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Resolving Corporate Social Responsibility (CSR) Disputes in Nigeria- The Potentials of ADR Mechanisms

Kudirat Magaji W. Owolabi*

Abstract

Conflicts are usual occurrences in the corporate world particularly between business/corporate organisations and the stakeholders. Divergent interests, goals and aspirations are mostly the cause of these disagreements. The Corporate Social Responsibility CSR concept therefore encourages corporate and business organisations to be socially, economically and environmentally conscious of their business activities impacts so as to minimize conflicts. Thus, conflicts are bound to occur where stakeholders' interests are overlooked. This makes it imperative for any corporate/business organisation to include an effective conflict resolution management in their business agenda. This paper aimed to establish the importance of CSR projects as a tool to attain a peaceful society and; to explore the potential of the use of ADR in resolving CSR disputes in Nigeria. The paper employed doctrinal methodology of legal research. It therefore adopts descriptive and analytical methods. The paper suggests a model company-based mechanism that aspires to solve disputes via ADR and in a CSR conscious way. It argues that due to its features, ADR mechanisms would respond effectively to CSR disputes.

Keywords: *Corporate Social Responsibility, Dispute, ADR, Nigeria.*

Introduction

In the past, maximization of profits was the major focus of every corporate and business organisation without being mindful of the common interests and values of the host communities and those who may be affected by the aftermath of their business operations in the society.¹ Certainly, it is not all about profit maximization rather, every business/corporate organisation must be socially responsible to its immediate communities through initiative called Corporate Social Responsibility (CSR). CSR is a voluntary concept whereby business and corporate

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1 Holmes Sara & Moir Lance, "Developing a Conceptual Framework to Identify Corporate Innovations through Engagement with Non-Profit Stakeholder Corporate Governance" 7(4) *The Int'l JBS* 422 (2007).

organisations are charge to integrate the best social and environmental common interest in their business operations.²

Kotler and Lee perceive CSR concept as a specific obligation imposes on business/corporate organisations directing them to adopt a flexible business practices thereby contribute meaningfully using corporate resources.³ CSR is also symbol of commitment on the part of the organisations to impact positively on the economic and social development of its society.⁴ McWilliams and Siegel define CSR to include business activities of the organisation that extend beyond its profit-oriented drive with the inclusion of some social good in line with the rule of law.⁵ Ijaiya sees CSR as those social demands and expectations of the public towards any business or corporate organisation at any given time.⁶ Mordi and others describe CSR as a moral commitment impose on the business/corporate organisations to promote feasible societal values and peaceful atmosphere within a given society.⁷ According to Helg, CSR is a perpetual obligatory duty impose on the corporation to act morally towards economic development while improving on the lives of their workforce, community and the society.⁸

One crucial reason behind CSR is to balance the societal interest and the profit-driven business practices of the corporate/business organisations so, their operations can have meaningful impacts on the society/community within which they operate.⁹ The CSR concept therefore encourages corporate and business organisations to be socially, economically and environmentally conscious of their impacts on the stakeholders and the society at large.¹⁰ Hence, where organisations fail to consider the interests and safeties of those that matters then, conflicts are bound to occur. The nature of conflict in any society makes it imperative for any corporate/business organisation to include an effective conflict resolution management in their agenda. CSR related issues such as human rights, labor and environmental concern are to be handled and resolved with caution so as to maintain a peaceful co-existence in the society. That is to say, a flexible resolution approach is desirable to sustain the relationship.

- 2 European Commission, "Green Paper: Promoting a European Framework for Corporate Social Responsibility," accessed 15 October, 2022, https://Europa.eu.int/comm/employment_social/soc-dial/csr/csr2002_col_en.pdf.
- 3 Kotler Phillips & Lee Nancy, *Corporate Social Responsibility-Doing the Most Good for your Company and your Cause* 5(John Wiley and Sons Inc, New Jersey, 2005).
- 4 Osemeke Louis, Adegbite Stephen *et. al*, "Corporate Social Responsibility Initiatives in Nigeria" in S.O Idowu (eds.) *Key Initiatives in Corporate Social Responsibility: Global Dimension of CSR in Corporate Entities* 357 (Springer International, Switzerland 2016).
- 5 McWilliams Abigail & Siegel Donald, "Corporate Social Responsibility: A Theory of the Firm Perspective" 26(1) *The AMR* 118 (2001).
- 6 Ijaiya Hakeem, "Challenges of Corporate Social Responsibility in the Niger Delta Region of Nigeria" 3(1) *J.SDL&P* 63 (2014).
- 7 MordiChima *et al.*, "Corporate Social Responsibility and the Legal Regulation in Nigeria" 1 *EIT&C* 4 (2012).
- 8 Helg Asa, *Corporate Social Responsibility from a Nigerian Perspective* 88 (2007) (Unpublished Masters Theses, Goteborgs University).
- 9 *Ibid.*
- 10 Adeyanju O. David "An Assessment of the Impact of Corporate Social Responsibility on Nigerian Society: The Case of Banking and Communication Industries" 1 *UJM &BR* 22 (2012).

Undue technicality associated with litigation as well as its complexity nature (to mention few) create doubt to its suitability in resolving CSR disputes. This is so because, it is always impossible for the parties to maintain that cordial and peaceful co-existence after litigation. Whereas, any corporate/business organisation requires responsive environment to thrive. This is where Alternative Dispute Resolution (ADR) mechanisms may be relevant. Initiating ADR mechanisms into the CSR disputes resolution process may function effectively to fill the lapses identified with the court system.¹¹

The term ADR was first used in an article titled 'Settling Large Case Litigation: An alternative Approach.'¹² The authors therein contend that initiating or defending a corporate lawsuit entails various glitches ranging from legal contentious, complex factual issues, many witnesses and the usual roomfuls of documents which ofcourse can be avoided by adopting an alternative approach rather than the usual court proceedings.¹³ The authors observe that the impacts of corporate litigation can either have direct or indirect trench on the corporate resources hence, it is often a strong incentive for the management to seek alternative means of resolving disputes informally. The term 'alternative' in ADR needs to be understood as an add-onto access to justice, not as a means which may replace the traditional court system.¹⁴

This article aimed to establish the importance of CRS projects as a tool to attain a peaceful society. It also rests on the proposition that it is desirable for any corporate/ business organisations to consider ADR mechanism in their resolution management agenda which should ofcourse aim to expedite fair settlement of their CSR disputes at any given time. This paper therefore explores the following research questions; whether an effective and functional implementation of CSR projects can serve as a useful tool to attain a violence free and peaceful environment that is require of any corporate/business organisations to thrive? And where there is dispute; whether ADR mechanisms are suitable strategies which can be adopted to remedy CSR's disputes in Nigeria?

Going by these research questions, this paper employed doctrinal methodology of legal research. It therefore adopts descriptive and analytical methods. Descriptive method of research is necessary to describe and explain the current status of the CSR in Nigeria and the regulatory measures that have been put in place (if any) to regulate the wide range of level of CSR. It is also necessary to analyse the appropriateness of several alternative dispute resolution mechanisms in remedying CSR disputes in Nigeria. The primary and secondary sources of materials were utilised. These materials were subjected to evaluative, descriptive and content analysis.

11 Johnson JR. Earl, Kantor Valerieet al., *Outside the Courts: A Survey of Diversion Alternative in Civil Cases* 35 (National Center for State Court, U.S.A, 1977).

12 Eric D green, Jonathan B. Marks et al., "Settling Large Case Litigation: An Alternative Approach" 11(3) LLALR 493 (1978).

13 *Ibid.*

14 Andrew J. Pirie, *Alternative Dispute Resolution: Sills, Science and the Law* xvi (Irwin Law, Toronto, 2000).

This paper starts discussion by examining CSR concept from various theoretical approaches and perspectives. It discusses CSR initiatives in Nigeria by looking at the origin, current status of CSR in Nigeria and position of the law in place to regulate the concept. This article emphasis more generally in details the benefits that come with the adoption of CSR projects. It further contends that CRS disputes can be avoided just by being socially responsible towards those that matters or affected by the activities of the organisations. Finally, the paper canvases for the use of ADR mechanisms to maintain that cordial and peaceful co-existence which cannot be guaranteed if settle via litigation.

Theoretical perspectives on CSR

CSR concept charges businesses and corporate organisations to enhance value in three dimensions, that is, profit, people and planet.¹⁵ Hence, there are theories which have been developed to justify the concept of CSR in these three dimensions. These include (i) instrumental theory; (ii) political theory; (iii) integrative theory; (iv) ethical theory; and (v) stakeholders' theory.

Instrumental theory puts so much emphasis on intensifying profits for the shareholders hence, business/corporate organisations are perceived as a tool to generate wealth for the shareholders thus, the interests of the stakeholders are not prioritised.¹⁶ According to this theory the only obligation expected of any corporate organisations is to increase its business profits and nothing more.¹⁷

Political theory canvases for a friendly co-existence between organisations and the society through adoption of CSR projects. That is, corporate/business organisations are expected to contribute in their own little way using its corporate power to help create better welfare opportunities for the stakeholders particularly, in areas where government's amenities are not sufficient or absent.¹⁸ Integrative theory posits that corporations should be sensitive to the communal needs and must integrate some level of socially habit in their business agenda.¹⁹ Ethical theory charges corporations to be ethically responsible and the theory further mandates them to operate in accordance with the rule of law.²⁰

Stakeholders theory emphasis on those external forces that help in attaining the desire outcome in any corporate businesses.²¹ Affluence, stability as well as responsive atmosphere of

15 AmoduNojeem, "Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria" 61 JAL 106 (2017).

16 Friedman Milton, "The Social Responsibility of Business is to Increase its Profits" in ChZimmeril, Holzinger & Richter(eds.) *Corporate Ethics and Corporate Governancel* 173 -178(Springer, Berlin Heidelberg, 2007).

17 NikolovaVentsislava&ArsicSanela, "The Stakeholder Approach in Corporate Social Responsibility" 3(1) JEM 28 (2017).

18 Guthrie James & Parker Lee, "Corporate Social Disclosure Practice: A Comparative International Analysis" 3 APIA 166 (1990).

19 Nikolova&Arsic , "The Stakeholder Approach," 30.

20 *Ibid*, at 31.

21 Lekia P. Celestine, "Corporate Social Responsibility (CSR) and Conflict Management: A Case Study of SPDC's" 6(1) KIUJSS 128-130 (2020).

the society/communities where businesses operate are among the factors that the theory beliefs dictate the feat in any business operations.²² According to this theory, stakeholders comprise of individual or/and entities who are distressed by the business activities of a corporate/business organisations or whose rights have been infringed whilst in the business operation.²³ One of the essential key notion of this theory is, the emphasis on the ability of the business/corporate organisation to identify the victims who are affected individually or collectively and be accountable to them.²⁴ Proponents of this theory therefore believe once the stakeholders' interests are recognised in business activities/decisions, a successful business operation is strongly built.²⁵ There is no sustainable development without a good relationship and when there is no relationship, disputes and violence become inevitable.²⁶ It is further observed that the quicker route to ruin the investment capital of the shareholders of a company is to disregard stakeholders' interests.²⁷

Hence, CSR concept is aimed to inculcate in the corporate world, a socially responsible attitude where corporate/business organisations can give-back through an impactful welfare and developmental project initiatives that can be beneficial to the host community(ies) and the society at large.²⁸ Surprisingly, countries including Nigeria have shown interest in the CSR practice by embracing attitude of kindness through an impactful projects. This explain reason some corporate/business organisations in Nigeria, focus their CSR projects on educational development through sponsorships, donation/maintenance of school facilities and equipment. While others exhibit their CSR's focus on projects such as a rural electrification, establishment of health care facilities, job opportunities and provision of drinkable water etc.

CSR Initiatives In Nigeria

Historically, CSR in Nigeria can be traced to the arrival of the multinational oil companies (MNOCs) in the Niger Delta²⁹ part of the country in 1956.³⁰ Before now, MNOCs dominated the mining sectors of the Nigerian economy specifically, in the area of exploration and exportation of oil and gas.³¹ Production of oil and gas in the region were the major sources of revenue for the

22 Gray Rob, Kouhy Reza & Lavers Simon, "Corporate Social and Environmental Reporting: A Review of the Literature and a Longitudinal Study of UK Disclosure" 8(2) *AA&AJ* 55 (1995); Deegan Craig, "Introduction: The Legitimizing Effect of Social and Environmental Disclosures – A Theoretical Foundation" 15(3) *AA&AJ* 295 (2002).

23 Lekia P. Celestine, "Corporate Social," 125.

24 Stakeholders theory involves critical stakeholders such as society, host communities, employees, customers, suppliers etc.

25 Lekia P. Celestine, "Corporate Social," 126.

26 Bryson M. John, "What to do When Stakeholders Matters: A Guide to Stakeholder Identification and Analysis Technics" available at https://www.researchgate.net/publication/228940014_What_to_do_when_stakeholders_matters_A_guide_to_stakeholder_identification_and_analysis_technics & ved = 2ah UKE wjO2 p6A4 uD0 Ah UGGuWkHWsyCZk QFnoECAQQAQ&usg=AOvVaw0HdmTari_mpTXADnLdFJoc (Last Modified February 02, 2003)

27 Freeman R. Edward, "The Politics of Stakeholder Theory: Some Future Directions" 4(4) *BEQ* 417 (1994).

28 Adeyanju O. David "An Assessment" 18.

29 Niger Delta consists of Rivers, Akwalbom, Delta, Edo, Cross Rivers, Bayelsa, Abia, Imo and Ondo States.

30 Osemeke Louis, Adegbite Stephen *et. al*, "Corporate Social Responsibility Initiatives" 357.

31 Ogbemi O. Bricksins, "Attitude of host Communities Towards Deploying Corporate Social Responsibility to Manage

Nigerian Government, representing 90 per cent of the nation's revenue as at then.³² Regrettably, exploration of oil in the region creates negative impacts on the indigenous communities whose major occupations at the time were and still farming and fishing. Hence, they were not benefiting from the growth of the Nigerian economy despite that the oil was discovered in the region.³³

Maximization of profits was the major drives of the MNOCs without any sign of concerned towards the poor condition of the economic and welfare of its host communities who are victims of the aftermath of their business operations. Thus, lack of proper guidelines by the Nigerian government to regulate the operations of these MNOCs caused the host communities endless disaster on their livelihood.³⁴ The indigenous people and the host communities were greatly affected by the spillage of oil, dumping of toxic waste materials in rivers, flaring of gas resulting from the oil companies' operations.³⁵

Nigerian governments both at the federal and state levels intervened but this could not yield positive solutions. Possibly, lack of transparency and low sense of accountability among public officers could be the major setback for the governments to provide tangible solutions. Corruption which is at the top gear in the nation is not left out as a blame.³⁶ Also, bad governance of our leaders and inadequate legal framework among others could be responsible for the failure on the part of the Governments to come up with the solution to the issues affecting the hosts of these MNOCs.³⁷ Consequently, the host communities were forced to challenge the MNOCs and further demand MNOCs to give back from the companies' resources to address societal issues affecting the population.³⁸ This is to improve on the living standard of the indigenous people who were victims.³⁹

Years later, the agitations from the host communities tactically birthed the CSR concept in Nigeria. Hence, businesses and corporate organisations are morally indebted to give back positively to the society and are to disengage on the usual profit accumulated orientation.⁴⁰ Surprisingly,

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- 32 Ijaiya Hakeem, "Challenges," 60; Cornelius K. Peter & Kogut Bruce, *Corporate Governance and Capital Flow in a Global Economy* 122 (Oxford university Press, Oxford Istedn., 2003); Okoko K.A.B & Nna N. John "Emerging Trends and Community Perception in Nigeria Oil Industry" 1(2) *NJOP* 48(1998).
- 33 Boele Richard, Fabig Heike & Wheeler David "Shell, Nigeria and Ogoni: A Study in Unsustainable Development II, Corporate Social Responsibility and Stakeholder Management versus a Rights- Based Approach to Sustainable Development" 9(2) *JSD* 78 (2001).
- 34 Nwankwo B. Odochi, "Conflict in the Niger Delta and Corporate Social Responsibility of Multinational Oil Companies: An Assessment" 144 (2017)(Unpublished PhD Thesis, Derby University).
- 35 Osemeke Louis, Adegbite Stephen *et. al*, "Corporate Social Responsibility Initiatives," 375.
- 36 Ogbemi O. Brickins, "Attitude of host Communities" 127.
- 37 Ite E Uwem, "Multinationals and Corporate Social Responsibility in Developing Countries: A Case Study of Nigeria." *EM* 9 (2004).
- 38 Rim-Rukeh Akpofure, Ogbemi O. Brickins & Imide I.O "Corporate Social Responsibility as a Strategy to reducing Conflict between Oil Companies and host Communities in the Niger Delta Nigeria" in Majaye, Arhagbaet *al. (eds.)*, *Media, Dialogue, Peace Building and Reconciliation: A Conference Proceeding*, 645-646 (Book-wright Publishers, Nigeria, 2008).
- 39 Osemeke Louis, Adegbite Stephen *et. al*, "Corporate Social Responsibility Initiatives" 375.
- 40 Ogbemi O. Brickins, "Attitude of host Communities" 123.

CSR turned out to be a very strong prerogative device to curb the profit-oriented drive of the MNOs. It further encourages the indigenous corporate organisations and companies to desire good welfare standard for its communities and to assist with the community developmental projects.⁴¹ Dangote Group of Companies, MTN, Cadbury Nigeria Plc, Zenith Bank, United Bank of Africa, Glo, Unilever Nigeria Plc and PZ Cussons are well known companies in Nigeria who in one way or the other involved in CSR programmes.

PZ Cussons Foundation focuses its CSR projects in the areas of education, healthcare, drinkable water and road maintenance.⁴² Since its establishment in 2007, the Foundation has carried out more than 70 CSR projects across geopolitical zones⁴³ in Nigeria.⁴⁴ Hence, its engrossment in CSR projects and its inimitable practice of the concept earns the company a sophisticated identity that help in maintaining its main business objectives along with the ability to improve on the living standards of its stakeholders. The PZ Cussons Plc⁴⁵ active involvement in the CSR programmes over the years assists the company to hold its ground against its main competitors and this further encouraged the rise in its share between 2005 and 2010 by 4 to 5%.⁴⁶ For this reason PZ Cussons Plc deepens its commitments into community projects and later improve on its ethical standards in the industry.

Dangote Foundation operates a charitable organisation and the Foundation has been very active in terms of CSR projects since 1994 when it was first established.⁴⁷ The Foundation undertakes to boost opportunities for social change through investments on health and wellbeing, quality education and economy empowerment.⁴⁸ In 2011 Dangote Group of Companies in conjunction with the Bank of Industry channeled N5 billion (US\$33 million) fund to create employment opportunities to small and medium scale enterprises who engage in agro-processing, merchandising and manufacturing.⁴⁹ The intention was to create truckload of jobs and career opportunities for the youths across the nation and also, to reduce poverty level and poor living standard within the country. In 2012, the Foundation also made donation of 430 million (\$2.6

41 Amaeshi Kenneth et al., "Corporate Social Responsibility (CSR) in Nigeria: Western Mimicry or Indigenous Influences?" 24(1) JCC 90 (2005).

42 The official website, available at <https://www.pzcussons.com> (Visited on September 23, 2021)

43 The six Geopolitical zones consist of: North Central, North-West, North-East, South-South, South-East and South-West. Daniel Eniola, "PZ Cussons Foundation Marks 10 years of Impacts in Nigeria," Available at <https://guardian.ng/business-services/pz-cussons-foundation-marks-10-years-of-impact-in-nigeria> (Last Modified on December 11, 2017)

44 The company is one of the biggest in Nigeria with over 120 years existence. The company deals in personal care, home care, food and electrical.

45 PZ Cussons Plc, Annual Report & Accounting available at <https://cdn.trmbino.org/uploads/files/PZC-Annual-Report-2010.pdf&ved=2ahUKEwihtvjsoOP0AhWkoFwKHebiBVMQFnoECBMQAQ&usq=AOvVaw3txi0zoliH RHs XW kbgGpL> (Visited on December 20, 2021)

46 The official website of the Foundation available at <https://dangote.com/foundation/> (Visited on December 26, 2021)

47 *Ibid*.

48 BOI Portal, "BOI/Dangote Foundation" Available at <https://www.boi.ng/dangotefoundationboi-matching-fund/> (Visited on October 15, 2021).

49 The Nation, "Dangote Donates N430m to Flood Victims, Women in Kogi" Available at <https://thenationonlineng.net/dangote-donates-n430m-to-flood-victims-women-in-kogi/> (Visited on October 12, 2021).

million) to complement Governments' efforts to supply relief materials to secure the lives of flood affected victims and vulnerable women in Kogi State.⁵⁰ In 2013, Dangote Foundation donated N79.15 million (\$5m) to support fight against measles; a course which was initiated by the United Nations Children's Fund (UNICEF).⁵¹ Hence, it may not be wrong to say that the Foundation's active involvement in CSR programs so far have been rewarding to the Dangote Group of Companies⁵² evidently, with N450 billion (US\$4 billion) turnover annually.⁵³

Coco Cola Nigeria Plc is also one of the companies in Nigeria with special repute for CSR thus, its major focus is on education. Coca Cola Nigeria Plc together with Nigerian Bottling Company (NBC) initiate free educational development workshops to help undergraduate students across the country to discover themselves and build on their intellectual writing skills.⁵⁴ The workshop runs twice a year and consecutively for over 13 years now. It is known for its unique title 'Campus Journalists. The students are trained and are imparted with the core skills of voicing out their opinions and ideas through writings.⁵⁵ The intention is to allow the youths to be passionate and courageous enough to positively contribute their logical sights via writing skills on the issues affecting the society.

Convincingly, it can be established that CSR is the best frontward for any business/corporate organisation that intend to maintain leadership position and to secure its relevancy in the industry. Thus, CSR practices in Nigeria are greatly influenced by the indigenous culture, ethnics, traditions, religion belief and communal lifestyle of the host community(ies) involved.⁵⁶ In other words, business/ corporate organisations must consider the peculiar needs of its host community(ies) to decide which CSR project is the most appropriate in the circumstances. Over the years, CSR has been presented as a tool through which a corporate/business organisation can stimulate the hearts and minds of the host communities and to also cater for their specific needs. The idea is that when a business/corporate organisation adheres to giving back principle otherwise known as CSR to the society, such an organisation tends to record successes on the capital market. CRS disputes can therefore be avoided just by being socially responsible towards those that matters or affected. An organisation that is constantly face with crises and conflicts will, no doubt, find it difficult to survive. The relevant question that may come to mind at this intersection is, if there is any regulatory legal framework on CSR concept in Nigeria?

50 The Nation, "Dangote Foundation Donates \$5m to UNICEF to fight Measles" Available at <https://thenationonline.net/dangote-foundation-donates-5m-to-unicef-to-fight-measles/amp/> (Visited on October 12, 2021).

51 It consists of Dangote Cement, Dangote Sugar, Dangote Flour and NASCON Allied.

52 Dangote, Annual Report and Accounts 2021. Dangote, "Dangote Group Targets 30 Billion Turnover in Two Years" Available at <https://www.dangote.com/dangote-group-targets-30-billion-turnover-in-two-years-report> (Visited on October 12, 2021).

53 Ibid.

54 The Guardian, "Adequacy of Corporate Social Responsibility in Nigeria" Available at <https://guardian.ng/opinion/adequacy-of-corporate-social-responsibility-in-nigeria/> (Visited on October 23, 2021).

55 Osemeke Louis, Adegbite Stephen *et al*, "Corporate Social Responsibility Initiatives" 375.

56 Bethel Ihugba, "Compulsory Regulation of CSR: A Case Study of Nigeria" 5 (2) *JP&L* 72(2012); Amodu Nojeem, "Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria" 61 *JAL* 112(2017).

CSR Regulations in Nigeria

CSR is basically regarded as a voluntary concept.⁵⁷ This notion seems to be applicable in Nigeria as there are no direct regulatory legal frameworks to govern the practice of CSR in the country.⁵⁸ This explains reason CSR initiatives are only organised voluntarily by corporations operating in Nigeria. However, there are provisions in the existing laws which it may be necessary to be considered, being relevant to this section of the paper.

Company Income Tax Act (CITA),⁵⁹ Petroleum Profit Tax Act (PPTA)⁶⁰ requires every registered company to pay tax, rates and levies.⁶¹ Thus, this obligation does not extend to provision of amenities such as healthcare facilities, rural electrification, water supply or any community developmental projects.⁶² In addition, s 305 of the CAMA 2020 states that; (3) director shall at all times in in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skillful director would act in the circumstances and, in doing so, shall have regard to the impact of the company's operations on the environment in the community where it carries on business operation.' (4) 'the matters to which a director of a company is to have regard in the performance of his functions include the interests of the company's employees in general, as well as the interests of its member.'

A closer look at these above provisions reveals that the law focuses much of its strength on the welfares of the shareholders.⁶³ It is clear that these provisions impose a duty on the directors to prevent financial loss and also to avoid unnecessary risks that could cause loss of company's income and assets. It is therefore observed that subsection (3) and (4) of s.305 are meant to permit directors to pursue CSR just to circumvent unnecessary risk to the company's assets. This is so because the force of these provisions firmly advocates for the traditional primacy model of corporate governance. Its favoritism towards shareholders testify to this assertion; the corporate responsibility towards stakeholders, is very limited.⁶⁴

The provision of s.305(9) of the CAMA 2020 further provides 'any duty imposed on a director under this section is enforceable against a director by the company.' The effect of s.305 (9) is that, if the directors or any management team fail to act responsibly in safeguarding stakeholders' interests, the best that can happen is for that company itself to object to such act;

57 Ijaiya Hakeem, "Challenges"⁶⁹.

58 Cap C21, LFN 2004.

59 Cap P13 , LFN 2004.

60 See also Company Income Tax Act (CITA, Cap C21, LFN 2004, s.3; Petroleum Profit Tax Act (PPTA) 2004, s.8.

61 Ijaiya Hakeem, "Challenges"⁶¹.

62 See ss 279-292 of the CAMA 2020.

63 AmoduNojeem, "Stakeholder Protection and Corporate Social Responsibility from a Comparative Company Law Perspectives" 64(3) JAL438-9 (2020).

64 Rott Peter, "Directors' duties and Corporate Social Responsibility under Germany Law; Is tort law litigation Changing the Picture" 1 NJCL18 (2017).

it's only the company that can complain. This therefore constitutes an adoption of 'shareholder primacy-centric' which under the common law position means, the law prioritised the company or the interest of that company above any other interests.⁶⁵ Thus CAMA 2020 does not aim to discourage any corporation who is willing to operate its business activities on a socially responsible policy, such intentions must be clearly expressed in their Article and Memorandum of Associations.⁶⁶

The Nigerian Constitution in s.20 makes provision on the environmental welfare of the citizens.⁶⁷ The provision charges the State to protect and improve on the environment, safeguard water, air, land, forest and wildlife.⁶⁸ The clear objective of s. 20 is to safeguard a healthy environment for Nigerian citizen⁶⁹ hence, the provision does not adequately capture the full description and scope of a healthy environment that any business/corporate organisation can easily embrace as it basis for their CSR initiatives.⁷⁰ The relevant question that comes to mind is whether an aggrieved person whose right to a healthful environment has been threatened or violated as a result of the business operations and activities can approach the court to enforce s.20.⁷¹

The provision of s.6(6)(c) of the Nigerian Constitution 1999 provides:

The judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution.

Base on provision of s.6(6)(c) cited above, business activities/operations that is capable or likely to cause environmental devastation may not be challenged in any court of law in Nigeria. The provision seems to deny courts in Nigeria with their jurisdictional power to seat and determine matters having to do with the enforceability of the provision of s.20 of the Constitution.⁷² Provision of s.6(6) (c) therefore serves as an impairment for the actualisation of the right to a healthful environment as contains in s. 20.⁷³

The Nigerian Oil and Gas Industry Content Development (Local Content) Act 2010(NOICDA 2010)⁷⁴ is another brilliant legislation that imbedded some essences of

65 MordiChima et al., "Corporate Social Responsibility," 2.

66 s 20 Constitution of the Federal Republic of Nigeria 1999 Cap. C23 Laws of Federation of Nigeria 2004.

67 *Ibid.*

68 GozieOgbodo, "Environmental Protection in Nigeria :two Decades After Koko Incidence"15(1)*ASI&CLS*(2010).

69 Ijaiya Akeem, "Challenges," 69.

70 AbdulKadri B. Abdulkadri, "The Right to a Healthy Environment in Nigeria; A Review of Alternative Pathways to Environmental Justice in Nigeria" 3(1) *JSDL&P* 123 (2014).

71 *Ibid*,123-5. Okogie (Trustee of Roman Catholic Schools) and Other v. Attorney General, Lagos State (1981) 2 NCLR 337;

72 *Ibid.*

73 No. 2 2010 Act. Hereinafter referred to as NOICDA 2010.

74 ss 1 & 2 of the NOICDA 2010.

corporate responsibility.⁷⁵ It provides for the development of Nigerian content in the Nigerian oil and gas industry.⁷⁶ NOGICDA 2010 mandates companies operating in the oil and gas industry to prioritize local citizens for the employment and training positions into the junior and intermediate cadre.⁷⁷ It further charges companies to patronize and engage the services of the Nigerian professionals, experts and local products.⁷⁸ It is now a requirement that foreign owned companies who intend to operate in the oil and gas industry must involve Nigerian citizens in the creation of the company.⁷⁹ Hence, foreign companies must establish that not less than 50% of the equipment presented as tool to be used to perform the oil operation is principally belong to the Nigerian subsidiaries.⁸⁰

NOGICDA 2010 further makes it a requirement to submit succession plan where the operators are required to stipulate positions not occupied by Nigerians.⁸¹ And there must be provision in the succession plan for the employed Nigerians to understudy the incumbent expatriate for a period of four (4) years after which the position shall become nigerialised. Again, NOGICDA 2010 still does not include a direct imposition of CSR practice on the business/ corporate organisations operating in the oil and gas industry. The Act fails to sufficiently address an acceptable standard for CSR implementation in Nigeria. Nevertheless, the Act has been significantly helpful in upgrading and expanding the indigenous capacity in the Nigeria oil and gas industry.

It is therefore blatantly sad for Nigeria as a country not to have legislated or able to exhibit a single legislation that directly focus on CSR concept. The silence of the Nigerian legislature on this important issue is unwarranted knowing fully that, peaceful co-existence relationship between corporations/businesses and affected victims like stakeholders, plays a major role in the economy growth of every nation. Although, there have been several attempts to legislate on CSR in Nigeria. The Corporate Social Responsibility (Establishment) Bill was sponsored by Senator Uche Chukwumerde of Abia North before the Nigerian National Assembly in 2007.⁸² In the Bill, a creation of CSR Commission was proposed and the Commission is to be responsible for the collation and imposition of a compulsory 3.5 percent of the gross annual profit from corporate organisations to execute community projects for the citizenry.⁸³ Unfortunately, the Bill never became law because there were just too many critics of the Bill who belief it is an attempt to introduce many more corporate taxes to the existing tax regime.⁸⁴ Again, in 2018 the House of

75 See the preamble of the Act.

76 ss 3 & 28 of the NOGICDA 2010.

77 s 12 of the NOGICDA 2010.

78 s 41(1) of the NOGICDA 2010.

79 s 41(2) of the NOGICDA 2010.

80 s 31(1) of the NOGICDA 2010.

81 Corporate Social Responsibility (Establishment) Bill 2007- C1239-44 Available at <http://www.nassnig.org/sdocument/download/1> (Visited on October 25, 2022). Hereinafter referred to as Nigerian CSR Bill.

82 s 5 of the Nigerian CSR Bill.

83 Nwagwuljeoma, "The CSR bill and doing business in Nigeria" Available at <https://businessday.ng/analysis/article/the-csr-bill-and-doing-business-in-nigeria/> (Last Modified on March 24, 2016).

84 Tribune Online, "Reps Pass Bill For Companies to Adopt Corporate Social Responsibility" Available at <https://tribuneonline.ng/rep-pass-bill-for-companies-to-adopt-social-responsibility/> (Visited November 5, 2022).

Representatives okay a Bill proposed by one of its member Hon Abubakar Amuda-Kanike who sought for an amendment of the Financial Reporting Council Act 2011.⁸⁵ A Bill titled 'a Bill for an Act to Amend the Financial Reporting Council of Nigeria Act 2011 No6 to Prescribe Social Corporate Responsibility Requirement by Companies and Other for Related Matters.' The Bill scaled the second reading on the floor of the House. Sadly, the Bill has not been passed into law up till date.

As it is presently, there is no legal framework and policy that mandates companies and organisations to undertake CSR projects in their spheres of operations in Nigeria. It is therefore the responsibility of the Nigerian government to put in place an appropriate regulatory measures and enforcement framework to ensure the business activities of the corporate organisations do not pose any social or environmental danger to the society. Corporate/business organisation should be held accountable if there is contravention of individuals' rights or to the societal value.⁸⁶

Absence of the law regulating the CSR concept in Nigeria has many disadvantages; one of it is the differing perceptions of the concept as observed above. It may therefore be difficult to see the negative effect of this oversight because CSR practices in Nigeria are mostly founded on philanthropic moves and donations, not on legal obligation.⁸⁷ This explains reason several business/corporate organisations with socially responsible habits have recorded considerable success with the adoption of CSR programs despite the absence of regulatory measure to that effect. However, the practice of the CSR could be better if there is proper regulatory measure in place to monitor, safeguard and regulate the concept in Nigeria.

The fact that the practice of CSR in Nigeria is voluntary not obligatory also reflects glamorously in the attitudes of these organisations. The manner at which some CSR activities are steered in Nigeria indicate they are simply meant to cover-up the negative effects of their business activities. This is true to the extent that CSR activities in Nigeria are more of an *ad hoc* basis and are often not sustained.⁸⁸ For instance some of the MNOCs' CSR projects in the Niger Delta and other regions such as, hospitals, schools have been reportedly abandoned because the projects could no longer meet the needs of these communities due to failure to follow-up on maintenance and lack of sustainability.⁸⁹ Situations like these are usually the cause of disagreements as the host community(ies) and stakeholders are always willing to protect their communal interests, values and beliefs particularly, where the activities of the corporation add no value to the development of the community.⁹⁰ This brings the discussion to a point where it is pertinent to

85 Ijaiya Akeem, "Challenges," 68.

86 Raimi Lukman, "Reinventing CSR in Nigeria: Understanding its Meaning and Theories for Effective Application in the Industry" in *Redefining Corporate Social Responsibility Developments in Corporate Governance and Responsibility* (Emerald Publishing limited, Bingley, Vol 13, 2018) 143.

87 Amaeshi et al., "Corporate Social Responsibility (CSR)," 92.

88 Andrew Pendleton "Behind the Mask: The Real Face of Corporate Social Responsibility" Available at <https://www.christian-aid.org.uk/indepth/0401csr/index.htm> (Last Modified on January 21, 2004).

89 Ite E Uwem, "Multinationals and Corporate Social Responsibility" 4.

90 Ogbemi O. Brickins, "Attitude of host Communities," 129.

examine conflict resolution management. It is therefore necessary to analyse the appropriateness of several alternative dispute resolution mechanisms to remedy CSR's disputes in Nigeria.

ADR As an alternative pathway to solve CSR Disputes

It may be difficult to argue otherwise that CSR shares link with the conflict. Ineffective implementation of CSR projects or failure to make provision is usually the basis of the disagreements. It is therefore desirable for any business/corporate organisations to have their ways of handling conflicts through adequate provision for conflict resolution management of their choice. It is always beneficial for business/corporate organisations to put-up an effort that signifies desires on their part to achieve a peaceful co-existence with the society or the community in which they operate their business activities.⁹¹ Without doubt, inclusion of a good conflict resolution management will certainly create positive impacts on the resolution process and can as well help in reaching an outcome agreeable to all the parties involved.⁹²

Hence, ADR can serve as a conflict management control technique to achieve harmonious conflict resolution in the corporate worlds.⁹³ ADR is an alternative mechanism of resolving disputes /conflicts other than going through the formal judicial process.⁹⁴ It entails procedures and practices of disputes resolution that occur separate/ distinct of any public authority.⁹⁵ ADR is a path to attain a speedy resolution built strongly on a peaceful mutual agreement of the parties involved. ADR process gives opportunity to the disputant parties to resolve conflicts in a less formal way and it minimizes the cost of resolution.⁹⁶

ADR is not alien to Nigerian's culture as the practice has been in existence prior to the colonial era.⁹⁷ The growing popularity of ADR particularly in Nigeria indicates the extent of its acceptance as,⁹⁸ litigation is fraught with challenges making it hard to retain its exclusivity standard of accessing justice in any civil system.⁹⁹ Judges in Nigeria are showing a friendly attitude towards ADR processes and parties are always encouraged to adopt ADR mechanisms provided the case involve is civil.¹⁰⁰

91 *Ibid*, 130.

92 Oteh Chukwuemeka & Eze R.C, "Vandalization of Oil Pipeline in the Niger Delta Region of Nigeria and Poverty: An Overview" 3(2) *SSSI* 18 (2012).

93 Nwazi Joseph, "Assessing the Efficacy of Alternative Dispute Resolution (ADR) in the Settlement of Environmental Disputes in the Niger Delta Region of Nigeria" 9(3) *JL&CR* 27 (2017).

94 Khalid Yahya, *Alternative Dispute Resolution (ADR): History, Forms, Process, Mechanism, Development, Prospects* (Ruino Lambert Publishing, Dhaka, 2012).

95 *Ibid*.

96 Ngo-Pondi C, "Alternatives Disputes Resolution in Ghana: Tools & Mechanism for Resolving Commercial & Corporate Disputes" in Ayua I.A (eds.) *Alternative Dispute Resolution: Some Contemporary Issues* 259 (Zaria: Ahmadu Bello University Press, 2007).

97 *Ibid*. Lon L Fuller, "The Forms and Limits of Adjudication" 92 *HLR* 370-373 (1979).

98 Akomolade Timothy, "An Overview of ADR in the Dispensation of Justice in Nigeria," 21 *Ife JR OAU* 37 (2009)

99 *id* at 37

100 Carrie J. Menkel Meadow, Lela Portar Love & Andrea Kupfer Schneider, *Mediation: practice, Policy and Ethics* 98 (Wolters Kluwer Law and Business, New York, 2013).

The most common ADR mechanisms include negotiation, mediation, conciliation, arbitration among others. In negotiation parties themselves interact/communicate to reach a workable agreement without any help or interference from a third party. In mediation and conciliation third party play the role of intermediary with the purpose of promoting an amicable agreement between the parties. Specifically, mediation must be voluntary and consensus process without mediator compelling own decision on the parties. Thus; mediator can only exercise his skills to assist the parties in reaching amicable decision.¹⁰¹ Conciliation often interchange with mediation hence, the role of a third-party (conciliator) is to facilitate negotiations with the main purpose of helping the parties settle.¹⁰² Hence, conciliators are not permitted to determine who is wrong or right but to promote means of settlement and to encourage communication. In arbitration, an arbitrator(s) is in charge with an important role to facilitate the resolution of matter(s) between the parties and will thereafter render an award that will be binding on the parties.¹⁰³ The binding nature of the award distinguishes arbitration from conciliation and mediation. This explains reason arbitration is considered as a well-developed alternative to court hence, business/corporate organisations who find themselves in disputes that cannot be resolved through normal business negotiations may prefer arbitration.¹⁰⁴

One of the essential benefits of ADR as it relates to CSR disputes is the fact that dispute can be resolved by mutual agreement or consensus which is likely to bring satisfactory outcome agreeable to parties. Mutual agreement/ consensus is one of the key features of ADR that makes it attractive to CSR disputes. Consensus will certainly allow parties to maintain cordial relationship between them through dialog.¹⁰⁵ Consensus is a powerful tool that can ease the agreement as each party's ideas, grievances, views are considered with the target of reaching decision acceptable to all.¹⁰⁶ Another benefit of ADR as it relates to CSR disputes is the confidentiality features of ADR. Confidentiality in ADR makes it attractive because parties will be willing to disclose relevant information and documents for an effective resolution of disputes.¹⁰⁷ It is usually the best for any business/corporate organisation to keep their disputes away from the public.¹⁰⁸ Hence, application of ADR in CSR related disputes will be more useful and beneficial to any business/corporate organisation who desires for privacy particularly in such dispute that has the tendency to tarnish the company's reputations irretrievably.

101 Blake Susan, Browne Juliet et al., *Practical Approach to Alternative Dispute Resolution* 333 (Oxford University, Oxford, 2014).

102 *Ibid.*

103 Lazarus S. Stephen, Bray Jet et al., Holton R, Matthews P & Willard G., *Resolving Business Disputes -The Potentials of Commercial Arbitration* 35-40 (American Management Association, USA 1965).

104 *Ibid.*

105 Lawrence R Freeman & Michael L Prigroff, "Confidentiality in Mediation: The need for Protection" 2 *OSJDR* 37 (1986).

106 *Ibid.*

107 *Ibid.*

108 Lon Fuller, "Mediation : Its Forms and Function" 44 *SCLR* 325 (1971).

In addition, ADR mechanisms share a unique drive with CSR concept. Both are imbedded with a common purpose of preserving the relationship or parties' co-existence. With the adoption of Negotiation, Conciliation Mediation or arbitration mechanism, the relationship could be preserved and improved on. This is because the problem is addressed and the positions of the parties are heard and resolved through mutual understanding. This will certainly encourage constructive communication. The practice of ADR in CSR disputes can also redeem the relationship and foster trust which of course can improve on mutual respect and transparency between the parties.¹⁰⁹

Also, third party involvement in ADR is a huge indications that the disputes are likely to end with success.¹¹⁰ This is not surprising because, the presence of third party in the ADR process is a 'self-motivation' for the disputants which ofcourse can encourage two-sided negotiations between the parties themselves.¹¹¹ The presence of a third party can further lessens the likelihood of parties being hostile or aggressive towards one another.¹¹²

Integration of the ADR mechanism into the CSR disputes can also afford parties the opportunity to experience a speedy dispensation of justice.¹¹³ Delays, undue technicalities, harsh devotion to the rules of evidence in litigation create unnecessary frustration on the parties and also time consuming.¹¹⁴ All Corporate CSR related issues such as human rights, labour and environmental related concerns deserve the most efficient and quicker means of settlement. The victims whose rights have been incessantly violated or victims of environmental damage do not need unnecessary delay to access justice. In *Ambah v. SPDC*¹¹⁵ the plaintiff suffered on a constant basis oil spills to his fish ponds close to the Beniseide oil fields owned by the defendant. It took 19 years for the matter to be finally laid to rest. By the time the court gave its decision, majority of the disputants had dead. Also, in *John Eboigbe v. NNPC*¹¹⁶ the Supreme Court gave its final decision in 1994; the case was first instituted at the State High Court in 1979. Situations like these frustrate parties to relinquish their civil rights as guarantee in the Constitution and resort to violence through self-help. Meanwhile, inclusion of ADR in the 'conflict resolution management agenda' would have save the parties in those two cited cases, the years/costs spent in courts.

Jurisdictional convenience is another significant benefit of ADR as it relates to CSR. One of the benefits of ADR is the ability to serve remote villages, rural populations and geographically dispersed locations. Geographical distance to courts may be a challenge to those individuals in

109 Henry Brown & Arthur Mariott, *ADR Principles and Practice* 108-115 (Thomson Reuters, London, 2011).

110 Blake Susan, Browne Julie *et al*, *A Practical Approach*, 216.

111 Ellen Zwibel & John Kleefeld, "Mediation" in John Kleefeld *et al* (eds) *Dispute Resolution :Readings and Cases Studies* 298-306 (Toronto, Emond Publishers, 2016).

112 Nwazi Joseph, "Assessing the Efficacy," 27.

113 Kabir D, "Towards the Institutionalization of ADR processes in Nigeria" 4(5) *ABUJP&CL* 250(2011).

114 (1964) 1 ALL NLR 176.

115 (1994) 5 NWLR [Pt 347] 649.

116 Frynas J. George, "Problems of Access to Courts in Nigeria: Results of a Survey of Legal Practitioners" 10(3) *Social & Legal Studies* 397 (2001).

remote locations.¹¹⁷ Some villages and rural areas find it hard to access court hence, it become difficult to raise claim on their rights. Oftentimes, cases of environmental hazard happened in the remotes area where there is no court close by. Hence, adoption of the practice of ADR in CSR disputes can come in handy for the parties.

Conclusion And Suggestions

Ordinarily, adopting CSR should be perceived as an avenue to show commitment to the public in such a manner that can enhance the economic development of the society. Today, CSR go far beyond the normal humanitarian kind gestures by way of donations at the end of each financial year rather, it extends to all year-round responsibility that every corporate/business organisation must adopt to cater for the communal needs of its host communities so as to experience the best practices.

CSR served as a tool to aid better interpersonal relationship between corporate/business organisations, stakeholders, environment and the societies. Hence, CSR can operate in different dimension depending on the organisation involved. It is therefore important to identify the societal interests, values and beliefs of the communities or stakeholders in other to guide in choosing the appropriate CSR project that will meet their societal needs. The most essential component of the concept of CSR is that any organisation be it business, company or corporate must show a desire to connect with the people of the host community and its environs by way of extending goodwill. CSR therefore emphasis on the importance of imposing responsible behavior on the corporate/business organisations without conceding the main objective of the business. The paper therefore suggests as follows:

- i. Nigerians deserve an appropriate CSR law to regulates the concept. This will make it obligatory for organisations to adopt CSR projects.
- ii. Government should make it mandatory for every business/ corporate organisation to adopt a model company-based mechanism that aspires to solve disputes via ADR and in a CSR conscious way.

