corporate social responsibility in Nigeria.

The Constitution of the Federal Republic of Nigeria 1999 provides for rights that are deemed non-justiciable⁸ meaning that it can be prayed to be granted by the court of law in Nigeria⁹. In this regard, there is the Nigeria's African Charter on Human and People's Right (Ratification and Enforcement) Act¹⁰ which domesticates the provisions of the African Charter on Human and People's Right (African Charter). Article 24 of the Charter provides 'for a climate change-related right by guaranteeing everyone's right to a general satisfactory environment favourable to their development'¹¹. Flowing from the provision of Article 24 of African Charter on Human and People's Right (Ratification and Enforcement) Act (2004), the Supreme Court of Nigeria in *COPW v NNPC*¹² at least is now educating government institutions through its court's decision on the importance of enforcement of corporate social responsibility and law in Nigeria and now as decided by the Supreme Court of Nigeria:

- (1) Oil companies (both public and private) in Nigeria have a duty to prevent environmental degradation or oil spillage, human lives, public health and environment (the Court gave an indivisibly-aligned interpretation to right to life and the right to clean environment¹³)
- (2) The law widened the scope of those (like Nigerians from oil producing communities in a class court action) who can challenge such environmental degradation in court as an effect of failure in corporate social responsibility.

The Nigerian government needs to educate their citizens on health and safety and the impact laws on the enforcement of corporate social responsibility by companies in Nigeria since health and safety¹⁴ is necessary for any company to comply and government institutions in developing countries to know of its importance to ensure its compliance.

4. Conclusion

In Nigeria, there is the Nigerian police and the Ministry of Justice but there may be pitfalls in the enforcement of the law which will be the primary office to institute the action for corporate manslaughter and corporate homicide against oil companies in Nigeria (to be enforce its (the companies in Nigeria) corporate social responsibility duties) on behalf of oil company employees and Nigerians. Therefore, this writer suggests that it should be the attorney general's office which should institute action for Nigerian (as it relates to company's failure in their legal and ethical corporate social responsibility duties in its host country like Nigeria) in order to educate other government institutions and Nigerians of the importance of enforcement of corporate social responsibility¹⁵ by companies in Nigeria.

⁷ Steve Tombs 'State complicity in the production of corporate crime' in Gobert, James and Pascal, Ana-Maria eds. *European Developments in Corporate Criminal Liability*. Routledge Advances in Criminology (Routledge, 2011) 70–83.

⁸ The Constitution of the Federal Republic of Nigeria 1999 Sections 13-24

⁹ Philip E. Oamen and Eunice O. Erhagbe 'The Impact of Climate Change on Economic and Social Rights Realisation in Nigeria: International Cooperation and Assistance to the Rescue?' (2021) 21 *African Human Rights Law Journal* 1080-1111

¹⁰ African Charter on Human and People's Right (Ratification and Enforcement) Act Cap A9, Laws of the Federal Republic of Nigeria, 2004

¹¹ African Charter on Human and People's Right (Ratification and Enforcement) Act Cap A9, Laws of the Federal Republic of Nigeria, 2004 Article 24

¹² *COPW v NNPC* [2019] 15 Nigeria Weekly Law Report 1666. This is the Supreme court appealed case of *Centre for Oil Pollution v Nigerian National Petroleum Corporation*, FHC/L/CS/638/2004 (court of first instance being the Federal High Court in Lagos Nigeria in the same case) and *Centre for Oil Pollution v Nigerian National Petroleum Corporation*, CA/L/413/2008 (the Court of Appeal citation in the same case)

¹³ M.C. Anozie and E. O. Erhagbe 'The Impact of Climate Change on Economic and Social Rights Realisation in Nigeria: International Cooperation and Assistance to the Rescue?' (2021) 21 *African Human Rights Law Journal* 1080-1111

¹⁴ Mohamed Alhajeri Health and safety in the construction industry: challenges and solutions in the UAE. Unpublished Thesis. Coventry: Coventry University 2011

¹⁵ Samuel Nnamdi Nzegwu 'Companies' Corporate Social Responsibility and its Sustainability among Developing African Countries like Nigeria' (2022) 4(1) *International Journal of Multidisciplinary and Current Educational Research* 255-262