RESPONSIBLE INVESTMENT IN THE PETROLEUM SECTOR: THE CASE OF THE PETROLEUM INDUSTRY BILL (PIB)

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ABSTRCT: *The significance of incorporating socially responsible business practices into organisational economic objectives has become an important feature of contemporary business environment. While firms would prefer voluntary regulation expressed in varied terms but most generally classified as the corporate social responsibility (csr), regulatory institution sometimes interjects with plethora of external regulatory rules. This dilemma is particularly evident in extractive industries such as petroleum exploration. The case of Nigeria petroleum industry bill (PIB) that is poised, among other things, to embed regulatory regime readily comes into perspective. It would be argued that requiring firms to engage in socially responsible business practices strengthens the legitimacy licence and reputational effect of the relevant companies.*

KEYWORDS: *Responsible Investment; CSR; IOCs; Petroleum Sector; PIB; Social Licence*

INTRODUCTION

The necessity of aligning firms' economic objective with positive external image is increasingly becoming a principal part of business ethics. The characterisation for such alignment varies but could generally be classified as the concept of corporate social responsibility (csr); sustainable development;[1] or better still legitimacy licence.[2] From the regulatory perspective, analysis could be undertaken from the angle of optimal regulatory framework for corporations. In this vein, it is viewed from the standpoint of coercive regulation versus voluntary regulation;[3] the host state model of regulation versus home state model of regulation;[4] unilateral regulation versus multilateral regulation.[5] It could also be analysed from

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[1] One widely accepted definition of sustainable development enunciated by World Commission on Environment and Development (Brundtland Report), defines it as 'a development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.' See International Institute for Sustainable Development, 'What Is Sustainable Development? Environmental, Economic and Social Well-Being for Today and Tomorrow', at 3 http://www.iisd.org/sd, accessed: 17/11/2014

[2] Shuili Du and Edward T Vieira Jr, 'Striving for Legitimacy through Corporate Social Responsibility: Insights from Oil Companies ', *Journal of Business Ethics,* (2012), 2-3.

[3] Mark B Baker, 'Private Codes of Corporate Conduct: Should the Fox Guard the Henhouse?', *University of Miami Inter-American Law Review,* 24 (1992-1993), 400; Douglass Cassel, 'Corporate Initiatives: A Second Human Rights Revolution', *Fordham International Law Journals,* 19 (1995-1996), 1964.

[4] Beth Stephens, 'Coporate Liability: Enforcing Human Rights through Domestic Litigation', *Hastings International & Comparative Law Review,* 24 (2000-2001), 402-03; Surya Deva, 'Acting Extraterritorially to Tame Multinational Corporations for Human Rights Violations: Who Should ''Bell the Cat''', *Melbourne Journal of International Law,* 5 (2004), 50-51; Joshua P Eaton, 'Nigeria Tragedy, Environmental Regulation of Transnational Corporations, and Human Rights to a Healthy Environment', *B.U. International Law Journal,* 15 (1997), 278-82.

[5] Glen Kelley, 'Multilateral Investment Treaties: A Balanced Approach to Multinational Corporations', *Columbia Journal of Transnational Law,* 39 (2000-2001), 531.

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the prism of the communitarian and contractarian perspectives;[6] or even the shareholder-stakeholder debate.[7] The diversity of these perspectives can be illustrated using a radial cycle hereunder,

Source: author

Despite the divergences in word characterisation, the normative content of all remains the same: responsible investment practices vis a vis outside constituencies. For instance, the words 'communitarians' and 'stakeholders' loosely denote constituencies affected in one way or another by the corporation operating in the sphere of their surroundings. The focal point of this discourse remains however responsible foreign investment conduct - manifestation of corporation outward concern to stakeholders being invariably labelled the concept of CSR.[8]

This article constitutes a continuation of the debate on the optimal regulatory approach to multinational corporations involved in extractive industries, whether voluntary regulation (self-regulation) or coercive regulation, or a plethora of approaches, should be adopted. It radically differs from existing literature in this sphere by approaching the analysis from interdisciplinary

[6] Stephen Bainbridge, 'Community and Statism: A Conservative Contractarian Critique of Progressive Corporate Law Scholarship', *Cornell Law Review,* 82 (1997), 1-3.

[7] Benedict Sheehy, 'Scrooge - the Reluctant Stakeholder: Theoretical Problems in the Shareholder-Stakeholder Debate', *Miami Business Law Review,* 14 (2005-2006), 193.

[8] Note that CSR and responsible investment are used interchangeably in this discourse. Note also the effort by the UN in embedding responsible investment. See PRI, 'The Principles of Responsible Investment', *An Investor Initiative in Partnership with UNEP Finance Initiative and the UN Global Compact,* available: http://www.unpri.org/principles, accessed 02/10/2014. Responsible investment forms one of the hallmarks of CSR normative paradigm. For the progressive link between the two, see Russell Sparkes and Christopher J Cowton, 'The Maturing of Socially Responsible Investment: A Review of the Developing Link with Corporate Social Responsibility', *Journal of Business Ethics,* 52 (2004), 55.

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perspectives as well as using case studies, tables, to illustrate the points. The essence of adopting such a broad-based approach is hinged on availing the reader a complete picture of developments in related disciplines, as well as the perspectives of the multinational corporations operating in the petroleum sector vis a vis the regulatory position. Such analysis discloses emerging consensus across various disciplines of the necessity of balancing the goal of self-regulation with coercive regulation, with the concept of self-regulation being contextualised to cultural environment. The article is contextualised to the petroleum sector in Nigeria but the propositions made and conclusions reached are applicable across borders since it dwells extensively on international dimension of responsible investment. It would be contended that embedding responsible investment principles in firm's decisions enhances not only the legitimacy licence to operate in the relevant environment but also the reputational effect of the relevant firms.

The article is divided into seven parts. Apart from the introduction, part two explores various perspectives of approaching definitional construct of responsible investment. Part three then looks at the global convergence on the need for responsible investment. Part four examines various modes responsible investment could embed in the petroleum sector. Part five dwells on the responsible investment and/or CSR patterns of multinational operating in Nigeria – Shell, Chevron, and ExxonMobil. Part six then explores the implication of the coercive regulation – the PIB - poised to be introduced, and conceptualises the possible eventualities. Part seven concludes.

Definitional Construct

CSR does not seem to have a universally accepted definition.[9] However, the evolutional and well-articulated definitional construct of CSR provides a useful guidance.[10] CSR is characteristically viewed as mirroring a broad range of activities companies are expected to undertake. The diversity of perspectives underpinning CSR is not unconnected with various theories that underscore its conceptualisation particularly the institutional theory, agency theory, resource-based theory of the firm, stewardship theory, the theory of firm, and stakeholder theory.[11] As noted, the 'prescribed approaches to CSR' sometimes 'seem perplexing to theorists and completely elude practitioners'.[12] This preceding 'state of affairs probably impedes a full understanding among managers of what CSR should comprise' and further hinders the 'theoretical development of CSR'.[13]

Nevertheless, social responsibility of business entails, inter alia, responsible investment, respect for human rights of the host communities, and actions consistent with good corporate citizen in the host communities;[14] not least is the maintenance of a harmonious industrial

[9] Ramon Mullerat (ed.), *Corporate Social Responsibility - the Corporate Governance of the 21st Century*, ed. Reinier Lock, 'African's Unique Challenge: Linking Economic Growth, Infrastructure Reforms and Corporate Responsibilities', (Netherlands: Kluwer, 2011) at 376.
[10] Archie B Carroll, 'Corporate Social Responsibility: Evolution of a Definitional Construct', *Business Society,* 38/3 (1999), 298.
[11] Adam Lindgreen and Valerie Swaen, 'Coroproate Social Responsibility', *Internnational Journal of Management Reviews,* 12/1 (2010), 1-7.
[12] *Ibid*., at 1.
[13] *Ibid*.
[14] OECD, 'OECD Guidelines for Multinational Enterprises 2011 Edition', (2011) at 17-26, available: http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/48004323.pdf, accessed: 17/09/2012

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relation.[15] It could also be viewed as encompassing economic, legal, ethical, and discretionary responsibilities (particularly voluntary activities such as philanthropy).[16] However, the preceding classification of CSR seems illusory. The central objective of every business is to make profit (economic), economic responsibility therefore seems to fall outside CSR construct. Legal responsibility constitutes a mandatory minimum standard necessary for continued existence of a legally chartered company while voluntary activities particularly philanthropy is external to company activities; both therefore seemingly fall outside CSR construct.[17]

Social responsibility therefore 'rests centrally on firm's operational behaviour and its impacts on the surrounding' communities.[18] In other words, it entails a 'balanced approach for organization to address economic, social and environmental issues in a way that aims to benefit people, communities and society'.[19] In this perspective, it encompasses issues such as human rights, unfair business practices particularly bribery and corruption, anti-competitive practices, environmental development, social and community development.[20]

CSR equally entails activities (which set out the companies as a good corporate citizen) beyond the mandates of the law particularly in developing countries where statutory devices may be underdeveloped or even non-existent in the particular area of companies conduct.[21] In fact, the significance of CSR construct is dependent not only on the managerial perspectives of CSR[22] but also the prevailing institutional and political environment.[23] In other words, a consolidative conception of CSR is not thematically limited to moral, strategic, organisational aspects and implications alone but extends with equal force to cultural dimension.[24] By and large, there seems to be an emerging global convergence on the relevance of CSR to organisational goal.

[15] OECD, 'Corporate Social Responsibility and Economic Development', *OECD Global Forum on International Investment* (2001), 1-4, http://www.oecd.org/industry/internationalinvestment/investmentstatisticsandanalysis/2423198.pdf, accessed: 16/09/2012.
[16] Archie B Carroll, 'A Three-Dimensional Conceptual Model of Corporate Performance', *Academy of Management Review,* 4/4 (1979), 499.
[17] UNCTAD, 'The Social Responsibility of Transnational Corporations', (1999) at 3-5, available: http://unctad.org/en/Docs/poiteiitm21_en.pdf, accessed: 16/09/2012.
[18] *Ibid*., at 3.
[19] International Organisation of Standardisation, 'Preliminary Working Definition of Organisational Social Responsibility', available: http://www.iisd.org/pdf/2003/standards_definition.pdf, accessed: 25/09/2012
[20] *Ibid.*
[21] UNCTAD, 'The Social Responsibility of Transnational Corporations', at 4-5.
[22] For the dominant views on the managerial influence on CSR outcome and the emergence of the institutionalist paradigm see, Kenneth Amaeshi and Olufemi O Amao, 'Corporation Social Responsibility (CSR) in Transnational Spaces: An Institutionalist Deconstruction of MNCs' CSR Practices in the Nigeria Oil and Gas Sector', *CSGR Working Paper 248/08* (2008), 3-9.
[23] Jonathan P. Doh and Terrence R. Guay, 'Corporate Social Responsibility, Public Policy, and NGO Activism in Europe and the United States: An Institutional-Stakeholder Perspective', *Journal of Management Studies,* 43 (2006), 47-48.
[24] Adam Lindgreen *et al*, 'Organisational Stages and Cultural Phases: A Critical Review and a Consolidative Model of Corporate Social Responsibility Development', *International Journal of Management Reviews,* 12/1 (2010), 20.

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Global Convergence

Scholars in the field of economics (including management theorists), law, and political philosophy[25] have argued for ages on the proper contours of the corporation role vis a vis the external constituencies.[26] Neo-classical proponent of shareholder-centric corporation argued that the only social responsibility of corporation is to engage its resources for profit motive to maximise shareholders wealth.[27] Indeed, multi-stakeholders approach in the sense of corporation accounting for the interest of stakeholders including the community of operations is disregarded.[28] In their influential article, Hansmann and Kraakman[29] in arguing for shareholders primacy state that other constituencies such as the community where the corporation operates, creditors, employees, customers, suppliers, environments, can only be part of the corporate governance equation if they are party to express and unambiguous private orderings (contract) with the corporation.[30] Failing that, they can only lay claim to protection of other bodies of law (like environmental law, human rights law, tort, among others), otherwise their interests are not to be the concern of corporate policies.

Conversely, progressives argue that in the context of increasing globalisation, the argument that corporation exists purely to maximise shareholders' wealth is illusory, in the face of environmental and human rights challenges created by the activities of the corporations' consequent upon globalisation.[31] In other words, the existence of corporation is a by-product of team production involving the input of the communities hosting the corporation, the employees, and other constituents outside shareholders.[32]

In the UK, section 172 Company Act 2006 mandates the directors[33] of companies to 'act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so,' inter alia, have regard to outside

[25] John Farrar, *Corporate Governance* (2nd edn.; Oxford: Oxford Unversity Press, 2005) at 20.
[26] See A.A. Berle, 'For Whom Corporate Managers Are Trustees: Note', *Harvard Law Review,* 45/8 (1931-1932), 1367; E.M. Dodd, 'For Whom Are Corporate Managers Trustees?', ibid. (1932), 1145-63. The competing theories of corporation (artificial entity theory and natural entity theory) evolutionally define corporation sphere of operation. See David Millon, 'Theories of Corporation', *Duke Law Journal,* (1990), 211.
[27] Milton Friedman, 'The Social Responsibility of Business Is to Increase Its Profit', *New York Time Magazine,* 1970 at 32.
[28] Stephen Bainbridge, 'In Defence of Shareholder Wealth Maximization Norm: A Reply to Professor Green', *Washington and Lee Law Review,* 50 (1993), 1440-44; Bainbridge wrote in reply to Ronald Green argument for multi-stakeholder model of corporation. See Ronald M. Green, 'Shareholders as Stakeholders: Changing Metaphors of Corporate Governance ', ibid. at 1409-21.
[29] Henry Hansmann and Reinier Kraakman, 'The End of History for Corporate Law', *Georgetown Law Journal,* 89 (2000-2001), 441-42.
[30] Note that the argument ignores the efficiency underpinning dual-structured corporate governance system that recognises both shareholders and other stakeholders' interest. See Hideki Kanda *et al* (ed.), *Comparative Corporate Governance - the State of the Art and Emerging Research*, ed. Stefan Prigge, 'A Survey of German Corporate Governance', (Oxford: Oxford University Press, 1998) at 946-51.
[31] Cynthia Willaim, 'Corporate Social Responsibility in Era of Globalisation', *U.C. Davies Law Review,* 35 (2001-2002), 720; Stephen Rix, 'Globalisation and Corporate Responsibility', *Alternative Law Journal,* 27 (2002), 16-22; Alwyn Lim and Kiyoteru Tsutsui, 'Globalisation and Commitment in Corporate Social Responsibility: Cross-National Analyses of Institutional and Political-Economy Effects', *American Sociological Review,* 77/1 (2012), 69.
[32] Margaret M. Blair and Lynn A. Stout, 'A Team Production Theory of Corporate Law', *Virginia Law Review,* 85 (1999), 278-80.
[33] On the duties of directors generally, see Micheal Griffiths *et al, The Company Director - Powers, Duties and Liabilities* (11th edn.; Bristol: Jordan Publishing, 2011).

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constituencies interests particularly the impacts of the company operations on the host community and environment as well as maintain high standard of business conduct.[34] The UK company law reform of 2006 encapsulated in the 'enlightened shareholder value' has been hailed as the harbinger of the emerging CSR trends,[35] even though the traditionalists continue to maintain that the traditional common law shareholders primacy remains 'reiterated in the section'.[36] Indeed, for the first time the traditional common law shareholders primacy is qualified with enlightened shareholders value, entailing that directors must take into account the interest of stakeholders in promoting the interest of the shareholders.[37] Similarly, the OECD Principles of Corporate Governance embody similar obligation on the management to pay attention to stakeholders' interests in the context of not engaging in unethical and illegal investment practices.[38] Indeed, there is increasing acceptance of the relevance of responsible business practices as part of larger firm's goal. The manner in which the preceding is accomplished pretty much depends on the modes employed which could invariably involve shareholders activism, stakeholders' pressure, reporting, or a mix of approaches.

Potential Modes of Embedding Responsible Investment

The efficacy of these modes remains arguable. As noted, the question is not *whether* to constrain corporations' obsession with profit maximisation but rather *how* to constrain them (**emphasis added**): internal constraint (shareholder activism or other mechanism evolved by corporate law) or external constraints (markets, stakeholders, and regulation).[39]

Shareholders Activism

Shareholder activism involves the use of ownership power by institutional investors and/or individual shareholders to influence corporate policy and practice.[40] Agency theory postulates the existence of agency problem in corporation that creates divergence of interests between the

[34] CSR has become a global phenomenon with countries adapting their laws to incorporate CSR consideration. See Celine Louche and Steven Lydenberg, 'Socially Responsible Investment: Differences between Europe and United States', (2006), 6-8, available: http://public.vlerick.com/Publications/67642c0d-6aa9-e011-8a89-005056a635ed.pdf, accessed 01/10/2012

[35] The business review under s. 417(1-2) is meant to compel all companies other than small companies 'to acknowledge and respond to the interest of the stakeholders affected' by their operations. See Brendan Hanigan, *Company Law* (3rd edn.; Oxford: Oxford University Press, 2012) at 198.

[36] Paul L. Davies and Sarah Worthington, *Gower and Davies Principles of Modern Company Law* (9th edn.; London: Sweet and Maxwell, 2012) at 542.

[37] Note that the same s. 172 UK Company Act 2006 has been severely criticised for not being far reaching enough to take into account the stakeholders interest, since the section subordinates the stakeholders' interest to maximisation of shareholders value. Moreover, stakeholders are not entitled to a direct action to enforce their interest except where they double as shareholders, further undermining the potential utility of the section. See Andrew Keay and Joan Loughrey, 'Derivative Proceedings in a Brave New World for Company Management and Shareholders', *Journal of Business Law,* 2 (2010), 2-11; Adefolanke Adeyeye, 'The Limitations of Corporate Governance in the CSR Agenda', *Company Lawyer,* 31/4 (2010), 4-5.

[38] OECD, 'OECD Principles of Corporate Governance', (2004), 46-48, available: http://www.oecd.org/daf/corporateaffairs/corporategovernanceprinciples/31557724.pdf, accessed: 19/10/2012.

[39] Ian B. Lee, 'Corporate Law, Profit Maximization and the ''Responsible Shareholder''', *Stanford Journal of Law, Business and Finance,* 10 (2005), 1 at 11.

[40] Emma Sjostrom, 'Shareholder Activism for Corporate Social Responsibility: What Do We Know?', *Sustainable Development,* 16 (2008), 142; Huimin Chung and Till Talaulicar, 'Forms and Effects of Shreholders Activism', *Corporate Governance: an International Review,* 18/4 (2010), 253.

ISSN: 2052-6393(Print), ISSN: 2052-6407(Online)

corporate managers and shareholders triggering shareholder activism.[41] Corporate governance attempts to ameliorate this agency problem in various ways viz: (i) instituting independent board of directors to monitor management compliance with company philosophy; (ii) existence of institutional investors that watch over the activities of the management; and (iii) strong market for corporate control.

While shareholders activism appears to be a novel phenomenon in emerging markets, it has become a cardinal feature of corporate culture in advanced economies. Shareholders activism in the US dated as far back as 1900 when financial institutions particularly insurance companies, mutual fund, banks, among others, were involved in corporate governance prior to Glass-Steagall Act that proscribed direct acquisition of equities by US banks. There were also traces of such activism reflected in the practice of certain religious organisations that employ a social screen of investment. Such organisations forbade their members from investing in so-called sin stocks – gambling, tobacco, alcohol etc. However, the current tide of shareholders activism is credited to 1946 Securities and Exchange Act Rule 14a-8 that mandated corporate management to admit shareholders resolution into proxy statement.[42] In the 1960s and 1970s, shareholders activism was employed to pressure companies on civil rights and equal opportunities. Shareholders activism in the 1980s meandered into anti-takeover activism. Pressure from shareholders on social and environmental activism however gained momentum in the 1990s, attributable to increasing responsible investment awareness.

Such techniques as dialogues with the management; open letter to the board or management; questions and answer sessions at the annual general meeting; and shareholders proposal filed to the company, are normally used in such a traditional activism. Despite the fact that shareholders activism are traditionally used in corporate governance issues to extract certain benchmarks from the management and/or board bearing on improved financial returns, its usage to extract social performance benchmark remains nascent.[43] However, nothing precludes similar shareholders activism in the context of socially and environmentally responsible foreign investment in the oil sector.

Such possibility can be accomplished in various ways.[44] Firstly, shareholders may demand that IOCs comply with certain social performance benchmarks. Secondly, institutional investors (such as pension fund, mutual fund, insurance companies, among others) may also threaten to withdraw their investment unless IOCs follow certain social and environmental performance

[41] Micheal C Jensen and William H Meckling, 'Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure', *Journal of Financial Economics,* 3/4 (1976), 305; Frank H. Easterbrook and Daniel R. Fischel, 'Close Corporations and Agency Costs', *Standford Law Review,* 38/2 (1986), 272.
[42] Stuart L. Gillan and Laura T. Starks, 'The Evolution of Shareholders Activsim in the United States', (2007), 3-6; Anastasia O'rourke, 'A New Politics of Engagement: Shareholder Activism for Corporate Social Responsibility', *Business Strategy and Environment,* 12 (2003), 229.
[43] A distinction acknowledged as financial activism and social activism respectively. See Ajai Gaur *et al,* 'Antecedents of Shareholder Activism in Target Firms: Evidence from a Multi-Country Study', *Corporate Governance: an International Review,* 18/4 (2010), 259.
[44] Other ways of classifying it include: avoiding corporation with poor social performance benchmarks; supporting those with good benchmarks; comparing of various corporations benchmarks before investing; and engagement, see Celine Louche, 'Corporate Social Responsibility: The Investor's Perspective', *Professionals' Perspectives of Corporate Social Responsibility* (2010), 222.

ISSN: 2052-6393(Print), ISSN: 2052-6407(Online)

benchmarks.[45] Equally, potential investors can screen securities for possible investment and demand that IOCs adhere to certain tenet of responsible investment as a prerequisite to investing. The latter seems to be gaining momentum with institutional investors. Indeed, the international group of institutional investors under the auspices of the United Nations launched the Principles of Responsible Investment in 2006 to highlight the significance of environmental, social and corporate governance (ESG) topics to investment.[46] The essence of the foregoing no doubt is to align investment objectives with broader societal interests.

It does not seem that shareholders activism forms a significant feature of Nigeria corporate culture. However, there exists Nigerian Association of Shareholders for safeguarding the interest of investors. It is arguable if shareholders can rely on minority provisions to bring action for improved social and environmental performance of companies.[47] Examination of sections 299-309 of Companies and Allied Matters Act (CAMA) Law of the Federation of Nigeria (LFN) 2004 pertaining to minority protection does not disclose anything caught by better social performance of companies. However, it seems that action for relief can be maintained under section 311 of CAMA on the ground that the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to a member or members, in a total disregard of the interest of a member or members. In the past however, a significant number of actions and reliefs sought and maintained under this section related to the financial management of the company, and unrelated with social performance benchmarks.[48] The possibility of using such innovation as the reliance on minority provisions to achieve social performance outcome remains a moot point, and an interesting issue for future court ruling.

The pertinent question likely to be asked is, to what extent would shareholders' activism achieve the intended objective?[49] Indeed, the outcomes of such activism would depend on amalgam of factors. As noted, the success or otherwise of shareholders activism depends on a number of factors chiefly, the shareholders' power and influence; the firm's culture and the degree of compliance to that by the shareholders demand; and the political milieu characterising the shareholders' activities.[50]

Sceptics argue that the non-binding nature of shareholders resolution and other process constraints make shareholders activism an ineffective tool for improved social and environmental performance outcome from corporations.[51] The most such an activism can

[45] For scepticism underpinning institutional shareholders capability to foster improved corporate behaviour, see Stephen M. Bainbridge, 'Shareholder Activism and Institutional Investors', *UCLA Law-Econ Research Paper No. 05-20* (2005), 12-18.
[46] For an outline of the core ESG issues see, PRI, 'The Principles of Responsible Investment'.
[47] David Drake *et al*, *Minority Shareholders - Law, Practice, and Procedure* (4th edn.; Oxford: Oxford University Press, 2011) at 13.
[48] On the capacity of investor protection to enhance corporate valuation, see Florencio Lopez De Silanes *et al*, 'Investor Protection and Corporate Valuation', *National Bureau of Economic Research* (1999).
[49] Such activism with Burlington (which later merged with Conoco-Philip) succeeded but was partly unsuccessful with Chevron. See Emily Mcateer and Simone Pulver, 'The Corporate Boomerang: Shareholder Transnational Advocacy Networks Targeting Oil Companies in the Ecuadorian Amazon', *Massachusetts Institute of Technology Press* (2009), 17-18.
[50] Andrew J Hoffman, 'A Strategic Response to Investor Activism', *Sloan Management Review,* 37 (1996), 63.
[51] Eric Engel, 'What You Dont Know Can Hurt You: Human Rights, Shareholder Activism and SEC Reporting Requirements', *Syracuse Law Review,* 57 (2006), 3; Matt Bloom *et al*, 'Investor Activism, Managerial Responsiveness, and Corporate Social Performance', *Strategic Mnagement Journal,* 28 (2007), 97.

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achieve, sceptics argue, is to engender awareness and sensitisation both within and outside the corporation, and consequently flag off debates on the corporation social and environmental performance.[52] In other words, shareholders activism cannot engender systemic changes to corporations social and environmental performance; and where positive changes eventually filter out, it would be piecemeal, unlikely to be sustained in the long term.[53] The foregoing scepticism does not however divest shareholders activism of total utility. In fact, it can still constitute a veritable tool for improved social and environmental performance outcomes from corporations.[54] More so when it has been established that embedding CSR factors in investment decisions positively correlates to better investment returns, given the reputational leverage compared to other firms not embedding CSR matters in investment decision.[55]

Stakeholders Pressure

Closely aligned to shareholders activism is stakeholders' pressure on corporate management to reflect sound social and environmental business practice. The word 'stakeholders' presuppose a wide spectrum of groups. By and large, it entails both non-shareholders and shareholders since the latter have financial stakes in the company. However, in this discourse it refers to individuals or entities that do not have a shareholding interest in the company, and therefore do not constitute residual owners of the company, but are affected either directly or indirectly by the operation of corporations. In this perspective, it encompasses employees, creditors/contractors, and community hosting the corporation, including the NGOs.
However, not all of them constitute formidable players in bringing about improved social performance outcomes. This is because not all stakeholders have power and legitimacy – essential attributes of effective stakeholders - to coerce or convince corporate management in order to bring about socially responsible outcome. Such power becomes efficacious where a stakeholder can 'gain access to a coercive, utilitarian, or normative means, to impose its will' on corporate management.[56] In default of such attributes of power and legitimacy, stakeholders are no more than, in metaphorical sense, 'mosquitoes buzzing in the ears of managers: irksome but not dangerous', as well as 'bothersome but not warranting more than passive management attention, if any at all.'[57]

Stakeholders equally lack homogeneity of identity (unlike shareholders bound by residual ownership of the corporation), and commonality of interests. Consequently, they may suffer from competing or conflicting demands from the members. For instance, an employee who has

[52] O'rourke, 'A New Politics of Engagement: Shareholder Activism for Corporate Social Responsibility', at 236.
[53] Mattew Haigh and James Hazelton, 'Financial Markets: A Tool for Social Responsibility', *Journal of Business Ethics,* 52 (2004), 67.
[54] Anthony Miller *et al*, 'Shareholder Activism on Environmental Issues: A Study of Proposal at Large US Corporations (2000-2003)', *Natural Resources Forum,* 28 (2004), 317-30.
[55] Frank Jan De Graaf and Alfred Slager, 'Guidelines for Integrating Socially Responsible Investment in the Investment Process', (2009) at 4; Olayinka Marte Uadiale and Temitope Olamide Fagbemi, 'Corporate Social Responsibility and Financial Performance in Developing Economies: The Nigerian Experience', *Journal of Economics and Sustainable Development,* 3 (2012), 48. But see contrary position giving mixed results in Thomas Ainscough *et al*, 'Corporate Social Responsibility and Socially Responsible Investing: A Global Perspective', *Journal of Business Ethics,* 70 (2007), 167-72.
[56] Bradley R. Agle *et al*, 'Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts', *The Academy of Management Review* 22/4 (1997), 865-67.
[57] This description was used to illustrate demanding stakeholders. However, the description fits all stakeholders as long as there is an absence of private orderings between the relevant stakeholder and the corporation, which legally mandate the management to incorporate social performance benchmarks. See *ibid*., at 875.

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concerns relating to social performance may fear dismissal, especially in a jurisdiction where union protection and employment laws are not strong. A creditor may be more interested in debt servicing in contrast to social performance benchmarks, since they do not constitute part owners of the company. Thus, lack of a harmonious and unified identity and interest may hamper corporate attention and recognition of stakeholders' case for responsible business practices.[58]

The role of community as stakeholder might be relevant; however, the disparate geographical location of Niger-Delta communities makes them amenable to collective action problem,[59] thereby undermining their cause for responsible foreign investment. In the past, they resorted to violence to drive home their agitation for responsible foreign investment, leading to fatalities and excessive militarisation of the community, not least the killing of the prominent Ogoni activists. Youth restiveness equally sprang up (coupled with sporadic civil action and complaints) to pressure the IOCs to be more responsible in their investment policies, but to no avail. The lack of successful outcome of community-inspired responsible investment lends credence to the fact that the Niger-Delta community alone (as stakeholders) cannot, in itself, engender responsible foreign investment outcome in the petroleum sector in Nigeria.

The role of NGOs and community groups as stakeholders becomes relevant in this regard. A coalition of both national and international NGOs can work in collaboration. Although NGOs lack the power to employ coercive means to bring about responsible investment, they can engage in their usual tool of 'whistle-blowing' or 'name and shame' to bring attention to their cause. Amnesty International and Friends of the Earth have been particularly effective in the use of these approaches in the Niger-Delta. Similarly, there exist innumerable NGOs in Nigeria that can engage in collaborative efforts with international NGOs (or even work on stand-alone basis). For instance, the Environmental Rights Action (national NGO) - committed to sustainable development in Niger-Delta - merged with Friends of the Earth for greater efficacy and improved outcome in Niger-Delta.[60]

There are many other national NGOs with a convergent interest on responsible investment in the petroleum sector in Nigeria particularly, Communicating for Change; Enterprise Development Services; Guidance Community Development Foundation; International Society for Social Justice and Good Governance; and Niger Delta Woman for Justice. Such groups can work in collaboration with international NGOs for an efficacious outcome. A similar collaboration was illustrated by Friends of Earth Nigeria and Friends of the Earth Netherlands in the case of *Friends of the Earth v Shell Petroleum Development Company of Nigeria Ltd (SPDC)*, decided by the Netherlands court on 30th January, 2013. Although not all the issues canvassed by the Friends of the Earth (FOE) were upheld by the court,[61] this singular act of

[58] Frank G.A. De Bakker and Frank Den Hond, 'Introducing the Politics of Stakeholder Influence: A Review of Essay', *Business Society,* 47/8-20 (2008), 18.
[59] Richard C. Feiock, 'The Institutional Collective Action Framework', *Policy Study Journal* (2013), 1-4; Damon M Centola, 'Homophily, Networks, and Critical Mass: Solving the Start-up Problem in Large Group Collective Action', *Rationality and Society,* 25 (2013), 3-6.
[60] Friends of the Earth, 'Environmental Rights Action/Friends of the Earth Nigeria', available: http://www.foei.org/en/who-we-are/member-directory/groups-by-region/africa/nigeria.html, accessed: 15/03/2013.
[61] The court found Shell liable for failure to prevent oil pollution of farmlands at Ikot Ada Udo in Akwa Ibom State. The court however dismissed pollutions at Goi and Oruma as not attributable to Shell. See Friends of the

ISSN: 2052-6393(Print), ISSN: 2052-6407(Online)

litigation to enforce sound business practices in Niger-Delta highlights the potential implication of the NGOs inspired activism.
An insight into the dimension of influence of various stakeholders would better underscore the argument of this discourse –

Graphic Illustration of Stakeholders Influence

Stakeholders	Predominant Interest	Implications
Employees	Job security – weak unionism in Nigeria	General apathy
Creditors and contractors	Debt servicing	No significant interest
Niger-Delta community	Social and environmental performance	Collective action problem
NGOs	Social and environmental performance	Whistle-blowing; litigation; lack coercive apparatus

Source: author
The overall picture painted by this table indicates that no one stakeholder has significant influence to bring about transformative changes owing to inherent limitation. However, NGOs as illustrated by *FOE V Shell case* can make a difference.

Reporting Requirement
Closely following on the heels of stakeholders' action is the reporting requirement. The publication of companies' reports – quarterly, half-yearly or annually – is an aspect of disclosure regime required of publicly quoted companies to keep the shareholders and stakeholders abreast of the companies' performance.[62] While disclosure regime features prominently in corporate governance issues in the context of financial performance of companies, efforts have been intensified to deploy a similar requirement in social and environmental reporting.[63] Companies' Report or disclosure could either be voluntary or mandatory. However, as noted,[64] the distinction between voluntary and mandatory nature in the definitional construct of CSR is no longer tenable.

Voluntary reporting constitutes corporate-inspired and enforced business principles, code of conduct, or disclosure regime pertaining to social, environmental, and corporate governance issues. A significant number of corporations in the spotlight for questionable business practices adopt these guidelines (disclosure) to reflect their own version of responsible business practices,

Earth, 'Breakthrough Ruling in the Hague on Shell's Nigeria Subsidiary', available: http://www.foe.co.uk/blog/shell_nigeria_ruling_38951.html, accessed: 06/03/2013
[62] Sections 415-418 UK Company Act 2006; see also sections 331 – 342 CAMA.
[63] OECD, 'OECD Guidelines for Multinational Enterprises 2011 Edition', at 27-30.
[64] Adaeze Okoye, 'Novel Linkages for Development: Corporate Social Responsibility, Law and Governance: Exploring the Nigerian Petroleum Industry Bill', (2012), 460 - 71 at 465-66 (noting that CSR could either be voluntary, mandatory or hybrid depending on the dynamics of societal perception).

ISSN: 2052-6393(Print), ISSN: 2052-6407(Online)

or to deflect attention. It comes under various guises – code of conduct, CSR report,[65] corporate citizen report,[66] and sustainability report.[67] It constitutes the concept of self-regulation.
The rationale behind the foregoing voluntary reporting remains a subject of intense debate. It is invariably viewed as a ploy by corporations to evade external regulation by coercive authority. Industry lobbyists, on the other hand, view it as an embodiment of industry compliance with international best practices, requiring no further regulation externally. The Shell prides itself as a quintessence of international best practice. The Sustainability Report 2011 embodies the company's principal aim in business: to meet the global energy needs 'in ways that are economically, environmentally and socially responsible.'[68]

Shell conceded in its sustainability report that oil spills continue to linger in the Delta regions particularly at Ogoniland and Bonga field.[69] The magnitude of the spillage appears to be underpinned by a slow pace of remedial action. After assessment of the scale of devastation in Niger-Delta, the United Nations Environment Programme (UNEP) concluded that,

[t]he environmental restoration of Ogoniland in Nigeria could prove to be the world's most wide-ranging and long term oil clean-up exercise ever undertaken if contaminated drinking water, land, creeks and important ecosystems such as mangroves are to be brought back to full, productive health.[70]

More than 200 locations were covered - by the UNEP Report - in over 4000 samples conducted, involving water and soil samples, unravelling an unprecedented scale of ecological devastation and monumental health risk.[71]

While voluntary reporting initiative enjoys flexibility as well as derives justification from the right of corporation to reflect its best practices in their own way and defend it, it suffers from significant inadequacies. In the first place, it lacks a thorough and unbiased analytical dynamism. For instance, while Shell conceded knowledge of oil spillage, they scarcely faulted their operational procedures and/or accepted liability thereto. Secondly, it may be devoid of policy recommendation for punitive action against the company in the event of future recurrence. Indeed, such voluntary initiatives suffer from conflict of interest syndrome, under-enforcement and/or inadequate sanctions.[72] It equally lacks a robust assumption of the ecological and health consequences of the issue at stake.

[65] Chevron, '2011 Corporate Responsibility Report', (2011), http://www.chevron.com/documents/pdf/corporateresponsibility/Chevron_CR_Report_2011.pdf?, accessed: 27/02/2014.
[66] ExxonMobil, '2011 Corporate Citizen Report', (2011), http://www.exxonmobil.com/Corporate/Files/news_pub_ccr2011.pdf, accessed: 28/02/2014.
[67] Shell, 'Sustainability Report', *Royal Dutch Shell PLC Sustainability Report 2011,* http://reports.shell.com/sustainability-report/2011/servicepages/downloads/files/entire_shell_sr11.pdf, accessed: 27/02/2014.
[68] *Ibid*.
[69] *Ibid.,* at 18.
[70] United Nations Environment Programme, 'UNEP Ogoniland Oil Assessment Reveals Extent of Environmental Contamination and Threats to Human Health', (2011), http://www.unep.org/newscentre/default.aspx?DocumentID=2649&ArticleID=8827, accessed: 19/03/2013.
[71] *Ibid.*
[72] UNEP, 'Carrots and Sticks - Promoting Transparency and Sustainability', *An update on trends in Voluntary and Mandatory Approaches to Sustainability Reporting* (2010), 8.

ISSN: 2052-6393(Print), ISSN: 2052-6407(Online)

In view of the inherent deficiencies of voluntary reporting, argument has been made for mandatory CSR reporting.[73] Under the US Securities and Exchange Commission (SEC) Rule S-K, companies are required to disclose compliance with federal, state and local provisions pertaining to the environment. The US Sarbanes Oxley Act (otherwise known as the Public Company Reform and Investor Protection Act), 2002 requires significant reporting requirements for public-quoted companies to enhance transparency. Similarly, the EU Modernisation Directive 2003/51 appears to be tilting towards that direction. It mandates companies to publish non-financial report incorporated in annual and consolidated report, where necessary, for understanding of the company's development, performance or position.
In the UK, companies intent on listing on the London Stock Exchange are obliged to publish in their annual report the companies' performance pertaining to environmental, social and community matters. This requirement constitutes a transposition of the EU Modernisation Directive 2003/15. The UK Company Act 2006 requires that the content of the directors' report for understanding of the development, performance or position of the company's business incorporates, inter alia, information on the environmental matters – specifically, the impacts of the company's operation on the environment; and social and community issues as well as the efficacy of the companies policies in respect of the afore-mentioned issues.[74]

Mandatory non-financial reporting (ie social and environmental performance reporting) does not appear to be a significant feature of Nigeria investment legislation particularly in the petroleum operation.[75] Although mandatory non-financial reporting has been criticised for the fact that no one size fits all,[76] its significance outweigh voluntary reporting. First and foremost, it enjoys completeness of information - there is no opportunity for cherry picking. Additionally, its relevance is predicated on coercive character. The target would be under pressure to file report at the risk of sanction for failure to do so. Apparently to underpin the significance of this coercive regime, the current PIB before the National Assembly embodies some innovations. However, before analysis of the PIB innovation, it would be necessary to examine the CSR reports of IOCs as obtained from their published reports in order to have a comprehensive view of the situation.

CSR Patterns by Multinationals in Niger-Delta

The failure of CSR arising from multinational oil companies' investment in the Niger-Delta region has been, invariably, attributed to inadequate CSR packages.[77] Nonetheless, given the enormity of Niger-Delta developmental needs, multinational oil companies alone cannot cater for every perceptible developmental challenge afflicting the region. Nonetheless, they can make credible efforts in partnering with the government in certain developmental projects to offset the negative impacts of foreign investment,[78] more so when they equally have economic interest in the petroleum operation. Although the federal government has set up such facilitative

[73] Cynthia A. Williams, 'The Securities and Exchange Commission and Corporate Social Transparency ', *Harvard Law Review,* 112 (1999), 1275.
[74] Section 417 (5) UK Company Act 2006.
[75] However, traces of CSR still exist within some legislation particularly sections 5-6 of Nigeria Extractive Industry Transparency Initiative (NEITI) Act 2007. See Bethel U Ihugba, 'Compulsory Regulation of CSR: A Case Study of Nigeria', *Journal of Politics and Law,* 5 (2012), 68-81.
[76] UNEP, 'Carrots and Sticks - Promoting Transparency and Sustainability', at 8.
[77] Kiikpoye K Aaron, 'Corporate Social Responsibility Performance in the Niger Delta: Beyond Two Constitutive Orthodoxies', *Development in Practice,* 21/6 (2011), 781.
[78] For an example of such partnership see John Hall, 'The Social Responsibility of Corporations', *Alternative Law Journal,* 27 (2002), 12-15.

ISSN: 2052-6393(Print), ISSN: 2052-6407(Online)

institutions as the Oil Mineral Producing Area Development Commission (OMPADEC) 1993; Niger Delta Development Commission (NDDC) 2000; and the Ministry of Niger Delta (created in 2008) to facilitate community development, they have not been able to comprehensively address the myriad developmental challenges emanating from foreign investment. Even though significant milestones have been recorded by these institutions, further constraints remain.[79]

It is noteworthy that for CSR to be better harnessed in the Delta region, it has to be implemented in such an equitable way as not to engender community disharmony. For instance, a discriminatory implementation where one community is arbitrarily chosen for development over another could stoke the flame of violence.[80] Indeed, it would be necessary to examine the CSR practices of these IOCs as obtained from their published reports to unravel potential areas of lapses or better still, areas deserving credit. Although there is a number of oil companies involved in the petroleum operations in Nigeria, the analysis would only concentrate on the practices of the Royal Dutch Shell (Shell), Chevron, and ExxonMobil, owing to the breadth of their investment which significantly outweighs others.

Shell Petroleum Development Company of Nigeria (SPDC)

The Royal Dutch Shell otherwise known as Shell claims to be the first global company to establish General Business Principles that guide all Shell companies. These eight Principles, drafted in 1976 - literally replicate the definition of sustainable development enunciated by the Brundtland Report. It involves commitment to sustainable development 'balancing short and long-term interests and integrating economic, environmental and social considerations' into corporate decision.[81] In other words, Shell General Business Principles are guided by both economic consideration and reflection of good corporate citizenship in the operational areas.
In Nigeria, the Shell (called Shell Development Company of Nigeria) claims to have spent about nine billion Naira on community development in 2010. According to Shell Managing Director, the amount represents

… the biggest corporate social responsibility portfolios operated by a private company in Sub-Saharan Africa, and it shows that we care for the wellbeing of the communities in which we do business.[82]

The Shell LiveWire Nigeria Programme set up in 2003 reportedly engages in youth enterprise development. The programme provides entrepreneurial training, business skills development, and initial capital to start up and 'expand youth-owned businesses'.[83] According to Shell, the programme has trained not less than '3,208 Niger-Delta youths in enterprise development and

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[79] Uwafiokun Idemudia, 'Corporate Social Responsibility and the Rentier Nigerian State: Rethinking the Role of Government and the Possibility of Corporate Social Development in the Niger Delta', *Canadian Journal of Development Studies* 30 (2010), 144-47.
[80] See Wilson Akpan, 'Between Responsibility and Rhetoric: Some Consequence of CSR Practice in Nigeria's Oil Province', *Development Southern Africa,* 23 (2006), 234-38.
[81] Shell, 'Shell General Business Principles', http://www.shell.com/global/aboutshell/who-we-are/our-values/sgbp.html, accessed: 27/02/2014; Shell, 'Sustainability Report'.
[82] Shell, 'SPDC Spent N9 Billion on Community Development in Niger Delta in 2010 ', http://www.shell.com.ng/aboutshell/media-centre/news-and-media-releases/2011/nigerdelta-cdspent.html, accessed: 22/02/2014.
[83] Shell, 'Improving Lives in the Niger Delta', http://s05.static-shell.com/content/dam/shell/static/nga/downloads/pdfs/briefing-notes/improving-lives.pdf, accessed: 24/03/2014.

ISSN: 2052-6393(Print), ISSN: 2052-6407(Online)

management'.[84] In addition to LiveWire Programme, Shell equally claims to have reflected traces of CSR in advancing the cause of education. Scholarship is said to have been granted to 2,730 secondary school students and 750 undergraduate students of the universities.[85] Shell, in partnership with the state government, claims equally to facilitate access to improved and better health care delivery. About 275000 people are said to have benefitted from such programme.[86] Despite this commendable report, further hurdles remain for Shell to scale. As noted by the Friends of the Earth (FOE), Shell 'bears significant responsibility for the oil pollution' being the main oil producer in Nigeria. The same FOE cited a UN report stating that Shell failed to clean up oil spills, or did so insufficiently, and that the company's operational approaches breach Nigeria environmental legislation.[87] Indeed, significant oil spills have been witnessed in Nigeria far outstripping anything close to BP oil spills in the Gulf of Mexico.[88] In other words, despite Shell's apparently commendable records, further adjustment to business practices remains.

The case of the *Friends of the Earth (FOE) v Shell*, decided by the Netherlands court on 30th January, 2013 equally illustrates the difficulty in suing for these oil spills. The case, concerning damage caused by oil spills in Ikot Ada Udo, Oruma, and Goi, was brought by FOE Netherlands and four Nigeria farmers in 2008 against Shell Petroleum Development Company of Nigeria and the Royal Dutch Shell – the parent company. The plaintiffs claimed that Shell should clean up oil pollution emanating from their operations, compensate the farmers for the damages caused, and improve the maintenance of pipelines in the future. The District court of Hague ruled that sabotage caused the alleged oil spills at Oruma and Goi which was the subject of litigation though the defendant was held liable in respect of Ikot Ada Udo.[89]

This case equally highlights the difficulty involved in suing the parent companies of oil companies operating in Nigeria even where interlocking directorship or governance is evident.[90] For instance, while the Nigeria subsidiary was held liable (in respect of Ikot Ada Udo) the parent company was exonerated for lack of evidence establishing that the governance of the Nigeria subsidiary emanates from the parent company. Although there was evidence indicating that the parent company owns 100% shares of the Nigeria subsidiary and that the total profits made by the latter are normally remitted to the former, such evidence was not conclusive, according to the court, in absence of proof of the parent – subsidiary governance links. Such prove could only be possible under Netherlands law where the plaintiffs have access to the parent company documents (discovery of documents), which the court declined to grant in the circumstance. Thus, it is safe to theorise that had the court allowed the plaintiffs access to the parent company documents such interlocking governance from the parent to the subsidiary in Nigeria would have been established, necessitating a corresponding liability of the parent company for the pollution caused by the subsidiary in Nigeria.

[84] *Ibid*.
[85] *Ibid*.
[86] *Ibid.*
[87] Friends of the Earth, 'Breakthrough Ruling in the Hague on Shell's Nigeria Subsidiary'.
[88] *ibid*.
[89] Shell, 'Dutch Court Dismisses Foe Claims on Oil Spills', (30 January, 2013).
[90] Environmental News Service, 'Dutch Court Finds Shell Liable for Nigeria Oil Damages', (Hague, 2013).

ISSN: 2052-6393(Print), ISSN: 2052-6407(Online)

Chevron

Chevron Business Conduct and Ethics Code equally claim socially responsible and ethical business practices as the guiding business principles in their places of investment. In this respect, Chevron seemingly observes environmentally-friendly investment as well as social investment in the community of their operation.[91] Chevron's claim to stakeholders' recognition is reflected in the Global Memorandum of Understanding (GMOU).

In Nigeria, Chevron through its Niger Delta Partnership Initiative (NDPI) signed a Memorandum of Understanding (MOU) with the United States Agency for International Development (USAID) to foster socio-economic development of the Niger Delta region.[92] About 200 projects are said to have been executed in 425 communities affecting over 850,000 inhabitants, through these development initiatives. The objective behind such socio-economic initiatives in Niger Delta could be to foster peace and stability in the 'areas where Chevron operates'.[93]

Though the records seem impressive, these programmes need to be realigned to suit the needs of the community. After extensive empirical analysis of Chevron CSR performance, it was stated that,

[e]vidently, Chevron Nigeria Limited's claim about various community development effort embarked upon as part of the company's Corporate Social responsibility is undeniable, the findings however show the need for Chevron Nigeria Limited to carry out a re-appraisal of her community development efforts in the host communities in order to ensure that only projects that are directly relevant to the needs of the host communities are embarked upon as part of the company's CSR effort. It could be necessary also for Chevron to adopt a bottom-up approach in its community development drives. This will ensures proper investigation into the relevant needs of the community, build local capacity, enhance confidence, build social capital and stimulate growth of the local economy.[94]

ExxonMobil

Other oil companies that have fairly significant investment in petroleum operations particularly ExxonMobil equally claims to recognise stakeholders' interest. Such social investment involves recognising and addressing the interest of the community where the company operates.[95] In the area of training and development, ExxonMobil Nigeria claims to have established training centre in Eket to impart skills to local workforce. About 500 employees of

[91] Chevron, 'Business Conduct and Ethics Code', at 2, http://www.chevron.com/documents/pdf/chevronbusinessconductethicscode.pdf, accessed: 27/02/2014. See also Chevron, '2011 Corporate Responsibility Report', at 34-37.
[92] Chevron, 'Chevron and USAID Partner to Improve Living Standards in the Niger Delta through $50 Million Alliance'. Partnership Initiatives in the Niger Delta (PIND) in addition to Niger Delta Partnership Initiative (NDPI) coordinates development initiatives in the delta region.
[93] Chevron, 'Nigeria in the Community'. See also Chevron, 'Transforming Investment in Nigeria', http://www.chevron.com/globalissues/corporateresponsibility/2011/FosteringGrowthInNigeria, accessed: 25/02/2014.
[94] O. F. Alabi and S. S. Ntukekpo, 'Oil Companies and Corporate Social Responsibility in Nigeria: An Empirical Assessment of Chevron's Community Development Projects in the Niger Delta', *British Journal of Arts and Social Sciences,* 4 (2012), 373.
[95] ExxonMobil, 'Civic and Community', http://www.exxonmobil.com/Corporate/community_wwgiving_report_civic.aspx, accessed: 28/02/2014.

ISSN: 2052-6393(Print), ISSN: 2052-6407(Online)

the company specialised in mechanical and electrical engineering are said to be graduates of the centre. In the area of supplier development, the company claims to be involved in indigenous capacity building and utilisation. This was illustrated in 2000 metric tons of specialised steel pipeline installed in Edop-Idoho field offshore said to have been the first locally manufactured pipelines used by the company in Nigeria.[96]

Even though these companies are making efforts to engage in social investment, they are by no means comprehensive, given massive environmental degradation characterising Niger-Delta region. According to UN report,

at least twice as much oil has been leaked in Nigeria as in the BP oil disaster in the Gulf of Mexico. Unlike Deepwater Horizon, the Nigeria disaster has been a silent one, with disastrous consequences for people, wildlife, nature and the environment.[97]

Indeed, what is expected of the IOCs is the conduct of their operation in a responsible and ethical way. In other words, corrective measures through the instrumentality of CSR should not be the guiding principle. Instead, proactive measures to prevent the occurrence of such negative spillovers in the first place should be the guiding philosophy. IOCs should adopt and reflect international best practices in their petroleum operation in Niger-Delta. A typical example of relevant international best practice is the standards set by the Global Oil and Gas Industry Association for Environmental and Social Issues (IPIECA).[98] IPIECA provides standards for oil and gas companies' optimal environmental and social performance. The scope of issues covered by the standard includes, inter alia, biodiversity; climate change; healthcare delivery; oil spill control; CSR; and water purity.[99]

The current PIB attempt to compel IOCs to adopt responsible investment practices that emphasise both preventive and corrective measures while engaging in petroleum operation is seemingly indicative of an encouraging paradigm shift.

Implications of PIB Innovative Paradigm

Following the apparent shortcomings inherent in voluntary regulation, the current PIB provides significant innovations requiring the IOCs not only to conduct petroleum operation in a responsible manner that pays heed to social and environmental impact but also to reflect social investment in the areas of operation including the introduction of remittance regime.[100]

Petroleum Host Community Fund (PHC Fund)

Apart from the voluntary stride by IOCs to embed responsible investment in the petroleum sector, the current PIB further stipulates the setting up of regulatory levy in the form of

[96] Exxonmobil, '2011 Corporate Citizen Report', at 40-43.
[97] Friends of the Earth, 'Breakthrough Ruling in the Hague on Shell's Nigeria Subsidiary'.
[98] International best practice is equally reflected Global Reporting Initiative (GRI) and Oil and Gas Industry Guidance on Sustainability Reporting, 2nd ed. 2010 as well as in the guidelines of American Petroleum Institute (API). However, IPIECA remains the overarching global standard-setter.
[99] IPIECA, 'About Us', http://www.ipieca.org/about-us, accessed: 01/03/2014.
[100] The balancing challenges of the policy goal of development with the tenet of sustainable investment continue to bedevil emerging economies such as Nigeria. For highlights of these investment challenges, see UNCTAD, 'Investment Policy Framework for Sustainable Development', *UNCTAD/DIAE/PCB/2012/5* (New York: United Nations, 2012) at 7-8.

ISSN: 2052-6393(Print), ISSN: 2052-6407(Online)

Petroleum Host Community Fund to cater for the cause of responsible investment.[101] Indeed, every upstream oil company[102] is mandated to make a monthly remittance of ten percent of their net profit - calculated to mean 'adjusted profit less royalty, allowable deductions and allowances,' less hydrocarbon tax, and less Companies Income Tax - to the PHC Fund for the execution of its intended objectives.[103] The rationale behind such a PHC Fund is premised on the expediting the overall socio-economic development of the oil producing communities.[104]

The establishment of the PHC Fund has significant implications for the cause of responsible investment. Apart from its tendency to foster responsible foreign investment paradigm, such a ten percent monthly remittance would act as a claw back scheme to make oil companies financially responsible for questionable business practices in the petroleum sector. Indeed, prudent management and disbursement of the remittances would undoubtedly translate into the upliftment of the standard of living of the oil producing communities. However, the advantage of the PHC Fund should not be viewed strictly from the lens of oil producing communities. The oil companies equally stand to gain in the long run if the cumulative effect of the prudent management of the PHC Fund eventually fosters the elusive peace in Niger-delta. There is no gainsaying that the Niger-delta has been blighted by restiveness disrupting oil production to the dismay of oil companies. Certainly, where the benefits accruing from the PHC Fund succeed in embedding peace and security in the region, it would have a dramatic effect on enhancing social licence to operate hitherto lacking among oil companies. For the preceding to materialise however, the IOCs must strategically manage the way CSR policies are communicated to the communities[105] to promote understanding and acceptance.

Furthermore, the PIB contains an additional incentive to oil companies mediating any unpalatable burden of remittances to PHC Fund. Thus, where an act of sabotage, vandalism, or other civil unrest occurs causing damage to any petroleum facility within the host communities, the cost of repair of such facilities shall not be borne by oil companies if such damage is not attributable to them.[106] Such damage would be paid from the PHC Fund provided there is evidence of the host communities' complicity.

The import of the foregoing provision is crystal-clear: if any member or members of the host community instigate sabotage of petroleum facilities, the PHC Fund ostensibly meant for the development of their communities would be diverted for the repair of the damaged petroleum facilities instead. The traditional responsibility of the oil companies to undertake repairs of damaged petroleum facilities in the course of their operations needs no over-flogging here. It is however unclear who undertakes the funding of repairs of damaged petroleum facilities if the perpetrator involves a neutral third party external to the particular host community. The PIB is silent in this regard. It can be postulated that, perhaps, the oil companies remains

[101] See section 116 of PIB.
[102] Upstream sector includes oil and gas exploration and production in contrast to downstream sector that involves the final distribution and retail services.
[103] Section 118 (1) (2) of PIB.
[104] Section 117 of PIB.
[105] C. B. Bhattacharya *et al,* 'Maximizing Business Returns to Corporate Social Responsibility (CSR): The Role of CSR Communication', *International Journal of Management Reviews,* 12/1 (2010), 17.
[106] Section 118 (5) of PIB. Note that by virtue of section 118(6*)* the Minister subject to section 8 has the responsibility to make regulations for the entitlement, governance and management of PHC Fund.

invariably responsible to undertake the restoration of the relevant petroleum facilities to status quo ante. If anything, it constitutes part of the operational hazards.

Although PHC Fund constitutes a laudable innovation, the problem lies in the implementation. Undoubtedly, similar obligation for remittances prevailed in the past under Oil Mineral Producing Areas Development Commission (OMPADEC) and Niger Delta Development Commission (NDDC) regimes but poor and/or corrupt implementation bedevilled such exercise.

The PIB is equally silent on the modalities for the allocation and execution of the PHC Fund. The consequential lack of clarity may turn out to constitute a hotbed for potential bickering among the contending communities concerned. Although the PIB empowers the Minister to make regulations respecting 'entitlement, governance and management structure'[107] of the PHC Fund, such generalisation by no means constitutes clear-cut parameters of the percentage share of potential beneficiaries. In fact, it would not even amount to an exaggeration to hypothesise that the Minister potentially stands the danger of being accused of favouritism in the course of deciding on the entitlement, governance and management structure of the PHC Fund. Arguably, a formula for calculating the percentage entitlement of beneficial communities should have been set by the PIB.

Another curious feature of the PHC Fund is the perceptible stipulation of the financiers: upstream petroleum producing companies. There is a remarkable absence of the midstream (involving refining, engineering, among others) and downstream sectors from the remittance obligation – areas dominated by indigenous petroleum operators. The fact that the upstream sector is dominated by IOCs seems to provide the justificatory premise that PIB is arguably targeted at IOCs.[108] It is considered that the PIB should have instituted a proportional remittance regime from both the midstream and downstream petroleum operations since their operations can equally have detrimental effects on the communities similar to the upstream sector. Arguably at the very least, two – three percentage remittance regimes on midstream and downstream net profit would have sufficed, to give semblance of fairness among the competing petroleum operators.

Institutional Capacity Building
To facilitate effective implementation of responsible business practices in the petroleum sector, the PIB proposes to establish two institutions - the Upstream Petroleum Inspectorate (the Inspectorate) and Downstream Petroleum Regulatory Agency (Agency). The Inspectorate shall, among other objectives, have the responsibility to –

(a) promote the efficient, safe, effective and sustainable development of the upstream sector of the petroleum operations;
(b) promote the healthy, safe and efficient conduct of all upstream petroleum industry.[109]
Similarly, the Downstream Petroleum Regulatory Agency (Agency) proposed to be set up has, among other things, coterminous objectives (as the Inspectorate above) to

[107] Section 118 (6) of PIB.
[108] Although indigenous oil companies are at liberty to engage in upstream operations, they are invariably inhibited from doing so due to technological constraints leaving them with no option but to partner with IOCs under sole risks arrangement. See Nigerian National Petroleum Corporation, 'Oil Production'.
[109] Section 14(1) (a-b) PIB.

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(a) promote the efficient, safe, effective and sustainable development of the downstream sector of the petroleum operations;
(b) promote the healthy, safe and efficient conduct of all downstream petroleum operations.[110]

Arguably, the foregoing objectives of both the Inspectorate and the Agency have significant implications for petroleum operation in the Niger-Delta. First and foremost, the PIB does not specify the modus operandi for the promotion of sustainable foreign investment both in upstream and downstream sector leaving it to the widest discretion of both the Inspectorate and Agency. Thus, it can be postulated that both the Inspectorate and Agency are at liberty to avail themselves of whatever mode legitimate to fulfil their stipulated functions.

In the first place, they may for instance request mandatory quarterly, half-yearly, and/or annual reporting on sustainable foreign investment from the IOCs. This seems to be buttressed by the stipulated powers of both institutions. Specifically, both the Inspectorate and Agency have the powers to request and obtain any information or any document pertaining to licensed activities in both the upstream petroleum sector and downstream petroleum sector respectively from the licensee, permit holder or lessee (ie the oil companies).[111] Furthermore, both the Inspectorate and Agency can authorise the lessee, licensee or permit holders to publish information pertaining to upstream petroleum and downstream petroleum operations respectively.[112] Indeed, it is safe to argue that the preceding powers imbue both the Inspectorate and Agency the power to demand publication of information indicating the degree of conformity with the precepts of sustainable investment. Since the PIB does not specify the nature and breadth of the information to be requested and/or published, it can be validly argued that such information encompasses any issue pertaining to upstream and downstream petroleum operations as long as it affects compliance with the PIB.[113]

The PIB does not equally state at what stage the information becomes necessary, giving the impression that both the Inspectorate and the Agency have the discretion to request information both at pre-investment stage (ie blueprint of responsible investment plans - assuming there are new entrants to petroleum sector) and the post-investment stage – during the currency of the investment as long as such a request fosters compliance with the PIB. Adopting such two-pronged classifications is underscored by certain implication. While pre-investment would provide the sustainable investment benchmarks from the perspective of the IOCs (vetted probably by both the Inspectorate and the Agency), the post-investment reporting would constitute an accountability test – verifying the compliance of the IOCs with their pre-investment benchmarks.

Aside from embarking upon the foregoing request for mandatory reporting, both the Inspectorate and the Agency can equally, as part of the implementation of their objectives,

[110] Section 44(a-b) PIB.
[111] Section 16 (d) and section 46 (c) of PIB respectively.
[112] Section 16 (e) (ii*)* and section 46 (d) (ii) PIB respectively.
[113] Section 15 (1) (a-b) and section 45 (a-b) of PIB mandate the Inspectorate and Agency to administer and enforce policies, laws and regulations pertaining to all aspects of upstream petroleum operations and downstream petroleum operations respectively as well as the power to enforce compliance with the terms and conditions of all permits, licences and authorisations granted, respecting upstream sector and downstream sector respectively.

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undertake site inspection to establish either the degree of compliance with the relevant section of the PIB or to ascertain the veracity of the reports submitted (if applicable). On-site inspection by the Inspectorate and the Agency respectively has significant advantages for the cause of responsible investment in Niger-Delta. It constitutes the most veritable way of fact-finding mission. Real evidence of non-compliance can also be obtained bolstering the Inspectorate and Agency cause respecting any potential future litigation on breach of relevant PIB sections. From the IOCs perspectives, such visits can similarly help foster understanding (ie between IOCs and both institutions) since they deal with persons they can see instead of compliance with the letters of the law alone. The IOCs can avail themselves of such site visits as well to offer on-the-spot explanation for any potential breach particularly if it is inevitable – such an opportunity can constitute the forerunner of further written exchanges in that respect thereby facilitating mutual understanding.

Although both the Inspectorate and Agency are imbued with the power to wield the big stick in the event of non-compliance – modify, suspend or revoke any licence issued to oil companies pursuant to PIB[114] as it affects the upstream petroleum sector[115] and the downstream petroleum operations[116] - it is not expected that such an option would be explored except as a last resort. Arguably, only in cases of gross violation of the terms and conditions of licence, lease or permits granted would such modification, suspension or revocation be contemplated.
In addition to the preceding oversight responsibilities, the PIB embodies other innovations which constitute the subject of discussion hereunder.

Responsibility for Health, Safety, and Environment
In addition to afore-mentioned duty to remit ten percent of the net profit for social investment under the PHC Fund, every oil company engaged in upstream and downstream petroleum activities requiring licence, lease or permit has a corresponding obligation respecting health, safety and environment.[117] Such companies must comply with all environmental, health and safety laws, regulations, guidelines or directives that may be issued by the Minister, Federal Ministry of Environment, the Agency or Inspectorate, as the case may be.[118] Similarly, such companies involved in upstream and downstream petroleum operations are obliged to conduct petroleum operations in accordance with internationally acceptable principles of sustainable development, which involves respect for the constitutional rights of the present and future generation to a healthy environment - echoing the Brundtland Report. [119]

The responsibilities of both the Inspectorate and Agency in this respect is to ensure compliance with environmental laws, regulations or directives as may be issued by the Ministry of Environment and other relevant agencies involved in petroleum operations. In the course of enforcing compliance with the foregoing, both the Inspectorate and Agency are empowered to make regulations and issue directives pertaining to the environmental aspect of petroleum

[114] Section 16 (a) and section 46 (a) of PIB.
[115]See section 15 (1) (m) of PIB.
[116] See section 45 (1) (w).
[117] See Part VII of PIB. PIB embodies additional responsibilities of the IOCs: duty to respect protected sites and objects – section 198 – 199; duty to ensure environmental quality management – section 200 (1-2); duty to decommission and dispose solid pollutants on conclusion of relevant petroleum activities.
[118] Section 290 of PIB.
[119] Section 291 of PIB. The couching of this provision seemingly conforms to the internationally accepted tenet of sustainable development embodied in the Brundtland Report. See also David Birch, 'Social, Economic and Environmental Capital - Corporate Citizenship in a New Economy', *Alternative Law Journal,* 27 (2002), 5-6.

ISSN: 2052-6393(Print), ISSN: 2052-6407(Online)

operations, as the case may be. Curiously enough, the PIB does not specify the functional relationship between the Inspectorate, the Agency, and the National Oil Spill Detection and Response Agency.[120] Apparently their institutional function overlaps. Arguably the domain of activities of these institutions ought to be properly defined to avoid duplication as well as potential conflict. It remains to be seen how this will play out.

In addition to corrective measures, the PIB seems to incorporate a preventive approach to responsible investment. Thus, any company requiring oil prospecting licence or oil mining lease or permit in the upstream and downstream petroleum operations shall embody a precautionary approach to investment. Additionally, it should endeavour to develop and use environmentally friendly technologies for petroleum operations.[121]

The implication of the foregoing subsection is manifold. Firstly, the 'precautionary approach' to investment can be interpreted to mean taking precaution to avoid negative externalities of foreign investment - both at the inception and during the currency of the investment - particularly environmental damages (oil spills, pollution of farmland and fishing rivers). Secondly, the 'use of environmentally friendly technologies' can be construed as the deployment of up-to-date technology that eschews negative externalities emanating from petroleum operations.

Where the oil companies fail or are negligent in the execution of petroleum operations creating environmental damage, they are responsible for the restoration of the affected environment. In other words, the oil companies are expected as far as reasonably practicable to remediate the environment affected by petroleum exploration and production to its natural pre-existing state prior to petroleum operations as a result of which the environmental impact occurred.[122] Strictly speaking, it can be argued that the preceding stipulation entails that the holder of petroleum exploration licence, petroleum prospecting licence or petroleum mining lease must clean up environmental impacts of the petroleum operations, restore natural vegetation, natural habitat, on the expiration of the licence or lease.

Although the foregoing constitutes a laudable milestone in curtailing the negative externalities of petroleum operations, the dilemma lies in default of compliance. The Inspectorate and Agency in consultation with the Minister prescribe appropriate sanctions including payment of fines to the defaulting person or company.[123] Lack of clear-cut parameter for sanction as well as permutation of fines regimes payable can undermine the efficacy of this provision. Oil companies for instance may prefer to violate this provision and suffer the weight of 'sanctions, including payment of fines' if the cost of compliance - restoration of the environment to its pre-existing natural state - outweighs non-compliance. As argued, a firm may find that it is advantageous to violate the law deliberately and pay the penalty if the gains from the breach or violation outweigh the social cost of compliance with the statute or contract.[124]

[120] See section 1 NOSDRA.
[121] Section 292(a-b) of PIB.
[122] Section 293 (1) of PIB.
[123] Section 298 of PIB.
[124] Daniel R Fischel, 'The Corporate Governance Movement', *Vanderbilt Law Review,* 35 (1982), 1259-92, 1271.

ISSN: 2052-6393(Print), ISSN: 2052-6407(Online)

It is contended however that the Inspectorate and Agency in consultation with the Minister can forestall this outcome by ensuring at all times that the penalty for default is consistently equal to or surpasses the cost of rehabilitating the environment to its natural pre-existing state.

Responsibility for Protected Objects

In addition to responsibility for health, safety and environment, no holder of petroleum exploration licence, petroleum prospecting licence or petroleum mining lease, involved in upstream petroleum operations, shall injure or destroy any tree or object of commercial value; and object of veneration to the community resident within the petroleum prospecting or petroleum mining lease areas.[125] A breach of the preceding provision by any licensee or lessee attracts fair and adequate compensation. Now certain inferences can be drawn from the foregoing. Express use of the phrase 'upstream petroleum operations' excludes the applicability of the provision to midstream and downstream petroleum operations. Thus, the inevitable inference is that a licensee or lessee involved in midstream or downstream petroleum operations may injure or destroy trees or objects of commercial value or objects of veneration to the people resident within the relevant petroleum operations without incurring penalty.

Environmental Quality Management

In addition to the foregoing, a licensee or lessee engaged in the upstream petroleum operations shall, not later than one year of commencement of the PIB, or not later than three months of been granted a licence or lease, submit an environmental management plan to the Inspectorate detailing the licensee or lessee environmental policy objectives; and commitment to comply with relevant laws, regulations, guidelines and standards.[126]

Not only shall environmental management plan embody environmental policies underpinning the upstream petroleum operation, and compliance with environmental laws, the licensee or lessee must equally incorporate thereto environmental assessment of potential negative externalities of the relevant upstream petroleum operation. Thus, the environmental management plan must investigate, assess, and evaluate the impacts of the upstream petroleum operation on, inter alia, the socio-economic conditions of any person who might be affected by the relevant petroleum operations of the licensee or lessee. Likewise, it should embody contingency measures by the licensee or lessee to remedy, control or stop any environmental harmful impacts of the upstream petroleum operations. [127] The Inspectorate has the responsibility to either approve, request for adjustment, or amend the environmental management plan, as the case may be, in consultation with the Federal Ministry of Environment and State Ministries of Environment, within which licence or lease is situate.[128] Indeed, the significance of the foregoing environmental management plan should not be under-estimated. In the main, it will serve as the basis for accountability test as well as constitute the benchmark for comparism. Arguably, the Inspectorate can rely on the submission made earlier to ground the subsequent liability of the any licensee or lessee if there is significant non-conformity.
Furthermore, as a condition precedent to the exercise of the preceding power by the Inspectorate and even more compellingly, the grant of a licence or lease, every licensee or

[125] Section 198-199 of PIB. See also David Kinley and Sarah Joseph, Multinational Corporations and Human Rights – Questions About their Relationship', *Alternative Law Journal*, 27 (2002) 7, 7-8 (detailing such cases of abuses by corporations).
[126] Section 200 (1-2) of PIB.
[127] Section 200 (d) of PIB.
[128] Section 200 (4-7) of PIB, and section 202 of PIB.

ISSN: 2052-6393(Print), ISSN: 2052-6407(Online)

lessee shall pay environmental remediation contribution to environmental remediation fund[129] set up by the Inspectorate for the rehabilitation or management of negative environmental impacts of petroleum operations.[130] The Inspectorate employs such remediation fund in the management or rehabilitation of the environmental impacts of petroleum operation in the circumstances the licensee or lessee fails to rehabilitate or manage such negative externalities. The amount of contribution by any licensee or lessee is contingent on the scale of relevant petroleum operations and the environmental risks posed thereto. However, in the event of uncertainty, an independent assessor determines the financial contribution of each licensee or lessee, as the case may be.

Decommissioning and Disposal

Apart from the preceding, the PIB incorporates as well the regulation of solid pollutants that obstruct functional use of areas discharged of petroleum operations. Thus, the PIB stipulates that the decommissioning and abandonment of onshore and off shore petroleum installations, wells, structures, utilities and pipelines shall be conducted in accordance with good oil field practice and regulations.[131] It is the responsibility of the Minister, on the advice of the Inspectorate, to issue regulations on the decommissioning and abandonment by any licensee or lessee. In default of exercise of the preceding power at the commencement of production, it then behoves on the Inspectorate to issue directives to such a licensee and lessee pertaining to abandonment and decommissioning of petroleum installations. Every licensee or lessee must provide comprehensive plan of abandonment and decommissioning prior to the commencement of the exercise upon notice from the Inspectorate. Such plan must embody, inter alia, (a) descriptions of the methods to be used by the licensee or lessee to embark upon such work programme which must conform to best oil field practices; (b) arrangement in place to ensure maintenance of and safeguarding of health, safety and environment in the relevant areas. Additionally, the decommissioning plan shall not be approved by the Inspectorate unless there is conformity to existing technical, environmental and commercial regulations or standard. Once the preceding conditions are met by the licensee or lessee, the Inspectorate then moves to consideration of compliance to the next preconditions for commencement of work programme, which include: (a) the consideration of the potential for reuse of the petroleum facility or pipeline in respect of existing or future petroleum operations. Apparently, where the petroleum installations are still considered useful for future petroleum operations the Inspectorate can mandate the freezing of decommissioning or disposal on expiration of the relevant licence or lease. (b) Comparative assessment of decommissioning options and the optimal option to be followed. In this respect the option that is in line with international oil field practice will prevail. (c) Ensure that any partial or total disposal of petroleum installations or pipelines is executed in accordance with the tenets of sustainable investment.

Where the licensee or lessee fails or neglects to decommission or dispose of petroleum installations, the Inspectorate has the power to summon the relevant licensee or lessee back to fulfil its obligation under the PIB. In some cases however, the licensee or lessee might have moved to another jurisdiction out of reach of the Inspectorate after the expiration of the licence or lease. In such circumstance, it would be almost impossible to recall such a licensee or lessee to fulfil the decommissioning or disposal obligation under the current PIB. The PIB apparently envisages the foregoing possibility and consequently stipulated the setting up of abandonment

[129] It must be noted that remediation fund is distinct from the PHC Fund discussed above.
[130] Section 203 of PIB.
[131] Section 204 (1) of PIB.

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fund (to be funded by the licensee or lessee) for the decommissioning or disposal programme – administered by the Inspectorate - in event of the licensee or lessee default in carrying out the obligation under the PIB.

Independence of the Implementing Establishment

It can be contended that the PIB contains far reaching provisions that are poised to curtail environmental impacts of petroleum operations. The realisation of the foregoing objective of embedding sustainable investment in the petroleum sector or otherwise will significantly depend on the functional effectiveness of the institution charged with implementation (the Inspectorate and Agency respectively). One optimal way of fostering institutional effectiveness in this regard is to ensure financial independence of the Inspectorate. Not only will such a financial independence limit the possibility of reducing the Inspectorate to mere executive rubber-stamp but it will also shield the Inspectorate from the ravages of corruption. The current remuneration structure of members of the Board of the Inspectorate – the institution charged with the responsibility for administering the affairs and business of the Inspectorate[132] – which subjects payments (from the Fund of the Inspectorate) to such guidelines as may be issued by federal government from time to time will not arguably facilitate such an independence. The vagueness inherent in the details of the remuneration structure and its subordination to executive guidelines will potentially sway the Board to embark upon spurious implementation that emphasise obeisance to executive will rather than adherence to the provisions of the PIB. Even where the preceding does not materialise the Board may potentially still adopt cynical approach to implementation whereupon their implementation of the relevant provisions of the PIB is contingent on the promptness and/or benevolence of the government remuneration guidelines.

Thus, for a creditable discharge of its statutory responsibilities under the PIB, the remuneration structure of the Board ought to be independent of the capricious dictates of the executive. Arguably, not only should the remuneration fund of the Inspectorate be structured in such a manner as to reflect the consolidated revenue account of the federation for payment of certain government functionaries, the exact amount payable to Board members ought to be specified. Under such a situation, the Board will automatically be entitled to their remuneration and allowances without being subjected to the vagaries of the government. Not only that, the remuneration structure and allowances of the Board should be significantly worthwhile (subject to upward review) to act as motivating factor for better implementation outcomes. Apart from the capacity of the foregoing to tone down potential politicisation of implementation, such a meaningful remuneration structure may turn out to be veritable bulwark against the possibility of the Board being amenable to corruption intended to thwart or undermine strict implementation.

Win-Win Situation

As noted by CSR theorists, the rational justification for CSR can be premised on: (a) reducing the cost and risk of business operation; (b) strengthening reputation and legitimacy; (c) competitive advantage; and (d) the creation of win-win situations through synergy with societal interests.[133] After all, it is not objectionable to make firms strategic goal part of broader

[132] See section 17 – 19 of PIB.
[133] Archie B. Carroll and Kareem M. Shabana, 'The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice', *International Journal of Management Reviews,* 12/1 (2010), 101.

ISSN: 2052-6393(Print), ISSN: 2052-6407(Online)

ethics.[134] Thus, the essence of responsible investment is beneficial not only to petroleum producing communities but also the IOCs.

CONCLUSION

Socially responsible business practices have become an integral part of contemporary way of doing business. Multinational corporations are increasingly adopting such practices reflected in Shell General Business Principles, Chevron Business Conduct and Ethics Code as well as the Niger Delta Partnership Initiative, and ExxonMobil Corporate Citizen Report. Government equally steps in to impose regulatory rules in the area where there is a loophole. The current PIB therefore could be said to constitute a regulatory attempt to plug the loophole inherent in voluntary regulation. However, one notable concern perceptible in the current PIB is an attempt to shift the responsibility of development to the oil companies. While oil companies ought to exhibit socially responsible business practices in the domain of operation, the abiding responsibility of development resides primarily with the government. Nonetheless, oil companies for the most part need not quaver much over duties allotted to them under the PIB; in a way, such roles could further legitimise their operation in the eyes of the people and eventually enhances their reputation as companies with sound business practice.

[134] James Noland and Robert Phillips, 'Stakeholder Engagement, Disclosure Ethics and Strategic Management', *International Journal of Management Reviews,* 12/1 (2010), 41-49 at 49.

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