COMBATING ECONOMIC INEQUALITY: THE STRATEGIC ROLE OF THE FUND MANAGEMENT INDUSTRY IN PROMOTING INCLUSIVE DEVELOPMENT IN NIGERIA

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DECLARATION

I, Omotuyi Opeyemi Yetunde declare that this thesis is my own, unaided work. I further declare that this thesis has never been submitted for any degree or examination in any University.

Signed:

Date: July 31, 2020.

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ABBREVIATIONS AND ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
CAMA	Companies and Allied Matters Act
CCAB	Consultative Committee of Accountancy Bodies
CFRN	Constitution of the Federal Republic of Nigeria
CSR	Corporate Social Responsibility
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
EMS	Environmental Management System
ESG	Environmental, Social and Governance
GRI	Global Reporting Initiative
ICC	International Chamber of Commerce
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICGN	International Corporate Governance Network
IFAC	International Federation of Accountants
IFC	International Finance Corporation
IFFs	Illicit Financial Flows
ILO	International Labour Organisation
ISA	Investments and Securities Act
ISO	International Organisation of Standardisation
MNEs	Multinational Enterprises
NEITI	Nigerian Extractive Industries Transparency Initiative
NGOs	Non-Governmental Organisations
NNPC	Nigerian National Petroleum Corporation
NSE	Nigerian Stock Exchange

NSWG National Stakeholders Working Group

OECD Organisation for Economic Cooperation and Development

OSH Occupational Safety and Health

PRI Principles for Responsible Investment

RI Responsible Investment

SEC Securities and Exchange Commission

SOEs State-Owned Enterprises

SON Standard Organisation of Nigeria

UDHR Universal Declaration of Human Rights

UN United Nations

UNEPFI United Nations Environmental Programme Finance Initiative

UNESCO United Nations Educational, Scientific and Cultural Organisation

UNGC United Nations Global Compact

UNPRI United Nations Principles for Responsible Investment

USSIF United States Social Investment Forum

WCED World Conference on Environment and Development

WHO World Health Organisation

WSSD World Summit on Sustainable Development

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ABSTRACT

There is growing inequality in many countries around the world, and particularly in Nigeria. Recognising this global challenge, the United Nations agreed to seventeen sustainable development goals in 2015. As part of a global agenda to tackle inequality and promote inclusive development, the United Nations agreed to a specific goal to reduce inequalities among and within countries. To enable effective implementation, the United Nations calls for a global partnership, involving the public and private sector, in the achievement of the goals.

This thesis highlights the state of economic inequality in Nigeria. In so doing, the thesis finds that the high rate of inequality in Nigeria is mostly as a result of poor social spending on the part of government, as well as adverse corporate impacts, resulting in poor social opportunities and outcomes for citizens. Furthermore, the thesis analysed Nigeria's legal and regulatory provisions on issues of inequality, highlighting the strengths and weaknesses of the laws. The thesis finds that these laws are grossly inadequate to address the inequality challenges in Nigeria, and a complementary approach to address these challenges is needed.

Since the thesis finds a significant increase in the growth of investment funds in Nigeria over the last decade, the thesis proposes the Nigerian Fund Management Industry as an avenue for improving the state of economic inequality in Nigeria, through the implementation of the principles for responsible investment.

CHAPTER ONE: GENERAL INTRODUCTION AND BACKGROUND

1.1 Introduction

Since the United Nations Conference on the Human Environment held at Stockholm in 1972, the global sustainable development agenda has expanded tremendously.[1] The Conference led to the recognition of the need to integrate economic development with environmental protection and social development,[2] and also framed the discussions at the United Nations Conference on Environment and Development held in Rio in 1992.[3] Such social development forming part of the sustainable development agenda encompasses freedom from extreme poverty, and inequality, among others. Social development cannot be achieved without focusing on inequality. This is because a socially-inclusive approach to development must have the principles of equality at its core such that all persons irrespective of their circumstances have unimpeded access to resources and opportunities.[4]

For the first time, world leaders at the 'World Summit for Social Development', specifically committed to ending inequality.[5] This was endorsed at the United Nations millennium summit held in New York in September 2000, where world leaders adopted the millennium declaration.[6] The declaration sets out eight targets that Member-States were committed to achieve by the end of 2015. Those targets became known as the 'millennium

[1] Ralph Hamann 'Can Business make Decisive Contributions to Development? Towards a Research Agenda on Corporate Citizenship and Beyond' (2006) 23(2) *Development Southern Africa* 175.
[2] The sustainable development agenda raised at the Stockholm Conference was further recognised in the Report of the United Nations World Commission on Environment and Development (Brundtland Commission) *Our Common Future* (1987) available at *http://www.un-documents.net/ocf-02.htm#1* [accessed January 14, 2019].
[3] Ralph Hamann, *op cit*.
[4] United Nations Department of Economic & Social Affairs *The Inequality Predicament: Report on the World Social Situation 2005* (2005) 13.
[5] The United Nations Report of the World Summit for Social Development (1995) UN Doc A/CONF.166/9.
[6] The United Nations Millennium Declaration (2000) UN Doc A/Res/55/2, para 1.2.

development goals' (MDGs).[7] The MDGs commit member-States to the eradication of extreme poverty, and the promotion of gender equality among others.[8]

In 2012, in order to build upon the MDGs and put in place a post-2015 development agenda, the United Nations launched a process to develop a set of sustainable development goals (SDGs) at the Rio+20 Conference held in Johannesburg. The United Nations General Assembly formally adopted the 2030 agenda for sustainable development in 2015 with a set of seventeen (17) goals and one hundred and sixty-nine (169) targets.[9] One of the sustainable development goals is reduced inequalities within countries with four major targets including; reduction in income inequalities, promotion of universal socio-economic inclusion, adoption of fiscal and social policies that promotes equality.[10] According to the United Nations (UN), this goal is aimed at the achievement of sustained income growth of the populace who earn below a national average at a rate higher than the national average. It is also aimed at the empowerment and promotion of socio-economic inclusion of all persons irrespective of their economic or other status. Furthermore, it is aimed at the adoption of policies particularly, fiscal, wage and social protection policies and the progressive achievement of greater equality.[11]

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[7] The background to the United Nations Millennium Development Goals available at *www.un.org/millenniumgoals/bkgd.shtml* [accessed January 14, 2019].
[8] The United Nations Millennium Development Goals, Goals 1 & 3 available at *www.un.org* [accessed January 14, 2019].
[9] The United Nations 'Sustainable Development' available at *https://sustainabledevelopment.un.org/resourcelibrary* [accessed January 14, 2019].
[10] The United Nations Sustainable Development Goals, Goal 10 available at *https://www.globalgoals.org/10-reduced-inequalities* [accessed January 14, 2019].
[11] *Ibid.*

The SDGs in alignment with the MDGs also commit member-States to the eradication of poverty,[12] and the promotion of gender equality.[13] One of the targets of the goal of poverty reduction is to ensure equal right to basic services and economic resources by all persons especially, the poor and vulnerable.[14] Similarly, the UN specifies the equal right of women to economic resources and financial services as one of its targets to achieve gender equality.[15] Furthermore, the SDGs commit member-States to ensuring an inclusive and equitable quality education and promotion of lifelong learning opportunities for all persons.[16] It could therefore be argued that greater equality is pertinent to the achievement of an inclusive and sustainable development.

Although governments are generally the major actors in the achievement of the SDGs, the private sector is increasingly expected to play a vital role towards the achievement of the goals.[17] In fact, the goals expressly call for business participation towards the achievement of its targets.[18] Similarly, several international organisations[19] have embraced corporate social responsibility (CSR) with the expectation that the private sector through CSR can

[12] The United Nations Sustainable Development Goals, goal 1 available at *https://www.globalgoals.org/1-no-poverty* [accessed January 14, 2019].
[13] The United Nations Sustainable Development Goals, goal 5 available at *https://www.globalgoals.org/5-gender-equality* [accessed January 14, 2019].
[14] The SDGs, goal 1, target 4.
[15] The SDGs, goal 5, target 5.A.
[16] The SDGs, goal 4 available at *https://www.globalgoals.org/4-quality-education* [accessed January 14, 2019].
[17] Ralph Hamann *op cit.*
[18] The United Nations Sustainable Development Goals, Goal 17 available at *https://sustainabledevelopment.un.org/sdg17* [accessed January 14, 2019].
[19] For instance, the Organization for Economic Cooperation and Development (OECD) 'Guidelines for Multinational Enterprises'; the International Chamber of Commerce 'Business Charter for Sustainable Development' among others.

play a significant role in the achievement of the SDGs.[20] Thus, actors in the private sector are expected to support the achievement of the SDGs by means of their business activities, and through engagement in public policy dialogue and advocacy.[21] This thesis advocates a support for the SDGs by the Nigerian fund management industry through their corporate activities, particularly, through the implementation of the principles for responsible investment.[22]

1.2 Problem Statement

In order to be adequately assessed, any corporate responsibility discourse within a domestic context needs to address relevant social and economic issues peculiar to the country of discourse.[23] Inequality has been described as a major factor behind several insecurity challenges including crime, social unrest, and violent conflicts.[24] Nigeria is not without its own share of such insecurity challenges as the country is plagued by kidnapping, boko haram terrorism in the north, Niger-Delta militancy in the south, Indigenous People of Biafra (IPOB) agitations in the south-east, and Fulani herdsmen-farmers clashes in the north-central. These insecurity challenges have been attributed to the high incidence of economic inequality in the country.[25]

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[20] Peter Newell & Jedrzej George Frynas 'Beyond CSR? Business, Poverty and Social Justice: An Introduction' (2007) 28(4) *Third World Quarterly* 669.
[21] Ralph Hamann *op cit*., 176.
[22] Responsible investment is an investment strategy that requires institutional investors to integrate environmental, social and governance issues in their investments' analyses and decision-making processes.
[23] Gloudi van der Ahee & Jess Schulschenk, *op cit*., 1.
[24] Andrew McKay 'Defining and Measuring Inequality' (2002) Overseas Development Institute Inequality Briefing, Paper No. 1 (March 2002) 1.
[25] Olabanji O Ewetan & Ese Urhie 'Insecurity and Socio-Economic Development in Nigeria' (2014) 5 *Journal of Sustainable Development Studies* 40; Nnaemeka Abamara, Chukwuemeka Okoye, Tochukwu Oguegbe & Chiamaka Joe-Akunne 'Corruption and Insecurity in Nigeria: A Psychological Insight' (2015) *Journal of Political Sciences & Public Affairs* 1.

Moreover, Nigeria was for a second time in 2018 ranked the country with the highest inequality between its rich and poor population by Oxfam.[26] According to Oxfam, Nigeria's social spending is extremely low resulting in very poor social outcomes for Nigerians.[27]

In a recent visit to Cape Town, the British Prime Minister, Theresa May, noted that increasing wealth has brought about rising inequality within many African nations. She further stated that while much of Nigeria is thriving with several individuals enjoying the fruit of the economy, about 87 million Nigerians, representing more than 50% of the population, live on less than $1.90 a day. She concluded that this makes the country home to more very poor people than any other nation in the world.[28]

Some of the factors responsible for this high inequality rate in Nigeria have been identified to include high incidence of unemployment, dilapidating public infrastructure, high rate of out-of-school children and poor output in the education sector as uncompetitive youths are produced in a technology-driven world.[29] Many rural communities are not connected to the national grid and therefore do not have electricity. Some do not have access to potable

[26] Oxfam is a global civil society organisation that agitates against injustice and the likes in the world.
[27] Oxfam International *Inequality in Nigeria: Exploring the Drivers* (2017); Development Finance International & Oxfam International *The Commitment to Reducing Inequality Index 2018* (2018). For instance, the Nigerian government allocated only 7.04% of the 2018 budget, and 7.4% of the 2017 budget to education. The 2019 budget allocated 5.23% of the budget to education; see Clifford Ndujihe 'Scandalous Poor Funding: Education Gets N4.57trillion of N61.48trillion budget in 10years' Vanguard Nigeria, January 6, 2019. Similarly, 3.9% of the 2018 budget, and 4.16% of the 2017 budget was allocated to health; see Ebuka Onyeji '2018 Budget: Again, Nigeria Falls Short of AU Health Funding Commitment' Premium Times Nigeria November 10, 2017. This is in spite of the African leaders' pledge to commit at least 15% of their annual budgets to improving the health sector; see The African Summit on HIV/AIDS, Tuberculosis and other Related Infectious Diseases 'Abuja Declaration on HIV/AIDS, Tuberculosis and other Related Infectious Diseases' (2001) OAU/SPS/ABUJA/3.
[28] Ugo Aliogo 'Nigeria: Tackling Economic Inequality' This Day September 6, 2018.
[29] Hamisu Muhammad Bali 'Oxfam ranks Nigeria Last on Inequality Index Again' Daily Trust October 9, 2018.

water while others lack infrastructure for storage and transportation of raw materials from their production areas to markets.[30] It has been established that government alone cannot address all these social challenges and there is need for the participation of business in addressing such challenges.

A significant increase in investment funds has been reported in Nigeria recently.[31] This positions the financial sector as a strategic driver of corporate responsibility in Nigeria. Hence, the fund management industry in Nigeria can help address most of the identified inequality challenges thus, contributing to the achievement of greater equality in Nigeria. The industry can do this through the implementation of the principles for responsible investment. However, there is no legal nor regulatory framework for responsible investment in Nigeria. An examination of the websites of majority of the fund management

[30] 'The Growing Inequality in Nigeria' Editorial This Day Newspaper, October 15, 2018.

[31] For instance, the Nigerian Pension Scheme has been reported to grow at an average rate of 27.05% annually since 2004, see 'Pension Scheme Records 27% Annual Growth Rate' This Day November 25, 2013. As at 2015, Pension Funds in Nigeria has grown into a N4.9trillion market, see Babajide Komolafe 'Fund Managers move to attract N4.9trillion Pension Assets' The Vanguard Nigeria July 20, 2015. According to the Director-General of the Nigerian Pension Commission, pension funds invest more in government bonds and corporate equities, and the Pension Investment Rules are to be amended so as to enable more pension funds to be channelled into corporate bonds, see Elisha Bala-Gbogbo 'Nigeria to channel more Pension Funds to Corporate Bonds' Bloomberg Business June 9, 2014. Similarly, the Nigeria Mutual Fund Industry is reported to have grown by 23.6% in 2014, The Business Day (Nigeria) August 22, 2014; and is valued at about N695billion as at 2015, See 'Managed Funds hit N695b as Fund Managers Plan Joint Distribution Network' The Nation Nigeria available at http://thenationonlineng.net/managed-funds-hit-n695b-as-fund-managers-plan-joint-distribution-network/ [accessed November 11, 2015]. Furthermore, the Nigeria Insurance Industry recorded 34% growth rate between 2007 and 2010 as opposed to the 14% growth rate recorded between 2003 and 2006, The All Africa Daily Champion February 1, 2011. As at 2014, the asset value of the insurance industry has doubled to US$357billion from the US$1.74billion recorded in 2007, Omolade Oladipo 'Nigeria's Insurance Sector: Growth Beckons' Africa Global Funds Forum December 15, 2015. The industry has further been stated to have the highest growth potential among other sectors of the economy as it is capable of maintaining a 100% annual growth rate, The All Africa Daily Champion February 1, 2011. As at 2018, the asset under management of the mutual funds grew by 55.3% and there was a fresh capital influx of over N231.8 billion recorded by the fund management industry as at November of the same year, Ifeanyi John 'Mutual Funds Grow AUM to N650bn in 2018' Business Day (Nigeria) January 8, 2019.

firms in Nigeria also reveals an absence of any report on the implementation of the principles for responsible investment by these firms.

Therefore, there is a need for a regulatory framework to be put in place to harness the potentials that the industry holds.

1.3 Aims and Objectives of Study

Globally, investors are increasingly recognising that pressing global challenges including inequality cannot be addressed without harnessing the capital markets and engaging businesses.[32] Against this background, this research aims to examine the possible role of the fund management industry in combatting inequality in Nigeria.[33]

Secondly, the goal of equality calls for institutions and policies that promote a level playing field where all persons have similar opportunities of becoming socially active and economically productive.[34] In this regard, this research aims to investigate possible corporate policies that may positively impact inequality reduction in Nigeria. Also, the research aims to identify the role of relevant oversight institutions in the fight against inequality in Nigeria.

Lastly, the research aims to propose a framework for the regulation of responsible investment in the Nigerian fund management industry.

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[32] Steve Lydenberg, Michael Musuraca, William Burckart & Mackenzie Clark *Why and How Investors Can Respond to Income Inequality* (2018) 10.

[33] Fund managers are institutional investors who manage and invest specific portfolios, consisting of a grouping of financial assets, on behalf of asset owners. They include pension funds, mutual funds, hedge funds, among others.

[34] The World Bank 'World Development Report 2006, *op cit*., 2.

1.4 Research Questions

In arriving at the stated aims and objectives, the thesis investigates the following research questions;

i. How can the Nigerian fund management industry strategically contribute to combatting inequality in Nigeria?
ii. How can the principles for responsible investment be effectively regulated in Nigeria? Particularly, what are the strengths and weaknesses of existing environmental, social and governance laws, and what law reform is necessary?

1.5 Methodology

This research, which is primarily desk-based, adopts a doctrinal approach. It comprehensively reviews existing literature on inequality, corporate responsibility and accountability, and responsible investment. The thesis also relies on both primary and secondary sources of information relevant to the study. The primary sources include international and regional instruments and domestic laws relevant to the study. Adopting a content analysis approach, the thesis identifies and explores the provisions of relevant regulatory and normative instruments dealing with inequality, corporate responsibility, and responsible investment at a national, regional and international level. Some of the domestic laws explored include those that regulate the environment, labour rights, human rights, taxation, among others. The thesis also explores the provisions of international and regional instruments such as the International Covenant on Economic, Social and Cultural Rights, and the African Charter on Human and Peoples' Rights. This is done in order to identify

corporate environmental, social and governance responsibilities since environmental, social and governance issues have an impact on inequality and development.

Some of the normative instruments reviewed include the Organization for Economic Cooperation and Development 'Guidelines for Multinational Enterprises', the United Nations Global Compact, and the International Finance Corporation 'Business Charter for Sustainable Development', among others. Although, these international instruments are not legally binding and do not impose any legal obligations on corporations,[35] they possess significant normative value because they provide an internationally acceptable framework within which corporations can be held responsible and accountable for their social and environmental impacts.[36] Furthermore, the significance of these instruments cannot be under-estimated because they help to stimulate and guide corporate responsibility globally; they help to put pressure on corporate directors and influence corporate conduct.[37] Moreover, globalisation has made the world a global market with corporations becoming more involved in a network of international chains of suppliers and customers.[38] Thus,

[35] See RR Baxter 'International Law in her Infinite Variety' (1980) 29(4) *The International & Comparative Law Quarterly* 549 at 557. See also CM Chinkin 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38(4) *The International & Comparative Law Quarterly* 850 at 851; Alan E Boyle 'Some Reflections on the Relationship of Treaties and Soft Law' (1999) 48(4) *The International & Comparative Law Quarterly* 901; David Hunter, James Salzman & Durwood Zaelke (eds) *International Environmental Law and Policy* 2 ed (2002) 349.
[36] See Deborah Leipziger *The Corporate Responsibility Code Book* 2 ed (2010) 37.
[37] Ibid. See also RR Baxter op cit., 559.
[38] Jacqueline Cramer 'Applying International Standards and Guidelines on Corporate Social Responsibility: An Action Plan' (2005) *Environmental Quality Management* 71.

business is no longer viewed as an entity restricted to any particular national jurisdiction, but as an entity capable of international regulation.[39]

The secondary sources include journal articles, textbooks, statistical reports, and other relevant electronic sources.

1.6 Significance of Study

The significance of the research lies in the expediency of the subject-matter, inequality reduction and inclusive development. As stated earlier, Nigeria was recently rated, for a second time in a row, as one of the countries with highest economic inequality globally. This rate of inequality, as shown above, has been linked to the social unrest and high poverty rate prevalent in the country. The implementation of the principles for responsible investment by the fund management industry can lead to greater social cohesion, and the achievement of greater equality in the country. This is because responsible investment promotes issues such as environmental protection, social equity, and economic development. It is noteworthy that these issues also have implications for equity. Thus, implementation of the principles for responsible investment by the fund management industry is tantamount to the industry taking up and addressing some of the causes of inequality in Nigeria.

Moreover, such responsible investing may help ensure financial and economic stability essential to long-term investments. This is because if investors decide to invest

[39] Paul Redmond 'International Corporate Responsibility' in Thomas Clarke & Douglas M Branson (eds) *The SAGE Handbook of Corporate Governance* (2012) 585.

'irresponsibly', it may lead to serious systemic risks which can negatively impact the long-term performance of investments and economic development generally.

In addition, since responsible investment for equality will take account of environmental, social and governance issues such as labour rights and protection, social protection, taxation, among others, responsible investment and this research contributes to the achievement of the global sustainable development agenda.

1.7 Originality and Justification for Study

This research provides a novel approach to solving the inequality challenges in Nigeria. Traditionally, government has solely been looked upon with the responsibility of addressing the inequality challenges plaguing the country. This research however provides an opportunity to explore the potential role of the private sector particularly, the fund management industry, as an effective pathway for combatting inequality and enhancing inclusive development in Nigeria. Therefore, the research will be useful to government, political lobbyists and civil society actors, in the uni and promotion of inclusive development in Nigeria.

1.8 Chapter Breakdown

The research is presented in seven broad chapters.

In chapter two, I discuss the concepts of economic inequality and inclusive development. In so doing, the link between the two concepts was identified. Major causes and impacts of, as well as solutions to economic inequality are also discussed. I further provide a theoretical background of the study. Within the context of identified theories, I situated a role for the

corporate sector generally, and investment institutions specifically, in addressing the inequality challenges in Nigeria.

In chapter three, I introduce and comprehensively discuss the concept of responsible investment. I trace the history and evolution of the concept, and discuss its nature and constituent elements.

In chapter four, I analyse the existing legal and regulatory framework on ESG issues in Nigeria. I analyse the provisions of domestic laws and regulations on issues such as the environment, labour, human right, taxation, among others. I also analyse the role of domestic regulatory institutions charged with the oversight of such issues. The strengths and weaknesses of these laws and regulations are reviewed in the chapter.

In chapter five, which is the core of the thesis, I examine the role of the fund management industry in combatting economic inequality in Nigeria. I analyse how fund managers can help address the challenges of economic inequality in Nigeria by implementing the principles for responsible investment. Taking a cue from international best standards and practices, I identify specific strategies for the effective implementation of the principles for responsible investment by fund managers in Nigeria.

In chapter six, I propose a regulatory regime for responsible investment in the Nigerian fund management industry.

In chapter seven, the general findings from the study are presented, and relevant recommendations proffered.

CHAPTER TWO: ECONOMIC INEQUALITY AND THE ROLE OF THE PRIVATE SECTOR- CONCEPTUAL AND THEORETICAL BACKGROUND

2.1 Introduction

The previous chapter introduced the subject of the research and provided a background of the study. This chapter discusses the concept of economic inequality, and addresses the role of the private sector in contributing to the achievement of greater equality. The chapter begins with a discussion of what is meant by economic inequality. In so doing, the causes of, and the solutions to economic inequality were identified. The chapter proceeds to discuss the concept of inclusive development, and how it is related to equality. In addition, the chapter discusses the role of the private sector generally, and that of investment institutions particularly, in combating economic inequality and promoting inclusive development. In an effort to provide a rationale and justification for ascribing such public sector role to the private sector, the chapter situates such private sector participation within relevant theories.

2.2 The Concept of Economic Inequality

One of the greatest social problems the world is faced with is that of increasing inequality.[40] In spite of the compelling case for addressing inequality, it has continued to gain ground around the globe, and several forms of inequality have become more profound.[41] Inequality refers to a difference in the social status, wealth, rights or opportunities between people or

[40] James A Crone *How Can We Solve Our Social Problems?* 2 ed (2011) 47; Thomas Piketty *Capital in the Twenty-First Century* (2014); Amina Mohammed 'Outlook on the Global Agenda 2015: Deepening Income Inequality' Report of the World Economic Forum 2015 available at *www.reports.weforum.org/outlook-global-agenda-2015/wp-content/blogs-dir/59/mp/files/pages/files/trend-1.pdf* [accessed February 18, 2019]; Milanovic Branko *Global Inequality: A New Approach for the Age of Globalisation* (2016).
[41] The Inequality Predicament, *op cit.,* 2.

groups.[42] The World Bank on the other hand, defines equality as the capacity of individuals to have equal opportunities to pursue a life of their choice and be free from extreme deprivation in outcomes.[43] Consequently, inequality could be said to refer to a difference in opportunities and outcomes for different persons or groups of persons. Inequality of outcomes refers to differences in what people achieve in life for instance, unequal pay for equal work done.[44] Inequality of opportunities on the other hand refers to differences in people's background or circumstances that condition their outcomes for instance, differences in social treatment and conditions such as unequal access to employment or education, etc.[45] Thus, inequalities of opportunities has been described as more of a result of circumstances while inequalities of outcomes as more of the result of people's personal efforts.[46] Consequently, inequalities of opportunities is generally regarded as 'unfair' while the 'fairness' of inequality of outcomes is deeply contested.[47] The argument is that inequality is more likely to be accepted where all persons have equal opportunities to improve their socio-economic position and outcomes. However, where some persons or groups have consistently worse opportunities than others, social justice and the human right to equality and non-discrimination is undermined.[48]

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[42] James A Crone *op cit*., 49.
[43] The World Bank *World Development Report 2006: Equity and Development* (2005) 2.
[44] United Nations International Children's Emergency Fund & UN Women 'Global Thematic Consultation on the Post-2015 Development Agenda: Addressing Inequalities' (2013) Report of the UN Global Public Consultation on the Post-2015 Development Agenda 2013.
[45] *Ibid*.
[46] The World Development Report 2006: Equity and Development, *op cit.*
[47] De Barros RP, Ferreria FHG, Vega JRM, Chanduvi JS Measuring Inequality of Opportunities in Latin America and the Carribean (2009); Brigitte Rohwehder 'Poverty and Inequality' (2016) Governance and Social Development Resource Centre, UK.
[48] *Ibid*.

Economic inequality refers to different positions of people within the economic distribution of income, pay, and wealth.[49] It is also described as the unequal or disproportionate distribution or allocation of income and opportunity to people or between different groups in society.[50] The rising trends in inequality, especially in developing countries, show that economic growth and development has not benefitted all sections of the populace in a similar way.[51] Thus by nature, many discussions around inequality tend to focus on people and groups at the bottom of the economic pyramid, or those who are excluded from economic development. Such approach to inequality reduction ensures that economic growth and development are improved for all persons.[52] Moreover, the sustainable development agenda connotes inclusiveness, and cannot be achieved with the exclusion of any part of the world's population from opportunities, services and a better life. Arguably therefore, the goal of reduction in economic inequality may be regarded as the most cross-cutting of the sustainable development goals because significant progress in reducing economic inequality is essential to realizing several of the other goals.[53]

[49] The Equality Trust 'How is Economic Inequality Defined?' available at *www.equalitytrust.org.uk* [accessed January 19, 2019].
[50] Institute of Labour Economics 'What is Economic Inequality?' available at *https://wol.iza.org* [accessed January 19, 2019].
[51] Sergio Vieira 'Inequality on the Rise? An Assessment of Current Available Data on Income Inequality at Global, International and National Levels' (2012) Background Document for the World Economic and Social Survey (WESS) 2013.
[52] Frederico Cingano 'Trends in Income Inequality and its Impact on Growth' (2014) OECD Social, Employment and Migration Working Paper No. 163.
[53] For instance, reduction in economic inequality is very essential to achieving poverty eradication (goal 1), zero hunger (goal 2), good health and well-being (goal 3), quality education (goal 4), economic growth (goal 8), peaceful societies and access to justice (goal 16).

2.2.1 Inequality and Human Rights

Recently, economic inequality has been on the rise,[54] thereby constituting a challenge to poverty reduction, stirring political instability, and limiting the full enjoyment of human rights.[55] Economic inequality yields several detrimental human rights effects such as , poverty and social exclusion, disparities in access to health, education, housing, and such other amenities essential to the enjoyment of socio-economic rights.[56] Similarly, several causes of inequality such as breach of labour rights, decadence of public amenities, etc., has been described as breach of globally acceptable fundamental human rights.[57] Hence, inequality has been described not just as an economic issue but also a human rights issue. The argument is that certain degrees of inequality cannot be reconciled with the rights to equality, dignity, and commitments to human rights for everyone. Similarly, people should have equal opportunities to claim their rights and human rights principles should apply to everyone equally.[58] As such, extreme inequality has been referred to as an antithesis of human rights.[59]

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[54] Oxfam International *Extreme Inequality in Numbers* (2017); AUC/OECD *Africa's Development Dynamics 2018: Growth, Jobs and Inequalities* (2018).

[55] United Nations 'Report of the UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston' UN Doc A/HRC/29/31 (2015) 11-13.

[56] *Ibid*.

[57] Ignacio Saiz & Gaby Ore Aguilar 'Introducing the Debate on Economic Inequality: Can Human Rights make a Difference?' (2015) OpenGlobalRights Debate on Economic Inequality and Human rights available at *https://www.opendemocracy.net/openglobalrights/ignacio-saiz.gaby-or-aguilar/introducing-debate-on-economic-inequality-can-human-ri* [accessed February 12, 2019].

[58] Radhika Balakrishnan & James Heintz 'How Inequality threatens all Human Rights' (2015) OpenGlobalRights Debate on Economic Inequality and Human Rights available at *https://www.openglobalrights.org* [accessed February 12, 2019].

[59] *Ibid*.

It is noteworthy that equality and non-discrimination have been core principles of international human rights law and enshrined in several international and regional human rights convention, as well as national laws.[60]

2.2.2 Causes of Inequality

Several factors have been identified in academic literature and research reports for the increasing gap between the rich and the poor globally. Some of the factors identified include;

i. Precarious Employment- this refers to employment practices by employers designed to limit or reduce their permanent workforce to a minimum, to maximise their flexibility, and to shift risks to workers.[61] Such employment practices result in temporary, casual, and insecure jobs as workers in such jobs are not protected by labour laws as well as social security protections.[62] As a result, workers in such jobs are paid low wages, and provided no health nor retirement benefits. Such workers are also liable to the loss of their jobs at anytime, and without any benefits. These save huge amount of money for companies thus enabling more profits and higher salaries for senior officers, as well as larger dividends for shareholders all at the expense of the workers. Such practices give rise to deeper inequality.[63]

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[60] Section 42, Constitution of the Federal Republic of Nigeria 1999; Articles 2 & 3, International Covenant on Civil and Political Rights, and Article 3 International Covenant on Economic, Social and Cultural Rights, UN General Assembly Resolution 2200A (XXI) of December 16, 1966.
[61] International Labour Organization 'Policies and Regulations to Combat Precarious Employment' (2011) Background Paper for the Symposium on Regulations and Policies to Combat Precarious Work.
[62] *Ibid*.
[63] James A Crone *op cit*., 53.

ii. Labour market policies- labour market policies have been identified as a significant part of economic empowerment. Thus, labour policies which fail to respect human rights at work as enshrined in various human rights and labour conventions constitute a direct cause of inequality.[64] For instance, the erosion of trade unionism, minimum wages, as well as stagnation of workers' salaries, contribute significantly to economic inequality.[65] In fact, it is argued that the degree to which low income earners in corporate organizations are unable to join trade unions to protect their financial interests is a major cause of growing inequality. This is because vibrant trade unions constitute a significant factor in pay differentials of different workers.[66] For instance, it has been identified that the reason why workers in Germany are highly paid while those in the United States are minimally paid is because labour unions are vibrant in Germany but weak in the United States. In fact, it is mandatory for workers to make up half of corporate boards in Germany.[67]

iii. Growing gap between the formal and informal sector of an economy- Large pools of unskilled labour have been identified to play a major role in the perpetuation of poverty and inequality.[68] The argument is that people who are not in adequate employment and do not generate sufficient income to meet their health, education,

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[64] United Nations Centre for Economic and Social Rights 'From Disparity to Dignity: Tackling Economic Inequality through the Sustainable Development Goals' (2016) United Nations Human Rights Policy Brief, 15.

[65] International Labour Organization 'World of Work Report 2008: Income Inequalities in the Age of Financial Globalization' (2008) ix; Jaumotte F & Osorio Buitron C 'Inequality and Labor Market Institutions ' (2015) International Monetary Fund Staff Discussion Note SDN/15/14 available at *https://www.imf.org/external/pubs/ft/sdn/2015/sdn1514.pdf* [accessed February 12, 2019].

[66] Harold R Kerbo Social Stratification and Inequality: Class Conflict in Historical, Comparative, and Global Perspective (2003) 28.

[67] *Ibid*, 510.

[68] UNDESA 'The Inequality Predicament' *op cit*., 3.

and other basic needs and those of their families are usually among the most vulnerable in the society, and are prone to poverty.[69]

iv. Lack of accessible social amenities- the sustainable development agenda denotes 'access' as a prominent feature of the goal of equality. Such access includes access to basic resources, services, or opportunities that drives a good standard of living including quality and affordable education, healthcare, public infrastructures, among others.[70] Such access drives inequality when it is lacking.[71] An empirical study conducted finds that lesser access to education for disadvantaged groups, as well as reduced quality of education, reduces individual capabilities and consequently, fuels income inequality.[72] This is because income inequality is mostly justifiable on the basis of the capabilities of workers.

v. Illicit Financial Flows and Tax Evasion- Illicit financial flows (IFFs) refers to the movement of funds from one country to another so as to secure better returns, as well as for illicit purposes such as tax evasion and avoidance.[73] The Council for International Development defined IFFs as "*the transfer of illegally earned assets, or the hiding of legally earned assets to facilitate illegal tax evasion*".[74] IFFs is one of the most significant causes of persisting development problems such as

[69] *Ibid.*
[70] The Inequality Predicament, *op cit*., 2.
[71] *Ibid*.
[72] Fredrico Cingano, *op cit*.
[73] United Nations Economic Commission for Africa *The State of Governance in Africa: The Dimension of Illicit Financial Flows as a Governance Challenge* (2013) 2.
[74] Council for International Development 'Illicit Financial Flows and their Impact in Developing Nations' (2014).

inequality, particularly in developing countries.[75] In fact, there is a correlation between IFFs and high incidence of poverty, economic inequality and low level of human development.[76] IFFs deprives countries of resources that could be used to finance public and social services that aids equality.[77] The deprivation of the provision of social services hinders the guarantee of basic human rights especially socio-economic rights.[78] IFFs often take the form of trade mis-invoicing involving the deliberate falsification of the value or volume of an international commercial transaction.[79] Such transaction may be over- invoiced in order to illicitly move funds abroad, or under-invoiced in order to evade appropriate taxes.

2.2.3 Impacts of Inequality

A range of empirical studies show a correlation between inequality and social problems.[80] Similarly, there is growing evidence that high levels of inequality can be a serious threat to

[75] Kar Dev 'Globalisation, Illicit Financial Flows Widen Inequality' Global Financial Integrity March 26, 2013 available at *https://www.gfintegrity.org/press-release/globalisation-illicit-financial-flows-widen-inequality/* [accessed April 13, 2019]; Joseph Spanjers & Hakon Frede Foss *Illicit Financial Flows and Development Indices: 2008-2012* (2015).
[76] *Ibid*.
[77] Organisation for Economic Cooperation and Development *Measuring OECD Responses to Illicit Financial Flows* (2013) 15; Global Financial Integrity *Illicit Financial Flows from Developing Countries 2002-2011* (2013); L Ndikumana 'Capital Flight and Tax Havens: Impact on Investment and Growth in Africa (2013) Paper Delivered at the European Development Network Conference on 'Finance and Development' Berlin 11-13 December, 2013; African Development Bank, Organisation for Economic Cooperation and Development, United Nations Development Programme & United Nations Economic Commission for Africa *African Economic Outlook 2012* (2012) 69.
[78] J Maton & T Daniel 'The Kleptocrats Portfolio Decisions' in P Reuter (ed) *Draining Development? Controlling Flows of Illicit Funds from Developing Countries* (2012) 415; Marc Herkenrath 'Illicit Financial Flows and their Developmental Impacts: An Overview' (2014) 5(3) *International Development Policy*.
[79] Global Financial Integrity 'Trade Misinvoicing' available at *https://www.gfintegrity.org/issue/trade-misinvoicing/* [accessed April 13, 2019].
[80] Wilkinson Richard & Kate Pickett *The Spirit Level: Why more Equal Societies Almost Always do Better* (2009); Richard Wilkinson & Kate Pickett *The Spirit Level: Why Greater Equality makes Societies Stronger* (2010); Karen Rowlingson *Does Income Inequality Cause Health and Social Problems?* (2011) 5; The Equality Trust 'Why More Equality? Health and Social Problems are Worse in More Unequal Countries' (2013) available at *http://www.equalitytrust.org.uk/research* [accessed February 13, 2019].

economic growth, poverty reduction, social and economic stability, and sustainable development.[81] In fact, an empirical study of the relationship between income inequality and economic growth across 174 countries shows that income inequality strongly determines the quality of economic growth notwithstanding market structures and other institutional factors.[82] There are several effects of inequality on economic growth. First, the potential social tension, civil unrest, instability, and insecurity associated with inequality incur explicit avoidable remedial costs.[83] Second, inequality leads to uneven access to health, education, and other basic public services, and therefore to the intergenerational transmission of unequal economic and social opportunities.[84] This creates poverty traps, waste of human potential, and less dynamic societies.[85] Third, inequality results in a less stable and inefficient economic system that disrupts economic growth and participation of all members of society in the market. This is because an unequal concentration of income and wealth reduces the aggregate demand for goods and services thus stifling economic growth.[86] Fourth, several studies have shown that income inequality has significant impacts

[81] Alberto Alesina & Dani Rodrik 'Distributive Politics and Economic Growth' (1994) 19(2) *The Quarterly Journal of Economics* 465; Michael Bruno, Martin Ravallion & Lyn Squire 'Equity and Growth in Developing Countries: Old and New Perspectives on the Policy Issues' (1996) World Bank Policy Research Working Paper No. 1563; Andrew Berg, Jonathan Ostry & Jeromin Zettelmeyer 'What Makes Growth Sustained?' (2012) 98(2) *Journal of Development Economics* 149, UNDESA 'Inequality Matters' *op cit*., 21.
[82] Andrew Berg & Jonathan Ostry 'Inequality and Unsustainable Growth: Two Sides of the Same Coin?' (2011) International Monetary Fund Staff Discussion Note, August 2011.
[83] Todd Landman & Marco Larizza 'Inequality and Human Rights: Who Controls What, When, and How' (2009) 53(3) *International Studies Quarterly*; Lucas Chancel, Alex Hough, & Tancrede Voituriez 'Reducing Inequalities Within Countries: Assessing the Potential of the Sustainable Development Goals' (2018) 9 *Global policy* 5, 7.
[84] Joseph Stiglitz *The Price of Inequality: How Today's Divided Society Endangers Our Future* (2013).
[85] *Ibid*.
[86] *Ibid*.

on labour productivity and job satisfaction.[87] Thus, increasing inequality hinders economic growth through reduction in motivation and productivity at work as this reduces workers' capabilities and yields a decline in the productivity of the economy generally.[88]

2.2.4 Addressing Inequality

Several solutions have been proffered as capable of reducing the inequality gap, and enhancing the achievement of greater equality. The availability of comprehensive collective bargaining systems has been identified as one of the most effective means to achieve greater equality.[89] Thus, policies must be put in place to stop employers' aggression against workers who desire to create or join trade unions. Since employers often use precarious forms of employment to undermine collective bargaining and individual labour rights, as well as creating a low income sector, policies must be put in place providing for protection against unfair dismissal, full legal recognition of any de facto employment relationship, equal rights and privileges for part-time and regular employees, as well as setting clear limitations for the use of temporary employment.[90] Furthermore, labour policies must promote equal pay for work of equal value,[91] and ensure stringent labour standards at

[87] Ernst Fehr, Lorenz Goette & Christian Zehnder 'A Behavioural Account of the Labour Market: The Role of Fairness Concerns' (2009) *Annual Review of Economics* 355; David Card, Alexandre Mas, Enrico Moretti, & Emmanuel Saez 'Inequality at Work: The Effect of Peer Salaries on Job Satisfaction' (2012) 102(6) *American Economic Review* 2981; Emily Breza, Supreet Kaur, & Yogita Shamdasani 'The Morale Effects of Pay Inequality' (2018) 133(2) *The Quarterly Journal of Economics* 611.
[88] Frederico Cingano, *op cit*.
[89] Frank Hoffer, Pierre Laliberte, Tandiwe Gross 'The Challenge of Inequality: Time for Change' (2013) Background Report for the ILO Symposium on Income Inequality, Labour Market Institutions and Workers' Power, 10-13 December 2013; Sergio Chaparro 'Inequality Human Dignity and the Power of Unions' (2016) OpenGlobalRights Debate Economic Inequality: Can Human Rights Make a Difference?' available at *https://www.opendemocracy.net/openglobalrights/sergio-chaparro-hern-ndez/inequality-human-dignity-and-power-of-unions* [accessed February 15, 2019].
[90] *Ibid*.
[91] *Ibid.*

workplaces.[92] In addition, institutional changes such as increase in minimum wage is very important in reducing inequalities as it presents a strategy for improving wage distribution.[93]

Second, universal access to provision of basic amenities such as housing, water, electricity, sanitation, as well as social services such as nutrition, health, and education is essential to reducing poverty and promoting greater equality.[94] Such access to basic amenities and social infrastructure represents an equality of opportunity which is an important factor in the reduction of inequality. The ability to access such goods and services constitute aspects of equality of opportunity for all persons to work towards a desired outcome.[95] For instance, investment in education has played a central role in the rapid industrialisation around the world. The higher educational levels of farmers and their children in the Republic of Korea and the Taiwan Province of China has been reported to contribute immensely to the fast industrialisation of these countries.[96] The rise in enrolment in primary, secondary and tertiary education in Korea increased their receptivity to new agricultural technology, provided a social basis for an educated workforce for the industrial

[92] Michael Kumhof, Romain Ranciere, Pablo Winant 'Inequality, Leverage and Crises: The Case of Endogenous Default' (2013) International Monetary Fund Working Paper Series WP/13/249 available at *https://www.imf.org/external/pubs/ft/wp/2013/wp13249.pdf* [accessed February 15, 2019].
[93] United Nations Trade and Development *Trade and Development Report 2012: Policies for Inclusive and Balanced Growth* (2012).
[94] The Inequality Predicament, *op cit*; United Nations 'Equality: Why it Matters' available at *http://www.un.org/sustainabledevelopmment* [accessed February 12, 2019].
[95] United Nations 'A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development' (2013) The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda; United Nations Development Group 'Synthesis Report on the Global Thematic Consultation on Addressing Inequalities' (2013); United Nations Interactive Dialogue 2: Tackling Inequalities, Empowering Women and Girls and Leaving No One Behind' (2015).
[96] The Inequality Predicament, *op cit*.

sector, and contributed to significant reductions in income inequalities.[97] Similarly, increase in educational access and enrolment have been reported to result in a decline in the wage gap between skilled and unskilled workers in Latin America which is one of the most unequal regions in the world.[98]

Just like access to education, ensuring universal access to the highest attainable standard of health has been described as a precondition to mitigating economic inequalities.[99]

Third, fiscal and monetary policies have significant impacts on inequality because such policies play a role in revenue generation for social investment. The payment of taxes is a fundamental aspect of corporate responsibility,[100] and tax policies arguably constitute one of government's most powerful tools for the reduction of inequality through the redistribution of income and the production of public revenue for public services.[101] However, chasing revenue targets without proper redistributive policies could result in

[97] *Ibid.*
[98] *Ibid*.
[99] Angus Deaton *The Great Escape: Health, Wealth and the Origins of Inequality* (2015).
[100] John Christensen & Richard Murphy 'The Social Irresponsibility of Corporate Tax Avoidance: Taking CSR to the Bottom Line' (2004) 47(3) *Development* 37.
[101] Brautigam D, 'Introduction: Taxation and State Building in Developing Countries' in Brautigam D, Fjeldstad OH & Moore M (eds) *Taxation and State Building in Developing Countries: Capacity and Consent* (2008); Aguolu O 'Tax Reform in Nigeria: Unrealized Expectations' (2010) 64 *Bulletin for International Taxation* 61; Virginia Nnenna Onyeka & Carol Nwankwo 'The Effect of Tax Evasion and Avoidance on Nigeria's Economic Growth' (2016) 8(24) *European Journal of Business and Management* 158; Francesca Bastagli, David Coady & Sanjeev Gupta 'Income Inequality and Fiscal Policy' (2012) International Monetary Fund Staff Discussion Note SDN/12/08, June 28, 2012; Amar Inamdar 'Improving the Development Impact of Transnational Corporations' Background Paper to the Department for International Development White Paper on Globalisation available at *www.globalisation.gov* [accessed February 16, 2019].

unequal outcomes.[102] Thus, the imperative of equality requires that taxation is equitable and accountable.[103]

Thus, the extent of their impact will depend on how progressive a tax system is, and how much the poor benefits from social transfers and protection. Hence, fiscal policies have the potential to reduce inequality through progressive taxation and highly redistributive social transfers targeting basic public goods and services such as education and health.[104] The provision of such basic goods and services must be universal and must pay particular attention to the needs of the disadvantaged and marginalised groups in such a manner that ensures that economic growth and development are improved for all persons.[105]

Fourth, environmental protection and conservation provides a mechanism through which inequality may be frantically reduced. This is because environmental degradation limits opportunities for, and access to equality.[106] Environmental protection improves equality either by improving access and opportunity through the reduction of potential adverse environmental impacts or at least, reducing the damages.[107] For instance, the impacts of oil pollution on the Niger Delta[108] environment and its inhabitants is very grave. The frequent oil spills in the region have adverse socio-economic consequences on the inhabitants such as degradation of agricultural land and destruction of artisanal fishery as a result of the

[102] From Disparity to Dignity, *op cit*., 27.
[103] Centre for Economic and Social Rights 'Human Rights and Tax Policy' available at *http://cesr.org/taxjustice* [accessed February 15, 2019].
[104] The Inequality Predicament *op cit*.
[105] United Nations 'Equality: Why it Matters' *op cit.*; Frederico Cingano, *op cit*.
[106] United Nations Department of Economic and Social Affairs 'Inequality and the 2030 Agenda for Sustainable Development' *op cit.,* 4.
[107] *Ibid.*
[108] Niger Delta is the major oil producing area in Nigeria, and is where major oil exploration activities take place.

pollution of water bodies; it is noteworthy that farming and fishing constitute the major occupations of the inhabitants in the region.[109] Thus, as a result of the degradation of their environment, the inhabitants of this region are deprived of fertile soil and consequently means of livelihood. This results in an increasing level of poverty and economic inequality in this region. While the workers of the oil and gas companies earn huge salaries and live comfortably, the local community suffers the brunt of the exploration activities and are left in abject poverty thus increasing the inequality gap. Moreover, the frequent oil spills in the region as well as gas flares, pose serious health risks for the communities.[110] This can reduce the productivity as well as lifespan of the inhabitants of the communities and consequently, widen the equality gap.

Furthermore, social protection or social security has been reported to promote social inclusion and to be of significant effect in mitigating economic inequalities.[111] It is however important to ensure that spending on social protection reaches the most disadvantaged and marginalized persons or groups.[112] It has been argued that even though social protection

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[109] O Osibanjo 'Industrial Pollution Management in Nigeria' in EO Aina & NO Adedipe (eds.), *Environmental Consciousness for Nigerian National Development* (Nigeria: Federal Environmental Protection Agency, 1992) 97.

[110] United Nations Environmental Programme *Environmental Assessment of Ogoniland* (2011); Nriagu J 'Oil Industry and the Health of Communities in the Niger Delta of Nigeria' in Nriagu J (ed) *Encyclopedia of Environmental Health* (2011) 240; Werner AK, Vink S & Watt K 'Environmental Health Impacts of Unconventional Natural Gas Development: A Review of the Current Strength of Evidence' (2015) 505 *Science of the Total Environment* 1127.

[111] United Nations Economic and Social Commission for Asia and the Pacific 'Time for Equality: The Role of Social Protection in Reducing Inequalities in Asia and the Pacific' (2015) available at *http://www.unescap.org/sites/default/files/SDD%20tIME%20for%20Equality%20report_final.pdf* [accessed February 15, 2019]; United Nations Research Institute for Social Development *Combating Poverty and Inequality: Structural Change, Social Policy and Politics* (2015) 161.

[112] *Ibid.*

may not guarantee equality of outcomes, it however ensures that opportunities to participate in socio-economic activities are distributed more widely and inclusively.[113]

In addition, the growing gap between the formal and informal sector in many economies around the world strengthens the case for reducing inequality. Workers in the formal sector generally fall among the 'high-class' in the society as they are more likely to earn decent wages, receive employment benefits, and are protected by labour laws. Those in the informal sector on the other hand are typically the 'low-class' in the society as they are often excluded from various legal protections and are unable to access basic employment benefits. The argument is that since majority of poor people work in the informal sector, expansion of the sector has major implications for reducing poverty and inequality.[114]

2.3 The Corporate Sector and Inequality

The power of business to create social values has been studied for a long time.[115] The corporate sector has unleashed great innovations and progress on the world and has made life better for many people through the provision of goods and services, job creation, economic growth and globalisation. Globalisation is however not without its adverse impact notorious among which is increasing inequality across the globe.[116]

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[113] United Nations 'Inequality Matters' *op cit*., 103.
[114] The Inequality Predicament, *op cit*., 2.
[115] For instance, Howard R Bowen *Social responsibilities of the Businessman* (1953); Williams C Frederick 'The Growing Concern Over Business Responsibility' (1960) 2 *California Management Review* 54; Keith Davis 'Understanding the Social Responsibility Puzzle: What Does the Businessman Owe to Society? (1967) 10 *Business Horizons* 45.
[116] Edward R Freeman, Kirsten Martin & Bidhan Parmar 'Stakeholder Capitalism' (2007) 74 *Journal of Business Ethics* 303.

Historically, the issue of poverty and inequality was largely ignored in management theory and practice.[117] However, the potential contribution of the private sector to several societal problems has continued to attract global attention since the start of the 21st century.[118] According to the Department for International Development (DFID) in the UK, engaging in socially responsible corporate practices enables the economic growth generated by the private sector to be more inclusive and equitable.[119] Similarly, several international guidelines have evolved over the years persuading companies to assume responsibility for the social and environmental impacts of their activities.[120] For instance, the Organisation for Economic Cooperation and Development 'Guidelines for Multinational Enterprises',[121] the United Nations Global Compact,[122] the International Chamber of Commerce 'Business Charter for Sustainable Development',[123] the Ruggie Framework on Business and Human Rights,[124] have called on business organisations to be accountable for their environmental and social impacts. The United Nations Sustainable Development Goals reiterates the role of the private sector in solving several challenging problems the world is faced with

[117] Subhash C Jain & Sushil Vachani (eds) *Multinational Corporations and Global Poverty Reduction* (2006).
[118] Ans Kolk, Rob Van Tulder, Bart Westdijk 'Poverty Alleviation as Business Strategy? Evaluating Commitments of Frontrunner Multinational Corporations' (2006) 34(5) *World Development* 789; Rob Van Tulder 'The Role of Business in Poverty Reduction: Towards a Sustainable Corporate Story?' (2008) Background Paper Commissioned for the United Nations Research Institute for Social Development Flagship Report on Poverty, 6.
[119] Department for International Development *Socially Responsible Business Team Strategy* (2004) 2.
[120] Martje Theuws & Mariette Van Huijstee *Corporate Responsibility Instruments: A Comparison of the OECD Guidelines, ISO 26000 & the UN Global Compact* (2013) 4.
[121] The Organisation for Economic Cooperation and Development 'Guidelines for Multinational Enterprises' (2008) available at *http://www.oecd.org/investment/mne/1922428.pdf* [accessed February 16, 2019].
[122] The United Nations Global Compact (1999) available at *https://www.unglobalcompact.org/* [accessed February 16, 2019].
[123] The International Chamber of Commerce 'Business Charter for Sustainable Development' available at *https://www.iisd.org/business/tools/principles_icc.aspx* [accessed August 10, 2015].
[124] United Nations 'The Protect, Respect and Remedy Framework and Guiding Principles' (2008) available at *https://www.business-humanrights.org/en/un-secretary-generals-special-representative-on-business-human-rights/un-protect-respect-and-remedy-framework-and-guiding-principles* [accessed February 16, 2019].

including inequality.[125] The private sector is expected to support the achievement of the sustainable development goals by means of business activities and through engagement in public policy dialogue and advocacy.[126] Moreover, it has been argued that corporate social responsibility policies present an important tool for enhancing corporate contribution to the achievement of developmental goals particularly in developing countries.[127] This is because corporate social responsibility emphasises issues such as improved environmental quality, working conditions, labour and human rights, community development, and these issues have implications for equality as well. Also, since States are primarily responsible for dealing with the challenges of inequality, corporate social responsibility initiatives could be said to complement government efforts in the promotion of greater equality.[128] Consequently, corporate social responsibility policies have been argued to enhance the achievement of greater equality.[129] It must however be stated that CSR as it is today may not be completely beneficial to society in this regard. This is because the voluntary nature of CSR may dissuade companies from fully complying its principles, but only comply to the extent that it is beneficial to their business.

[125] The United Nations Sustainable Development Goals, goal 17.
[126] Ralph Hamann *op cit*., 176.
[127] Kate Grosser & Jeremy Moon 'The Role of Corporate Social Responsibility in Gender Mainstreaming' (2005) 7(4) *International Feminist Journal of Politics* 532; Wendy J Werner 'Corporate Social Responsibility Initiatives Addressing Social Exclusion in Bangladesh' (2009) 27(4) *Journal of Health, Population and Nutrition* 545.
[128] Peter Utting 'CSR and Equality' (2007) 28(4) *Third World Quarterly* 697.
[129] Maimunah Ismail 'Corporate Social Responsibility and Its Role in Community Development: An International Perspective' (2009) 2(9) *The Journal of International Social Research* 199; Karoly Behringer & Krisztina Szegedi 'The Role of CSR in Achieving Sustainable Development: Theoretical Approach' (2016) 12(22) *European Scientific Journal* 10.

2.4 Institutional Investors and Inequality

A major challenge with the corporate responsibility debate is how far should a company's responsibility extend?[130] In addressing this challenge, the United Nations through the Global Compact introduced the term 'sphere of influence'.[131] The term also features in the ISO 26000 standard which is another corporate responsibility instrument. The standard specifically recognises the integration, implementation and promotion of socially responsible behaviour throughout organisational policies and practices within its sphere of influence.[132] The term 'sphere of influence' indicates that leverage over other actors can give rise to responsibility, and the greater the leverage, the greater the responsibility to exercise it.[133] In other words, an organisation may cause, contribute, or be directly linked to adverse social impacts through its own activities or through its business relationships. In the latter case, the organisation is expected to use its leverage to change the practices of its business relationships so as to stop, mitigate, and/or prevent the impacts.[134]

On this basis, institutional investors are becoming more prominent in the global financial markets as a result of the influence they possess and exercise through the ownership of corporate shares.[135] In fact, there has recently been an evolution of the concerns around advancing long-term sustainability as an investment practice.[136] This is reflected in the

[130] Martje Theuws & Mariette van Huijstee *op cit*.
[131] The United Nations Global Compact (2000) available at *https://www.unglobalcompact.org* [accessed February 17, 2019].
[132] International Organization for Standardization 'ISO 26000: Guidance on Social Responsibility' (2010) available at *https://www.iso.org* [accessed February 17, 2019].
[133] Martje Theuws & Mariette van Huijstee, *op cit*., 8.
[134] *Ibid*.
[135] Gloudi van der Ahee & Jess Schulschenk *The State of Responsible Investment in South Africa: A Study of the Extent to which Environmental, Social & Governance Issues Impact on the Investment Decisions made by Institutional Investors in South Africa* (2013) 2.
[136] *Ibid*.

emergence of the United Nations-backed 'Principles for Responsible Investment' (UNPRI) in 2006 and the wide acceptance of the principles by institutional investors globally. This has launched the developing concept of 'responsible investment', that is an investment practice that integrates the consideration of ESG issues in investment decision-making, into prominence in the global investment industry.[137] The primary aim of the UNPRI is to help investors invest responsibly by providing a voluntary framework by which investors can integrate ESG issues into their investment practices so as to better align their objectives with those of the society at large.[138]

It is increasingly being understood around the globe that inequality constitute a significant social and economic issue. This is more so as it can increase financial and social instability, and reduce economic growth. This has several adverse impacts on investment including, negative impact on long-term investment performance, changes in the risks and opportunities that affect investment, instability of the financial and social systems within which investors operate.[139]

As already stated, the United Nations, through the SDGs, reiterates the role of the private sector in solving several sustainable development challenges, including inequality. Thus, the SDGs call for the participation of private actors generally, institutional investors inclusive. Since the launch of the SDGs in 2015, there has been increasing discussions on

[137] *Ibid*.
[138] *Ibid*.
[139] United Nations Principles for Responsible Investment & The Investment Integration Project *Why and How Investors Can Respond to Income Inequality* (2018) 10.

how investors can contribute to the SDGs.[140] Institutional investors have been called out as having a responsibility to use their ownership influence to tackle corporate culture and drive it to more sustainable economic growth by moving from being passive on challenging social issues.[141] Furthermore, investors have been identified as having the capacity to collaborate with policy makers to develop, as well as support economic policies which drive faster, more sustainable and more inclusive growth.[142]

In a bid to emphasise the role of institutional investors in combating inequality specifically, it has been suggested that investors need to evaluate their investee-companies on issues such as compensation, the right to collective bargaining, and other labour rights, among other things. The argument is that the evaluation of such issues allows investors to assess how a company is contributing to inequality.[143] This is because quality employment with a living wage empowers workers to participate in the socio-economy and also helps bridge the gap between the rich and the poor.

Therefore, institutional investors can contribute to greater equality by leveraging on their ownership influence to canvass and influence corporate policies towards greater equality.

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[140] The United Nations Principles for Responsible Investment, United Nations Environmental Program Finance Initiative, & United Nations Global Compact *The Sustainable Development Goal Investment Case* (2017) 6.
[141] *Ibid*.
[142] *Ibid.*
[143] Principles for Responsible Investment Academic Network 'Highlights from the Academic Network Conference and PRI in Person 2017' (2017) 12 *Responsible Investment Quarterly* 6, 20.

2.5 The Concept of Inclusive Development

The term 'development' is defined as a "*comprehensive economic, social, cultural and political process which aims at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom*".[144] From this definition, it is clear that development is a concept that finds its basis in inclusiveness; its major principles being the well-being of the entire population and all individuals, the active, free and meaningful participation of all individuals in development, and the fair distribution to the entire population of the benefits of development.

The idea of a right to development began with the call by developing countries for the establishment of a new international economic order to allow them enjoy their development.[145] This call led to the adoption of the United Nations Declaration and Program of Action of the New International Economic Order (NIEO Declaration) in 1974.[146] This was followed by the adoption of the Charter of Economic Rights and Duties of States in the same year.[147] Even though these instruments were aimed at empowering developing countries, they lacked the economic power to enforce their implementation rendering them futile.[148] This led to the build-up of the declaration of a specific right to development by the United Nations (UN). The right to development was proclaimed by the

[144] See the Preamble to the Declaration on the Right to Development, UNGA Res 41/128 4 December 1986.
[145] A Eide 'Human Rights-based Development in the Age of Globalization: Background and Prospects' in B Andreassen & S Marks (eds) *Development as a Human Right: Legal, Political and Economic Dimensions* (2006) 220, 228; Serges Alain Djoyou Kamga & Charles Manga Fombad 'A Critical Review of the Jurisprudence of the African Commission on the Right to Development' (2013) *Journal of African Law* 1.
[146] United Nations General Assembly Resolution 3201(S-VI) 1 May 1974.
[147] United Nations General Assembly Resolution 3281(XXIX).
[148] A Eide *op cit*., Kamga & Fombad *op cit*.

UN in the 'Declaration on the Right to Development' and has been affirmed in several international instruments including the 'Rio Declaration on Environment and Development',[149] the 'Vienna Declaration and Programme of Action of the World Conference on Human Rights',[150] the 'UN Millennium Declaration',[151] and the 'UN Declaration on the Rights of Indigenous Peoples',[152] among others.

According to the UN, the right to development is an inalienable human right and equality of opportunity for development is a prerequisite for its realisation.[153]According to the declaration, every person and all peoples are entitled to enjoy socio-economic development in which they can fully realise their human rights.[154] The declaration provides that humans are the central subject of development and should be active beneficiaries of the right to development.[155] Furthermore, the declaration obliges national governments to undertake all necessary measures for the realisation of the right to development and to ensure among other things, the equality of opportunity for all in their access to basic resources, social amenities, and the fair distribution of income.[156] National governments are also obliged to implement appropriate economic and social reforms to eradicate all social injustices within

[149] The Report of the United Nations Conference on the Environment and Development, UN Doc A/CONF. 151/26, 12 August 1992.
[150] Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna on 25 June 1993; UN Doc A/CONF.157/23.
[151] The United Nations Millennium Declaration, UN Doc A/Res/55/2 (2000).
[152] The United Nations Declaration on the Rights of Indigenous Peoples, UN Doc A/Res/61/295, 13 September 2007.
[153] See the Preamble to the Right to Declaration *op cit*.
[154] The Declaration on the Right to Development *ibid*, art 1.
[155] *Ibid*, art 2.
[156] *Ibid*, art 8.

their jurisdiction.[157] It has thus been argued that equality has a great potential to support the kinds of reforms that can lead to such inclusive development.[158]

In conclusion, the right to development connotes the enjoyment of socio-economic benefits that aids the realisation of other human rights. Such benefits are required to be enjoyed by all persons and people thus, recognising the need for shared or inclusive development. As identified earlier, the concept of equality emphasises access by all persons and people to the same opportunities without any form of discrimination. Pursuant to the concept of equality, it is on the basis of such access to the same opportunities without any discrimination that any outcome with respect to any person or people is justified. Therefore, inclusive development and equality are arguably two sides of the same coin; they are aimed at the same goal which is, access by all persons and people to equal means of achieving relevant outcomes. Such means may include, equal pay for equal work done, quality environmental conditions, access to basic social amenities, among others. Responsible investment, which is an investment strategy that requires institutional investors to take cognisance of socio-economic and environmental factors in their investment decisions, may therefore be a viable path for the realisation of equality and inclusive development.

i. The Right to Development in Africa

The right to development was first recognised in Africa pursuant to the enactment of the 'African Charter on Human and Peoples' Rights' (the ACHPR).[159] The ACHPR was

[157] *Ibid.*
[158] Raymond A Atuguba 'Equality, Non-Discrimination and Fair Distribution of the Benefits of Development' in United Nations *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (2013) 109.

enacted with the primary goal of restoring dignity to the African peoples after decades of colonialism and apartheid on the continent, and to promote and protect individual liberty.[160] According to the ACHPR, all peoples have the right to economic, social and cultural development.[161] Accordingly, the ACHPR vests the responsibility on States to ensure the exercise of this right through legislative or other measures that give effect to their realisation.[162]

From an African perspective therefore, the right to development, which is normative within the UN declaration and such other international instruments, transcends the realm of soft law as a result of the provision of article 22 of the ACHPR. It is also noteworthy in this regard that many member-States of the African Union have domesticated the ACHPR giving it a force of law within their jurisdictions.[163]

The African Commission on Human and Peoples' Rights (the Commission) had been faced with the interpretation of this right in several cases. One of such is the case of *the Democratic Republic of Congo v Burundi, Rwanda and Uganda* (the DRC case).[164] In this case, the DRC claimed to be a victim of a military assault by Burundi, Rwanda and Uganda which invaded its Eastern Provinces and committed mass violations of human rights. The violations comprised of the mass killing of civilians and the occupation of a hydroelectric dam which resulted in the interruption of electricity supply to homes, schools and hospitals

[159] The African Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force 21 October 1986.
[160] See the Preamble to the African Charter on Human and Peoples' Rights, *ibid*.
[161] *Ibid*, art 22.
[162] *Ibid*, art 1 & 22.
[163] For instance, Nigeria has domesticated the ACHPR through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria 2004.
[164] The African Commission on Human and Peoples' Rights, Comm. 227/1999.

thereby, causing the death of patients relying on life support systems. The DRC also claimed that the respondents were responsible for mass looting of properties and natural resources as well as the forced movement of populations from the region into concentration camps in Rwanda.

On the right to development, the Commission pronounced that the killings and barbaric acts against the Congolese people is a violation of their right to cultural development. Second, the Commission identified a relationship between the right to wealth and natural resources on one hand, and the right to development on the other. According to the Commission, "*the deprivation of the right of the people of the DRC, in this case, to freely dispose of their wealth and natural resources has also occasioned another violation, their right to their economic, social and cultural development…*"[165]

In *Centre for Minority Rights Development and Minority Rights Group International (on behalf of the Endorois) v Kenya* (the Endorois case),[166] the complaint concerned the eviction of the Endorois community from their ancestral land so that a national game reserve and tourist facilities could be established. According to the complainants, the eviction was a violation of the Endorois people's human rights resulting from their displacement from their ancestral land upon which their sustainable way of life was based. The complainants also claimed that the loss of their land interrupted their pastoral activities and infringed their rights to practice their culture as well as their overall process of

[165] *Ibid*, para 95.
[166] The African Commission on Human and Peoples' Rights, Comm. 276/2003.

development.[167] Furthermore, in claiming their right to development, the complainants alleged that their eviction from their land deprived them of their right to self-determination over their land and natural resources.[168] According to the Commission, the right to self-determination,[169] is an important element of the right to development. Accordingly, people should be given the choice to develop their potential and this cannot be done without territorial and economic self-determination. The Commission therefore held that the eviction of the Endorois people hindered their right to self-determination, and reduced their freedom to empower themselves.

It is therefore arguable from these cases, that the African Commission affirms that several issues of environmental, social and economic injustice are a direct violation of the right to development. This is more so given various forms of environmental and social injustice, as well as economic inequality reduces the freedom and potential of people to be empowered, thus increasing the inequality gap. It is therefore safe to conclude that from an African perspective, the right to development seeks to promote socio-economic and environmental justice within and among nations, among other things. It is noteworthy that these are also the major issues with which the principles for responsible investment are concerned. Thus, the implementation of the principles for responsible investment presents a viable avenue within which the realization of the right to development may be achieved within any jurisdiction.

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[167] *Ibid*, para 1.
[168] *Ibid*, para 129.
[169] The right to self-determination is provided for by the ACHPR, art 20; and art 1(1) of the International Covenant on Economic, Social and Cultural Rights, as well as the International Covenant on Civil and Political Rights, among others.

ii. The Duty-bearers of the Right to Development

Generally, rights are entitlements that require corresponding duties. Therefore, the recognition of a right would necessitate the identification of the duty-holder who bears the responsibility for the fulfilment of the right.[170] Since both the UN declaration and the African Charter specifically impose the duty for the fulfilment of the right to development on State actors, private actors may arguably not be liable for the fulfilment of the right. It is noteworthy however that State actors have an international legal responsibility to generally control the activities of private entities within their jurisdictions which are likely to violate the rights of those in such jurisdiction.[171] Moreover, both instruments specifically obliges States to formulate national policies, and undertake legislative or other processes aimed at the realisation of the right. Arguably, this requires that States enact laws and regulations that support the creation of an environment that promotes inclusive development, such as those that seeks to promote social justice, economic equality, and environmental conservation, among others.

Furthermore, the UN declaration obliges national governments to encourage popular participation in all spheres, as an important factor in development and in the full realisation of human rights.[172] This could imply that beyond the obligation imposed on national governments to be personally responsible for an inclusive development, they may also involve other potential participants that can enhance the achievement of inclusive

[170] Arjun K Sengupta 'Conceptualizing the Right to Development for the Twenty-first Century' in United Nations *Realizing the Right to Development op cit*., 67.
[171] See the African Commission on Human and Peoples' Rights in *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v Nigeria*, Comm. 155/1996 paras 57-58.
[172] United Nations Declaration on the Right to Development *op cit*., art 8(2).

development. This is in alignment with the argument that since rights are entitlements that require corresponding duties, instead of linking rights to exact duty-holders, it is better that claims to rights are addressed by anyone who can contribute to the fulfilment of the rights.[173]

In addition, the UN has affirmed some fundamental philosophies and ethics that underlie the right to development generally, one of which is the issue that the promotion of development is a fundamental concern of every human endeavour.[174] In other words, all human activities, ranging from the production of goods to the provision of services, are aimed in one way or the other at development. Whether such development is sustainable and inclusive is a major matter of concern. Second, is the issue of moral interdependence which connotes that the increasing interdependence of all peoples underlines the necessity of sharing responsibility for the promotion of development.[175] Such interdependence may be reflected for instance, in the producer-workers-consumers-regulator nexus. In other words, within a business context, business thrives on the relationship with various stakeholder groups such as the workers who contribute their skills and workmanship to the success of the business, the consumers who give their resources in exchange for the products and services, and the regulators who provide businesses with the government license to operate. The argument therefore is, that based on such interdependence, there is a moral responsibility on business organisations for instance, to share in the responsibility of promoting inclusive development.

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[173] Amartya Sen *Development as Freedom* (1999) 228.
[174] United Nations *Realizing the Right to Development op cit*., 9.
[175] *Ibid*, 10.

Thus, even though States are the major duty-bearers under international law generally and under the declaration and ACHPR specifically, it has been argued that the duty to promote the right to development is of general application and should apply to non-State entities as well.[176]

2.6 Theoretical Background to Private Regulation

This thesis is premised on a number of theories which advocate for a role of business in society beyond profit maximisation for shareholders to include adding value to societies in which they operate. This role of business in society is premised on the notion of corporate accountability which suggests the ability of those affected by a corporation to hold such corporation to account for its operations.[177] The theories posit that business contribution to society enhances primarily corporate accountability, while at the same time improving business legitimacy, and on the long term, corporate sustainability.[178]

Traditionally, the relationship between business and society was built on the existence of a regulatory environment whereby government addresses public issues and regulate business behaviour. Hence, government institutions are considered the only institutions that deal with societal welfare while corporations are regarded as economic actors only.[179] In other words, traditionally, business organisations are not obliged to take on issues of public

[176] *Ibid*, 13.
[177] Stuart M Cooper & David L Owen 'Corporate Social Reporting and Stakeholder Accountability: The Missing Link' (2007) 32 *Accounting, Organizations and Society*, 649; Ans Kolk 'Sustainability, Accountability and Corporate Governance: Exploring Multinationals' Reporting Practices' (2008) 18 *Business Strategy and the Environment* 1.
[178] Mullerat Ramon *Corporate Social Responsibility: Corporate Governance in the 21st Century* (2010); Abigail McWilliams & Donald Siegel 'Corporate Social Responsibility and Financial Performance: Correlation or Mispecification?' (2000) 21(5) *Journal of Strategic Management* 603.
[179] Andreas G Scherer, Guido Palazzo & Dirk Matten 'The Business Firm as a Political Actor: A New Theory of the Firm for a Globalized World' (2014) 53(2) *Business & Society* 143; Anant K Sundaram & Andrew C Inkpen 'The Corporate Objective Revisited' (2004) 15 *Organization Science* 350.

welfare although they may engage in corporate philanthropy as part of their business strategies.[180] However, with increasing globalisation, the distinction between the roles of the public sector and the private sector is fast becoming eroded as private actors are often looked up to by society to step in and fill any governance void left by the public sector.[181] In other words, the private sector is increasingly been expected to take responsibility for issues of public concern. This social expectation is rooted in several theories which will be examined in this section.

a. Social Contract Theory

Historically, the social contract theory has been one of the most dominant theories within moral and political philosophy. Although Thomas Hobbes was identified to have given the first full exposition and defence of the theory, John Locke and Jean-Jacques Rousseau are regarded as the best known proponents.[182] The social contract theory indicates that members of a society have reasons to endorse and comply with the social rules and/or principles of society.[183] It is concerned with the determination of whether or not a regime is legitimate and therefore worthy of loyalty, as a result of its compliance with the social rules or principles of the society.[184] According to the theory, the social rules and principles of a

[180] Amy J Hillman, Gerald D Keim & Douglas Schuler 'Corporate Political Activity: A Review and Research Agenda' (2004) 30 *Journal of Management* 837; Michael E Porter & Mark R Kramer 'The Competitive Advantage of Corporate Philanthropy' (2003) 80(12) *Harvard Business Review* 56.
[181] Andreas G Scherer & Guido Palazzo 'The New Political Role of Business in a Globalized World: A Review of a New Perspective on CSR and its Implications for the Firm, Governance and Democracy' (2011) 48 *Journal of Management Studies* 899; Stephen J Kobrin 'Sovereignty at Bay: Globalization, Multinational Enterprises, and the International Political System' in Alan M Rugman & Thomas L Brewer (eds) *The Oxford Handbook of International Business* (2001) 181.
[182] Fred D'Agostino, Gerald Gaus & John Thrasher 'Contemporary Approaches to the Social Contract' in Edward N Zalta (ed) *The Stanford Encyclopedia of Philosophy* (2016).
[183] *Ibid.*
[184] Fred D'Agostino *Free Public Reason: Making It Up As We Go Along* (1996) 23.

society, whether moral, political, legal and so on, can be rationally justified. The rationality of the justification is not based on the correctness or soundness of such rules and principles, but on the fact that everyone in society, given their individual reasoning, would agree to the rules and principles.[185]

Corporate social responsibility (CSR) initiatives have been viewed from a social contract point of view. From this point of view, CSR is perceived as a set of managerial practices that corporate organisations observe in order to meet public expectations beyond the provision of the law.[186] This view also perceives CSR practices as a moral obligation of corporate organisations to promote social values.[187] This is because corporate organisations have always been viewed as part of a larger social system and as such, have been expected to reflect a positive impact on the system in order to maintain their legitimacy and success.[188] Within the context of corporate organisations therefore, the social contract theory postulates the existence of a social contract between corporations and individual members of society.[189] On the basis of this social contract, society provides corporations with a legal standing to operate. The corollary is that corporate existence depends on the

[185] Fred D'Agostino *et al*., *op cit.*
[186] Dima Jamali & Ramez Mirshak 'Corporate Social Responsibility (CSR): Theory and Practice in a Developing Country Context' (2007) 72 *Journal of Business Ethics* 243, 244.
[187] C Mordi, IS Opeyemi, M Tonbara, & S Ojo 'Corporate Social Responsibility and the Legal Regulation in Nigeria' (2012) *Economic Insights-Trends and Challenges* 1.
[188] Keith Davis, William C Frederick & Robert L Blomstrom *Business and Society: Concepts and Policy Issues* (1980) 4 & 8; William C Frederick, Keith Davis & James E Post *Business and Society- Corporate Strategy, Public Policy, Ethics* 6 ed (1988) 28; Tom Cannon *Corporate Responsibility* (1992) 31-32; George A Steiner and John F Steiner *Business, Government and Society- A Managerial Perspective* 9 ed (2000) 6; Mel Wilson 'Corporate Sustainability: What Is It and Where Does It Come From?' (2003) *Ivey Business Journal* 1; Mervyn King & Teodorina Lessidrenska *Transient Caretakers- Making Life on Earth Sustainable* (2009) 8.
[189] Reg M Mathews *Socially Responsible Accounting* (1993) 26. See also Allan D Shocker & Prakash S Sethi 'An Approach to Incorporating Societal Preferences in Developing Corporate Action Strategies' (1973) 15(4) *California Management Review* 97.

willingness of the society to continue to allow corporations to operate.[190] Arguably, societal willingness to continue to allow corporations to operate will depend on the level at which society perceives them to be compliant with social rules and principles. Some of these rules and principles will generally involve issues of socioeconomic protection, as well as environmental protection. This is because even though various stakeholder groups are believed to have diverse interests and expectations,[191] there is a general consensus that economic stability, environmental justice, and social equity are shared interests and expectations among various stakeholder groups.[192]

Thus, notwithstanding that the main objective of a company is to make profits, it has a moral obligation to act in a socially responsible manner based on its social contract with the society. In fact, it is argued that such social responsibility enhances the possibility of its continued operation over the long term.[193]

b. Corporate Social Responsibility

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[190] *Ibid*. See also Craig Deegan 'Introduction: The Legitimising Effect of Social and Environmental Disclosure- A Theoretical Foundation' (2002) 15(3) *Accounting, Auditing and Accountability Journal* 282, 290; Craig Deegan *Australian Financial Accounting* (2002); Robert B Reich 'The New Meaning of Corporate Social Responsibility' (1998) 40(2) *California Management Review* 8; Gary O'Donovan 'Environmental Disclosures in the Annual Report: Extending the Applicability and Predictive Power of Legitimacy Theory' (2002) 15(3) *Accounting, Auditing and Accountability Journal* 344.

[191] For instance, shareholders will expect that the business of a corporation be managed in a manner that maximizes their investment returns. Employees will expect that a corporation be managed in a manner that gives regard to their welfare, and guarantees their job security. Customers will expect the continued provision of corporate products and services. The local communities will expect that corporate organisations conduct their business in a manner that creates value for the communities, and does not expose the communities to unreasonable health and environmental hazards.

[192] Mel Wilson 'Corporate Sustainability: What is it and Where Does It Come From?' (2003) *Ivey Business Journal* 1; World Health Organization *Social Protection: Shared Interests in Vulnerability Reduction and Development* (2012).

[193] Shocker & Sethi *op cit*.; RM Matthews *op cit*.; Gary O'Donovan *op cit*. Such threat may be reflected in various ways such as consumers' boycott, suppliers eliminating the supply of labour and credit to the company; see Craig Deegan *op cit*., 293. See also Amy Sinden 'Power and Responsibility: Why Human Rights should address Corporate Environmental Wrongs' in Doreen McBarnet, Aurora Voiculescu & Tom Campbell (eds) *The New Corporate Accountability: Corporate Social Responsibility and the Law* (2007) 501, 515; Keith Davis & Robert Blomstrom *Business and its Environment* (1966) 174-175.

The corporate social responsibility debate dates back to the 1930s, and has continuously been a widely discussed subject within academia and among business practitioners.[194] Historically, corporate social responsibility was premised on the belief that corporations are important centers of power and decision-making in society, and corporate activities impact the lives of members of the society in various ways.[195] Also, globalization with its consequences such as increased industrialization and technology advancement, was viewed as making the negative impacts of corporate activities on society more intense.[196] As a result, there has been a continuous demand for corporations to be responsible for their impacts on society.[197] Although corporate social responsibility may not represent an all-encompassing solution to the negative effects of business on society, it is believed that it guides corporate actions and business activities to align with social values and

[194] Archie B Carroll & Kareem M Shabana 'The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice' (2010) 12 *International Journal of Management Reviews* 85; Marina Nehme & Claudia Koon Ghee Wee 'Tracing the Historical Development of Corporate Social Responsibility and Corporate Social Reporting' (2008) 15 *James Cook University Law Review* 129; Elisabet Garriga & Domenec Mele 'Corporate Social Responsibility Theories: Mapping the Territory' (2004) 53 *Journal of Business Ethics* 51; Lance Moir 'What do we mean by Corporate Social Responsibility?' (2001) 1(2) *Corporate Governance: The International Journal of Business in Society* 16; Archie B Carroll 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) 38(3) *Business & Society* 268, 269.

[195] Archie B Carroll *ibid*, 269; Rosamaria C Moura-Leite & Robert C Padgett 'Historical Background of Corporate Social Responsibility' (2011) 7(4) *Social Responsibility Journal* 528.

[196] David C Korten *When Corporations Rule the World* 3 ed (2015) 1-2; Dan Butts *How Corporations Hurt Us All: Saving Our Rights, Democracy, Institutions and Our Future* (2003); Russell Mokhiber & Robert Weissman *Corporate Predators: The Hunt for Mega Profits and the Attack on Democracy* (1999) 26.

[197] Andreas G Scherer & Guido Palazzo 'Globalisation and Corporate Social Responsibility' in Andrew Crane, Abigail McWilliams, Dirk Matten, Jeremy Moon & Donald Siegel (eds) *The Oxford Handbook of Corporate Social Responsibility* (2008) 413; Barbara Parker *Globalisation and Business Practice: Managing Across Boundaries* (1998); Thomas P Lyon & John W Maxwell 'Corporate Social Responsibility and the Environment: A Theoretical Perspective' (2008) 2(2) *Review of Environmental Economics and Policy* 240; Joshua D Margolis & James P Walsh 'Misery Loves Companies: Rethinking Social Initiatives by Business' (2003) 48 *Administrative Science Quarterly* 268.

objectives.[198] In addition, it clarifies the obligations that corporate managers and business practitioners have towards the society in which they operate.[199]

Within the business and society field, CSR has been defined as an intervention mechanism for filling the governance gap caused by markets and government failure especially in developing economies.[200] This interventionist approach amplifies the role of the private sector in community development, and ascribes a public policy role to the sector.[201] In other words, this interventionist approach perceives CSR as a practice whereby corporations take on certain public sector roles on account of government failure or governance deficits. Therefore, as corporate citizens, corporations may be presumed to assume such roles in order to complement the efforts of government especially where such efforts have failed to adequately meet social needs and expectations. Such public sector roles that may be taken up by the private sector include provision of public infrastructures and social amenities, among others.

c. Business Ethics and African Values

Over a period of time, business organisations have continued to face several ethical issues in the course of their business activities and decision-making processes. These issues

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[198] Howard R Bowen *Social Responsibilities of the Businessman* (2013) 6. See also Archie B Carroll 'Corporate Social Responsibility: The Centerpiece of Competing and Complementary Frameworks' (2015) 44 *Organizational Dynamics* 87; Kellie McElhaney 'A Strategic Approach to Corporate Social Responsibility' (2009) *Leader to Leader* 30; Alessia D'Amato, Sybil Henderson & Sue Florence *Corporate Social Responsibility and Sustainable Business: A Guide to Leadership Tasks and Functions* (2009) 1.

[199] *Ibid.*

[200] Kwasi Dartey-Baah & Kwesi Amponsah-Tawiah 'Exploring the Limits of Western Corporate Social Responsibility Theories in Africa' (2011) 2(18) *International Journal of Business and Social Science* 126; Wayne Visser 'Corporate Social Responsibility in Developing Countries' in Andrew Crane, Abigail McWilliams, Dirk Matten, Jeremy Moon & Donald Siegel (eds) *The Oxford Handbook of Corporate Social Responsibility* (2008) 473.

[201] Andreas G Scherer & Guido Palazzo 'Globalization and Corporate Social Responsibility' in Andrew Crane *et al. ibid*, 413; Duane Windsor 'Corporate Social Responsibility: Three Key Approaches' (2006) 43(1) *Journal of Management Studies* 93.

include matters of morality, right and wrong, fairness and unfairness in the process of dealing with various stakeholders.[202] Within a Nigerian context, Nigeria is a highly religious country where a majority of its people belong to one religious sect or another. It is noteworthy that a majority of these religions are advocates of lofty moral principles.[203] For instance, the major religions in Nigeria encourage communalism.

Likewise, within an African context, there is the realization that western business practices, which is based solely on self-interest, is irreconcilable with the African values and perception of a person and conceptions of a community.[204] Therefore, it is believed that for any business to succeed in Africa, it must incorporate African values such as 'ubuntu'. The concept of 'ubuntu' is concerned with human relationships; it emphasises that human actions and decisions should always express a sense of concern and care for the welfare of the community.[205] This is because Africa understands a human being as one by virtue of belonging to a community. It is therefore believed that Africans have a causal influence on one another as a result of their communal relationship.[206] Thus, within an African context, business ethics implies that the operations of corporations, being corporate citizens, are ethically reasonable when they enhance the ultimate welfare of the society in which they operate. Likewise, the ethics of 'ubuntu' requires that corporations take into account the

[202] PA Ordu & S Okoroafor 'Sustaining Ethical Management Practice in Contemporary Organization: Challenges and Mitigations in Nigeria' (2014) 2(1) *EBSU Journal of Contemporary Management* 43; Archie B Carroll 'Ethical Challenges for Business in the New Millennium: Corporate Social Responsibility and Models of Management Morality' (2000) 10(1) *Business Ethics Quarterly* 33.
[203] Uwaoma Ironkwe & Promise A Ordu 'The Place of Ethics in Entrepreneurship: The Nigerian Perspective' (2015) 1(3) *International Journal of Innovation and Economic Development* 45.
[204] Munyaradzi F Murove 'The Voice from the Periphery: Towards an African Business Ethics Beyond the Western Heritage' (2005) 8(3) *South African Journal of Economic and Management Sciences* 339.
[205] P Kasenene 'Ethics in African Theology' in Charles Villa-Vicencio & John De Gruchy (eds) *Doing Ethics in Context: South African Perspectives* (1994) 141-142; Mogobe B Ramose *African Philosophy Through Ubuntu* (1999) 53; Martin Prozesky *Frontiers of Conscience: Exploring Ethics in a New Millennium* (2003) 5.
[206] Mogobe B Ramose *ibid*, 62-64.

adverse impacts on society caused through their deliberate decisions and actions.[207] It is noteworthy that this is exactly what the principles for responsible investment canvasses. It requires institutional investors to take into account not only the economic impacts of their business decisions and actions, but also their social and environmental impacts.

Furthermore, there is an African indigenous knowledge system especially, that of environmental conservation whereby, the existence of the people is intrinsically linked to the existence of nature.[208] Thus, with the increasing global agitations for environmental conservation, such an African perspective provides a viable basis for business practices that take into consideration environmental welfare.[209] The implementation of the principles for responsible investment by institutional investors is one of such business practices that promote environmental welfare, among others. It allows institutional investors to take into account the adverse environmental impacts of their business activities and decisions.

In addition, African ethics emphasises the notion of the common good that is, that the basic interests of all members of the society are the same whether natural or corporate citizens. As such, if the common good is achieved, the individual good is also achieved.[210] Therefore, there is no basis for a conceptual tension between the common good and the good of individual members of the society. Likewise, there is no reason to think of such common good as a threat to the realization of individual good.[211] This conception of African ethics affirms that there should be no tension or trade-off between the economic

[207] Munyaradzi F Murove *op cit*., 346.
[208] *Ibid*, 345
[209] *Ibid*.
[210] Kwame Gyekye 'African Ethics' in Edward N Zalta (ed) *The Stanford Encyclopedia of Philosophy* (2011) 1.
[211] *Ibid*.

interests of corporations as corporate citizens, and the interests of the society generally. Thus, such African ethics canvasses for business practices that take into consideration and balance the business interest with the general interest of the society. The principles for responsible investment is one of such business practices. Its implementation allows institutional investors take into consideration their economic interest as well as social and environmental interests in their business activities and decision-making processes.

2.7 Theoretical Framework of Study

It is noteworthy that the funds that fund managers invest with and make profits from, belong to various stakeholders in the society. It is logical to conclude that such fund owners have entrusted their funds to fund managers with the expectation that the funds will be maximized in their interests and for their benefits. Economic inequality is an issue that affects every individual, including the rich and the poor. This is because of the various social and security challenges that are attributable to economic inequality.[212] Similarly, issues of responsible investing, that is environmental, social and governance issues, are capable of posing adverse impacts on every member of a society.[213] Hence, this study is specifically framed within the context of business ethics. It is arguably morally wrong and unfair for fund managers to invest stakeholders' funds in business activities that poses adverse impacts and challenges to the stakeholders. Likewise, it will amount to an injustice for fund managers to make profits from stakeholders' funds at the detriment of the stakeholders.

[212] Within the Nigerian context, some of these challenges were identified in chapter one to include kidnapping and terrorism, among others.
[213] It has earlier been discussed in this chapter how environmental, social and governance issues contribute to inequality.

2.8 Conclusion

In this chapter, I presented an overview of the concept of economic inequality and I found that several socioeconomic issues such as environmental degradation, precarious employment, illicit financial flows and tax evasion, among others are major causes of high inequality rate in Nigeria. Therefore, to achieve equity, I identified some solutions such as labour market policies reforms, fiscal and monetary policies that guard against IFFs and tax evasion, environmental protection and conservation, among others. Within a framework of identified theories, I found that the private sector generally has a role to play in addressing the challenges of inequality even though it is traditionally a public sector role. This is because government has been established as incapable of addressing the challenges of inequality alone. Thus, within the identified theoretical and ideological context, I situated a role for the private sector generally and investment institutions particularly, in contributing to the identified solutions to addressing economic inequality in Nigeria.

CHAPTER THREE: INTRODUCTION TO RESPONSIBLE INVESTMENT

3.1 Definition of Responsible Investment

The concept of responsible investment[214] has been defined in different ways. It has been defined as an investment philosophy that combines ethical or environmental goals with financial goals.[215] It has also been defined as the exercise of ethical and social criteria, in addition to financial criteria, in the selection and management of investment portfolios.[216] Furthermore, responsible investment has been defined as a process of identifying and investing in companies that meet certain baseline standards or criteria of corporate social responsibility.[217] It connotes an investment strategy that considers environmental, social, and corporate governance criteria so as to generate long-term competitive financial returns and positive societal impact.[218]

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[214] It is noteworthy that other terms such as socially responsible investment, ethical investment and sustainable investment have been used to describe responsible investment in the literature.

[215] Russell Sparkes 'A Historical Perspective on the Growth of Socially Responsible Investment' in Rory Sullivan & Craig Mackenzie (eds) *Responsible Investment* (2006) 39. See also Stephanie Giamporcaro & Lise Pretorius 'Sustainable and Responsible Investment (SRI) in South Africa: A Limited Adoption of Environmental Criteria' (2012) 75 *Investment Analysts Journal* 17; Karen Heese 'The Development of Socially Responsible Investment in South Africa: Experience and Evolution of SRI in Global Markets' (2005) 22(5) *Development Southern Africa* 729; Thomas W Dunfee 'Social Investing: Mainstream or Backwater?' (2003) 43(3) *Journal of Business Ethics* 247, 248.

[216] See Chris Cowton 'The Development of Ethical Investment Products' in Andreas R Prindl & Bimal Prodhan (eds) The *ACT Guide to Ethical Conflicts in Finance* (1994) 213. See also Mark Mansley *Socially Responsible Investment: A Guide for Pension Fund Managers* (2000) 3.

[217] See the United States Social Investment Forum 'Report on Socially Responsible Investing Trends in the United States' SIF Industry Research Program, 2001 available at *http://www.ussif.org/files/Publications/01_Trends_Report.pdf* [accessed February 12, 2015].

[218] See the United States Social Investment Forum 'Report on US Sustainable, Responsible and Impact Investing Trends' (2014) available at *www.ussif.org/Files/Publications/SIF_Trends_14.F.ES.pdf* [accessed May 23, 2018]. See also 'The Value of Responsible Investment' (2014) Investment Leaders Group, University of Cambridge Institute for Sustainability Leadership available at *www.cisl.cam.ac.uk/publications/publications-pdfs/ilg-the-value-of-responsible-investment.pdf* [accessed May 23, 2018].

3.2 History and Evolution of Responsible Investment

The integration of extra-financial issues such as environmental and social issues into investment practice dates back to the Quakers anti-slavery campaigns especially in the 17th century.[219] Similarly, before the formal recognition of responsible investment as it is today, its principles have been in practice since the 1960s by investors, who based on religious convictions, avoided investments in what was regarded as 'sin stocks' such as those of tobacco, alcohol and gambling corporations among others.[220] This was pursuant to the teachings of John Wesley, the founder of the Methodist Church, who emphasised that the manner in which money is used is one of the most important teachings of the new testament.[221] Thus, religion played a vital role in the evolution of responsible investing.

The avoidance of investment in and divestment from South African companies during the apartheid regime increased the influence of the socially responsible investment movement on the international stage.[222] Moreover, as at 1995, the legislations of six States in the

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[219] Steve Schueth 'Socially Responsible Investing in the United States' (2003) 43(3) *Journal of Business Ethics* 189.

[220] Stephanie Giamporcaro & Lise Pretorius 'Sustainable and Responsible Investment (SRI) in South Africa: A Limited Adoption of Environmental Criteria' (2012) 75 *Investment Analysts Journal* 17; Suzette Viviers & Neil Eccles '35 Years of Socially Responsible Investing (SRI) Research- General Trends Over Time' (2012) 43(4) *South African Journal of Business Management* 1; Karen Heese 'The Development of Socially Responsible Investment in South Africa: Experience and Evolution of SRI in Global Markets' (2005) 22(5) *Development Southern Africa* 730; Mark S Schwartz 'The "Ethics" of Ethical Investing' (2003) 43(3) *Journal of Business Ethics* 195.

[221] Social Investment Forum '1999 Report on Socially Responsible Investing Trends in the United States' (1999) 7 available at *http://www.socialinvest.org/areas/research/trends/1999-Trends.htm* [accessed February 6, 2019]; Steve Schueth 'Socially Responsible Investing in the United States' (2003) 43(3) *Journal of Business Ethics* 189; Bailard Thought Series 'From SRI to ESG: The Origins of Socially Responsible and Sustainable Investing' (2017) White Paper published by Bailard Inc., California available at *https://www.bailard.com/wp-content/uploads/2017/06/Socially-Responsible-Investing-History-Bailard-White-Paper-FNL.pdf* [accessed February 6, 2019].

[222] Russell Sparkes *op cit*., 44; Karen Heese *op cit*.; Stephanie Giamporcaro & Lise Pretorius *op cit*.

United States required that State Pension investment strategy must be such that oppose religious discrimination in Northern Ireland.[223]

Since corporations are rarely always financially self-sufficient, they often times rely on the capital market[224] to finance corporate growth and new developments.[225] Traditionally, financial institutions do not consider the environmental and social impacts of their decisions to provide corporations with capital.[226] This is because financial institutions are not usually held accountable for the impacts of the corporate activities they fund. In addition, many institutional investors possess minimal knowledge of the kind of activities they fund and any ensuing negative impacts.[227] The capital provided by such investors is therefore transformed into an instrument of development which may impact negatively on the environment and society.[228] Therefore, financial institutions have been construed as indirect polluters who indirectly contribute to the global environmental and social problems as a result of the corporate activities they fund and benefit from.[229]

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[223] Peter G Pan & Jean K Mardfin 'Socially Responsible Investing' (2001) 5 available at *www.state.hi.us/lrb/* [accessed February 6, 2019].

[224] Which include financial institutions such as pension and mutual funds, insurance schemes, banks, *inter alia*.

[225] See Andreas Hackethal & Reinhard H Schmidt 'Financing Patterns: Measurement Concepts and Empirical Results' (2004) No 125 Working Paper Series, University of Frankfurt; Jenny Corbett & Tim Jenkinson 'How is Investment Financed? A Study of Germany, Japan, the United Kingdom, and the United States' (1997) 65 *The Manchester School* 69.

[226] See Benjamin Richardson op cit., 3.

[227] *Ibid*.

[228] *Ibid* at 5. See also Avery Kokers 'Ethical Investing: The Permissibility of Participation' (2001) 9(4) *Journal of Political Philosophy* 435 at 442.

[229] Juan Rada & Alex Trisoglio 'Capital Markets and Sustainable Development' (1992) 27(3/4) *Columbia Journal of World Business* 42; William L Thomas 'The Green Nexus: Financiers and Sustainable Development' (2000) 13 *Georgetown International Environmental Law Review* 899. See also the Norwegian Ministry of Finance 'The Report from the Graver Committee on Responsible Investments' (2003) available at *https://www.regjeringen.no/en/dokumenter/Report-on-ethical-guidelines/id420232/* [accessed April 5, 2018], where it was stipulated that such indirect contribution to environmental and social problems arising from corporate activities may be regarded as complicity in those activities.

Furthermore, prior to 2013, the United States Federal Courts usually exercise original jurisdiction over any civil action brought by foreigners for a tort in violation of international law under the Alien Tort Claims Act 1789 (ATCA). Specifically, from the mid-1990s till 2013, the ATCA was used as the basis of actions against corporations for complicity in human rights violations and environmental crimes.[230] The decision of the Supreme Court of the United States in *Kiobel v Royal Dutch Petroleum Co*.,[231] however changed this narrative. In that case, some Nigerian citizens brought an action claiming that Shell, through its Nigerian subsidiary Shell Petroleum Development Company (SPDC) aided and abetted the Nigerian government in the 1990s to commit violations of customary international law. The plaintiffs claimed that SPDC was complicit in the commission of torture, extra-judicial killing and other violations pursuant to the ATCA. The suit was dismissed by the Courts in the U.S. for lack of a direct business relationship between the U.S. and SPDC. According to the Supreme Court, such relationship must be established in order for the ATCA to be applicable, and ATCA generally does not apply to conducts outside the U.S.

Consequently, other ways to seek redress for human rights cases and other cases of social injustice involving businesses have been sought. One of such other avenues that have been explored include holding companies accountable with regard to forced labour and modern slavery in their supply chains pursuant to the California's Transparency in Supply Chains Act 2010 (the Act). The Act criminalises human trafficking and slavery, and affirms that

[230] Encyclopaedia Britannica 'The Alien Tort Claims Act 1789' available at www.britannica.com/topic/Alien-Tort-Claims-Act [accessed 13 July 2020].
[231] *Kiobel v Royal Dutch Petroleum Co*. 569 U.S. 108 (2013).

businesses inadvertently promote and sanction these crimes by subscribing to goods and products tainted by these crimes in their supply chain.[232] Thus, as a way of promoting responsible business conduct, the Act requires companies with over US$100million in annual revenues to disclose the specific actions they undertake to eliminate slavery and human trafficking from their supply chain.[233] Consequently, several lawsuits have been filed pursuant to the disclosure required by the Act. For instance, in 2015, an action was brought against a U.S. retail company Costco and its Thai Seafood supplier alleging that Costco knowingly sold prawns from a supply chain tainted by slavery. The claim alleged that Costco had for several years bought and resold farmed prawns from the Thai Food Group and other companies that have sourced the raw materials for their feed from ships manned by slaves.[234]

Second is to hold financial institutions directly accountable for the human rights abuse and other social injustices arising from the projects they finance or invest in.[235] Thus, in *Budha Ismail Jam et al. v International Finance Corporation*,[236] some Indian fishermen filed a suit against the International Finance Corporation (IFC), alleging that by funding the Tata Mundra Coal Power Plant in Gujarat, the IFC caused the loss of their livelihoods by reducing fish stocks, damaging the environment, and causing health problems. The plaintiffs seek compensation and injunctive relief for harm to property, health and economic livelihoods. The IFC pleaded for a dismissal of the case claiming immunity. The

[232] The California Transparency in Supply Chains Act 2010, section 2.
[233] *Ibid*, section 3.
[234] 'Costco and CP Foods Face Lawsuit Over Alleged Slavery in Prawn Supply Chain' The Guardian (International Edition) 19 August 2015.
[235] 'In the Courtroom & Beyond: New Strategies to Overcome Inequality and Improve Access to Justice' Business & Human Rights Resource Centre, Corporate Legal Accountability Annual Briefing 2016.
[236] *Budha Ismail Jam et al. v International Finance Corporation* 586 U.S. _ (2019).

Court held that the IFC was not absolutely immune from suit under the International Organisations Immunities Act 1945. This has therefore opened up the possibility that financial institutions may be held liable for harms caused by the projects they finance. In addition, it has been argued that global and domestic businesses, as well as private enterprises constitute the largest force capable of effectively solving the daunting social and environmental challenges the world is faced with.[237] On this basis, financial institutions, through their ownership stakes in companies, possess the necessary power and influence to improve corporate behaviour to more sustainable patterns of business operation.[238]

Therefore, financial institutions are increasingly been looked up to as an avenue for solutions that can help address sustainability challenges.[239] In a speech delivered by the Archbishop of Canterbury, it was emphasised that financial services are regarded as 'services' because they need to serve,[240] and be people-centred.[241] It has also been emphasised that corporate investors, having encouraged corporate behaviour that has jeopardized the planet, can no longer afford to stand by as uninformed, disengaged and

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[237] See generally Stuart L Hart Capitalism at the Crossroads: The Unlimited Business Opportunities in Solving the World's Most Difficult Problems (2005); Jeffrey Hollender & Stephen Fenichell *What Matters Most: Business, Social Responsibility and the End of the Era of Greed* (2004).

[238] Anastasia O'Rourke 'The Message and Methods of Ethical Investment' (2003) 11 *Journal of Cleaner Production* 683, 684; Bert Scholtens 'Finance as a Driver of Corporate Social Responsibility' (2006) 68 *Journal of Business Ethics* 19; Stephanie Giamporcaro & Lise Pretorius *op cit*. See also Coro Strandberg 'Best Practices in Sustainable Finance' (2005) 6 available at *www.corostrandberg.com/wp-content/uploads/files/Sustainable%20Finance%20-%20Best%20Practices.pdf* [accessed November 8, 2017].

[239] International Finance Corporation 'The Business Case for Sustainability' available at *www.ifc.org/sustainability* [accessed November 8, 2017]; Michael Imeson & Alastair Sim 'Sustainable Banking: Why helping communities and saving the planet is good for business' (2010) White Paper issued by Statistical Analysis System Institute available at *http://www.sas.com/resources/whitepaper/wp_24356.pdf* [accessed November 10, 2017], where it was expatiated that corporate organisations cannot afford to ignore societal expectations that business needs to be seen as acting on sustainability challenges. See also Djoko S Bandung 'Moving Towards an Era of Green Financing' The Jakarta Post January 20, 2015; Chris Hewett 'Civil Society urges Politicians to transform the Finance System' The Guardian UK January 5, 2015.

[240] In this case, financial services need to serve environmental and societal interests.

[241] A speech delivered by the Archbishop at the Conference 'Financial Inclusion: The Next Move Forward' held in London on January 19, 2015. See the Anglican Communion News Service, January 19, 2015.

passive financial market participants.[242] Hence, there is an uprising trend globally whereby financial institutions are pressed to ensure that their investment activities contribute to the goals of sustainability, and are held accountable for such investment activities. This is deduced from major documents promoting the integration of environmental, social, and governance issues into institutional investments,[243] as well as the development of various national and regional responsible investment initiatives.[244]

Pursuant to these documents, financial institutions can play this pivotal role across various industries and sectors by incorporating social, environmental, and governance issues into their investment policies and decision-making processes, and also systematically evaluating environmental, social, and governance risks in their investments appraisal. By so doing, financial institutions are expected to focus their investments on those companies with high environmental, social and governance performance, as well as actively engage their investee-companies with regard to environmental, social and governance issues.

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[242] See Geeta Aiyer 'Global Investment Community Can't Afford to Ignore Sustainability' The Guardian UK November 14, 2014.

[243] Such as the United Nations Environmental Program Finance Initiative Freshfields Report 'A Legal Framework for the Integration of Environmental, Social, and Governance Issues into Institutional Investment' (2005) available at *http://www.unepfi.org/fileadmin/documents/freshfields_legal_resp_20051123.pdf* [accessed February 12, 2018]; the United Nations 'Principles for Responsible Investment' (2006) available at *http://www.unpri.org/* [accessed February 12, 2018]; the 'Code for Responsible Investing in South Africa' (2011) available at *http://www.oldmutual.com/download/18138/Code%20for%20Responsible%20Investing%20SA%20(PDF).pdf* [accessed February 12, 2018].

[244] Such as the United Kingdom Social Investment Forum at *www.uksif.org/uksif*; European Social Investment Forum at *www.eurosif.com/*; United States Social Investment Forum at *www.ussif.org*; Association for Sustainable and Responsible Investment in Asia at *www.asria.org/*; Responsible Investment Association Australasia at *http://responsibleinvestment.org/*; Responsible Investment Association, Canada at *http://riacanada.ca/*.

3.3 The Nature of Responsible Investment

3.3.1 Responsible Investment as Corporate Social Responsibility

The corporate social responsibility debate dates back to the 1930s, and has continuously been a widely discussed subject within academic circles and business practitioners.[245] Historically, corporate social responsibility was premised on the belief that corporations are important centers of power and decision-making in the society, and corporate activities impact the lives of members of the society in various ways.[246] Also, globalization with its consequences such as increased industrialization and technology advancement, was viewed as making the negative impacts of corporate activities on the society more intense.[247] As a result, there has been a continuous demand for corporations to be responsible for their impacts on the society.[248] Although corporate social responsibility may not represent an all-encompassing solution to the negative effects of business on the society, it is believed that it guides corporate actions and business activities to align with societal values and

[245] Archie B Carroll & Kareem M Shabana 'The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice' (2010) 12 *International Journal of Management Reviews* 85; Marina Nehme & Claudia Koon Ghee Wee 'Tracing the Historical Development of Corporate Social Responsibility and Corporate Social Reporting' (2008) 15 *James Cook University Law Review* 129; Elisabet Garriga & Domenec Mele 'Corporate Social Responsibility Theories: Mapping the Territory' (2004) 53 *Journal of Business Ethics* 51; Lance Moir 'What do we mean by Corporate Social Responsibility?' (2001) 1(2) *Corporate Governance: The International Journal of Business in Society* 16; Archie B Carroll 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) 38(3) *Business & Society* 268, 269.

[246] Archie B Carroll *ibid*, 269; Rosamaria C Moura-Leite & Robert C Padgett 'Historical Background of Corporate Social Responsibility' (2011) 7(4) *Social Responsibility Journal* 528.

[247] David C Korten *When Corporations Rule the World* 3 ed (2015) 1-2; Dan Butts *How Corporations Hurt Us All: Saving Our Rights, Democracy, Institutions and Our Future* (2003); Russell Mokhiber & Robert Weissman *Corporate Predators: The Hunt for Mega Profits and the Attack on Democracy* (1999) 26.

[248] Andreas G Scherer & Guido Palazzo 'Globalisation and Corporate Social Responsibility' in Andrew Crane, Abigail McWilliams, Dirk Matten, Jeremy Moon & Donald Siegel (eds) *The Oxford Handbook of Corporate Social Responsibility* (2008) 413; Barbara Parker *Globalisation and Business Practice: Managing Across Boundaries* (1998); Thomas P Lyon & John W Maxwell 'Corporate Social Responsibility and the Environment: A Theoretical Perspective' (2008) 2(2) *Review of Environmental Economics and Policy* 240; Joshua D Margolis & James P Walsh 'Misery Loves Companies: Rethinking Social Initiatives by Business' (2003) 48 *Administrative Science Quarterly* 268.

objectives.[249] In addition, it clarifies the obligations that corporate managers and business practitioners have towards the society in which they operate.[250]

Therefore, several definitions and descriptions of corporate social responsibility have been developed over the past decades.[251] For instance, corporate social responsibility has been described as an agenda which seeks to establish a more humane, ethical and transparent way of doing business.[252] Also, corporate social responsibility has been described from the viewpoint of corporate managers as public trustees and social stewards whereby they have an ethical obligation to assume responsibility for the public good.[253] On the basis of this ethical obligation, corporate managers are expected to consider whether their corporate activities are likely to promote the public good and advance societal objectives.[254]

Corporate social responsibility has also been described as the duty imposed on corporate managers to balance the competing claims of employees, customers and the society at large with those of the shareholders, as well as corporate philanthropic support of worthy social

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[249] Howard R Bowen *Social Responsibilities of the Businessman* (2013) 6. See also Archie B Carroll 'Corporate Social Responsibility: The Centerpiece of Competing and Complementary Frameworks' (2015) 44 *Organizational Dynamics* 87; Kellie McElhaney 'A Strategic Approach to Corporate Social Responsibility' (2009) *Leader to Leader* 30; Alessia D'Amato, Sybil Henderson & Sue Florence *Corporate Social Responsibility and Sustainable Business: A Guide to Leadership Tasks and Functions* (2009) 1.

[250] *Ibid*.

[251] Matthias S Fifka 'Towards a More Business-Oriented Definition of Corporate Social Responsibility: Discussing the Core Controversies of a Well-Established Concept' (2009) 2 *Journal of Service Science & Management* 312. See also Alexander Dahlsrud 'How Corporate Social Responsibility is Defined: An Analysis of 73 Definitions' (2008) 15 *Corporate Social Responsibility and Environmental Management* 1; Wan S Wan-Jan 'Defining Corporate Social Responsibility' (2006) 6(3/4) *Journal of Public Affairs* 176; Archie B Carroll 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) 38(3) *Business & Society* 268.

[252] See Marcel V Marrewijk 'Concepts and Definitions of CSR and Corporate Sustainability: Between Agency and Communion' (2003) 44 *Journal of Business Ethics* 95.

[253] William C Frederick 'Corporate Social Responsibility: Deep Roots, Flourishing Growth, Promising Future' in Andrew Crane et al *op cit*., 522 at 524; Peter F Drucker *The Practice of Management* (2006) 388; Steve Letza & Xiuping Sun 'Corporate Governance: Paradigms, Dilemmas, and Beyond' (2002) 2 *The Poznan University of Economics Review* 43.

[254] *Ibid*.

causes.[255] From this viewpoint, the obligations of corporate managers are neither restricted to the shareholders nor to the economic interests of the company, but extend to voluntary corporate actions that promote social good in the society.[256] Thus, compliance with corporate law requirements is not enough responsibility for corporate managers, they must be concerned with externalities such as the environment and the society as much as they are concerned with shareholders and corporate economic performance.[257]

Corporate social responsibility has further been described from the viewpoint of corporations as corporate citizens. On the basis of such corporate citizenship, business organisations are regarded as an integral part of the society in which they operate, and thus have duties and obligations in the society just as natural citizens of the society do.[258] Corporations, upon registration are granted citizenship by the State not just as economic

[255] WC Frederick *op cit*.

[256] Alexandro Kleine & Michael V Hauff 'Sustainability-Driven Implementation of Corporate Social Responsibility: Application of the Integrative Sustainability Triangle' (2009) 85 *Journal of Business Ethics* 517; Paul C Godfrey & Nile W Hatch 'Researching Corporate Social Responsibility: An Agenda for the 21st Century' (2007) 70 *Journal of Business Ethics* 87; Abigail McWilliams & Donald Siegel 'Corporate Social Responsibility: A Theory of the Firm Perspective' (2001) 26 *Academy of Management Review* 117; Geoffrey P Lantos 'The Boundaries of Strategic Corporate Social Responsibility' (2001) 18(7) *Journal of Consumer Marketing* 595.

[257] Carmen Valor 'Corporate Social Responsibility and Corporate Citizenship: Towards Corporate Accountability' (2005) 110(2) *Business and Society Review* 191, 192-193. See also Adam Lindgreen, Valerie Swaen & Francois Maon 'Introduction: Corporate Social Responsibility Implementation' (2009) 85 *Journal of Business Ethics* 251; Debby Bielak, Sheila M Bonini & Jeremy M Oppenheim 'CEOs on Strategy and Social Issues' (2007) 10 *McKinsey Quarterly* 8; Paul Hohnen *Corporate Social Responsibility: An Implementation Guide for Business* (2007) 2.

[258] Duane Windsor 'Corporate Citizenship: Evolution and Interpretation' in Jorg Andriof & Malcom McIntosh (eds) *Perspectives on Corporate Citizenship* (2001) 39; Donna J Wood & Jeanne M Logsdon 'Theorising Business Citizenship' in Andriof & McIntosh ibid at 83; Dirk Matten, Andrew Crane & Wendy Chapple 'Behind the Mask: Revealing the True Face of Corporate Citizenship' (2003) 45(1-2) *Journal of Business Ethics* 109; Chris Marsden 'The New Corporate Citizenship of Big Business: Part of the Solution to Sustainability' (2000) 105 *Business and Society Review* 8, 11.

entities for commercial purposes but also as social entities for general community needs and the promotion of overall societal welfare.[259]

In addition, it is noteworthy that corporate social responsibility has become more acceptable and promoted globally by various organs of the society such as national governments, inter-governmental and non-governmental organisations.[260] Some international organisations have also shown support for corporate social responsibility by contributing to the definition of the subject, and establishing guidelines for its promotion.[261] For instance, the World Business Council for Sustainable Development has defined corporate social responsibility as "*the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as the local community and society at large*".[262] It has also been referred to as "*a mechanism for entities to voluntarily integrate social and environmental concerns into their operations and their interaction with their stakeholders which are over and above the entities' legal responsibilities*".[263] However, it must be noted that voluntariness is usually ineffective in harnessing the potentials of CSR as against

[259] WC Frederick *op cit*., 527; Scott Hamilton 'Corporate Governance from the Perspective of the Share' (2008) 5 *The BSIS Journal of International Studies*; Ralph Hamann 'Can Business Make Decisive Contributions to Development? Towards a Research Agenda on Corporate Citizenship and Beyond' (2006) 23(2) *Development Southern Africa* 175; Andrew Gamble & Gavin Kelly 'Shareholder Value and the Stakeholder Debate in the UK' (2001) 9(2) *Corporate Governance: An International Review* 110, 115; Richard C Warren *Corporate Governance and Accountability* (2000) 130-143; Janet Dine *The Governance of Corporate Groups* (2000) 17-21.

[260] See Moura-Leite & Padgett *op cit*., 533. See also Lisbeth Segerlund *Making Corporate Social Responsibility a Global Concern: Norm Construction in a Globalizing World* (2013); Radu Mares *The Dynamics of Corporate Social Responsibilities* (2008).

[261] *Ibid*.

[262] World Business Council for Sustainable Development *Corporate Social Responsibility: Meeting Changing Expectations* (1999) 3.

[263] Standards Australia International 'AS 8003-2003 Corporate Social Responsibility' (2003) 4. See also the European Commission 'Promoting a European Framework for Corporate Social Responsibility' European Union Green Paper EU Doc/01/9 (2001).

formal regulation which is better capable of holding companies accountable for their social impacts.

Consequently, corporate social responsibility emphasises that corporate managers and business practitioners take into account some external interests in addition to those of the shareholders when taking any corporate action or making any corporate decision. It also presupposes that corporate managers go beyond legal requirements and be accountable for the impacts of their corporate activities to wider stakeholder groups. Over time, there has been a shift from mere corporate social responsibility to corporate social responsiveness which deals with what corporations should do in order to effectively comply with their social obligations.[264]

Corporate social responsiveness emphasises that merely reiterating or identifying the social responsibilities of corporations is not sufficient to satisfy the requirements of corporate social responsibility; in addition to identifying their social responsibilities, corporations must develop strategies to actually and effectively comply with those responsibilities.[265] Thus, corporate social responsiveness is concerned with the managerial processes of responding to corporate social roles; managerial processes such as corporate social policy, and social decision making. As a result, implementing the principles for responsible

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[264] Steen Vallentin 'Private Management and Public Opinion: Corporate Social Responsiveness Revisited' (2009) 48 *Business & Society* 60; Irina E Iamandi 'Corporate Social Responsibility and Social Responsiveness in a Global Business Environment: A Comparative Theoretical Approach' (2007) 10(23) *Romanian Journal of Economic Forecasting* 3; William C Frederick 'From CSR_1 to CSR_2:The Maturing of Business and Society Thought' (1994) 33(2) *Business & Society* 150; Peter Arlow & Martin J Gannon 'Social Responsiveness, Corporate Structure, and Economic Performance' (1982) 7(2) *The Academy of Management Review* 235.

[265] Philip Kotler & Nancy Lee *Corporate Social Responsibility: Doing the Most Good for Your Company and Your Cause: Best Practices from Hewlett-Packard, Ben & Jerry's and other Leading Companies* (2005) 7-9; David Hess, Nikolai Rogovsky & Thomas W Dunfee 'The Next Wave of Corporate Community Involvement: Corporate Social Initiatives (2002) 44(2) *California Management Review* 110.

investment constitutes a major process or strategy by which institutional investors in the Nigerian financial sector can be socially responsible. In addition, responsible investment improves and enhances corporate social responsibility practices among the investee-companies of such investors.

3.3.2 Responsible Investment as a Path to Sustainable Development

The concept of sustainable development is not a new concept; it has attracted recognition since the early centuries and across diverse times.[266] The concept challenges the conventional view of development which prioritises economic growth and development at the detriment of nature even though future economic development significantly depends on the continuous availability of natural resources.[267] Although the sustainable development debate can be traced to the early 1960s, the Stockholm Conference brought it to the fore by recognising the importance of environmental management.[268] The Stockholm Declaration brought to the fore indications that environment and development can no longer afford to

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[266] Marie-Claire C Segger & Ashfaq Khalfan *Sustainable Development Law: Principles, Practices, and Prospects* (2004) 16. See also Edward B Barbier 'The Concept of Sustainable Economic Development' (1987) 14(2) *Environmental Conservation* 101; Sharachchandra M Lele 'Sustainable Development: A Critical Review' (1991) 19(6) *World Development* 607; William M Adams *Green Development: Environment and Sustainability in the Third World* 2 ed (2001); John Robinson 'Squaring the Circle? Some Thoughts on the Idea of Sustainable Development' (2004) 48(4) *Ecological Economics* 369 for the recognition and discussion of sustainable development across different times.

[267] Susan Baker *Sustainable Development* (2006) 1-3; Dennis A Rondinell & Michael A Berry 'Environmental Citizenship in Multinational Corporations: Social Responsibility and Sustainable Development (2000) 18 *European Management Journal* 70; Giuseppe Munda 'Environmental Economics, Ecological Economics, and the Concept of Sustainable Development' (1997) 6(2) *Environmental Values* 213; Ian Moffatt *Sustainable Development: Principles, Analysis and Policies* (1996); Mario Giampietro 'Using Hierarchy Theory to Explore the Concept of Sustainable Development' (1994) 26(6) *Futures* 616; Stephan Schmidheiney *Changing Course: A Global Business Perspective on Development and the Environment* (1992).

[268] Desta Mebratu 'Sustainability and Sustainable Development: Historical and Conceptual Review' (1998) 18 *Environmental Impact Assessment Review* 493. See also Gill Seyfang 'Environmental Mega-Conferences-From Stockholm to Johannesburg and Beyond' (2003) 13(3) *Global Environmental Change* 223; Djamchid Memtaz 'The United Nations and the Protection of the Environment: From Stockholm to Rio de Janeiro' (1996) 15(3/4) *Political Geography* 261; Carl Mitcham 'The Concept of Sustainable Development: Its Origins and Ambivalence' (1995) 17(3) *Technology in Society* 311.

be in a state of conflict because development significantly depends on nature.[269] Thus, sustainable development was viewed as a concept that connotes the integration of environmental protection with economic development because environmental sustainability is required for the sustainability of economic development.[270]

The notion of sustainable development became more popular and widely accepted globally as a result of the publication of the Report of the World Commission on Environment and Development in 1987.[271] The global acceptability of sustainable development was further enhanced as a result of the United Nations Conference on Environment and Development held in 1992,[272] as well as the World Summit on Sustainable Development held in 2002.[273] These summits gave rise to a significant increase in the influence of sustainable development on national and international policy development, as well as policy documents of business organisations globally.[274]

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[269] See the 'United Nations Stockholm Declaration on the Human Environment' (1972) UN Doc A/CONF.14/48/Rev.1 available at *http://www.unep.org/documents.multilingual/default.asp?documentid=97&articleid=1503* [accessed March 21, 2016].

[270] Susan Baker *op cit*., 5; Sharachchandra M Lele op cit.; David W Pearce, Edward Barbier & Anil Markandya *Sustainable Development: Economics and Environment in the Third World* (1990) 4.

[271] John Robinson *op cit*.; Paul R Portney 'Corporate Social Responsibility: An Economic and Public Policy Perspective' in Bruce L Hay, Robert N Stavins & Richard H Vietor (eds) *Environmental Protection and the Social Responsibility of Firms: Perspectives from Law, Economics, and Business* (2010) 107; John Drexhage & Deborah Murphy 'Sustainable Development: From Brundtland to Rio 2012' (2010) Background Paper Prepared for Consideration by the United Nations High Level Panel on Global Sustainability 2 available at *http://www.un.org/wcm/webdav/site/climatechange/shared/gsp/docs/GSP1-6_Background%20on%20Sustainable%20Devt.pdf* [accessed March 21, 2018]; David Reid *Sustainable Development: An Introductory Guide* (1995) xiii.

[272] United Nations Conference on Environment and Development, Rio de Janeiro (1992) which gave rise to the Rio Declaration on Environment and Development.

[273] World Summit on Sustainable Development, Johannesburg (2002) which gave rise to the Johannesburg Declaration on Sustainable Development and the Implementation Plan of the Declaration.

[274] Peter Hardi & Terrence Zdan *Assessing Sustainable Development: Principles in Practice* (1997) 8. See also Desta Mebratu *op cit*.; Gill Seyfang *op cit*.; Djamchid Memtaz *op cit*.

Furthermore, consequent upon the Brundtland Report,[275] the Rio Declaration,[276] and the Johannesburg Declaration,[277] sustainable development is no longer regarded as a mere concept but a recognised principle of contemporary international law.[278] Since contemporary international law emphasises the need for environmental protection, as well as establishes economic, social and cultural rights, the need for the integration of social justice and equity with economic development and environmental protection was also recognised.[279] Thus, the sustainable development agenda contemporarily emphasises a development paradigm that integrates environmental and social concerns with economic considerations.[280]

Although there is no generally acceptable definition of the term 'sustainable development', its core idea was defined by the World Commission on Environment and Development (the Brundtland Commission) as 'development that meets the needs of the present without

[275] The Report of the World Commission on Environment and Development (Brundtland Commission) *Our Common Future* (1987) available at *http://www.un-documents.net/our-common-future.pdf* [accessed March 21, 2018].
[276] United Nations Declaration on Environment and Development (Rio Declaration) (1992) 31 *International Legal Materials* 874 available at *http://www.jus.uio.no/lm/environmental.development.rio.declaration.1992/portrait.a4.pdf* [accessed March 21, 2018].
[277] The Johannesburg Declaration on Sustainable Development (2002) UN Doc A/CONF.199/20 available at *http://www.unmillenniumproject.org/documents/131302_wssd_report_reissued.pdf* [accessed March 21, 2018].
[278] Segger & Khalfan *op cit*. See also Virginie Barral 'Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm' (2012) 23(2) *The European Journal of International Law* 377.
[279] See Segger & Khalfan *op cit*., 17; Robert W Kates, Thomas M Parris & Anthony A Leiserowitz 'What Is Sustainable Development? Goals, Indicators, Values, and Practice' (2005) 47(3) *Environment: Science and Policy for Sustainable Development* 8.
[280] Christian Rammel 'The Paradox of Sustainable Development: Socio-Ecological System, Stability and Change' in Alexander D Maples (ed) *Sustainable Development: New Research* (2005) 1; Bill Hopwood, Mary Mellor & Geoff O'Brien 'Sustainable Development: Mapping Different Approaches' (2005) 13 *Sustainable Development* 38; Bob Giddings, Bill Hopwood & Geoff O'Brien 'Environment, Economy and Society: Fitting them together into Sustainable Development' (2002) 10(4) *Sustainable Development* 187.

compromising the ability of future generations to meet their own needs'.[281] This definition implies that every person must be capable of maintaining a reasonable quality of life over the long term, and since the quality of human life is inextricably linked to the state of the natural environment, the natural environment must be sustained.[282] Likewise, social justice and intergenerational equity has been identified as capable of promoting a reasonable quality of life over the long term.[283] Hence, there is a general consensus that sustainable development consists of the triple bottom line of economic prosperity, environmental protection, and social equity.[284]

Even though governments and national authorities were traditionally the principal players in the sustainable development agenda,[285] recently, business organisations have increasingly been looked upon as major actors in the achievement of the sustainable development goals.[286] This is because business operations and activities influence the

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[281] Brundtland Report *op cit*., 43. See Michael Redclift 'Sustainable Development (1987-2005): An Oxymoron Comes of Age' (2005) 13(4) *Sustainable Development* 212; Thomas M Parris & Robert W Kates 'Characterizing and Measuring Sustainable Development' (2003) 28 *Annual Review of Environment and Resources* 559 for the lack of a general consensus on the definition of sustainable development.

[282] Pratima Bansal 'The Corporate Challenges of Sustainable Development' (2002) 16(2) *Academy of Management Executive* 122, 123; The World Conservation Union, The United Nations Environmental Programme & The World Wide Fund for Nature 'Caring for the Earth: A Strategy for Sustainable Living' (1991) 18 available at *https://portals.iucn.org/library/efiles/documents/CFE-003.pdf* [accessed June 4, 2018].

[283] *Ibid*; Jan Bebbington 'Sustainable Development: A Review of the International Development, Business and Accounting Literature' (2000) *University of Aberdeen Working Paper 00-17* at 7-8.

[284] Stefan Schaltegger & Roger Burritt 'Corporate Sustainability' in Henk Folmer & Tom Tietenberg (eds) *The International Yearbook of Environmental and Resource Economics-A Survey of Current Issues* (2005) 187; Stefan Schaltegger, Roger Burritt & Holger Petersen *An Introduction to Corporate Environmental Management: Striving for Sustainability* (2003) 21; Thomas Dyllick & Kai Hockerts 'Beyond the Business Case for Corporate Sustainability' (2002) 11 *Journal of Business Strategy and the Environment* 130; Mark Diesendorf 'Sustainability and Sustainable Development' in Dexter Dunphy, Jodie Benveniste, Andrew Griffiths & Philip Sutton (eds) *Sustainability: The Corporate Challenge of the 21st Century* (2000) 19, 22.

[285] Dyllick & Hockerts *ibid*, 131; Andrew Savitz & Karl Weber *The Triple Bottom Line: How Today's Best-Run Companies Are Achieving Economic, Social and Environmental Success- And How You Can Too* (2006) xii.

[286] *Ibid*; Stefan Schaltegger, Dorli Harms, Sarah Elena Windholf & Jacob Horisch 'Involving Corporate Functions: Who Contributes to Sustainable Development?' (2014) 6(5) *Sustainability* 3064, 3065; Paul

natural environment and the society as a whole; thus, businesses are expected to measure their success not only by their financial performance but also by the value they add to the environment and society in which they operate.[287] Hence, the concept of sustainable development extends corporate responsibility beyond profit maximisation for the benefit of shareholders to include the management by companies of the impacts of their activities on the economy, as well as the natural environment and the society in which they operate.[288]

In summary, sustainable development demands that developmental activities be implemented in a manner that advances not only economic values, but also environmental and social values. Nigeria is not exempted from the global environmental and social challenges as a result of the operations and developmental activities of its corporate sector. Based on the principles of sustainable development, the Nigerian corporate sector can address such environmental and social challenges by considering environmental and social issues in their business operations so as to mitigate adverse environmental and societal impacts of such operations. Institutional investors can contribute to sustainable development by influencing corporate practice towards such sustainable development culture through their investments' analyses and decision-making processes. In other words, responsible investment enhances and improves corporate sustainability, which is business

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Burger, Claus-Heinrich Daub & Yvonne Scherrer 'New Perspectives on Sustainable Business' (Editorial) (2009) 85(3) *Journal of Business Ethics* 479; Paul Shrivastava 'The role of corporations in achieving ecological sustainability' (1995) 20(4) *Academy of Management Review* 936.

[287] *Ibid*; Andrew Savitz & Karl Weber *The Triple Bottom Line: How Today's Best-Run Companies Are Achieving Economic, Social and Environmental Success- And How You Can Too* (2006) xii; Subhabrata B Banerjee 'Managerial Perceptions of Corporate Environmentalism: Interpretations from Industry and Strategic Implications for Organizations' (2001) 38(4) *Journal of Management Studies* 489.

[288] Elisa Morgera *Corporate Accountability in International Environmental Law* (2009) 18; William Young & Fiona Tilley 'Can Business Move Beyond Efficiency? The Shift Toward Effectiveness and Equity in the Corporate Sustainability Debate' (2006) 15(6) *Journal of Business Strategy and the Environment* 403.

contribution to the global sustainable development goals. Thus, responsible investment enables institutional investors to contribute, howbeit indirectly, to the global sustainable development goals and the goal of combatting inequality.

3.3.3 Responsible Investment as Stakeholder Management

Corporations are traditionally regarded as legal instruments for shareholders to promote their interests and maximize their investments returns.[289] This is premised on the argument that corporations are properties of the shareholders and as such, must aim at the maximization of profits to enhance the shareholders' value.[290] Similarly, company managers were regarded as agents or stewards to whom the shareholders of a company delegate the running of the affairs of the company.[291] As such, shareholders expect that managers will act and make decisions in their interests.[292]

However, over time, a new perspective of the corporation[293] has been developed which regard corporations as being responsible and accountable to wider stakeholder groups

[289] Steve Letza, Xiuping Sun & James Kirkbride 'Shareholding versus Stakeholding: A Critical Review of Corporate Governance' (2004) 12(3) *Corporate Governance: An International Review* 242; Margaret M Blair 'For Whom Should Corporations Be Run? An Economic Rationale for Stakeholder Management' (1998) 31(2) *Long Range Planning* 195; William T Allen 'Our Schizophrenic Conception of the Business Corporation' (1992) 14 *Cardozo Law Review* 261.

[290] *Ibid.*

[291] Haslinda Abdullah & Benedict Valentine 'Fundamental and Ethics Theories of Corporate Governance' (2009) 4 *Middle Eastern Finance and Economics Journal* 88; Thomas Clarke *Theories of Corporate Governance: The Philosophical Foundations of Corporate Governance* (2004); Catherine M Daily & Dan R Dalton 'Corporate Governance: Decades of Dialogue and Data' (2000) 28(3) *Academy of Management Review* 371.

[292] Wan Fauziah Wan Yusoff & Idris A Alhaji 'Insight of Corporate Governance Theories' (2012*) Journal of Business and Management* 52; Alexandre Padilla 'Can Agency Theory Justify the Regulation of Insider Trading?' (2002) 5 *The Quarterly Journal of Austrian Economics* 3.

[293] This new perspective has been described using several terms such as the stakeholder theory, stakeholder-inclusive model of governance.

rather than the shareholders only.[294] Thus, the stakeholder theory connotes that corporate managers in the management of their companies, take cognizance of a wider stakeholder groups beyond the shareholders, and acknowledge a duty of care towards the wider stakeholder groups.[295] As an extension of the duty of care, the theory postulates that corporate managers should manage the affairs of their companies for the benefit of, and should be accountable to all the various corporate stakeholder groups.[296]

Several definitions of the term 'stakeholders' have been given in the literature. Stakeholders have been defined to include those groups without whose support a business would cease to be viable.[297] It has also been defined to include any group or individual that can affect the business of a company and whose interests a corporate executive must take into consideration in the management of a company.[298] It has further been defined as individuals or constituencies that contribute either voluntarily or involuntarily to corporate wealth creating capacity and activities, and that are therefore its potential beneficiaries and/or risk bearers.[299] However, notwithstanding the several definitions, a stakeholder is

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[294] See generally Edward R Freeman *Strategic Management: A Stakeholder Approach* (2010). See also Andrew L Friedman & Samantha Miles 'Developing Stakeholder Theory' (2002) 39 *Journal of Management Studies* 1; Andrew Kakabadse & Nada Kakabadse *Geopolitics of Governance: The Impact of Contrasting Philosophies* (2001) 24.

[295] Dima Jamali 'A Stakeholder Approach to Corporate Social Responsibility: A Fresh Perspective into Theory and Practice' (2008) 82 *Journal of Business Ethics* 213; John Simmons 'Managing in the Post-Managerialist Era: Towards Socially Responsible Corporate Governance' (2004) 32(3/4) *Management Decision* 601.

[296] Jeffrey S Harrison, Douglas A Bosse & Robert A Phillips 'Managing for Stakeholders, Stakeholder Utility Functions and Competitive Advantage' (2010) 31 *Strategic Management Journal* 58; James Post, Lee Preston & Sybille Sachs *Redefining the Corporation: Stakeholder Management and Organizational Wealth* (2002) 19; Chris E Metcalfe 'The Stakeholder Corporation' (1998) 7 *Journal of Business Ethics* 30; John Argenti *Your Organization: What Is It For?: Challenging Traditional Organizational Aims* (1993).

[297] Edward R Freeman, Jeffrey S Harrison, Andrew C Wicks, Bidhan L Parmar & Simone De Colle *Stakeholder Theory: The State of the Art* (2010) 26.

[298] *Ibid*.

[299] Post, Preston & Sachs *op cit*., 61.

generally considered to include any individual or group who can affect, or is affected by the achievement of a company's objectives such as, the shareholders, employees, customers, or local community.[300] This is because almost all business organisations thrive on their relationships with these various groups.[301] Also, these groups have direct interests in business organisations with which they interact.[302] For instance, shareholders present corporate organisations with the financial capital with which the business of such organisations are managed, and thus, have their investments at stake in the organisations. Employees contribute their skills and workmanship to the success of corporate organisations, and have their jobs and livelihood at stake in the organisations. Customers give their resources in exchange for the products and services of a company and thus, have their needs at stake in the company. The local communities are generally believed to present corporate organisations with a social license to operate.[303] Therefore, as a result of their contributions and stake in corporate organisations, the stakeholder theory opines that these wider stakeholder groups have a right to be considered in the management of corporate affairs, and to expect that their legitimate interests and expectations be met by the corporations with which they interact.[304]

However, it is noteworthy that the various stakeholder groups have differing interests in, and expectations from the corporate organisations with which they interact. For instance,

[300] Edward R Freeman & John McVea 'A Stakeholder Approach to Strategic Management' in Michael A Hitt, Edward R Freeman & Jeffrey S Harrison (eds) *The Blackwell Handbook of Strategic Management* (2006) 189.
[301] Edward Freeman *et al op cit*.
[302] Thomas Donaldson & Lee Preston 'The Stakeholder Theory of the Corporation: Concepts, Evidence & Implications' (1995) 20 *Academy of Management Review* 65.
[303] Edward Freeman *et al op cit*., 25.
[304] Stuart Crainer & Des Dearlove *Financial Times Handbook of Management* 3 ed (2004); Gerald Vinten 'The Stakeholder Manager' (2000) 38(6) *Management Decision* 377.

shareholders will expect that the business of a corporation be managed in a manner that maximizes their investment returns. Employees will expect that a corporation be managed in a manner that gives regard to their welfare, and guarantees their job security. Customers will expect the continual provision by corporations of their products and services for the benefit of such customers. The local communities will expect that corporate organisations conduct their business in a manner that creates value for the communities, and does not expose the communities to unreasonable health and environmental hazards. Thus, according to the stakeholder theory, the role of company managers includes balancing the stakeholders' differing interests and expectations.[305]

Several arguments have been proposed in support of the stakeholder theory. For instance, it has been argued that the stronger the relationship between a company and all its stakeholders, the easier it will be for the company to satisfy its economic interests.[306] This argument views stakeholder-inclusive governance as an effective means of achieving major corporate objectives such as profitability, and the maximization of value for shareholders.[307] It has also been argued that a stakeholder-inclusive governance model

[305] Elaine Sternberg *Just Business: Business Ethics in Action* 2 ed (2000); Elaine Sternberg 'The Defects of Stakeholder Theory' (1997) 5 *Corporate Governance: An International Review* 3.

[306] Michael Jensen 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function' (2002) 12(2) *Business Ethics Quarterly* 235; Christopher Stoney & Diana Winstanley 'Stakeholding: Confusion or Utopia? Mapping the Conceptual Terrain' (2001) 38(5) *Journal of Management Studies* 603, 608; Andrew Campbell 'Stakeholders: The Case in Favour' (1997) 30(3) *Long Range Planning* 446; John Plender *A Stake in the Future: The Stakeholding Solution* (1997).

[307] *Ibid*; David E Hawkins *Corporate Social Responsibility: Balancing Tommorrow's Sustainability and Today's Profitability* (2006); David Foster & Jan Jonker 'Stakeholder Relationships: The Dialogue of Engagement' (2005) 5(5) *Corporate Governance: The International Journal of Business in Society* 51; Robert Phillips, Edward Freeman & Andrew Wicks 'What Stakeholder Theory Is Not' (2003) 13(4) *Business Ethics Quarterly* 479; James S Wallace 'Value Maximization and Stakeholder Theory: Compatible or Not?' (2003) 15(3) *Journal of Applied Corporate Finance* 120.

enhances the efficiency and legitimacy of the business of corporate organisations.[308] It has further been argued that for a company to be sustainable over the long term, it is necessary for it to establish and maintain a sustainable relationship with all its stakeholder groups.[309] Thus, the goal of the stakeholder theory has been identified to include strengthened stakeholder relationships so as to develop a competitive advantage and be sustainable over the long term.[310]

Therefore, the stakeholder theory legitimizes new forms of managerial understanding and actions that give regard to wider interests other than profit maximization for shareholders' benefit.[311] Arguably therefore, management practices such as environmental management, human rights due diligence, responsible investment, are justified within this corporate governance regime. Furthermore, even though various stakeholder groups are believed to have diverse interests and expectations, there is a general consensus that economic stability, environmental justice, and social equity are shared interests and expectations among the various stakeholder groups.[312] It is noteworthy that the principles for responsible investment requires that financial institutions take cognizance of corporate environmental and social issues in their investments' analyses and decision making processes. Thus, the

[308] Letza & Sun *op cit*., 50; Gamble & Kelly *op cit.*

[309] Frances Perrini & Antonio Tencati 'Sustainability and Stakeholder Management: The Need for New Corporate Performance Evaluation and Reporting Systems' (2006) 15 *Journal of Business Strategy and the Environment* 298; Mel Wilson 'Corporate Sustainability: What is it and Where Does it Come From?' (2003) *Ivey Business Journal* 1.

[310] *Ibid*.

[311] Jan Jonker & David Foster 'Stakeholder Excellence: Framing the Evolution and Complexity of a Stakeholder Perspective of the Firm' (2002) 9 *Corporate Social Responsibility and Environmental Management* 187. See also Cathy Driscoll & Mark Starik 'The Primordial Stakeholder: Advancing the Conceptual Consideration of Stakeholder Status for the Natural Environment' (2004) 49 *Journal of Business Ethics* 55; Bernhard Waxenberger & Laura J Spence 'Reinterpretation of a Metaphor: From Stakes to Claims' (2003) 12(5) *Strategic Change* 239.

[312] Mel Wilson *op cit*.

stakeholder theory provides additional argument in support of the implementation of the principles for responsible investment in Nigeria.

In addition, it has been argued that for a corporation to achieve the goal of strengthened relationships with all its stakeholder groups, there is the need to first identify those stakeholders and develop strategies for improving the relationships with those stakeholders.[313] Since corporate stakeholders have been defined to include the environment,[314] employees,[315] community,[316] and the government,[317] institutional investors have the responsibility to protect the interests of these stakeholders in addition to those of their beneficiaries. Institutional investors can fulfil this responsibility by monitoring their investee-companies in relation to those stakeholder interests. Thus, responsible investment constitutes a major strategy for the improvement of the several corporate-stakeholder relationships.

3.3.4 Responsible Investment as Ethical Business

Business organisations are believed to have ethical duties towards the society as a result of the several activities with which they are involved, and which can have significant ethical implications for the society in general, as well as for future generations.[318] This is as a result of the negative impacts that corporate decisions and activities have continually had

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[313] *Ibid*.
[314] Environmental interest includes environmental protection and preservation.
[315] Employees' interest includes protection of labour rights, occupational health and safety, *inter alia*.
[316] Community interest includes environmental and human rights protection, quality products and services, *inter alia*.
[317] Government interest will include environmental and human rights protection based on their obligations under international law.
[318] Michael E Berumen *Do No Evil: Ethics With Applications to Economic Theory and Business* (2003) 5; James Fieser 'Do Businesses Have Moral Obligations Beyond What The Law Requires?' (1996) 15 *Journal of Business Ethics* 457.

on several societal issues such as human rights, food and water security, community health and safety, and state of the natural environment, over the past decades.[319] Second, business organisations possess immense power and influence in the society and they are believed to have ethical duties to wield such power and influence not just in favor of the organisations but also in favor of the entire society.[320]

Ethics deal with the moral rules and values that guide a person's character and conduct, as well as the investigation of questions of right and wrong, good and bad, duty and obligation, justice and injustice.[321] Thus, business ethics deal with what constitutes right and wrong, good and bad, just and unjust conducts within a business context.[322] Business ethics has further been described as the principles and standards that guide business decisions and activities, particularly in relation to society at large.[323] Business ethics have been addressed from the viewpoint of several ethical theories such as the rights theory,

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[319] *Ibid.* See also Fernando AC *Business Ethics and Corporate Governance* (2010) 1.2; Gregg Wood & Michael Callaghan 'Communicating the Ethos of Codes of Ethics in Corporate Australia, 1995-2001: Whose Rights, Whose Responsibilities?' (2003) 15(4) *Employee Responsibilities and Rights Journal* 209.

[320] Abdullah & Valentine *op cit*., 93; Dennis P Quinn 'An Agent Morality View of Business Policy' (1995) 20 *Academy of Management Review* 22.

[321] Rosamund Thomas 'Business Ethics' in Ramon Mullerat (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* 2 ed (2011) 35; George G Brenkert & Tom L Beauchamp *The Oxford Handbook of Business Ethics* (2010) 4; Andrew Crane & Dirk Matten *Business Ethics* 3 ed (2010) 5; William H Shaw *Business Ethics* 8 ed (2014) 3.

[322] *Ibid*. See also George Steiner & John Steiner *Business, Government and Society: A Managerial Perspective* 13 ed (2011) 204; William Frederick, James E Post & Keith Davis *Business and Society: Corporate Strategy, Public Policy, Ethics* 7 ed (1992) 52.

[323] Archie B Carroll & Ann K Buchholtz *Business and Society: Ethics, Sustainability, and Stakeholder Management* 9 ed (2014) 181-182; Praveen K Parboteeah & John B Cullen *Business Ethics* (2013) 5. See also Jacob Dahl Rendtorff *Responsibility, Ethics and Legitimacy of Corporations* (2009) 14; Robin D 'Toward an Applied Meaning for Ethics in Business' (2009) 89 *Journal of Business Ethics* 139; Jones Campbell, Rene Ten Bos & Martin Parker *Business Ethics: A Critical Approach* (2005) 16.

utilitarian theory, Kant's theory, social contract theory, and stakeholder theory.[324] These are discussed below;

i. Rights Ethics

According to the rights ethics, there exist some globally endorsed fundamental rights prescribed by legal documents, and which entail the element of duty on the part of others to respect those rights.[325] Therefore, business ethics from the point of view of the rights theory connotes that business decisions and activities should not prevent or hinder the effective exercise of fundamental rights, and corporations ought to implement some positive actions to enhance the exercise of such rights.[326] Likewise, company managers have a legal and ethical duty to identify the legitimate rights of those with whom the company interacts, and respect those rights in the course of implementing any business activity or decision.[327]

Moreover, there is a general consensus in the literature that there exist some stakeholder groups who contribute to the achievement of corporate objectives, and whom corporate activities and decisions may significantly affect.[328] Therefore, the rights ethics posit that those stakeholders who contribute to the success of a corporation have reciprocity rights; in return for their contribution to the company, they have a right to expect that the company

[324] See generally Oliver Johnson & Andrews Reath *Ethics: Selections from Classic and Contemporary Writers* (2011); Jeffery Smith *Normative Theory and Business Ethics* (2009); Sana Loue *Textbook of Research Ethics: Theory and Practice* (2007).
[325] Mick Fryer *Ethics Theory and Business Practice* (2014). See also WC Frederick *et al op cit*., 60; Steiner & Steiner *op cit*., 258.
[326] *Ibid*. see also Institute of Business Ethics 'Business Ethics and Human Rights' (2012) 26 *Business Ethics Briefing* 2.
[327] *Ibid.* See also Fernando AC *op cit*., 2.5.
[328] See generally notes 80-85 *op cit*.

will be managed and decisions taken in their interests.[329] Similarly, those stakeholders upon whom the activities of corporations may have an impact have a right to be considered by the company before taking any decision or commencing any activity because of such impacts.[330]

Hence, business ethics imply that shareholders have an ethical right with a corresponding duty on companies to get maximum value for their investments; employees have an ethical right with a corresponding duty to get reasonable wages and fair working conditions for their workmanship; customers have an ethical right with a corresponding duty to get satisfactory and quality products and services in return for their money; and the local community have a legal and ethical right with a corresponding duty to have their social, economic and cultural rights respected.

ii. Utilitarian Ethics

The utilitarian theory analyses the ethicality of actions in relation to their propensity to promote desirable outcomes and to avoid undesirable outcomes.[331] According to the theory, an ethically right action is one which brings about the greatest amount of good for the greatest number of people, or one which maximizes a desirable outcome over an

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[329] John Hasnas 'The Normative Theories of Business Ethics: A Guide for the Perplexed' (1998) 8 *Business Ethics Quarterly* 19; Kenneth E Goodpaster 'Business Ethics and Stakeholder Analysis' (1991) *Business Ethics Quarterly* 53.

[330] Wesley Cragg 'Business Ethics and Stakeholder Theory' (2002) 12(2) *Business Ethics Quarterly* 113; Kevin Gibson 'The Moral Basis of Stakeholder Theory' (2000) 26(3) *Journal of Business Ethics* 245. Other stakeholders who may suffer the adverse impacts of corporate activities include the environment and members of the host communities. The environment may suffer degradation and pollution, while members of the host communities may suffer from loos of farm lands, access to potable water, and diseases from air pollution, among others.

[331] Robert Audi 'The Place of Ethical Theory in Business Ethics' in George G Brenkert & Tom L Beauchamp (eds) *The Oxford Handbook of Business Ethics* (2010) 58-59; Mick Fryer *op cit*.; Jones Campbell *et al op cit*., 27; Fernando AC *op cit*., 2.5; Carroll & Buchholtz *op cit*., 125; William Frederick *et al op cit*., 59; William Shaw *op cit*., 49; Steiner & Steiner *op cit.,* 260.

undesirable outcome.[332] Thus, business ethics from this point of view seeks that business managers manage their corporate affairs in such manner that maximizes the greatest amount of good for the majority of their stakeholders.[333] As such, before taking any decision or engaging in any business activity, business managers are ethically obliged to consider the outcomes of such decisions or activities and taking those decisions and engaging in those business activities that will bring about the greatest amount of good to the majority of the stakeholders.[334]

iii. Social Contract and Legitimacy theories

According to the social contract theory, there exists a social contract between corporations and their host communities by which the communities grant corporations a license to operate.[335] Business ethics from this point of view posits that based on such social contract, corporations have ethical duties to see to it that their operations are in the interests, and do not adversely impact on their host communities.[336] The corollary is that corporate existence depends on the willingness of the society to continue to allow corporations to operate.[337] Thus, notwithstanding that the main objective of a company is to make profits, it has a

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[332] *Ibid*.
[333] *Ibid;* Milton Snoeyenbos & James Humber 'Utilitarianism and Business Ethics' in Robert Frederick (ed) *A Companion to Business Ethics* (1999) 17.
[334] *Ibid*; Andrew Gustafson 'In Defense of a Utilitarian Business Ethic' (2013) 118(3) *Business and Society Review* 325; Colin Heydt *Rethinking Mill's Ethics: Character and Aesthetic Education* (2006) 105.
[335]Allan D Shocker & Prakash S Sethi 'An Approach to Incorporating Societal Preferences in Developing Corporate Action Strategies' (1973) 15(4) *California Management Review* 97; Reg M Mathews *Socially Responsible Accounting* (1993) 26.
[336] Thomas W Dunfee & Thomas Donaldson 'Social Contract Approaches to Business Ethics: Bridging the "Is-Ought" Gap' in Robert Frederick *op cit*., 38; Parboteeah & Cullen *op cit*.; Fernando AC *op cit*., 2.12.
[337] *Ibid*. See also Craig Deegan 'Introduction: The Legitimising Effect of Social and Environmental Disclosure- A Theoretical Foundation' (2002) 15(3) *Accounting, Auditing and Accountability Journal* 282, 290; Craig Deegan *Australian Financial Accounting* (2002); Robert B Reich 'The New Meaning of Corporate Social Responsibility' (1998) 40(2) *California Management Review* 8; Gary O'Donovan 'Environmental Disclosures in the Annual Report: Extending the Applicability and Predictive Power of Legitimacy Theory' (2002) 15(3) *Accounting, Auditing and Accountability Journal* 344.

moral obligation to act in a socially responsible manner based on its social contract with the society. In fact, it is argued that such social responsibility enhances the possibility of its continued operation over the long term.[338]

Consistent with the social contract theory is the 'legitimacy theory' which postulates that corporations do not possess any inherent right to natural resources, or to exist. Rather, corporations exist to the extent that the society considers that they are legitimate.[339] Based on the assumption that business contributes to the global social and environmental problems,[340] the legitimacy theory assumes that the exercise of corporate power will be illegitimate if business does not assume a role in remedying the problems.[341] Thus, the legitimacy theory considers the management of corporate adverse impacts as a way by which corporate management can influence societal perceptions about their company thereby, legitimising their operations.[342]

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[338] Shocker & Sethi *op cit*.; Reg M Matthews *op cit*.; Gary O'Donovan *op cit*. Such threat may be reflected in various ways such as consumers' boycott, suppliers eliminating the supply of labour and credit to the company; see Craig Deegan *op cit*., 293. See also Amy Sinden 'Power and Responsibility: Why Human Rights should address Corporate Environmental Wrongs' in Doreen McBarnet, Aurora Voiculescu & Tom Campbell (eds) *The New Corporate Accountability: Corporate Social Responsibility and the Law* (2007) 501, 515; Keith Davis & Robert Blomstrom *Business and its Environment* (1966) 174-175.

[339] Craig Deegan *op cit*., 292. See also Blake E Ashforth & Barrie W Gibbs 'The Double Edge of Legitimisation' (1990) 1 *Organisation Science* 177; Kimberly D Elsbach & Robert I Sutton 'Acquiring Organisational Legitimacy Through Illegitimate Actions: A Marriage of Institutional and Impression Management Theories' (1992) 35 *Academy of Management Journal* 699; David G Woodward, Pam Edwards & Frank Birkin 'Organisational Legitimacy and Stakeholder Information Provision' (1996) 7 *British Journal of Management* 329; Nola Buhr 'Environmental Performance, Legislation and Annual Report Disclosure: The Case of Acid Rain and Falconbridge' (1998) 11(2) *Accounting, Auditing and Accountability Journal* 163.

[340] Guler Aras & David Crowther 'Governance and Sustainability: An Investigation into the Relationship between Corporate Governance and Corporate Sustainability' (2008) 46(3) *Management Decision* 434. Business contributes to the global social and environmental problem including environmental degradation, human rights violation, workplace hazards, *inter alia*.

[341] Archie B Carroll, & Ann K Buchholtz *Business and Society: Ethics and Stakeholder Management* 6 ed (1996) 38; WC Frederick *et al op cit*., 38; Steiner & Steiner *op cit*., 132.

[342] Craig Deegan *op cit*., 291-292.

iv. Kant's Ethics

According to Kant's theory, the morality or ethicality of an action or decision is inherent in humans and thus, the theory perceives humans as rational actors who can reason out the ethicality of any action or decision.[343] Notwithstanding, the theory proposes some imperatives against which the ethical value of an action or decision can be assessed; whether such action or decision can be willed to become a universal law, whether such action or decision treats humanity as an end in itself or merely as a means to an end, and whether such action or decision can be universally acceptable.[344] Thus, business ethics from this point of view implies that corporate actions and decisions can only be ethical if they could be consistently followed, they promote human dignity, and they are acceptable to all other constituents of the society.[345]

In summary, since environmental and social issues constitute some of the fundamental rights that are guaranteed by several legal instruments,[346] it is both legal and ethical that such issues be addressed in corporate management. It is noteworthy that the rights theory emphasises that corporations must not just prevent the enjoyment of fundamental rights, but they should also engage in positive activities to enhance the enjoyment of such rights. I am of the opinion that investing responsibly is one positive step that could enhance the

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[343] Norman E Bowie *Business Ethics in the 21st Century* (2013) 50-64; Matthew C Altman *Kant and Applied Ethics: The Uses and Limits of Kant's Practical Philosophy* (2011); Allen W Wood *Kantian Ethics* (2008); Norman E Bowie *Business Ethics: A Kantian Perspective* (1999).
[344] *Ibid*; Robert Audi *op cit*., 47.
[345] *Ibid*.
[346] See generally the United Nations Universal Declaration of Human Rights UN Doc A/810 at 71 (1948); United Nations International Covenant on Economic, Social and Cultural Rights UN Doc A/6316 (1966); African Charter on Human and Peoples' Rights OAU Doc CAB/LEG/67/3 rev.5 (1986).

enjoyment of such rights. Also, from the utilitarian point of view, I believe that addressing social issues during corporate decision-making processes or before engaging in any business activity will promote the greatest possible balance of good over bad for the majority of stakeholders. This is because social inequality affects all stakeholder groups ranging from the shareholders, to the employees, customers, and the society at large.

3.3.5 Responsible Investment as Integrated Governance

Integrated governance has been defined as 'the system by which companies are directed and controlled in which sustainability issues are integrated in a way that ensures value creation for the company and beneficial results for all stakeholders in the long term'.[347] In recent decades, business organisations have increasingly been expected to broaden the basis of their corporate performance evaluation beyond a short term financial focus to include a longer term focus on social and environmental performance.[348] This is because business organisations are beginning to recognize that sustainable corporate growth and shareholder value are best achieved by managing a broad framework of economic, social and environmental issues, and measuring and reporting corporate performance against economic, social and environmental parameters.[349] Thus, integrated governance is

[347] United Nations Environmental Programme Finance Initiative (UNEPFI) 'Integrated Governance: A New Model of Governance for Sustainability' (2014) A Report of the UNEPFI Asset Management Working Group 35.

[348] Dima Jamali 'Insights into Triple Bottom Line Integration from a Learning Organization Perspective' (2006) 12(6) *Business Process Management* 809. See also Francesco Perrini & Antonio Tencati 'Sustainability and Stakeholder Management: The Need for New Corporate Performance Evaluation and Reporting Systems' (2006) 15(5) *Business Strategy and the Environment* 296; William McDonough & Michael Braungart 'Design for the Triple Top Line: New Tools for Sustainable Commerce' (2002) 9(3) *Corporate Environmental Strategy* 251; Max E Clarkson 'A Stakeholder Framework for Analyzing and Evaluating Corporate Social Performance' (1995) 20 *Academy of Management Review* 92; Donna J Wood 'Corporate Social Performance Revisited' (1991) 16(4) *Academy of Management Review* 691.

[349] McDonough & Braungart *ibid*; James Roselle 'The Triple Bottom Line: Building Shareholder Value' in Ramon Mullerat (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* 2 ed

concerned with how companies can manage and balance their triple bottom line responsibilities of economic development, environmental protection and social equity for a balanced view of overall corporate performance.[350]

Moreover, the launching of the International Integrated Reporting Council in 2010 has led to increasing demands being made of business organisations regarding the information provided in their company reports.[351] Business organisations are being required not to merely report on their financial performance, but also their social and environmental performance.[352] It is noteworthy that the major idea that underlies the principle of Corporate Social Responsibility is the corporate achievement of a proper balance between economic development, environmental protection and social equity.[353] Thus, corporations through integrated governance seek to capture and manage together their social

(2010) 113; Wayne Norman & Chris MacDonald 'Getting to the Bottom of "Triple Bottom Line" (2004) 14(2) *Business Ethics Quarterly* 243; Michael Sauvante 'The Triple Bottom Line: A Board Room Guide' (2002) 25(11) *Director's Monthly* 1.

[350] Teun W Hardjono & Marcel Van Marrewijk 'The Social Dimensions of Business Excellence' (2001) 8(3) *Corporate Environmental Strategy* 223. See also Graham Hubbard 'Measuring Organizational Performance: Beyond the Triple Bottom Line' (2009) 18 *Business Strategy and the Environment* 177; Fred Robins 'The Challenge of TBL: A Responsibility to Whom?' (2006) 111 *Business and Society Review* 1; Wayne Norman & Chris MacDonald 'Getting to the Bottom of Triple Bottom Line' (2004) 14(2) *Business Ethics Quarterly* 243.

[351] Isabel-Maria Garcias-Sanchez, Lazaro Rodriquez-Ariza & Jose-Valeriano Frias-Aceituno 'The Cultural System and Integrated Reporting' (2013) 22(5) *International Business Review* 828; Cristiano Busco, Mark L Frigo, Paolo Quattrone & Angelo Riccaboni 'Towards Integrated Reporting: Concepts, Elements and Principles' (2013) *Integrated Reporting* 3; Robert G Eccles & Daniela Saltzman 'Achieving Sustainability through Integrated Reporting' (2011) *Stanford Social Innovation Review* 55.

[352] The International Integrated Reporting Council *Towards Integrated Reporting: Communicating Value in the 21st Century* (2011) 2; Indra Abeysekera 'A Template for Integrated Reporting' (2013) 14(2) *Journal of Intellectual Capital* 227; Jill Solomon & Warren Maroun *Integrated Reporting: The Influence of King 111 on Social, Ethical and Environmental Reporting* (2012) 6; Robert G Eccles & Kyle Armbrester 'Integrated Reporting in the Cloud' (2011) 8 *IECE Insight* 13.

[353] Fred Bergmans 'Integrating People, Planet and Profit' (2006) *Management Models for Corporate Social Responsibility* 117.

responsibilities in order to generate added economic, social and environmental value.[354] Such system of integrated governance implies a decision making process aimed at selecting activities that create such added value.[355] Thus, the system of integrated governance requires institutional investors to integrate environmental and social issues in their investments analyses and decision making processes, and to direct their investments to those organisations and activities that create added environmental and social value. In addition, based on the increasing demand for integrated reporting, the social and environmental impacts of their investments will constitute part of the information which financial institutions are expected to include in their corporate reports.

In addition, in this globalized age where business organisations are expected to be transparent about their business activities, and disclose their governance regime,[356] institutional investors need to ensure that their governance regime takes into consideration the impact of their business activities[357] on the environment and the society generally.

3.4 The Elements of Responsible Investment

Since responsible investing basically connotes the integration of environmental, social, and governance issues into investment analysis and decision-making processes, the major elements of responsible investing will include issues of environmental protection, corporate

[354] John Elkington 'The Link Between Accountability and Sustainability: Theory put into Practice' (1999) A Paper presented at the Conference on the Practice of Social Reporting for Business, London on January 19, 1999.
[355] Fred Bergmans *op cit.*
[356] Noting that contemporary trend in corporate governance indicates that business organisations should not be governed for the sole purpose of profit maximisation, but corporate managers should also take into consideration their corporate impact on the environment and society at large.
[357] In this case, their investments in companies that is, corporate stocks.

social responsibility, and corporate governance. This section examines these issues one after the other.

3.4.1 The Environmental Element

The provisions of several international documents on the environment have given rise to some common standards of environmental management and protection that have gained a significant level of acceptance internationally as being directly applicable to business organisations.[358] These standards include environmental impact assessment, environmental management systems, principles of precaution and prevention, environmental remediation, supply chain management, life cycle assessment, and sustainable use of natural resources.[359]

I. Environmental Impact Assessment

Environmental impact assessment is defined as "*the process of identifying, predicting, evaluating, and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made*".[360] It includes a study of the possible environmental impacts of corporate activities before and during their implementation on the basis of scientific evidence and communication with the

[358] Elisa Morgera 'From Corporate Social Responsibility to Accountability Mechanisms: The Role of the Convention on Biological Diversity' (2012) *University of Edinburgh School of Law Research Paper Series No 2012/06* 4.
[359] *Ibid*. See also the Organisation for Economic Cooperation and Development *Environment and the OECD Guidelines for Multinational Enterprises: Corporate Tools and Approaches* (2005).
[360] International Association for Impact Assessment & Institute for Environmental Assessment 'Principles of Environmental Impact Assessment Best Practice' (1999) 2 available at *http://www.iaia.org/publicdocuments/special-publications/Principles%20of%20IA_web.pdf* [accessed August 17, 2016]. See also John Glasson, Riki Therivel & Andrew Chadwick *Introduction to Environmental Impact Assessment* 3 ed (2013) 5.

communities likely to be affected by such activities.[361] According to the International Association for Impact Assessment and the Institute for Environmental Assessment, the objectives of an environmental impact assessment include; to ensure that environmental considerations are explicitly addressed and incorporated into a development decision-making process; to anticipate and avoid, minimise or offset the adverse significant biophysical, social and other relevant effects of development proposals; to protect the productivity and capacity of natural systems and the ecological processes which maintain their functions; and to promote development that is sustainable and optimises resource use and management opportunities.[362]

II. Environmental Management Systems

Environmental Management System has been described "*as a system which integrates procedures and processes for the management of an organisation's environmental affairs in a comprehensive, systematic, and documented manner*".[363] It provides "*the internal framework that is needed to control corporate environmental impact including pollution control and resource management, as well as to integrate environmental considerations into corporate decisions*".[364]According to the Australian Department of Environment, "*environmental management system is a tool for managing the impacts of an*

[361] The OECD Guidelines *op cit*., chap VI, para 3; International Finance Corporation 'Policy and Performance Standards on Environmental and Social Sustainability' (2012) standard 1, paras 5-7 available at *http://www.ifc.org/wps/wcm/connect/b9dacb004a73e7a8a273fff998895a12/IFC_Sustainability_+Framework.pdf?MOD=AJPERES* [accessed August 15, 2016]. See also Jane Holder *Environmental Assessment: The Regulation of Decision Making* (2006) 7.

[362] International Association for Impact Assessment & Institute for Environmental Assessment *op cit*.

[363] Sroufe Robert 'Effects of Environmental Management Systems on Environmental Management Practices and Operations' (2003) 12(3) *Production and Operations Management* 416.

[364] Elisa Morgera *op cit*., 181. See also Stephen Tully *International Corporate Legal Responsibility* (2012) 413.

organisation's activities on the environment; it provides a structured approach to planning and implementing environmental protection measures".[365] Similarly, the International Standards Organisation (ISO) describes environmental management systems "*as an opportunity for corporations to identify and control their environmental impact, and constantly improve their environmental performance*".[366]

III. Life-Cycle Assessment or Analysis

The international standard on environmental assessment not only calls for an assessment of environmental impacts by corporate organisations before commencing an activity, but also as a continuous process to allow the integration of environmental concerns in corporate decision-making processes throughout the life cycle of an activity.[367] Environmental life cycle assessment is "*a tool for the systematic evaluation of the environmental aspects of a product or service through its entire life cycle such as from when raw materials are obtained, to the manufacturing, transportation and use of a product, and its waste management*".[368]

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[365] Australian Department of Environment available at *http://www.environment.gov.au/node/20494* [accessed August 17, 2016]. See also Institute of Environmental Management and Assessment 'Environmental Management Systems: Your A-Z Guide' available at *http://ems.iema.net/emsexplained* [accessed August 17, 2016].

[366] See ISO at *http://www.iso.org/iso/home/standards/management-standards/iso14000.htm* [accessed August 17, 2016].

[367] Elisa Morgera *op cit*., 182.

[368] See the OECD and the Environment *op cit*., 15. See also International Organisation for Standardisation *ISO 14040: Environmental Management Life Cycle Assessment- Principles and Framework* (2006); Jeroen B Guinee (ed) *Handbook on Life Cycle Assessment: Operational Guide to the ISO Standards* (2002) 5.

IV. Precautionary Principle

According to the precautionary principle of environmental law, environmental protection is not only about how to prevent certain environmental risks, but also how to anticipate risks suggested by possibility, contingency or probability.[369] The basic premise for the precautionary approach to environmental protection is that business organisations should act proactively as soon as possible to avoid significant environmental damage as a result of their activities.[370] Business organisations are required to exercise precaution where any adverse impacts deriving from their activities, products or processes, have been identified notwithstanding a lack of scientific certainty of the impacts, or the extent of such impacts on the environment.[371] In exercising precaution, business enterprises need to assess identified risks, organise options for dealing with such risks,[372] and communicate such risks to the public.[373]

[369] Malgosia Fitzmaurice *Contemporary Issues in International Environmental Law* (2009) 3; Nicolas de Sadeleer *Environmental Principles: From Political Slogans to Legal Rules* (2002) 92; Philippe Sands *et al op cit.*, 217; Nanda & Pring *op cit*., 63.
[370] *Ibid*.
[371] Several international documents on the environment have prescribed that where there are threats of serious or irreversible damage to the environment, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent such environmental damage; see the Convention on Biological Diversity *op cit*., preamble, para 9; United Nations Framework Convention on Climate Change (1992) article 3(3) available at *http://unfccc.int/resource/docs/convkp/conveng.pdf* [accessed August 20, 2016]; Rio Declaration *op cit*., principle 15; OECD Guidelines *op cit*., chap VI, sec 4; ICC Business Charter *op cit*., principle 10; the United Nations Global Compact *op cit*., principle 7 which stipulates that businesses should support a precautionary approach to environmental challenges.
[372] Such options may include alternative location, method of operation or process.
[373] OECD and the Environment *op cit*., 18.

V. Sustainable Use of Natural Resources

Sustainable development constitutes one of the foundations of the international agenda on corporate environmental responsibility.[374] Several international instruments on the environment have affirmed the global expectation that business organisations should operate in a manner that contributes to the objectives and goals of sustainable development.[375] Pursuant to the formulation of several international rules and norms protecting specific natural resources, it is expected that business contributes to sustainable development by making use of natural resources in a sustainable manner, and as prescribed by such international rules and norms.[376]

VI. Environmental Remediation

Remediation constitutes one of the several policy measures that have been evolved in international environmental law in order to counter environmental damage.[377] Remediation denotes a cause of action to be taken to remedy an eventual environmental damage.[378] Thus, within the context of environmental management, environmental remediation consists of the removal of contaminants and pollutants, resulting from any developmental activities, from the environment. Such remediation is aimed at redeveloping the polluted

[374] Elisa Morgera *op cit*., 195.

[375] See for instance, the United Nations Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights UN Doc E/CN.4/Sub.2/2003/12/Rev.2 (2003) para 14 available at *http://www1.umn.edu/humanrts/business/norms-Aug2003.html* [accessed August 18, 2016]; the OECD Guidelines *op cit*., 19; World Summit on Sustainable Development 'Johannesburg Declaration on Sustainable Development' *op cit*.

[376] Elisa Morgera *op cit*.,196. It is noteworthy that the term 'sustainable use' has been defined as 'the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity and thereby, maintaining its potential to meet the needs and aspirations of present and future generations'; see the Convention on Biological Diversity *op cit*., article 2. Thus, sustainable use of natural resources may be described as the exploitation of natural resources in a manner, and at a rate that does not lead to a long-term decline of natural resources, and maintains the potential to meet the needs and aspirations of future generations.

[377] See Nicolas de Sadeleer *op cit*.; Malgosia Fitzmaurice *op cit*.

[378] *Ibid*.

and contaminated environment, or to restore it to its natural state. The Coalition for Environmentally Responsible Economies (CERES) principles for instance, recognise the need to take responsibility for any harm caused to the environment by making every effort to fully restore the environment.[379]

VII. Sustainable Supply Chain Management

The interaction between sustainability, environment and supply chain[380] has recently aroused significant discussion in the environmental management literature.[381] The increasing globalisation and continued outsourcing by business organisations have caused business to function on a supply chain level.[382] Moreover, based on the increasing demands for corporate environmental responsibility, and the realisation that it is not only the end products of an organisation that can impact the environment adversely but also the products and services of its supply chain, organisations are being held responsible for the environmental performance of their supply chain.[383] Thus, in sustainable supply chain

[379] The Coalition for Environmentally Responsible Economies 'CERES principles' principle 7 available at *https://www.iisd.org/business/tools/principles_ceres.aspx* [accessed August 10, 2015].

[380] A supply chain refers to the network of organisations involved in the different processes and activities that produce value in the form of products and services to the ultimate consumers, see Gyongyi Kovacs 'Corporate Environmental Responsibility in the Supply Chain' (2008) 16 *Journal of Cleaner Production* 1571; Keah Choon Tan 'A Framework of Supply Chain Management Literature' (2001) 7 *European Journal of Purchasing & Supply Management* 39; Christopher L Martin *Logistics and Supply Chain Management* (1992).

[381] Robert Klassen & Vaidyanathan Jayaraman 'Sustainable Supply Chains: An Introduction' (2007) 25 *Journal of Operations Management* 1075; Paul R Kleindorfer, Kaylan Singhal & Luk Van Wassenhove 'Sustainable Operations Management' (2005) 14(4) *Production and Operations Management* 482; Charles J Corbett & Paul R Kleindorfer 'Environmental Management and Operations Management' (2003) 12(3) *Production and Operations Management* 287.

[382] Stefan Seuring, Joseph Sarkis, Martin Muller & Purba Rao 'Sustainability and Supply Chain Management' (2008) 16(15) *Journal of Cleaner Production* 1545; John T Mentzer, William DeWitt, James S Keebler, Soonhong Min, Nancy W Nix, Carlo D Smith & Zach G Zacharia 'Defining Supply Chain Management' (2001) 22(2) *Journal of Business Logistics* 1.

[383] *Ibid*; Stefan Seuring & Martin Muller 'From a Literature Review to a Conceptual Framework for Sustainable Supply Chain Management' (2008) 16 *Journal of Cleaner Production* 1699.

management,[384] environmental criteria are required to be fulfilled by organisations in their supply chain in order to maintain their operations within the supply chain.

Therefore, several environmental principles such as those identified above, enhances environmental protection and contributes to inequality reduction. These principles suggest that corporations, before implementing any project that may potentially impact the environment adversely, identify those potential impacts and develop a system for preventing, mitigating, or remediating those impacts in the course of their operation. In addition, corporations are expected to engage in such an assessment process throughout a project implementation process. Likewise, corporations are expected to take into cognisance the environmental affairs of those organisations in their supply chain, and ensure that environmental resources are exploited sustainably. Such integrated system of environmental protection reduces the likelihood of environmental degradation, and contributes to the reduction of inequality as already established that the state of the environment contributes immensely to inequality.

3.4.2 The Social Element

As a result of their relationship with various societal groups such as employees and consumers, corporations are expected to take cognisance of how their business activities may impact adversely on such groups, and put the legitimate interests of such groups into consideration in making business decisions.[385] Such social responsibility has been

[384] Sustainable supply chain management refers to the management of material and information flow as well as cooperation among organisations along a supply chain while deriving their objectives from the dimensions of sustainable development, see Stefan Seuring & Martin Muller, *ibid.*

[385] Abby Ghobadian, Kevin Money & Carola Hillenbrand 'Corporate Responsibility Research: Past-Present-Future' (2015) 40(3) *Group & Organization Management* 271, 276-278; Jennifer J Griffin & Aseem Prakash

identified to encompass issues that affect diverse social groups, such as human rights, labour practices including employee rights and occupational health and safety, unfair business practices payment of fair taxes, and consumer protection.[386] This is in line with international guidelines that have been developed with a view to encourage corporations to take responsibility for the impacts of their activities on the society as a whole.[387] These international guidelines provide guidance to corporations on aspects of socially responsible corporate conduct as obtainable globally, and serve as benchmarks for appropriate corporate conduct internationally.[388]

I. Human Rights Protction

As a result of their relationship with various societal groups such as employees, consumers, host communities, among others, corporations are expected to take cognizance of how their business activities may impact adversely on the human rights of such groups.[389] This is in line with international guidelines that have been developed with a view to encouraging

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'Corporate Responsibility: Initiatives and Mechanisms' (2014) 53(4) *Business & Society* 465; International Chamber of Commerce 'Business in Society: Making a Positive and Responsible Contribution' (2002).

[386] See International Organisation for Standardisation 'ISO 26000: Guidance on Social Responsibility' (2010). See also Corporations and Markets Advisory Committee *The Social Responsibility of Corporations Report* (2006) 13; Denis Leonard & Rodney McAdam 'Corporate Social Responsibility' (2003) *Quality Progress* 27.

[387] Martje Theuws & Mariette van Huijstee *Corporate Responsibility Instruments: A Comparison of the OECD Guidelines, ISO 26000 and the UN Global Compact* (2013) 4; Organisation for Economic Cooperation and Development *Annual Report on the OECD Guidelines for Multinational Enterprises 2008* (2009) 236; Ran Goel *Guide to Instruments of Corporate Responsibility: An Overview of 16 Key Tools for Labour Fund Trustees* (2005) 2.

[388] Corporations and Market Advisory Committee *op cit*., 25; Ran Goel *ibid.*

[389] Abby Ghobadian, Kevin Money & Carola Hillenbrand 'Corporate Responsibility Research: Past-Present-Future' (2015) 40(3) *Group & Organization Management* 271, 276-278; Jennifer J Griffin & Aseem Prakash 'Corporate Responsibility: Initiatives and Mechanisms' (2014) 53(4) *Business & Society* 465; International Chamber of Commerce 'Business in Society: Making a Positive and Responsible Contribution' (2002).

corporations take responsibility for the impacts of their activities on the society as a whole.[390]

Such international guidelines and initiatives[391] stipulate the human rights responsibilities of corporations.[392] Although these documents do not prescribe legally binding obligations on corporations, they provide frameworks for appropriate and internationally acceptable corporate behaviour. Furthermore, they serve as tools to guide corporate performance, and provide benchmarks by which corporations may be held accountable by stakeholders.[393] According to the UN Global Compact principles, "*businesses should support and respect the protection of internationally proclaimed human rights"*.[394] Likewise, the Global Sullivan Principles[395] urges corporations to *"express support for universal human rights"*.[396] According to Amnesty International, "*all companies have a direct responsibility to respect human rights in their operations*".[397] Furthermore, the Organization for Economic Cooperation and Development (OECD) requires corporations "*to respect human*

[390] Martje Theuws & Mariette van Huijstee *Corporate Responsibility Instruments: A Comparison of the OECD Guidelines, ISO 26000 and the UN Global Compact* (2013) 4; Organisation for Economic Cooperation and Development *Annual Report on the OECD Guidelines for Multinational Enterprises 2008* (2009) 236; Ran Goel *Guide to Instruments of Corporate Responsibility: An Overview of 16 Key Tools for Labour Fund Trustees* (2005) 2.

[391] Such as the UN Global Compact Initiative; the Global Sullivan Principles; and the Amnesty International Human Rights Principles for Companies.

[392] Weissbrodt op cit note 6 at 284. See also Linda H Leib *Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives* (2011) 64.

[393] Castan Centre for Human Rights Law, International Business Leaders Forum & Office of the UN High Commissioner for Human Rights *Human Rights Translated: A Business Reference Guide* (2008) xii.

[394] See Principle 1 UN Global Compact available at *<https://www.unglobalcompact.org/AbouttheGC/TheTENPrinciples/>*

[395] The principles have the objective of encouraging companies to support economic, social and political justice in the course of their business operations.

[396] See the Global Sullivan Principles available at *https://www1.umn.edu/humanrts/links/sullivanprinciples.html* [accessed October 28, 2015].

[397] See the Amnesty International Human Rights Principles for Companies available at *https://www1.umn.edu/humanrts/links/aihrprinc.html* [accessed October 28, 2015].

rights within the framework of internationally recognised human rights, as well as relevant domestic laws and regulations".[398]

The United Nations which has as one of its main purposes the protection of human rights[399] has been the central forum for the development and enforcement of international human rights norms.[400] In an attempt to prescribe a comprehensive framework creating direct human rights obligations on corporations, the UN Sub-Commission on the Promotion and Protection of Human Rights approved the 'Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights' (the Norms) in 2003.[401] The Norms, which set out the responsibilities of corporations with regard to human rights, was a landmark step in holding corporations accountable for the adverse human rights impacts of their activities.[402] According to the Norms, corporations are required to promote, secure the fulfillment of, respect, ensure respect of, and protect internationally as

[398] See the OECD Guidelines for Multinational Enterprises 2011, part 1 section IV; and the UN Guiding Principles on Business and Human Rights: Implementing the UN 'Protect, Respect, and Remedy' Framework (2011) UN Doc A/HRC/17/31, General Provisions (GP) 11-12.

[399] See the preamble to the United Nations Charter (1945) available at *www.un.org/en/sections/un-charter/preamble/index.html* [accessed October 27, 2015].

[400] Frank C Newman & David Weissbrodt *International Human Rights: Law, Policy and Process* 2 ed (1996) 5.

[401] *Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights* UN Doc E/CN.4/Sub.2/2003/12/Rev.2 (2003) available at *http://www1.umn.edu/humanrts/business/norms-Aug2003.html* [accessed April 7, 2016].

[402] Surya Deva 'UN's Human Rights Norms for Transnational Corporations and other Business Enterprises: An Imperfect Step in the Right Direction' (2004) 10 *ILSA Journal of International and Comparative Law* 493, 497; Julie Campagna 'United Nations Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights: The International Community Asserts Binding Law on the Global Rule Makers' (2004) 37 *John Marshall Law Review* 1205; David Weissbrodt & Maria Kruger 'Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights' (2003) 97(4) *The American Journal of International Law* 901; Carolin F Hillemanns 'UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights' (2003) 4(10) *German Law Journal* 1065.

well as nationally recognised human rights within their spheres of activity and influence.[403] Although the Norms enjoyed a wide array of support, it was not without some forms of opposition from some States and the business community[404] leading to the eventual disapproval of the Norms by the UN Human Rights Council in 2005.[405] In a consequent effort to identify standards of human rights responsibility for global business, a special representative to the UN Secretary-General on the subject of business and human rights was appointed in 2005. In 2008, the 'Protect, Respect and Remedy' Framework for business and human rights (Ruggie Framework) which was proposed by the special representative was unanimously adopted by the UN Human Rights Council. The Framework rests on three pillars including, the State's duty to protect against human rights abuses by third parties including business; the corporate responsibility to respect human rights; and greater access by victims to effective remedy.[406] Subsequent to the adoption of the Ruggie Framework, the special representative was further mandated to develop guiding principles for the implementation of the framework leading to the adoption of the 'Guiding

[403] See the Norms *op cit*., para 1.

[404] The Norms were opposed mainly because they imposed directly on corporations such human rights obligations that are binding on States under international law, as against voluntary human rights standards. See David Kinley, Justine Nolan & Natalie Zerial 'The Politics of Corporate Social Responsibility: Reflections on the United Nations Human Rights Norms for Corporations' (2007) 25 *Company and Securities Law Journal* 30; Karl-Heinz Moder 'Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights' Background Paper to the FES Side Event at the 60th Session of the UN-Commission on Human Rights, Geneva March 25, 2005 available at *http://www.fes-globalization.org/geneva/documents/UN_Norms/25March04_UN-Norms_Background.pdf* [accessed April 7, 2016].

[405] Pini P Miretski & Sascha-Dominik Bachmann 'The UN 'Norms on the Responsibility of Transnational Corporations and other Business Enterprises with Regard to Human Rights': A Requiem' (2012) 17 *Deakin Law Review* 5; John G Ruggie 'Business and Human Rights: The Evolving International Agenda' (2007) *American Journal of International Law* 819.

[406] See the UN Human Right Council 'Protect, Respect and Remedy: A Framework for Business and Human Rights' Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie UN Doc A/HRC/8/5 (2008) available at *http://www.reports-and-materials.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf* [accessed April 7, 2016].

Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' by the Human Rights Council in 2011.[407]

According to the Ruggie Framework, in addition to compliance with national laws, the baseline responsibility of corporations is to respect human rights.[408] According to the guiding principles for implementation, the corporate responsibility to respect human rights requires that business enterprises avoid causing, or contributing to adverse human rights impacts through their own activities and address such when they occur.[409] Furthermore, the corporate responsibility to respect human rights requires that business enterprises endeavour to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships even if they have not contributed to such.[410] Thus, the scope of the corporate responsibility to respect human rights depends on the potential and actual human rights impacts resulting from a company's business activities and the relationships connected to those activities.[411] In addition, the corporate responsibility to respect human rights includes avoiding complicity in human rights abuses.[412] Corporate complicity in human rights abuses has been related to aiding and

[407] The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' UN Doc A/HRC/17/31 (2011) available at *http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf* [accessed April 7, 2016].

[408] See the Ruggie Framework *op cit*., para 54.

[409] See the Guiding Principles on Business and Human Rights *op cit*., para 13.

[410] *Ibid*.

[411] See the UN Human Rights Council 'Clarifying the Concepts of "Sphere of Influence" and "Complicity" (2008) A Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie UN Doc A/HRC/8/16 (2008).

[412] Complicity refers to the indirect involvement of corporations in human rights abuses such as knowingly contributing to the abuse of human rights by another person or entity. See the UN Human Rights Council ibid at para 30; and the UN Global Compact *op cit*., principle 2.

abetting in criminal matters.[413] According to the special representative to the UN Secretary-General on human rights and transnational corporations and other business enterprises, aiding and abetting consists of 'acts directed to assist, encourage or lend moral support to the perpetration of a crime, and which have a substantial effect upon its perpetration'.[414] Therefore, the corporate responsibility to avoid complicity in human rights abuses implies that corporations desist from engaging in acts directed at assisting, encouraging or lending moral support to activities that violates human rights and which have a substantial effect upon such violation. Within a framework of responsible investing therefore, it would mean that investment institutions do not invest in corporations, or fund activities that are linked with human rights violations. Where an investment institution makes such investment or fund such activities, it may be liable for being complicit in human rights violation.[415] Thus, in the case of *Wiwa v Royal Dutch Shell*,[416] it was alleged that the Nigerian military government and security forces committed human rights violations, including torture and summary execution of some members of the 'Movement for the Survival of the Ogoni People' (MOSOP), to suppress MOSOP's activities and that Royal Dutch/Shell was complicit in the commission of these abuses. The plaintiffs won several pre-trial rulings, including on motions by the defendants to dismiss the case. The defendants agreed to a compensatory settlement of the plaintiffs in the sum of US$15.5million, as well as the establishment of a trust fund for the benefit of the Ogoni people.

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[413] UN Human Rights Council 'Clarifying the Concepts of "Sphere of Influence" and "Complicity" *op cit.*
[414] *Ibid*, para 36.
[415] See for instance, *Budha Ismail Jam et al. v International Finance Corporation, op cit*.
[416] *Wiwa v Royal Dutch Shell Co.* 532 U.S. 941 (2001).

Several human rights standards are stipulated in various international, regional and national instruments. The corporate responsibility to respect human rights connotes that corporations take these human rights standards into consideration in developing business tools and strategies, as well as in the course of their business activities and operations. International instruments[417] developed by the UN and which contain specific international human rights guarantees have been stated to represent a definitive interpretation of human rights obligations acceptable internationally.[418] Although these documents are international law instruments binding on ratifying States, corporations do have a duty under these documents to respect the rights of others.[419] These documents forbid both individual and corporate actions that infringe on any prescribed fundamental human rights.[420] Similarly, the UDHR requires that governments and other organs of society including corporations strive to promote respect for human rights and fundamental freedoms.[421]

Moreover, the special representative to the UN Secretary-General on human rights and transnational corporations and other business enterprises have affirmed that the corporate responsibility to respect human rights refers to internationally recognised human rights because business can have adverse impacts on virtually all range of such rights.[422] The

[417] Such as the Universal Declaration of Human Rights (UDHR) (1948) and the main instruments through which it has been codified; the International Covenant on Civil and Political Rights (ICCPR) (1966), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966).
[418] Barbara A Frey 'The Legal and Ethical Responsibilities of Transnational Corporations in the Protection of International Human Rights' (1997) 6 *Minnesota Journal of Global Trade* 153, 160; Philip Alston 'The Commission on Human Rights' in Philip Alston (ed) *The United Nations and Human Rights* (1992) 126-27.
[419] Barbara Frey *ibid*, 163.
[420] See article 30 of the UDHR; and articles 5(1) of the ICESCR & ICCPR.
[421] See the preamble to the UDHR.
[422] See the UN Guiding Principles on Business and Human Rights *op cit*., para 12. See also the United Nations Global Compact *Guide to the Global Compact: A Practical Understanding of the Vision and Nine*

special representative further affirmed that internationally recognised human rights consist of such as prescribed in the UDHR, ICESCR, and ICCPR.[423] Within a regional and domestic framework, human rights consideration in Nigeria will also include those provided in the African Charter on Human and Peoples' Rights,[424] as well as those of the Nigerian Constitution.[425]

Several fundamental human rights, especially socio-economic rights, have implications for inequality. Although Nigeria do not have in place any legally enforceable socio-economic rights, various international treaties on the subject have been ratified by the government including the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the African Charter on Human and Peoples Rights (ACHPR). The UDHR affirms that "*everyone has the right to equal access to public service and social security, and is entitled to the realization of the economic, social and cultural rights indispensable for his dignity and the free development of his personality*".[426] The UDHR also affirms the right of "*everyone to a standard of living adequate for the health and wellbeing of himself and his family*".[427] In addition, the

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Principles (2002) 15 with regard to the affirmation that the corporate responsibility to respect human rights relates to internationally acceptable human rights standards as contained in the UDHR, ICCPR & ICESCR.

[423] *Ibid*.

[424] African Charter on Human and Peoples' Rights (Banjul Charter) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) available at *http://www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf* [accessed April 7, 2016].

[425] See the Constitution of the Federal Republic of Nigeria 1999, chapter IV available at *http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm* [accessed April 7, 2016].

[426] UDHR *op cit*., article 21(2) & 22. See also article 9 of the ICESCR which affirms the right of everyone to social security including social insurance.

[427] *Ibid,* article 25(1). The Banjul Charter also affirms this right, article 16. See also article 11(1) & 12 of the ICESCR.

declaration affirms the right of everyone to education.[428] A guarantee of these rights enhances the achievement of equality, while any deviation from the rights can result in greater inequality.

II. Labour Rights

Labour is considered an important aspect of CSR because labour issues constitute some of the aspects used to measure CSR performance.[429] Employees' rights, as well as occupational health and safety have been stipulated in several international guidelines as the constituent elements of the corporate social responsibility of corporations to their employees.[430]

III. Employees' Rights

According to the International Labour Organisation (ILO),[431] even though economic growth is essential in an economy, there is also the need to ensure equity and social progress in the economy.[432] Thus, several international labour treaties and conventions of

[428] *Ibid*, article 26(1). See also the Banjul Charter, article 17(1), & article 13 of the ICESCR.
[429] Gerard Zwetsloot & Annick Starren 'Corporate Social Responsibility and Safety and Health at Work' (2004) European Agency for Safety and Health at Work 15-16; Jean-Pierre Segal, Andre Sobczak & Claude-Emmanuel Triomphe 'CSR and Working Conditions' (2003) European Foundation for the Improvement of Living and Working Conditions Research Paper.
[430] See for instance the ILO Declaration on Fundamental Principles and Rights at Work (1998) available at *www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm* [accessed November 7, 2015]; the United Nations Global Compact *op cit*.; the IFC Sustainability Framework *op cit*.; Organisation for Economic Cooperation and Development *Guidelines For Multinational Enterprises* (2008) available at *http://www.oecd.org/corporate/mne/1922428.pdf* [accessed November 12, 2015]; the Global Sullivan Principles *op cit*. Such employees' rights and occupational health and safety have emerged as a significant area of concern for socially responsible investors since the 1990s especially with the proliferation of alleged 'sweat shops' and exploitative labour practices, see Pietra Rivoli 'Labor Standards in the Global Economy: Issues for Investors' (2003) 43(3) *Journal of Business Ethics* 223.
[431] The ILO is the constitutionally mandated international organisation and the competent body to set and deal with international labour standards; see the preamble to the ILO Declaration *ibid*.
[432] Preamble to the ILO Declaration ibid. The International Finance Corporation holding a similar view posits that the pursuit of economic growth through employment creation and income generation should be accompanied by protection of the fundamental rights of workers; see the IFC Sustainability Framework *op cit*.

the ILO[433] specify various principles which have given rise to some fundamental rights of employees, and which are affirmed in the Declaration on Fundamental Principles and Rights at Work.[434] The ILO regards these principles and rights as very relevant in maintaining the link between social progress and economic growth.[435]

Some of these rights include, freedom of association and collective bargaining, freedom from forced or compulsory labour, and freedom from discrimination in employment.

IV. Occupational Health and Safety

A good occupational health and safety environment forms an integral part of corporate social responsibility to employees.[436] According to the World Health Organisation (WHO), occupational health deals with all aspects of health and safety in the workplace and has a strong focus on primary prevention of hazards.[437] The WHO further defines health as "*a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity*".[438] According to the ILO and WHO, occupational health should aim at the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations; the prevention amongst workers of departures from

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[433] Such as 'Freedom of Association and Protection of the Right to Organise Convention No. C87' (1948); 'Abolition of Forced Labour Convention No. C105' (1957); 'Discrimination (Employment and Occupation) Convention No. C111' (1958); 'Minimum Age Convention No C138' (1973); *inter alia*.

[434] The fundamental principles and rights at work include freedom of association, and effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labour; effective abolition of child labour; and elimination of discrimination in respect of employment and occupation. See the ILO Declaration *op cit*., para 2.

[435] See the preamble to the ILO Declaration *ibid*.

[436] Maria J Montero; Rafael A Araque & Juan M Rey 'Occupational Health and Safety in the Framework of Corporate Social Responsibility' (2009) 47 *Safety Science* 1440.

[437] See the World Health Organisation 'Occupational Health' available at *http://www.wpro.who.int/topics/occupational_health/en/* [accessed November 10, 2015].

[438] See the Constitution of the World Health Organisation (1948) preamble, para 1 available at *http://www.who.int/governance/eb/who_constitution_en.pdf* [accessed November 10, 2015].

health caused by their working conditions; the protection of workers in their employment from risks resulting from factors adverse to health; the placing and maintenance of the worker in an occupational environment adapted to his physiological and psychological capabilities.[439]

Fundamental rights of workers such as right to collective bargaining, trade unionism, among others; and occupational health and safety are issues that goes to the heart of dignified labour and fair living wages. As discussed in Chapter one, such issues are significant to combat inequality and responsible investors are expected to ensure that companies they invest in abide by this.

V. Consumer Rights and Protection

There is no gainsaying that goods or services produced by an enterprise are ultimately meant for consumers, the need to promote consumers rights and protection with regard to such goods and services has been highlighted over time.[440] This is because such goods or services produced are capable of having adverse impacts on consumers due to unethical and exploitative practices of business organisations.[441] Since corporate social responsibility connotes initiatives to assess and take responsibility for corporate effects on social wellbeing among others, provision of superior quality, safe and reliable products or services to consumers in an efficient and ethical manner has been identified as an integral aspect of

[439] The Joint ILO/WHO Committee on Occupational Health (1950) cited in Jorma Rantanen & Igor A. Fedotov 'Occupational Health Services' in Jeanne M Stellman (ed) *Encyclopaedia of Occupational Health and Safety* 4 ed (1998).

[440] Rajib Bhattacharyya 'An Analysis on the Various Aspects of Consumer Protection in India' (2014) 1(6) *Journal of Research* 1; Sewanand 'Consumer Protection and Consumerism' (2012) 1(6) *International Journal of Transformations in Business Management* 1.

[441] *Ibid*. Such practices assume various forms such as adulteration of food; poor quality of goods or services; deceptive advertisements; sale of hazardous products; among others.

corporate social responsibility.[442] This has implication for inequality because harmful products could be detrimental to human health and ultimately, to human productivity. Such resultant reduced productivity as a result of bad health reduces human capability to earn income and therefore contributes to inequality.

3.4.3 Corporate Governance Element

There is no single, accepted definition of the term 'corporate governance' as a result of the different views on the role of business in the society.[443] Corporate governance has been defined as the ways in which corporate shareholders assure themselves of getting value for their investment in a corporation.[444] It has also been defined as the set of mechanisms that guide corporate managers to make decisions that maximise corporate value to its shareholders.[445] According to the United Kingdom's Cadbury Report, corporate governance refers to the system by which companies are directed and controlled.[446] The OECD defines corporate governance as a set of relationships between a company's management, its board, shareholders and other stakeholders.[447] Thus, corporate governance is defined from different approaches; one that views corporate governance as the relationship between a

[442] See the Commission of the European Communities 'Green Paper: Promoting a European Framework for Corporate Social Responsibility' (2001).
[443] Thomas Clarke & Douglas Branson 'Introduction: Corporate Governance – An Emerging Discipline?' in Thomas Clarke & Douglas Branson (eds) *The SAGE Handbook of Corporate Governance* (2012) 1; Peter Cornelius & Bruce Kogut 'Creating the Responsible Firm: In Search for a New Corporate Governance Paradigm' (2003) 4 *German Law Journal* 45.
[444] Andrei Shleifer & Robert W Vishny 'A Survey of Corporate Governance' (1997) 52(2) *The Journal of Finance* 737.
[445] Diane K Denis & John J McConnell 'International Corporate Governance' (2003) 38 *Journal of Financial and Quantitative Analysis* 1.
[446] The Committee on the Financial Aspects of Corporate Governance and Gee and Co. Ltd. *Report of the Committee on the Financial Aspects of Corporate Governance* (1992) 15 available at *http://www.ecgi.org/codes/documents/cadbury.pdf* [accessed November 11, 2015].
[447] Organisation for Economic Cooperation and Development *G20/OECD Principles of Corporate Governance* (2015) 9 available at *www.oecd.org/g20/meetings/antalya/Corporate-Governance-Principles-ENG.pdf* [accessed November 11, 2015].

company and its shareholders, and another that views corporate governance as the web of relationships not restricted to that between a company and its shareholders but also those between a company and a broad range of other stakeholders.[448]

As a result of several corporate scandals globally, and the global financial crisis of 2008,[449] the latter approach[450] has continually attracted great attention as several principles considered paramount to good corporate governance are increasingly being emphasised around the world.[451] Moreover, several theoretical and empirical survey have continually indicated that good corporate governance is an investment technique that effectively improves corporate performance, and ultimately increases the value of corporate portfolios.[452]

[448] Jean J du Plessis; Anil Hargovan; Mirko Bagaric & Jason Harris *Principles of Contemporary Corporate Governance* 3 ed (2015); Jill Solomon & Aris Solomon *Corporate Governance and Accountability* (2004) 12; Thomas Clarke and Douglas Branson *op cit*.

[449] The corporate scandals and global financial crises were partly attributed to failures and weaknesses in corporate governance arrangements. See Aidan O'Dwyer 'Corporate Governance after the Financial Crisis: The Role of Shareholders in Monitoring the Activities of the Board' (2014) 5 *Aberdeen Student Law Review* 112; Grant Kirkpatrick 'The Corporate Governance Lessons from the Financial Crisis' (2009) *OECD Journal: Financial Market Trends* 61; Cristiano Busco, Mark L Frigo, Elena Giovannoni, Angelo Riccaboni & Robert W Scapens 'Beyond Compliance: Why Integrated Governance Matters Today' (2005) *Strategic Finance* 35.

[450] The approach that views corporate governance as the web of relationships between a company and a broad range of stakeholders.

[451] Solomon & Solomon *op cit*.; Thomas Clarke & Douglas Branson *op cit*.; Jean J du Plessis *et al op cit*.; Yadong Luo 'Corporate Governance and Accountability in Multinational Enterprises: Concepts and Agenda' (2005) 11 *Journal of International Management* 1; Amiram Gill 'Corporate Governance as Social Responsibility: A Research Agenda' (2008) 26 *Berkeley Journal of International Law* 452.

[452] Raghu Katragadda 'Corporate Governance and Firm Performance: A Theoretical Review' (2013) 1(7) *International Journal of Advance Research in Computer Science and Management Studies* 368; Colin Melvin & Hans-Christoph Hirt 'Corporate Governance and Performance' in Ken Rushton (ed) *The Business Case for Corporate Governance* (2008) 217; Sanjai Bhagat & Brian Bolton 'Corporate Governance and Firm Performance' (2008) 14(3) *Journal of Corporate Finance* 257.

According to the OECD corporate governance principles,[453] even though there is no single model of good corporate governance, some common elements underlie good corporate governance. These elements as identified by the OECD are reflected in the Nigerian corporate governance system.[454] The elements include; the rights and equitable treatment of shareholders; stakeholder management; transparency and disclosure; and a responsible board.[455]

These corporate governance issues have implications for inequality. For instance, transparency about, and disclosure of tax practices as well as a system of responsible executive pay goes a long way in the reduction of inequality. Similarly, a responsible board ensures that economic interests of employees are adequately considered in corporate management, and that corporations fulfil their corporate obligations to the government as corporate citizens. These also contribute to a reduction of inequality.

3.5 The Case for Responsible Investment

The financial sector has been identified as a major stronghold of any modern economy,[456] being a repository of public wealth and supplier of funds which lubricate the growth engine

[453] The principles have been applauded as a declaration of minimum acceptable standards for companies and investors around the world; see the International Corporate Governance Network (ICGN) 'Statement on Global Corporate Governance Principles' (2005) 1 available at *www.ecgi.org/codes/documents/revised_principles_jul2005.pdf* [accessed November 11, 2015]. Furthermore, the principles have gained worldwide recognition as an international benchmark for sound corporate governance; see Grant Kirkpatrick 'The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries' (2005) 13(2) *Corporate Governance: An International Review* 127.

[454] The Nigerian corporate governance framework consists of the Companies and Allied Matters Act which is the principal company legislation, and the Code of Corporate Governance for Public Companies in Nigeria.

[455] Organisation for Economic Cooperation and Development *G20/OECD Principles of Corporate Governance* (2015) available at *www.oecd.org/g20/meetings/antalya/Corporate-Governance-Principles-ENG.pdf* [accessed November 11, 2015].

[456] See Emilios Avgouleas *op cit*.; Eilis Ferran *et al op cit.* See also Adeyemi Babalola & Oluwaseyi A Adedipe 'Corporate Governance and Sustainable Banking Sector: Evidence from Nigeria' (2014) 5(12)

of an economy.[457] It has also been acknowledged by many economists that the financial sector provides linkages for other economic sectors.[458] Therefore, it is important that the activities of the sector be conducted in a responsible and sustainable manner. Moreover, the concept of 'responsible investment' has become a global phenomenon as the ranks of social investors are growing fast throughout the world.[459] Consequent upon the global financial crises, corporate stakeholders including investors are becoming aware of how poor corporate environmental, social and governance culture can be detrimental to corporate value.[460] It is also becoming clearer that on the long term, corporate environmental, governance, and social performance is likely to be a pre-requisite for corporate financial performance.[461] A research on the materiality of environmental, social, and governance

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Research Journal of Finance and Accounting 33; Franklin Allen, Elena Carletti, & Xian Gu 'The Roles of Banks in Financial Systems' in Berger N Allen, Molyneux Philip, & Wilson OS John (eds) *The Oxford Handbook of Banking* 2 ed (2014) 27.

[457] Ifeanyi D Nworji, Adebayo Olagunju & Olanrewaju D Adeyanju 'Corporate Governance and Bank Failure in Nigeria: Issues, Challenges and Opportunities' (2011) 2(2) *Research Journal of Finance and Accounting* 1; Nigamananda Biswas 'Sustainable Green Banking Approach: The Need of the Hour' (2011) 1 *Business Spectrum* 32 at 33; Sanusi L Sanusi 'Banks in Nigeria and National Economic Development- A Critical Review' Keynote address at the seminar on 'Becoming an Economic Driver While Applying Banking Regulations' (2011) available at *http://www.cenbank.org/OUT/SPEECHES/2011/GOV_BANKS%20IN%20NIGERIA%20AND%20NATIONAL%20ECONOMIC%20DEVELOPMENT_CHC-CIBN-RBC_040611.PDF* [accessed November 10, 2015].

[458] SL Sanusi, *ibid*.

[459] UNEP Finance Initiative Freshfields Report 'A Legal Framework for the Integration of Environmental, Social and Governance Issues into Institutional Investment' (2005) available at *http://www.unepfi.org/fileadmin/documents/freshfields_legal_resp_20051123.pdf* [accessed November 8, 2015].

[460] The Economist Intelligence Unit 'The Sustainable Future: Promoting Growth through Sustainability' (2011) 3 available at *www.enelsustainabilityday.com/wp-content/uploads/2011/02/sustainable_future_english.pdf* [accessed November 8, 2015]. See also Paul Thompson 'Bank Lending and the Environment: Policies and Opportunities' (1998) 16(6) *International Journal of Bank Marketing* 243.

[461] *Ibid*. See also United Nations Environment Programme Finance Initiative & Mercer 'Demystifying Responsible Investment Performance: A Review of Key Academic and Broker Research on ESG Factors' (2007); James T Hamilton 'Pollution as News: Media and Stock Markets Reactions to the Toxics Release Inventory Data' (1995) *Journal of Environmental Economics and Management* 28; WT Allen 'The Mysterious Art of Corporate Governance: How Individual Directors Set the Tone of the Board' (2001) 22

issues to corporate financial performance shows robust evidence that such issues affect shareholders value both in the short and long term, and that the impact of such issues on share price and corporate profitability can be valued and quantified.[462] Since investors will ordinarily expect valuable and long-term financial returns on their investments, it is expedient that they consider corporate profitability issues[463] in the course of their investment activities.

In addition, based on the general principles of corporate law, investment managers owe fiduciary duties to the investors in their investment schemes that is, the fund or asset owners.[464] These fiduciary duties oblige investment managers to perform their duties in the best interests of their investors. Consideration of environmental and social issues has been identified as one of the fiduciary duties of investment managers because the best interests of investors are not restricted to their financial interests but include extra-financial interests such as environmental and social welfare.[465] Moreover, the economic value of a

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Corporate Board 1. This is because environmental and social fines can increase corporate capital expenditure thereby reducing corporate income.

[462] UNEP Finance Initiative 'Show me the Money: Linking Environmental, Social and Governance Issues to Company Value' (2006) 11 available at *www.unepfi.org/fileadmin/documents/show_me_the_money.pdf* [accessed November 8, 2015]. See also Gunnar Friede, Timo Busch & Alexander Bassen 'ESG and Financial Performance: Aggregated Evidence from more than 2000 Empirical Studies' (2015) 5(4) *Journal of Sustainable Finance & Investment* 210.

[463] Which in this case will include environmental, social, and governance issues.

[464] Robert Baxt *Duties and Responsibilities of Directors and Officers* 18 ed (2005) 39 & 57. See also s 279 Companies and Allied Matters Act CAP 59 Laws of the Federation of Nigeria 2004 available at *http://www.nigeria-law.org/CompaniesAndAlliedMattersAct.htm* [accessed November 8, 2015].

[465] UNEP Finance Initiative 'Fiduciary Responsibility: Legal and Practical Aspects of Integrating Environmental, Social, and Governance Issues into Institutional Investment' (2009) available at *http://www.unepfi.org/fileadmin/documents/fiduciaryII.pdf* [accessed February 13, 2015]; UN Principles for Responsible Investment 'Responsible Investment and Fiduciary Duty' available at *http://d2m27378y09r06.cloudfront.net/wp-content/uploads/3.Responsibleinvestmentandfiduciaryduty.pdf* [accessed February 13, 2015]; Joakim Sandberg 'Socially Responsible Investment and Fiduciary Duty: Putting the Freshfields Report into Perspective' (2011) 101 *Journal of Business Ethics* 143; World Economic Forum 'Values and Value: Communicating the Strategic Importance of Corporate Citizenship to Investors' (2004) 21 available at *http://www.weforum.org/pdf/GCCI/GCCI_Survey_2004.pdf* [accessed November 10,

corporation is deemed higher than its book value and includes other values such as brand and goodwill, and an estimate of future earnings which can only be guaranteed by the sustainability of the firm.[466] Investing responsibly thus has the potential of increasing the economic value of an investment portfolio. Also, investing responsibly enhances investment reputation and an investment firm's social license to operate, while creating a long-term relationship with its stakeholders.[467]

Moreover, with the increase in the demand for responsible investment globally, investing responsibly may likely become a mainstream risk management issue for financial institutions as failure to manage environmental, social and governance issues may have significant consequences on the financial performance of financial institutions.[468] Similarly, responsible investment enhances the opportunity of a stable and long term investment returns by reducing credit risk and thereby building market confidence and enhancing financial stability.[469]

2015]. See also Magnus Jansson, Joakim Sandberg, Anders Biel & Tommy Garling 'Should Pension Funds' Fiduciary Duty be Extended to Include Social, Ethical and Environmental Concerns? A Study of Beneficiaries' Preferences' (2014) 4(3) *Journal of Sustainable Finance & Investment* 213.

[466] KPMG International and Economist Intelligence Unit 'Corporate Sustainability' (2011) available at *http://www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/Documents/iarcs-eiu-corporate-sustainability.pdf* [accessed November 8, 2015]; James Roselle *op cit*., 9.

[467] Iveta Cherneva 'The Business Case for Sustainable Finance: Beyond Public Relations, Ethics, and Philanthropy' (2012) 36(2) *The Fletcher Forum of World Affairs* available at *http://www.fletcherforum.org/wp-content/uploads/2012/09/Cherneva.pdf* [accessed November 8, 2015]; James A Brickley, Clifford W Smith & Jerold L Zimmerman 'Business Ethics and Organisational Architecture' (2002) 26 *Journal of Banking and Finance* 1821; Ralph Chami, Thomas F Cosimano & Connel Fullenkamp 'Managing Ethical Risk: How Investing in Ethics Adds Value' (2002) 26 *Journal of Banking and Finance* 1697.

[468] Karen Heese *op cit*., 731.

[469] Principles for Responsible Investment Initiative 'Corporate Bonds: Spotlight on ESG Risks' (2013) 4 available at *http://2xjmlj8428u1a2k5o34l1m71.wpengine.netdna-cdn.com/wp-content/uploads/PRI_CORPORATE_BONDS_SPOTLIGHT_ON_ESG_RISKS_2013.pdf* [accessed November 10, 2015]. See also Benjamin J Richardson 'Keeping Ethical Investment Ethical: Regulatory Issues for Investing for Sustainability' (2009) 87 *Journal of Business Ethics* 555; UNEP Finance Initiative *op cit*. This is particularly relevant to those financial institutions that invest in corporate bonds or debentures.

Furthermore, society was traditionally able to rely on governments and political systems to hold the corporate sector in check and accountable for their operations.[470] However, the power and influence of modern corporations has increased greatly especially with the rise of multinational corporations with immense powers in the society.[471] Therefore, the traditional government command techniques have gradually reached the limits of their design capabilities.[472] It has however been argued that the reform of the financial sector to promote long term investment and better consideration of environmental and social impacts may be an important facet of future systems of an inclusive development.[473]

3.6 Conclusion

This chapter discusses the concept and identifies the constituent elements of responsible investment. The concept connotes the integration of environmental, social, and governance issues in investment analyses and decision-making processes. The chapter finds that some of the social issues relevant for making responsible investments include, labour and human rights, community development, workers' protection, and payment of fair taxes. This is notwithstanding the issues of environmental protection and economic development which are also identified as necessary for making responsible investment. In other words, in implementing the principles for responsible investment, fund managers will be required to take into consideration the practices and performance of potential investees in respect of

[470] Benjamin J Richardson *op cit.*
[471] Russell Sparkes *op cit*.; Hellsten Sirkku & Chris Mallin 'Are Ethical or Socially Responsible Investments Socially Responsible?' (2006) 66 *Journal of Business Ethics* 393. See also David Vogel *Lobbying the Corporation: Citizen Challenges to Business Authority* (1978); Brill Hal, Jack A Brill, & Cliff Feigenbaum *Investing with your Values: Making Money and Making a Difference* (1999).
[472] See Benjamin J Richardson *op cit*.
[473] *Ibid*. See also Benjamin J Richardson 'Diffusing Environmental Regulation through the Financial Services Sector: Reforms in the EU and other Jurisdictions' (2003) 10 *Maastricht Journal of European & Comparative Law* 233.

such issues. Thus, while analysing their subsisting investments, and in making new investment decisions, fund managers are to be guided by the social and environmental policies and performance of subsisting and potential investees.

These issues relevant for making responsible investments also have implications for the promotion of equality and inclusive development. Hence, the implementation of the principles for responsible investment presents an avenue for addressing the challenges of inequality that will be tackled in more detail in subsequent chapters.

CHAPTER FOUR- ANALYSIS OF NIGERIA'S REGULATORY AND ENFORCEMENT REGIME FOR RESPONSIBLE INVESTMENT

4.1 Introduction

The constituent elements of responsible investment have been identified in the previous chapter as environmental, social and governance issues. This chapter examines various laws and regulations, as well as regulatory bodies, relevant to ESG issues in Nigeria. The chapter also highlights some strengths and weaknesses identified from the analysis particularly, those that have implications for inequality in Nigeria. This chapter will identify the adequacy or otherwise of the laws and regulations in addressing the inequality challenges in Nigeria, and the promotion of inclusive development in Nigeria.

4.2 Legal and Regulatory Framework for Environmental Protection

This thesis already identifies environmental pollution and degradation as one of the major causes of inequality in Nigeria. The Constitution of Nigeria imputes the national government with the responsibility of protecting and improving the environment, as well as safeguarding the water, air and land, forest and wild life of Nigeria.[474] In an effort to ensure the protection and conservation of her environment, in addition to the recognition of the international standards, Nigeria has domesticated the various principles of international environmental law, as well as the provisions of various international treaties and

[474] Constitution of the Federal Republic of Nigeria 1999 sec 20 available at *http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm* [accessed August 19, 2015].

conventions on the environment which is reflected in the National Policy on the Environment.[475]

> The objectives of the policy include,
>
> To ensure that the sustainable development goals are met in Nigeria through the proper management of the environment; to secure a quality of environment adequate for good health and well-being; to conserve and use the environment and natural resources for the benefit of present and future generations; to restore, maintain and enhance the ecosystems and ecological processes essential for the functioning of the biosphere; to preserve biological diversity and the principle of optimum sustainable yield in the use of living natural resources and ecosystems.[476]

In order to meet these objectives, the policy seeks to ensure among other things, "*that environmental concerns are integrated into major economic decision- making processes; environmental remediation costs are built into major development projects; and an environmental impact assessment is mandatorily carried out before any major development project is embarked on*".[477] Furthermore, the policy affirms international environmental law principles such as the 'precautionary principle';[478] 'polluter pays principle';[479] 'pollution prevention pays principle';[480] 'user pays principle';[481] 'principle of intergenerational

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[475] See the Nigerian National Policy on the Environment (1998) available at *http://www.nesrea.org/images/National%20Policy%20on%20Environment.pdf [*accessed August 19, 2015].
[476] *Ibid,* para 1 & 2.
[477] *Ibid*, para 1.
[478] Which holds that where there are threats of serious or irreversible damage, the lack of full scientific knowledge shall not be used as a reason for postponing cost-effective means to prevent environmental degradation.
[479] Which suggests that a polluter should bear the cost of preventing and controlling environmental pollution.
[480] Which encourages Industry to invest positively to prevent pollution.
[481] In which the cost of a resource to a user must include all the environmental costs associated with its extraction, transformation and use.

equity';[482] 'principle of intra-generational equity';[483] and the 'subsidiary principle'.[484] Consequently, the Federal Government of Nigeria has enacted several laws and regulations to safeguard the Nigerian environment including;

4.2.1 The Environmental Impact Assessment Act[485]

The Nigerian 'National Policy on the Environment', seeks to ensure among other things, "*that environmental concerns are integrated into major economic decision- making processes… and an environmental impact assessment is mandatorily carried out before any major development project is embarked on*".[486] This is in furtherance of its recognition of the 'pollution prevention pays principle' of international environmental law.[487] Thus, Nigeria has promulgated the Environmental Impact Assessment Act (the Act) which requires that an environmental impact assessment be carried out before commencing any project likely to have a significant impact on the environment.[488] According to the Act, "*the public and private sector of the economy*[489] *shall not undertake or embark on or authorise projects or activities without prior consideration, at an early stage, of their environmental*

[482] Which requires that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.
[483] Which requires that different groups of people within the country and within the present generation have the right to benefit equally from the exploitation of resources and that they have an equal right to a clean and healthy environment.
[484] Which requires that decisions should as much as possible be made by communities affected or on their behalf by the authorities closest to them. See the Nigerian National Policy on the Environment *op cit*.
[485] The Environmental Impact Assessment Act 1992.
[486] The National Policy on the Environment *op cit*., para 1.
[487] This principle encourages industry to invest positively to prevent pollution. See the National Policy on the Environment, *op cit.*
[488] See the Environmental Impact Assessment Act 1992 available at *http://www.nigeria-law.org/Environmental%20Impact%20Assessment%20Decree%20No.%2086%201992.htm* [accessed August 19, 2015].
[489] It is noteworthy that the private sector of any economy includes corporate organisations.

effects".[490] The Act further provides that "*where the extent, nature or location of a proposed project or activity is such that it is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provisions of the Act*".[491] Just as practiced globally, an environmental impact assessment process in Nigeria encompasses several stages including, the screening or mandatory study of a proposed project for potential environmental impacts and the preparation of a screening report;[492] the assessment of the identified potential environmental impacts by a review panel and the preparation of an assessment report;[493] and the design and implementation of a follow-up program.[494] Furthermore, the Act provides for the relevant environmental issues that must be considered when conducting an environmental impact assessment.[495] In addition, the Act requires the participation of the interested public in the assessment process.[496] The Act requires the regulatory agency to give opportunity to government agencies, members of the public, experts in any relevant discipline, and integrated groups to comment on the EIA of an activity before a decision is taken on such an activity.[497] Also,

[490] Environmental Impact Assessment Act *op cit.,* section 2(1).
[491] *Ibid*, section 2(2).
[492] *Ibid,* section 16(a) & 3(1).
[493] *Ibid,* section 16(b).
[494] *Ibid,* section 16(c). Such follow-up program will include measures which the corporate organisation intends to take to prevent, mitigate, remedy, or offset the identified possible adverse impacts.
[495] These include, a description, and purpose of the proposed activity; a description of the potential affected environment including specific information necessary to identify and assess the environmental effects of the proposed activity; an assessment of the likely or potential environmental impacts of the proposed activity and the possible alternatives; an identification and description of measures available to mitigate adverse environmental impacts of the proposed activity and assessment of those measures; an indication of gaps in knowledge and uncertainly which may be encountered in computing the required information; comments concerning those effects received from the public; an indication of whether the environment of any other State, Local Government Area or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives; see the Environmental Impact Assessment Act *op cit*., section 4 & 17.
[496] Environmental Impact Assessment Act *op cit*., section 7 & 8.
[497] *Ibid,* section 7.

the regulatory agency is obliged to consider such comments received before giving a decision on an application for environmental authorization.[498] Furthermore, the decision of the agency is required to be in writing with reasons for the decision and provisions if any to prevent, reduce, or mitigate damage to the environment stated. The decision shall be made available to interested persons or groups.[499]

The Act further requires the preparation of an environmental impact statement containing the details and report of the assessment process.[500] The Act vests the authority for overseeing the administration of the Act in the National Environmental Standards and Regulations Enforcement Agency (NESREA).[501]

I. Strengths and Weaknesses of the Environmental Impact Assessment Act

The provisions of the EIA Act are laudable as it ensures that business activities leave very minimal impact on the environment. Also, for the purpose of facilitating public participation in the assessment process, the Act requires the establishment of a public registry in respect of every project for which an assessment is conducted.[502] The registry is required to contain all records and information produced, collected or submitted with respect to the environmental assessment of a project.[503] Furthermore, the Act requires NESREA to maintain an annual statistical summary of all the environmental assessment undertaken or directed by it, and all decisions made in relation to the environmental effects

[498] *Ibid*, section 8.
[499] *Ibid*, section 9.
[500] *Ibid,* section 4(h).
[501] *Ibid,* section 63(1).
[502] *Ibid,* section 57.
[503] *Ibid.*

of a project after the completion of the assessment.[504] This provision ensures the accountability of NESREA for all environmental applications presented to it, and the environmental authorisations granted by it.

The Act however fails to provide for a system of life-cycle assessment which ensures that the assessment runs throughout the life-cycle of a project. Such life-cycle assessment is expedient because it ensures that those adverse impacts that were unforeseen during the initial assessment are not left unattended during the implementation of the project. Second, internationally acceptable standards on environmental assessment requires an assessment process to include the design of an environmental management plan (EMP).[505] An EMP is a corrective action plan which defines resources, roles and responsibilities required to manage environmental impacts and implement mitigation measures. The plan also defines monitoring requirements to determine whether mitigation is successful.[506] As significant as this is for an effective assessment process, the Nigerian EIA Act fails to provide for it in detail. The Act only mentions the development of follow-up program which it describes as a program for verifying the accuracy of the assessment and determining the effectiveness of measures taken to mitigate adverse environmental effects.[507] Third, international standard on environmental assessment[508] requires the environmental management plan to include

[504] *Ibid*, section 58.
[505] For instance, the International Finance Corporation 'A Guide to Biodiversity for the Private Sector' available at *www.ifc.org/BiodiversityGuide* [accessed April 7, 2019]; and the International Association for Impact Assessment & Institute of Environmental Assessment 'Principles of Environmental Impact Assessment Best Practice' (1999).
[506] *Ibid*.
[507] Environmental Impact Assessment Act *op cit.*, section 63(1).
[508] A Guide to Biodiversity for the Private Sector, and the Principles of Environmental Impact Assessment Best Practice, *op cit.*

measures for mitigating adverse environmental impact including preventive measures,[509] mitigating measures,[510] remedial measures,[511] and compensatory measures.[512] The EIA Act in Nigeria recognises only prevention and reduction of impacts as mitigation measures.[513] It is however noteworthy that restoration of the environment and payment of compensation are very important means of remedying any inconveniences suffered by an aggrieved party as a result of environmental degradation. In addition, the Act provides for a penalty of not less than N50, 000 and not more than N1, 000, 000 fine for any company that fails to comply with the provisions of the Act. This is grossly inadequate as it lacks specificity, and leaves the determination of the amount of fine to be paid by a defaulting company at the discretion of NESREA. Moreover, the EIA Act requires an environmental assessment to be conducted in respect of projects that may likely impact the environment adversely. However, the Act based the determination of what projects may impact the environment on the volume of the project or the land mass to be covered by the project.[514] This has the effect of defeating the purpose of the Act because it fails to base the requirement of an assessment on the potential of a project to cause significant environmental impact but on the volume and land mass of the project.[515]

[509] This include measures that totally avert identified environmental impacts.
[510] That is, those measures that reduces the adverse impacts when such impacts are unavoidable.
[511] This involves the restoration of the environment to its original state.
[512] This involves payment of compensation to affected persons for any residual, unavoidable impact.
[513] Environmental Impact Assessment Act *op cit*., section 9(1)(c).
[514] *Ibid*, the Schedule to the Act.
[515] Thus, where a project does not meet up with the specified volume nor occupy the specified land mass, an assessment may be avoided even though the project has the potential to adversely impact the environment.

4.2.2 The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act516

The Act established NESREA as the enforcement agency for environmental standards, regulations, rules, laws, policies and guidelines in Nigeria.[517] Thus, NESREA has the responsibility "*to enforce compliance with laws, guidelines, policies and standards on environmental matters and with the provisions of international agreements, protocols, conventions, and treaties on the environment*". Second, NESREA has the responsibility for the protection and development of the environment, biodiversity conservation, and sustainable development of Nigeria's natural resources.[518] Third, NESREA is obligated with "*the enforcement of environmental control measures through registration, licensing and permitting systems, the conduct of environmental audit, establishment of data bank on regulatory and enforcement mechanisms of environmental standards, and to carry out activities that are necessary for the performance of its functions*".[519] In addition, NESREA is empowered "*to prohibit processes and use of equipment or technology that undermine environmental quality, to conduct field follow-up of compliance with set standards and take procedures as prescribed by law against any violator, and to conduct public investigations on pollution and the degradation of natural resources*".[520]

[516] The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007.
[517] *Ibid*, section 1.
[518] *Ibid,* section 2.
[519] *Ibid,* section 7.
[520] *Ibid*, section 8.

I. Strengths and Weaknesses of NESREA

The NESREA Act vests so much power on NESREA necessary for the effective implementation of its responsibilities. The state of the Nigerian environment however indicates that NESREA has not been totally effective in developing and protecting the Nigerian environment. Several reasons have been alluded for this including, too much bureaucracy which has corrupted the system, the failure of NESREA to spread out its tentacles and establish its presence in all the States of the federation, and the failure of NESREA to engage relevant stakeholders beyond conference tables to the fields where action is needed to safeguard the environment.[521] Another very significant weakness of the NESREA Act is the absence of any form of mandatory disclosure of information on compliance with environmental laws and regulations by corporations to NESREA. This may hinder the achievement of the objectives of the Act as enforcement may become superficial. In addition, available punishment for non-compliance with environmental laws prescribed by environmental statutes are inadequate as punishment often comprises of administrative penalty such as fines, rather than criminal penalty and/or remedial measures. Administrative penalties may not deter further breach of the law by corporations, criminal penalty may better serve the purpose of the Act by deterring further non-compliance with environmental legislation. Also, remedial measures will ensure that corporations pay to restore degraded environment back to its original state thereby enhancing the achievement of the objectives of NESREA which include the development and protection of the environment. Furthermore, environmental statutes do not generally provide for the proper

[521] Lauretta Asemota 'Need for Effective Environmental Regulators in Nigeria' The Guardian Nigeria, July 19, 2018.

compensation of aggrieved persons from corporate activities that degrade the environment. Such compensatory measure is also needed to fully remedy any harm occasioned to any person from environmental degradation. Since the state of the environment has been linked to human health and productivity, these weaknesses have implications for inequality.

4.2.3 The Petroleum Act[522]

The Petroleum Act is the principal law that governs petroleum operations in Nigeria, including oil exploration, production and use. The Act vests the general supervisory powers over all oil operations in Nigeria on the Minister for Petroleum Resources (the Minister).[523] The Act grants the minister of petroleum resources the power "*to make regulations providing generally for matters relating to licenses and leases granted under the Act and operations carried on under the Act including the prevention of pollution of water courses and the atmosphere*".[524] This led to the enactment of the Petroleum (Drilling and Production) Regulations in 1969. The regulation was enacted to regulate and monitor the activities of the oil and gas industry in Nigeria. The regulation provides that

> A licensee or lessee shall adopt all practicable precautions to prevent the pollution of inland waters, rivers, watercourses, the territorial waters of Nigeria or the high seas by oil, mud or other fluids or substances which might contaminate the water, banks or shoreline or which might cause harm or destruction to fresh water or marine life, and where any such pollution occurs or has occurred, shall take prompt steps to control and if possible, end it.[525]

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[522] The Petroleum Act 1969.
[523] *Ibid*, section 8(1).
[524] Ibid, section 9(1)(b)(iii).
[525] Petroleum (Drilling and Production) Regulations 1969, section 25 available at *www.faolex.fao.org/docs/pdf/nig120683.pdf [*accessed July 20, 2013].

The Minister is empowered "*to access oil fields at all times for the purpose of inspecting the operations conducted therein and enforcing the provisions of the Act and any of its subsidiary regulations, as well as the conditions of any oil licence or lease granted*".[526] The Minister generally carry out this responsibility through the Department of Petroleum Resources (DPR) which is a department in the Ministry of Petroleum Resources. The DPR performs the following functions;

a) Supervises all petroleum industry operations carried out under licences and leases in the country;
b) Monitors the petroleum industry operations to ensure they are in line with national goals and aspirations;
c) Ensures that health, safety and environmental regulations conform to national and international best oil field practice;
d) Ensures timely and accurate payment of rents, royalties and other revenues due to the government.[527]

I. Weakness of the Act

The major weakness with this law lies in the DPR being the regulator of the petroleum industry. It is noteworthy that the Nigerian National Petroleum Corporation (NNPC) is a public corporation that participates in oil operations in Nigeria on behalf of the Federal Government.[528] In fact, the NNPC operates a joint venture with major oil companies in

[526] Petroleum Act *op cit.,* section 8(1).
[527] The Department of Petroleum Resources, available at *https://www.dpr.gov.ng* [accessed April 7, 2019].
[528] The Nigerian National Petroleum Corporation Act Cap N123 Laws of the Federation of Nigeria 2004, section 1 & 5.

Nigeria on behalf of the government,[529] and is a parastatal of the Ministry of Petroleum Resources. Since Nigeria substantially relies on oil revenue, NNPC could be said to be the major revenue generator for the Federal Government. It is also noteworthy that the Ministry of Petroleum Resources is an executive organ of government saddled with the responsibility of promoting the growth and development of the oil industry in Nigeria.[530] Moreover, the DPR has its history in the NNPC as it was formerly a department within the NNPC until 1988 when it was excised from the Commission and transferred to the Ministry of Petroleum Resources.[531] Arguably, there is a conflict of interest as the Minister is both the principal and regulator of NNPC and the oil industry generally. It may become challenging for the Minister to take action when rules and regulations are broken by the NNPC for instance, thus, becoming powerless to enforce good practice in the industry.

4.2.4 Environmental Guidelines and Standards for the Petroleum Industry in Nigeria[532]

Pursuant to its functions, the DPR develops Environmental Guidelines and Standards for the Petroleum Industry (EGASPIN) periodically. The guidelines and standards cover the environmental control of various petroleum activities in Nigeria including exploration, production, transportation and marketing. The EGASPIN mandates every petroleum company whose operations affect the environment "*to have an environmental management*

[529] The level of ownership of NNPC in oil companies is 60% except that of Shell Petroleum Development Company which is 55%; available at *https://www.nnpcgroup.com/NNPCBusiness/UpstreamVentures.aspx* [accessed April 7, 2019].
[530] Nigeria: Federal Ministry of Petroleum Resources available at *http://www.nigeria.gov.ng/index.php/2016-04-06-08-40-29/executive/122-federal-ministry-of-petroleum-resources* [accessed March 26, 2019].
[531] Nigeria : The Department of Petroleum Resources, available at *https://www.dpr.gov.ng* [accessed April 7, 2019].
[532] The Department of Petroleum Resources 'Environmental Guidelines and Standards for the Petroleum Industry in Nigeria' revised edition 2002.

system (EMS) which shall encompass planned and integrated environmental management practices aimed at ensuring that unforeseen, identified and unidentified environmental issues are contained and brought to an acceptable minimum".[533] It requires such company "*to establish an EMS manual which shall define, document and communicate specific roles, responsibilities and authorities to facilitate effective environmental management*".[534] In addition, the EMS manual is required "*to document and describe organisational structure, policy, responsibility, objectives and targets, practices, procedures, processes and resources for the implementation of all environmental management issues peculiar to the organisation*".[535]

In so doing, petroleum companies are required to establish and maintain procedures for identifying direct and indirect environmental aspects of their operations. They are also required to document their environmental policies and make it available to the public, and also establish and maintain procedures for dealing with internal and external communication.[536] Petroleum companies should also "*establish and maintain procedures for the identification of potential for and response to accidents and emergency situations, as well as the prevention and mitigation of environmental impacts that may be associated with their operations*".[537] In addition, oil companies are to "*establish and maintain documented procedures to monitor and measure on a regular basis the key characteristics of its operations and activities that can significantly impact the environment, and to*

[533] *Ibid,* section E.
[534] *Ibid.*
[535] *Ibid.*
[536] *Ibid*, section H.
[537] *Ibid*.

evaluate compliance with organisation's environmental objectives and targets as well as relevant environmental legislation and regulations".[538]

Furthermore, oil companies are required "*to conduct periodic environmental audits to facilitate the management control of environmental practices and assess compliance with the management system and regulatory requirements*".[539] The audits are required to be carried out by competent and certified auditors who are registered by the DPR.[540]

I. The Strengths and Weaknesses of EGASPIN

EGASPIN is commendable as it provides for internationally acceptable standards of environmental management and protection including, environmental impact assessment and environmental management system. The provisions on EIA and EMS measures up to internationally acceptable standards of EIA and EMS.[541]

As laudable as the provisions of EGASPIN are, especially within the context of environmental protection in the petroleum industry, it lacks any element of enforcement. It fails to provide for any corrective and/or punitive measures for non-compliance with the provisions.

4.2.5 The National Oil Spill Detection and Response Agency (Establishment) Act[542]

The Act established the National Oil Spill Detection and Response Agency (NOSDRA) to monitor and regulate oil spills in Nigeria.[543] NOSDRA is obligated to coordinate,

[538] *Ibid*.
[539] *Ibid*, section I.
[540] *Ibid*.
[541] Such as the International Organisation for Standardisation 'ISO 14001: Environmental Management Systems'; and the International Finance Corporation 'A Guide to Biodiversity for the Private Sector'.
[542] The National Oil Spill Detection and Response Agency (Establishment) Act 2006.

implement and review the national oil spill contingency plan. In so doing, NOSDRA is required "*to establish a viable national operational organisation that ensures a safe, timely, effective and appropriate response to all oil pollution and hazardous substances in the petroleum sector*".[544] Second, NOSDRA is required to identify high-risk and priority areas for protection and clean-up.[545] Furthermore, NOSDRA is required to "*establish the mechanism to monitor and assist response to oil spills, including the mobilisation of necessary resources to save lives, protect threatened environment and clean up to the best practical extent the impacted sites*".[546]

I. Strengths and Weaknesses of NOSDRA

The establishment of NOSDRA is very innovative because it is specifically obligated to monitor and manage incidence of oil spills in Nigeria. Thus, it serves to prevent roles and conflicts in environmental management while ensuring that specific roles and responsibilities are vested in specific institutions. This aids the clarity of institutional responsibilities and hence, performance of such responsibilities.

On the other hand, the volume of oil frequently leaked into the environment with very little of the leaked oil recovered, and the consequent state of the Niger Delta environment indicates that NOSDRA may not be doing a good job of its obligations. This maybe as a result of the constitution of NOSDRA. The agency is headed by a Director-General appointed by the President on the recommendation of the Minister for Environment.[547] The

[543] *Ibid*, section 1.
[544] *Ibid,* section 5.
[545] *Ibid.*
[546] *Ibid.*
[547] *Ibid*, section 8(1).

Director-General is required to have a minimum of ten years cognate experience on environmental matters.[548] This is inadequate as a person experienced in environmental matters may not necessarily be experienced in technical matters such as that related to oil spills. Second, the NOSDRA Act fails to recognise the significance of DPR as an important stakeholder for the effective achievement of the objectives of NOSDRA. Moreover, in a recent media interview, the Center for Peace and Environmental Justice (CEPEJ) revealed the findings of its investigation which indicates that NOSDRA has always been very slow to responding to oil spill incidence in Nigeria. According to CEPEJ, oil companies are often responsible for the provision of logistics for NOSDRA to assess sites of oil spillage making it easy for the covering up of the real reasons behind spills.[549] CEPEJ also reported that oil companies, in collaboration with NOSDRA, engage in voluntary vandalism of oil pipelines to cover up the failure of the pipelines which most times are overdue for replacement hence, the constant oil spills.[550] In addition, CEPEJ reported that those who are contracted by oil companies to clean up oil spill sites, and granted permits by NOSDRA, are not qualified environmental personnel.[551] Arguably, these factors constitute some of the reasons for the ineffective oil spill management in the country.

4.3 Legal and Regulatory Framework for Social Protection in Nigeria

The previous chapter identifies some social issues that have implication on the increasing inequality in Nigeria including, labour rights and human rights. Nigeria is party to several international and regional instruments aimed at social protection generally. Nigeria being a

[548] *Ibid.*
[549] Chidimma C Okeke 'Agency Slow in Responding to Oil Spill' Daily Trust (Nigeria) August 29, 2018.
[550] Ibid.
[551] Ibid. Those contracted are usually the community members.

Member-State of the United Nations (UN) has ratified several of UN's instrument making such instruments applicable within the Nigerian context.[552] Thus, this section evaluates such international regulatory framework in addition to domestic regulatory framework on social issues.

4.3.1 Labour

According to the Universal Declaration of Human Rights (UDHR),[553] everyone "*has the right to just and favorable conditions of work and to protection against unemployment*".[554] Likewise, "*every employee has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented where necessary by other means of social protection*".[555] Furthermore, "*every worker has the right to form and join trade unions for the protection of his interests*".[556] In addition, "*every worker has a right to safe and healthy working conditions*".[557]

The Nigerian legal system also provides for some basic employee rights. For instance, the Nigerian Constitution[558] stipulates that "*every individual is entitled to respect for the dignity of his person and accordingly, no person shall be held in slavery or servitude; and*

[552] Although these instrument are not legally binding on countries, it has however been argued that since countries have constantly invoked their provisions for more than five decades, they have become binding as part of customary international law; Henry J Steiner & Philip Alston *International Human Rights in Context: Law, Politics, Morals* 2 ed (2000).
[553] The Universal Declaration of Human Rights consist of a set of human rights adopted by the United Nations General Assembly in 1948.
[554] *Ibid*, article 23(1). The African Charter on Human and Peoples' Rights (Banjul Charter) (1986) also emphasises this right, article 15.
[555] *Ibid,* article 23(3). The International Covenant on Economic, Social and Cultural Rights (ICESCR) also emphasises this right; article 7(a) ICESCR (1976).
[556] UDHR *op cit.*, article 23(4); ICESCR *ibid,* article 8(1)(a).
[557] ICESCR *ibid,* article 7(b).
[558] The Constitution of the Federal Republic of Nigeria is the national *grundnorm*, and every other laws derive their validity from its provisions, see section 1 of the Nigerian Constitution 1999.

no person shall be required to perform forced or compulsory labour".[559] Also, the Constitution provides that "*every person shall be entitled to assemble freely and associate with other persons, and may form or belong to any trade union or any other association for the protection of his interests*".[560]

According to the Nigerian Labour Act,[561] "*no contract of employment shall make it a condition of employment that a worker shall, or shall not join a trade union; shall or shall not relinquish membership of a trade union*".[562] Likewise, an employer is prohibited from causing "*the dismissal of, or otherwise prejudice a worker by reason of trade union membership, or because of trade union activities, or such worker not being a member of a trade union*".[563] The Labour Act also prohibits the exploitation of any form of forced or compulsory labour by employers in Nigeria.[564] In addition, the Nigerian Factories Act makes general provisions with regard to occupational health and safety in Nigeria.[565] The Employee's Compensation Act is another labour legislation in Nigeria. It makes provisions for compensations for any death, injury, disease or disability arising out of, or in the course of employment.[566]

The Ministry of Labour is the oversight institution for labour laws and issues in Nigeria.

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[559] Constitution of the Federal Republic of Nigeria *ibid*, section 34(1)(b) & (c).
[560] *Ibid*, section 40.
[561] The Labour Act is the principal legislation dealing with employment related issues in Nigeria.
[562] The Nigerian Labour Act, Cap L1 Laws of the Federation of Nigeria 2004, section 9(6).
[563] *Ibid*.
[564] *Ibid,* section 73(1).
[565] The Act makes occupational health and safety provisions such as the cleanliness and sanitary state of a factory; ventilation and lighting; precautions required with regard to any machinery and dangerous liquids; training and supervision of inexperienced workers; among others; the Nigerian Factories Act 1987.
[566] The Employee's Compensation Act 2010.

I. Weaknesses of Labour Laws in Nigeria

The Nigerian worker has not been adequately protected by the existing labour laws. For instance, there is no law protecting workers from precarious employment, neither is any regulating the amount of workers' remuneration. In fact, as a result of the unemployment rate in Nigeria, many individuals are employed in one form of precarious employment or the other, while some are underemployed. The Ministry of Labour is grossly inadequate as the oversight institution for labour matters. This is because the Ministry is an executive arm of government headed by the Minister who is a political appointee. Thus, the loyalty of the Ministry will often times rest with the President as against the legitimate interests of labour.[567] The Ministry of Labour operates through various agencies including the National Directorate of Employment (NDE). The NDE was established by the NDE Act for the purpose of designing and implementing programmes to combat mass unemployment, among others.[568] To fulfil this mandate, the NDE operates through various programmes such as vocational skills, and entrepreneurship development, agricultural skills training, and public works programme. These programmes are developed by the NDE to provide skills acquisition for employability.[569] The NDE therefore focuses on skills acquisition and development as a means to alleviating unemployment but fails to provide funding for start-up capital of such entrepreneurs. Without any form of accessible start-up capital, acquired skills may not be adequately explored for the purpose of income generation. This defeats

[567] See for instance the recent agitation for the review of the minimum wage in Nigeria. The extant N18, 000 minimum wage was adopted since 2011 and has in fact been due for a review since 2016 going by international best practices on minimum wage; 'A Realistic New Minimum Wage' The Punch (Nig.) Editorial, May 21, 2018.
[568] The National Directorate of Employment Act 1989, section 1 & 2.
[569] The National Directorate of Employment available at *https://nde.gov.ng/about-nde/* [accessed April 12, 2019].

the motive for the skill acquisition and the objective of NDE. Second, the 2016 NDE annual report, revealed about 23.47% reduction in NDE's achievement than that of 2015. This decline in achievement has been attributed to the inadequate budgetary allocation for the implementation of employment programmes in 2016 as a result of the economic recession experienced by the country.[570] Thus, there is a need for complementary means of combating unemployment, as well as protecting workers' rights in Nigeria through investment in and development of the informal sector, as well as responsible investing generally.

4.3.2 Social Protection Laws

The first is the Nigerian Social Insurance Trust Fund Act which establishes the Nigerian Social Insurance Trust Fund (NSITF) as a social insurance fund paid by employers on their employees.[571] The Act provides for the categories of benefits to be paid by employers to the NSITF including, retirement pension benefit, survivors benefit, and death grant or invalidity benefit.[572] The Act prohibits any employer from reducing directly or indirectly, the remuneration or allowances of any employee on account of contributions made to the NSITF.[573] The Act establishes the NSITF management board as the body with the general control of the NSITF.[574]

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[570] NDE 2016 Annual Report available at *https://nde.gov.ng/wp-content/uploads/2018/12/2016-Annual2-Report.pdf* [accessed April 12, 2019].
[571] The Nigerian Social Insurance Trust Fund Act, Cap N88 Laws of the Federation of Nigeria 2004, section 1.
[572] Ibid, section 16.
[573] Ibid, section 15.
[574] Ibid, section 2.

I. Strengths and Weaknesses of the NSTIF Act

The Act provides social protection for employees and their survivors particularly in the event of retirement, death or ill health. This provides a form of safety net for individuals particularly at old age, or when no more in a good state of health to work. It ensures that individuals still possess the capacity to participate in the enjoyment of socio-economic rights.

The management board of the NSITF consists of a chairman appointed by the President on the recommendation of the Minister for Labour; two persons each nominated by the Nigeria Employees Consultative Association (NECA) and the Nigeria Labour Congress (NLC); one representative each of the Federal Ministry of Environment, Central Bank of Nigeria, three executive directors and a managing director.[575] The Managing Director and executive directors are appointed by the President on the recommendation of the Minister for Labour who is required to make such recommendation upon consultation with the NLC and NECA .[576] The board so constituted is responsible for the administration, and investment of the NSITF, as well as the payment of the benefits provided by the Act to persons entitled to it.[577] The constitution of the board is inadequate as no recourse is made to the inclusion of experts or professionals with cognate experience in relevant field of study. This is more so as the Act indemnifies members of the board from personal liability for any act done in good faith while engaged in the business of the board.[578] This implies the freedom from liability of members of the board for acts done or decision made negligently if it is deemed

[575] Ibid, section 4(1).
[576] Ibid, section 7(1) & (4).
[577] Ibid, section 3(1).
[578] Ibid, section 37.

to have been done in good faith. All expenses incurred in the administration of the NSITF is required to be paid by the board out of the NSITF.[579] Any money standing to the credit of the NSITF and does not require any immediate expense, may be invested from time to time as the board may approve having regard to contingencies.[580] Within six months from the end of a year, the board is required to cause its account to be audited by an auditor it appoints.[581] The board is required to determine the fee payable to auditors for the auditing services.[582] These provisions may serve to encourage bribery and corruption, financial fraud or misappropriation of the NSITF which may be abetted by the auditors.[583]

Second is the Employees Compensation Act which was enacted to enable the provision of a system of compensation for employees or their dependants for death, injury, disease or disability arising out of or in the course of employment.[584] It also provides for the rehabilitation of employees with employment-related disabilities, as well as the establishment and maintenance of an Employees Compensation Fund (ECF), among others.[585] The NSITF Board is vested with the power to implement the Act and the ECF.[586] The Act established the ECF for the credit of all funds contributed by employers for adequate compensation to employees or their dependants for any death or disability arising

[579] Ibid, section 27.
[580] Ibid, section 28.
[581] Ibid, section 29(2).
[582] Ibid, section 29(4).
[583] For instance, the recent pension fund fraud case in Nigeria involving the former chairman of the Presidential Task Force on Pension Reforms and others who were alleged with the diversion of pension funds from 2010 onwards; Nasir Ayitogo 'Pension Fraud: Reps Summon Maina, Okonjo-Iweala' Premium Times (Nigeria) March 6, 2018.
[584] The Employees Compensation Act 2010, section 1.
[585] Ibid.
[586] Ibid, section 2(2) & 57.

out of, or in the course of employment.[587] Employers are required to pay to the ECG such contributions as assessed by the board.[588]

I. Strengths and Weaknesses of the Act

Similar to the NSITF Act, the ECA is aimed at the protection of employees particularly, in the case of an accident or injury sustained or death arising from or in the course of employment. This, as stated earlier, provides social protection for workers when not in paid employment. The Act is commendable in that it gives the definition of an employee to include persons in precarious employment.[589] However, the NSITF board is obligated by the Act to formulate policies and strategies for assessing the compensation and welfare of employees who sustain injuries or contact diseases in the course of employment.[590] The board is also required to carry out an assessment of the amounts to be paid into the fund by employers,[591] and shall undertake actuarial valuation of industries, sectors and workplaces to determine the rates of contributions by employers into the fund.[592] It is argued that these provisions require specialised expertise by experts or professionals with cognate experience in the relevant field. Since the NSITF board is constituted by mere recommendations without any form of qualification, it is submitted that the board may not be adequately equipped to carry out these responsibilities.

Third is the Pension Reform Act which provides for the administration and payments of retirement benefits for the public and private sector, as well as the assurance that everyone

[587] Ibid, section 56(1).
[588] Ibid, section 56(2).
[589] Ibid, section 73.
[590] Ibid, section 31(d).
[591] Ibid, section 32(a).
[592] Ibid, section 32(b).

who worked in the public or private sector receives retirement benefits as and when due.[593] Another objective of the Act is to assist those persons that are not provident to save so as to cater for their livelihood during old age.[594] The Act established a contributory pension scheme for the payment of retirement benefits of employees in the public and private sector.[595] The rate of payment to the scheme include a minimum of 10% of an employee's monthly emoluments by the employer, and a minimum of 8% by the employee.[596] The National Pension Commission is empowered to administer the Act.[597]

The amount payable as a retirement benefit is not taxable.[598] This may be to ensure that workers in their old age have sufficient means to cater for their basic needs. The social safety net offered by the Act is not of universal application as the contributory pension scheme is only applicable to employees in the public sector and those in the private sector who are in the employment of an organisation with fifteen or more employees.[599]

4.3.3 Human Rights

The UDHR,[600] affirms that everyone has the right to equal access to public service and social security, and is entitled to the realization of the economic, social and cultural rights

[593] The Pension Reform Act 2014, section 1.
[594] Ibid, section 1(d).
[595] Ibid, section 3.
[596] Ibid, section 4.
[597] Ibid, section 17(1) & 18.
[598] *Ibid*, section 10(3).
[599] *Ibid*, section 2(2).
[600] It is noteworthy that the UDHR is not a treaty and cannot legally create binding rights and obligations. However, the significance of the instrument cannot be over-emphasised being the foundation of the codification of human rights. Moreover, the provisions of several international and regional human rights treaties, as well as the provisions of national Constitutions on human rights, are largely based on the provisions of the declaration.

indispensable for his dignity and the free development of his personality.[601] The UDHR also affirms the right of everyone to a standard of living adequate for the health and wellbeing of himself and his family.[602] In addition, the declaration affirms the right of everyone to education.[603]

Moreover, the Nigerian Constitution makes provision for some government obligations that are directly relevant to the fight against inequality in Nigeria. According to the Constitution, the Nigerian State shall control the national economy in a manner that secures the maximum welfare of every citizen on the basis of social justice and equality of status and opportunity.[604] Second, the Nigerian government shall direct its policy towards ensuring that the economic system is not operated in a manner that permit the concentration of wealth in the hands of few individuals or a group.[605] Similarly, government policy should be directed towards ensuring that suitable and adequate shelter, food, reasonable living wage and social protection are provided for all citizens.[606] Third, the Nigerian government shall direct its policy towards ensuring that all citizens have the opportunity to secure adequate means of livelihood and adequate opportunity to secure suitable

[601] UDHR *op cit*., article 21(2) & 22. See also article 9 of the ICESCR which affirms the right of everyone to social security including social insurance; the ICESCR has the force of law in Nigeria having been ratified on 29 October 1993
[602] *Ibid,* article 25(1). The Banjul Charter also affirms this right, article 16; the African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is legally binding in Nigeria having been ratified by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Laws of the Federation of Nigeria 1990. See also article 11(1) & 12 of the ICESCR.
[603] *Ibid*, article 26(1). See also the Banjul Charter, article 17(1), & article 13 of the ICESCR.
[604] The Constitution of the Federal Republic of Nigeria 1999, section 16(1)(b).
[605] *Ibid*, section 16(2)(c).
[606] *Ibid*, section 16(2)(d).

employment;[607] conditions of work are just and humane, and the health, safety and welfare of all persons in employment are safeguarded;[608] there are adequate medical and health facilities for all persons;[609] and there are equal and adequate educational opportunities at all levels.[610] Furthermore, the government shall protect and improve the environment, and safeguard the water, air and land, forest and wildlife of Nigeria.[611] In addition, the Constitution vests every citizen with the duty to abide by the constitution and respect its ideals;[612] respect the dignity of other citizens and the rights and legitimate interests of others;[613] and make positive and useful contribution to the advancement, progress and wellbeing of the community where he resides.[614]

I. Weaknesses

As laudable as these government objectives are, they have been made non-justiciable by the same Constitution that provides for them.[615] In other words, citizens cannot legally enforce these provisions, neither can they obtain any legal redress if denied by the government of these fundamental rights. However, it is noteworthy that these provisions contain socio-economic ideals which are necessary for the realisation of the human right to dignity of human person as recognised by the Constitution.[616] It is also noteworthy that the

[607] *Ibid*, section 17(3)(a). it is noteworthy that this is closely linked to the right to education because educational status determines to a large extent the availability and quality of employment.
[608] *Ibid*, section 17(3)(b) & (c).
[609] *Ibid,* section 17(3)(d).
[610] *Ibid,* section 18(1).
[611] *Ibid*, section 20.
[612] *Ibid*, section 24(a).
[613] *Ibid,* section 24(c).
[614] *Ibid*, section 24(d). it is noteworthy in this regard that corporations are regarded as corporate citizens who are bound by the rights and obligations of a natural citizen. Thus, corporations arguably are obligated to give recognition to these fundamental government objectives in their business operations.
[615] The Nigerian Constitution*, op cit*., section 6(6)(c).
[616] *Ibid*, section 34.

constitutional right to dignity of the human person is legally enforceable. Consequently, there is a lacuna that needs to be addressed to make socio-economic rights enforceable in Nigeria.

4.4 Legal and Regulatory Framework for Corporate Governance in Nigeria

Chapter three of this thesis identifies some corporate governance issues such as tax avoidance and evasion, executive remuneration, among others that have implications on inequality in Nigeria. Just as environmental and social issues, Nigeria has in place several laws that regulate these issues including;

4.4.1 Companies and Allied Matters Act[617]

The Companies and Allied Matters Act (CAMA) is the principal legislation that regulates corporate affairs and governance in Nigeria. CAMA establishes the Corporate Affairs Commission (CAC) as the apex supervisory body for corporate affairs in Nigeria.[618] CAMA gives recognition to the value of disclosure of beneficial owners of companies.[619] It requires every company to keep a register of members,[620] which shall be available for inspection by the public upon the payment of a charge.[621] It is however noteworthy that the registered members of a company may not necessarily be the beneficial owners. Thus, CAMA further provides for the disclosure of beneficial interests in shares of public

[617] Companies and Allied Matters Act, Cap C20 Laws of the Federation of Nigeria 2004.
[618] *Ibid*, section 1 & 7.
[619] It must be noted that the 'Panama Papers' saga of 2016 has placed the issue of beneficial ownership at the centre of global corporate governance discourse. The publication of the document attracted public attention to how the rich and famous, as well as politically connected persons use various corporate structures and offshore tax havens to conceal their beneficial ownership of companies, and hide their personal assets.
[620] Companies and Allied Matters Act *op cit*., section 83(1).
[621] *Ibid*, section 87(1).

companies.[622] As laudable as this provision is, it borders on disclosure by public companies only to the exclusion of private companies. The provisions of the Code of Conduct Bureau and Tribunal Act is also worthy of note with regard to the issue of beneficial ownership of companies by politically connected persons. The Act requires every public officer to submit to the Code of Conduct Bureau a written declaration specifying all properties, assets and liabilities owned periodically.[623] Such asset declaration encompasses investment in, as well as beneficial ownership of companies.

With regard to executive remuneration, CAMA provides that the remuneration of directors shall be determined periodically by the company in a general meeting, and the remuneration shall be apportionable.[624] It further provides that a managing director shall receive such remuneration as the directors may determine.[625]

Third, CAMA provides that a company may in general meeting declare dividends in respect of any year only on the recommendation of the directors.[626] However, a company shall not declare or pay dividend if there are reasonable grounds for believing that the company is or would be unable to pay its liabilities as they become due after the payment.[627] This provision enables the promotion of a corporate policy that prohibits the declaration or payment of dividends by a company until all employees have been paid a living wage.

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[622] *Ibid*, section 94-98.
[623] The Code of Conduct Bureau and Tribunal Act 1991, section 15(1).
[624] Companies and Allied Matters Act *op cit*., section 267(1) & (7).
[625] *Ibid*, section 268(1).
[626] *Ibid,* section 379(1).
[627] *Ibid*, section 381.

I. Strengths and Weaknesses of CAMA

CAMA's provisions on executive remuneration affords investors the opportunity of influencing executive pay and linking such pay to that of the lowest-paid employee in the company. This is very valuable to the reduction of economic inequality at the workplace. The provision however affords directors the opportunity to fix arbitrary remunerations for the managing director which has the tendency of widening the equality gap at the workplace.

Also, CAMA adopts the traditional shareholder primacy approach to corporate governance as against the stakeholder-inclusive approach. This is because CAMA scantily provides for corporate responsibility towards major corporate stakeholder groups such as employees. For instance, while CAMA requires directors to consider employee-related issues and interests in making corporate decisions,[628] it allows only the shareholders to sue where this provision is violated or perceived to have been violated.[629] This provision is however not without any merit as it allows investors to canvass for corporate policies that promotes employees' interests. With regard to corporate reporting and disclosures, CAMA provides only for financial report as against inclusive integrated or social report. It requires every company to make and deliver to the CAC an annual return stating information such as the number of shares and debentures of the company, the register of stockholders, the members of the board and the secretary, among others.[630] The directors of every company shall also prepare annual financial statements in respect of the company which shall state the

[628] *Ibid*, section 279(4).
[629] *Ibid*, section 279(9) & 299.
[630] *Ibid*, section 371.

financial report of the company.[631] Thus, all matters regarding accountability, transparency and corporate responsibility under CAMA are aimed at shareholders protection with little or no protection offered other stakeholders.

CAMA describes company directors as those persons duly appointed by the company to direct and manage the business of the company.[632] This provision provides an opportunity for investors to nominate and vote persons who are inclined to integrated corporate management and to sustainable development as directors. It also allows investors to canvass for employees' representation on the board of companies since there is no law that precludes an employee from being on the board of a company.

Moreover, CAMA requires the disclosure of beneficial owners of public companies. This CAMA's provision on beneficial ownership, apart from being limited to public companies falls grossly below accepted standards of beneficial ownership disclosure.[633] First, it fails to define what beneficial ownership is and who is referred to as a beneficial owner. Second, it fails to prescribe the details of information of beneficial owners that is required to be disclosed, nor does it provide for disclosure by politically exposed persons who are beneficial owners of companies.

4.4.2 The National Code of Corporate Governance[634]

The bulk of CSR and sustainability issues in Nigeria are regulated by Codes of Corporate Governance in different sectors and industries.[635] The National Code of Corporate

[631] *Ibid*, section 331 & 334.
[632] *Ibid*, section 244(1).
[633] For instance, the Extractive Industries Transparency Initiative 'The EITI Standard 2016' (2017).
[634] The Financial Reporting Council of Nigeria 'National Code of Corporate Governance' 2018.

Governance (the Code) was issued by the Financial Reporting Council of Nigeria (FRCN) pursuant to its powers under the FRCN Act, to ensure good corporate practices in the Nigerian public and private sectors.[636] The FRCN developed the Code as a comprehensive governance Code that merges the provisions of the several sectoral Codes into a single document. The Code adopts a principle-based approach by specifying minimum standards of corporate governance that companies should adopt on an 'apply and explain' basis. In other words, companies are required to report compliance with the Code by explaining how they have applied the principles of the Code.[637] The Code requires companies to pay adequate attention to sustainability issues in their business operation so as to ensure successful long-term business performance, and to project the company as a responsible corporate citizen.[638] The Code also require full and comprehensive disclosure of how companies have applied all matters material to investors and stakeholders and those set out in the Code.[639] It is noteworthy that the Code sets out matters pertaining to sustainability including occupational, community health and safety, environment, stakeholder communication, among others.

I. Strengths and Weaknesses of the Code

The FRCN Code moves away from the 'apply or explain' disclosure approach of the former Code to that of 'apply and explain'. This is commendable because the former approach to disclosure has been criticised for encouraging a tick-box approach to corporate governance,

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[635] Such as the Code of Corporate Governance for Banks; the Code for Insurance Companies, and the Code for the Telecommunications Industry, among others.
[636] The Financial Reporting Council of Nigeria Act 2011, section 1 & 11.
[637] *Ibid*.
[638] *Ibid*, principle 26.
[639] *Ibid*, principle 28.

and its reduction of governance to some mechanical actions with little regard to the objectives of governance.[640] The latter on the other hand, encourages a more proactive approach to governance as it requires company managers to reckon with how their application of the Code was intended to contribute to the achievement of its objectives.[641] The latter approach also deviates from a compliance-based approach whereby companies may fail to engage with the spirit of a Code to that which enables company managers adapt to the principles of a Code into actions that are appropriate to their organisational context, and which enhances the achievement of the object of the Code.[642]

Moreover, the FRCN has not implemented any standard or recommendation on social reporting in Nigeria. This has been argued to be capable of yielding the use of arbitrary and incompatible reporting indicators by companies who issue social reports.[643] Also, instead of being transparent, companies may engage in strategic disclosure designed to protect their legitimacy rather than reflect a total state of their corporate social performance.[644] Apart from the lack of standardised reporting indicators, the achievement of transparency in reporting is also hindered by the lack of verification of social reports to ensure the accuracy

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[640] Institute of Directors Southern Africa 'Why King IV's 'Apply and Explain' is so Important' (2019) available at *https://www.iodsa.co.za/news/438882/Why-King-IVs-apply-and-explain-is-so-important.htm* [accessed April 7, 2019].
[641] *Ibid.*
[642] *Ibid.*
[643] U Nzewi, H Nzewi & C Okereoti 'An Appraisal of Corporate Social Responsibility Accounting Practice of Non-Banks Companies in Nigeria' (2013) 46(4) *The Nigerian Accountant* 30; OB Michael & BS Oluseye 'Sustainable Development Reporting Practices by Nigerian Banks' (2014) 5(23) *Mediterranean Journal of Social Sciences* 2535; Adebimpe Umoren, Ekubiat Udo & Bokime George 'Environmental, Social and Governance Disclosures: A Call for Integrated Reporting in Nigeria' (2015) 3(6) *Journal of Finance and Accounting* 227.
[644] Craig Deegan 'The Legitimising Effect of Social and Environmental Disclosures: A Theoretical Foundation' (2002) 15(3) *Accounting, Auditing & Accountability Journal* 282; Gary O'Donovan 'Environmental Disclosures in the Annual Report: Extending the Applicability and Predictive Power of Legitimacy Theory' (2002) 15(3) *Accounting, Auditing & Accountability Journal* 344.

and completeness of the information provided.[645] In addition to the absence of standard reporting guidelines and performance indicators, the Code fails to provide for the verification of social reports by independent experts.

4.4.3 The Nigeria Extractive Industries Transparency Initiative Act[646]

The Extractive Industries Transparency Initiative (EITI) at a Conference of various countries, companies, and civil society in 2003, developed a set of principles (EITI Principles) whereby they agreed to increase transparency over payments and revenues in the extractives sector.[647] Pursuant to this, the Federal Government of Nigeria had implemented the Nigeria Extractive Industries Transparency Initiative (NEITI) Act. The Act established NEITI to ensure due process and transparency in the payments made by all extractive industry companies to the Federal Government and other statutory recipients. Other objectives of the NEITI include;

A. To monitor and ensure accountability in the revenue receipts of the government from extractive industry companies;
B. To eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the government from extractive industry companies;
C. To ensure transparency and accountability by government in the application of resources from payments received from extractive industry companies; and

[645] Amanda BALL, David Owen & Rob Gray 'External Transparency or Internal Capture? The Role of Third-Party Statements in Adding Value to Corporate Environmental Reports' (2000) 9 *Business Strategy and the Environment* 1.
[646] Nigeria Extractive Industries Transparency Initiative Act 2007.
[647] Extractive Industries Transparency Initiative 'The EITI Standard 2016' (2017).

D. To ensure conformity with the EITI principles.[648]

The EITI standard requires effective multi-stakeholder oversight for the implementation of its principles including government, companies, and civil society organisations.[649] Accordingly, the NEITI Act prescribes the governing body of NEITI as the National Stakeholders Working Group (NSWG) which shall be constituted by the President and shall include representatives of the extractive industry companies, civil society, labour unions in the extractive industries, experts in the industries and one member from each geopolitical zones.[650] The NSWG is vested with the responsibility of formulating policies, programmes and strategies for the effective implementation of the objectives of NEITI.[651] To enable the achievement of its objectives, the NEITI Act empowers NEITI to obtain from any extractive industry company an accurate record of the cost of production and volume of sale of oil, gas and other related minerals extracted by the company at any period.[652] NEITI is also empowered to request from any company or relevant organ of government an accurate account of money paid by and received from the company at any period as revenue accruing to the government from such company for that period.[653]

I. Strengths and Weaknesses of NEITI

To enable the achievement of its objectives, NEITI is required to appoint independent auditors annually to audit the total revenue which accrued to the federal government for that year from extractive companies in order to determine the accuracy of payments and

[648] The NEITI Act *op cit.*, section 1 & 2.
[649] EITI Standard *op cit.*
[650] NEITI Act *op cit.*, section 5 & 6.
[651] *Ibid*, section 5.
[652] *Ibid,* section 3(d).
[653] *Ibid*, section 3(e).

receipts.[654] To ensure transparency and conflict of interests, the Act prevent the appointment of an auditor that has audited the account of any extractive company in any given year to audit the extractive company for NEITI purposes. Similarly, an auditor shall not be engaged for more than two years consecutively.[655] This ensures that auditors and extractive companies do not get too familiar in a manner that may constitute a breach of trust or conflict of interest.

NEITI is responsible to the President and the national assembly.[656] Thus, upon completion of an audit, the independent auditors shall submit the reports together with comments of the audited companies to NEITI which shall cause same to be disseminated to the National Assembly and the auditor-general of the federation.[657] The auditor-general is required to publish any comments made or action taken by the government on the reports.[658] NEITI is required to submit a bi-annual report of its activities to the President and the National Assembly.[659] This ensures the principle of checks and balances in dealing with the outcome of NEITI. The National Assembly is able to act as a check on any excessive or arbitrary use of power against NEITI so as to influence its activities and reports.

Furthermore, the identity of the beneficial owners of extractive companies is often hidden by various unaccountable corporations thus, enhancing corruption and tax evasion. Therefore, the EITI Standard requires the disclosure of beneficial ownership in extractive

[654] *Ibid*, section 4(1).
[655] *Ibid,* section 4(5) & (6).
[656] *Ibid,* section 1(2).
[657] *Ibid*, section 4(3).
[658] *Ibid,* section 4(7).
[659] *Ibid*, section 4(4).

companies in implementing countries.[660] The standard defines a beneficial owner as a natural person who directly or indirectly ultimately owns or controls a corporate entity. The standard recommends that national EITIs should agree on an appropriate definition of beneficial ownership in alignment with that of the standard. Such definition should however specify the reporting obligations of politically exposed persons.[661] Information about the identity of beneficial owners should include names, nationality, country of residence, date of birth, among others.[662] EITI further recommends such information to be made available through public registers. In order to ensure that the necessary preparatory steps and reforms are undertaken, implementing countries are required to agree and publish roadmaps for their beneficial ownership disclosures by January 2017.[663] Accordingly, Nigeria has published a roadmap on beneficial ownership disclosure implementation.[664] Likewise, when an extractive company commits an offence against the Act, it shall be deemed that the directors or other managers of the company committed the offence.[665] This is a commendable statutory incorporation of the common law doctrine of 'lifting the veil of incorporation'. This is very important as it ensures that company managers do not hide behind the façade of incorporation to carry out any fraudulent or illegal acts that jeopardizes the reputation and value of the company.

The NNPC, being a state-owned enterprise and a major commercial player in the extractive industry, may raise an incidence of conflict of interest between the federal government and

[660] The EITI Standard *op.cit.,* para 2.5.
[661] *Ibid*, para 2.5(f).
[662] *Ibid,* para 2.5(d).
[663] EITI 'Guidance Note 22: Developing a Roadmap for Beneficial Ownership Disclosure' (2016).
[664] NEITI 'The Roadmap on the Implementation of Beneficial Ownership Disclosure in Nigeria' (2017).
[665] NEITI Act op cit., section 16(5).

NEITI. This is more so with regard to the quality and authenticity of disclosure of payment made by NNPC to the government. In other words, there is a possibility of the government trying every possible means to protect the NNPC from the prying eyes of NEITI so as to protect its economic interest. Second, the NEITI Act prescribes the funds of NEITI as consisting of such sums as may be provided by the government and appropriated by the National Assembly based on the budget submitted by the NSWG.[666] This provision makes NEITI financially dependent on the government and as such, may impede the independent and unbiased performance of its responsibility especially in respect of NNPC. Third, the EITI Standard provides that where State participation in the extractive industries gives rise to material revenue payments, implementing countries must disclose prescribed information including; an explanation of the prevailing rules and practices regarding the financial relationship between the government and the State-owned enterprises (SOEs); as well as disclosure from the government and the SOEs of their level of ownership in extractive companies.[667] A perusal of the several oil and gas industry audit reports directed by NEITI reveals a lack of implementation of this standard as none of the reports discloses the financial relationship between NNPC and the Federal Government.[668]

NEITI Act empowers the President to appoint members of the NSWG without any recommendations from their constituencies, or any legislative approval.[669] This may give rise to arbitrary appointments by the President who may decide to appoint only his political allies. Since the NSWG is constituted to oversee the NEITI process, such appointments

[666] NEITI Act *op cit*., section 13(1).
[667] The EITI Standard *op cit.,* para 2.6.
[668] The NEITI 'Oil and Gas Industry Audit Reports' available at *www.neiti.gov.ng* [accessed April 8, 2019].
[669] The NEITI Act op cit., section 6.

may result in conflict of interests in the discharge of the responsibilities of the NSWG members. The Act does not also prescribe the qualification of the representatives of the geo-political zones on the NSWG. This also, may prevent the appointment of technocrats who have cognate experience in the extractive sector thus hindering the implementation of relevant and appropriate decisions or actions that enhances the objectives of the NEITI process. Although the Act renders criminal an act of rendering a false statutory return or the failure to furnish a statutory return,[670] NEITI is not empowered to arrest or prosecute such offenders. Thus, NEITI may need to rely on other government agencies that have such powers for instance, the Economic and Financial Crimes Commission, to bring offenders to justice. The Act empowers a Court, upon conviction of an offender, to order the erring company to pay to the federal government the actual amount due.[671] Thus, NEITI is also not empowered to demand the amount due from an erring company, only a Court can make such demand. Thus, in spite of the enormous provisions of the Act, and the responsibility of NEITI to administer the Act, NEITI is not empowered with the matters of enforcement of the provisions of the Act. In other words, NEITI has to rely on other government parastatals to enable it achieve the objectives of the Act.

One of the objectives of the NEITI is to ensure transparency and accountability by government in the application of the resources from payments received from extractive companies.[672] NEITI has not done much in this regard as it has not published any report of its progress in this area. Thus, while NEITI has focused on the transparency of payments

[670] Ibid, section 16(1).
[671] Ibid, section 16(2).
[672] Ibid, section 2(d).

made by extractive companies and received by the federal government, it has paid no attention and there has been no transparency of the manner by which the government applies this revenue.

4.4.4 Tax Laws and Regulations

According to the National Tax Policy, the Nigerian tax system should be aimed at meeting specific goals including, promotion of social, political and economic development such as wealth creation and employment. The policy also requires tax rates to be progressive and designed to promote equality.[673] The Constitution in providing for the civic responsibilities of citizens stipulates the duty of every citizen to declare his income honestly to appropriate and lawful agencies and to pay tax promptly.[674] These provisions taken together presupposes that taxation ought to be an instrument for inequality reduction in Nigeria through income redistribution and the provision of social capital.

The context of this research is focused on corporations and thus, taxation in respect of corporations.[675] The Companies Income Tax Act (CITA) and the Petroleum Profit Tax Act (PPTA) regulate corporate taxation in Nigeria.

I. Companies Income Tax Act

The CITA prescribes companies income tax rate as 30% of all profits of a company, and 15% special levy on excess profits of every company.[676] CITA also provides for

[673] The Nigerian Federal Ministry of Finance 'National Tax Policy' 2017.
[674] The Nigerian Constitution *op cit*., section 24(f).
[675] This is more so as corporations particularly, those in the petroleum industry contribute the most to the revenue of government. For instance, between the second and last quarter of 2018, the Nigerian government generated about 43.86% from petroleum profit tax alone, and 21.18% from companies income tax; Federal Inland Revenue Service 'Total Tax Revenue Collection by Tax Types' available at *https://www.firs.gov.ng/TaxResources/TaxStatisticsReports* [accessed April 8, 2019].

withholding taxes which is levied on dividends, interest, rents, royalties, among others, of companies and individuals.[677] For tax purposes, CITA allows for the deduction of any sum payable by way of interest on any money borrowed for the realisation of the profit of the company.[678] It also exempts from taxation, not-for-profit companies as well as profits of any Nigerian company in respect of goods exported from Nigeria provided the proceeds from such export are repatriated to Nigeria and used exclusively for the purchase of raw materials, plant, equipment, and spare parts.[679] Second, CITA exempts the profits of a company whose supplies are exclusively inputs to the manufacturing of products for export; as well as profits of companies established within an export processing zone or free trade zone.[680] Third, dividends received from small companies in the manufacturing sector are exempted from taxation in the first five years of their operation, as well as dividends received from investments in wholly export-oriented business.[681] Similarly, the interest on foreign currency domiciliary account in Nigeria, and dividend, interest, rent, or royalty derived by a company from a foreign country and brought into Nigeria through government approved channels, are exempted from taxation.[682] Also, the profits of any company established by the law of a State for the purpose of fostering the economic development of

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[676] The Companies Income Tax Act, Cap C21 Laws of the Federation of Nigeria 2004, section 40(1).
[677] *Ibid*, section 78-80.
[678] *Ibid,* section 24.
[679] *Ibid,* section 23.
[680] *Ibid.* It must be noted however that free trade zones are not without adverse impacts especially for a developing country like Nigeria. Such free trade zones increase the risks of environmental degradation, poor working conditions, reduced tax revenue, among others. Multinational enterprises may also take advantage of such arrangement to dump substandard products especially in an emerging economy.
[681] *Ibid.*
[682] *Ibid.*

that State is exempted from tax.[683] A new company entering into the mining industry for the exploration of solid minerals is also exempted from taxation for the first three years of operation.[684]

Any person guilty of an offence under the CITA, or who fails to comply with any of its provisions or any rule made pursuant to it, shall be liable on conviction to a fine of N20, 000.[685] However, such prosecution may not be commenced except at the instance, or with the sanction of the oversight body.[686]

- **Strengths and Weaknesses of CITA**

The provisions of CITA apparently is aimed at the promotion of local manufacturing and exportation of goods, as well as the importation of foreign currency, which has the impact of boosting local economic development and job creation and ultimately, inequality reduction. It also encourages investment in small and medium-sized companies, as well as mining companies, by exempting from tax dividends received from such companies within a specified period. This can impact the local economy positively as it promotes diversification of government revenue sources, and also enhances job creation and poverty reduction which ultimately has implications for reducing inequality. CITA also provides for the application of the arms length principle to the assessment of tax payable by any

[683] *Ibid.*
[684] *Ibid*, section 36.
[685] *Ibid*, section 92(1).
[686] *Ibid*, section 97.

entity.[687] CITA empowers the oversight body to disregard any disposition or make necessary adjustments if any transaction between connected persons appear to be artificial or fictitious.[688]

The exemption of a new company entering into the mining industry for the exploration of solid minerals from taxation deprives government of the much needed revenue for social infrastructure. It gives such mining companies the opportunity to exploit national resources, often exploited at the detriment of the environment and the host communities, without contributing adequately to the social capital of government for meeting the needs of the host country. The weakness with CITA also lies in the provisions for offenders. The penalty for non-compliance with the provisions of CITA is inadequate. Second, the requirement of the sanction of the oversight body before the institution of a proceeding against an offender may result in an unintended benefit for politically exposed persons who default against the provisions of the Act.

II. Petroleum Profit Tax Act

Petroleum Profit Tax Act (PPTA) levies upon the profits of companies engaged in petroleum operations in Nigeria the petroleum profit tax (PPT).[689] The PPT rate in Nigeria is of varying categories; PPT in respect of a joint venture and sole risk company in the first five years of operation is 65.75%. The PPT for joint venture and sole risk companies with more than five years of operation is 85%. The PPT for companies under production sharing

[687] The arms length principle is an internationally acceptable principle of taxation which ensures that tax administrators are able to tax on an appropriate taxable basis corresponding to the economic activities deployed by taxable persons including transactions and dealings between related persons.
[688] CITA *op cit*., section 22.
[689] Nigeria: The Petroleum Profit Tax Act, Cap P13 Laws of the Federation of Nigeria 2004, section 8.

contract is however placed at 50%.[690] The Act however allows deductions such as rents, royalties, customs or excise duty, interest on debt owed by the company, debts owed the company which has become bad, all of which must be incurred in the course of petroleum operations.[691] The Act also precludes from the application of the Personal Income Tax Act or any other Tax Act, income or dividends derived from petroleum profits.[692]

The PPTA acknowledges the arms length principle of taxation. According to the Act, where the administrator of the Act is of the opinion that any disposition is not in fact given effect to, or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the administrator may disregard any such disposition or direct that the tax liability of such corporation be adjusted and assessed appropriately.[693] The Act describes an artificial or fictitious transaction as that between persons one of whom has control over the other, or that between persons both of whom are controlled by some other persons, such transaction not having been made on terms which may fairly have been expected to have been made by independent persons engaged in the same or similar activities.[694]

Any person guilty of an offence against the Act or any rule made pursuant to the Act shall be liable to a fine of N10, 000.[695] Every person who without reasonable excuse submits an incorrect account to the administrator shall be guilty of an offence and shall be liable to a

[690] *Ibid,* section 21 & 22.
[691] *Ibid*, section 10.
[692] *Ibid,* section 60.
[693] *Ibid*, section 15(1).
[694] *Ibid*, section 15(2).
[695] *Ibid,* section 51(1).

fine of N1, 000, and double the amount of tax which has been undercharged in consequence of such incorrect accounts.[696] No prosecution in respect of any such offence may however be commenced except at the instance of, or with the sanction of the administrator.[697] The Act provides a limitation period of six years from the end of the accounting period in respect of which the offence was committed, for the institution of any proceeding against the offender.[698] The administrator may compound any such offence and may stay or compound any such proceeding before judgment is given.[699]

The administration of the Act and PPT is vested in the oversight body which is empowered to do all such acts as may be deemed necessary and expedient for the assessment and collection of the PPT.[700] Where any instalment of tax due is not paid within the appropriate time limit, the administrator is empowered to add a sum equal to 5% of the amount due to the instalment due.[701] In addition, the administrator is empowered to acquire, hold and dispose of any property taken as security for, or in satisfaction of any tax or any judgment debt due in respect of any tax.[702]

- **Strengths and Weaknesses of the PPTA**

The PPTA recognises the need to tax petroleum operators over and beyond that levied on other companies. This aligns to a very large extent with the polluter pays international principle of environmental law. It ensures that such taxes generated by the government

[696] *Ibid,* section 52(1).
[697] *Ibid*, section 58.
[698] *Ibid,* section 52(2).
[699] *Ibid*, section 52(3).
[700] *Ibid*, section 3(1).
[701] *Ibid*, section 46.
[702] *Ibid*, section 3(1).

from the petroleum sector are sufficient to provide adequate social capital for the host country which resources is exploited. The Act also imbibes the arms length international principle of taxation. Also, the power of the administrator to exercise lien over the property of an erring company is laudable as this helps to enhance the enforcement of the Act. In addition, the provision prohibiting any other form of taxation of income or dividends derived from petroleum profit helps to encourage investment in the petroleum sector as it prevents double taxation of the same income.

In spite of the strengths, the Act is weak in some areas. First, the provision on the penalty for offenders is inadequate and is not capable of deterring further non-compliance with the Act. Second, the provision on the limitation period for instituting an action against an offender may defeat the purpose of creating offences against the Act. This is more so as erring companies may engage the services of experts to help perfect their illegal acts from the realisation of the administrator. Hence, it is possible for the illegal acts of an entity to be hidden from discovery until the limitation period lapses.

III. Administration of Tax Laws in Nigeria

With the rate of IFFs in Nigeria as identified in the previous chapter, it cannot be said that companies as corporate citizens are fully compliant with the intent of the national tax policy or those of the tax laws and the Constitution. It is however noteworthy that several international organisations have developed recommendations needed to give effect to the principles of taxation in various jurisdictions. For instance, the OECD recommends the

development of rules to prevent base erosion and profit shifting (BEPS)[703] through the use of related party and third party debts to achieve excessive interest deductions, or to finance the production of exempted income.[704] One of such measures that may be taken is the adoption of a thin capitalisation rule[705] which may take one of two forms including, determination of a maximum amount of debt for which deductible interest payments are available, or determination of a maximum amount of interest that may be deducted.[706] The OECD also recommends the adoption of the arm's length principle in the evaluation of transactions among related enterprises so as to avoid transfer pricing.[707]

Consequently, the Federal Inland Revenue Service (FIRS)[708] has published several regulations, in alignment with existing international standards on taxation, to give effect to the provisions of the tax laws. The first is the Income Tax (Transfer Pricing) Regulations which requires connected taxable persons to record sufficient information or data with an analysis of such information and data so as to verify that the pricing of controlled transactions are consistent with the arm's length principle.[709] Accordingly, the Companies and Income Tax Act empowers FIRS to disregard any disposition or make necessary

[703] BEPS refers to the arrangement of corporate operations in a way that achieve no, or low taxation.
[704] The Organisation for Economic Cooperation and Development 'Action Plan on Base Erosion and Profit Shifting (2013).
[705] A company is thinly capitalised when the level of its debt is greater than its equity capital.
[706] The Organisation for Economic Cooperation and Development 'Thin Capitalisation Legislation: A Background Paper for Country Tax Administrations' (2012).
[707] OECD 'OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017' (2017).
[708] The Federal Inland Revenue Service was established to control and administer the different taxes, tax laws, and other tax regulations in Nigeria; the Federal Inland Revenue Service (Establishment) Act 2007, section 1 & 2.
[709] Income Tax (Transfer Pricing) Regulations 2018, regulation 16.

adjustments if transactions between connected persons appear to be artificial or fictitious.[710] A transaction is deemed to be at arm's length if the conditions of the transaction do not differ from the conditions that would have applied between independent persons in comparable transactions carried out under comparable circumstances.[711] FIRS explained the purpose of transfer pricing documentation to include; first, to ensure that taxpayers give appropriate consideration to transfer pricing requirements in establishing prices and other conditions for transactions between associated companies and in reporting the income derived from such transaction in their tax returns. Second, to provide tax administrators with useful information in conducting an appropriately thorough audit of the transfer pricing practices of entities subject to tax in their jurisdiction.[712] Where an MNE fails to comply with the provision on transfer pricing documentation, FIRS is empowered to make adjustments in order to bring the taxable profits resulting from the transaction in conformity with the arm's length principle.[713] The regulations further requires a connected person to declare its relationship with all connected persons whether resident in Nigeria or elsewhere.[714] In addition, a connected person is required to make an annual disclosure of transactions with connected persons without notice or demand.[715] Persons are deemed connected where one has the ability to control or influence the other, or there is a third person who has the ability to control or influence both persons.[716]

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[710] The Companies Income Tax Act, Cap C21 Laws of the federation of Nigeria 2004, section 22.
[711] Transfer Pricing Regulations *op cit.,* regulation 4(2).
[712] Federal Inland Revenue Service 'Guidelines on Transfer Pricing Documentation' (2018) para 2.
[713] Transfer Pricing Regulations *op cit*., regulation 4(3).
[714] *Ibid*, regulation 13(1).
[715] *Ibid,* regulation 14(1).
[716] *Ibid*, regulation 12(1).

Also, multinational enterprises (MNEs) are required to file an annual country-by-country report for each jurisdiction in which they do business stating the amount of revenue profit before income tax, and income tax paid or payable.[717] The objectives of the regulations include; first, the provision of tax authorities with information about MNEs global activities profits and taxes, as well as information to better assess international tax avoidance risks. Second, is the improvement of transparency of MNEs in their tax practices, and the prevention of tax evasion or avoidance through base erosion and profit shifting.[718] The regulations empower FIRS to impose an administrative penalty of N10million on any entity that fails to file or file an incorrect report.[719]

- **Strengths and Weaknesses of Tax Regulations and Administration**

The FIRS regulations are laudable as they are in tandem with international standards and guidelines on tax regulation. The regulations give effect to the arms length principle of taxation and mandate a country by country reporting system which helps to reduce the incidence of transfer pricing and profit shifting by MNEs to tax havens.

The regulations however fail to develop any thin capitalisation rule, and as such the tax laws in Nigeria allows for the deduction, for tax purposes, of any sum payable by way of interest on any money borrowed. This may enhance the incidence of BEPS in Nigeria. For instance, the Swedish government in line with international efforts to tackle BEPS, approved some measures to improve transparency and minimise aggressive tax planning in

[717] Country-By-Country Reporting Regulations 2018, regulation 7.
[718] *Ibid*, regulation 2.
[719] *Ibid*, regulation 12.

2018.[720] Among the approved measures is the thin capitalisation rule which restricts the deduction of interest expenses to a maximum of 30% for companies with net interest income of more than SEK5million. In exchange however, the corporate tax rate was reduced from 22% to a relatively low and internationally competitive rate of 21.4%.[721] Such corporate tax reduction serves as an incentive to attract or compete for foreign investments, while the thin capitalisation rule ensures that the government does not loose much tax revenue to BEPS by corporations.

Similarly, the penalty provided for non compliance with the regulations is too minimal compared to the volume of funds most MNEs illegally transfer to tax havens. Moreover, the administration of the system of taxation by FIRS may experience several challenges particularly in respect of the NNPC which is a government parastatal commercially active in the petroleum sector. Since FIRS is also a parastatal of the executive, there may be conflict of interest in the discharge of its responsibilities particularly, in relation to the NNPC.

4.5 Conclusion

This chapter evaluated the existing legal and regulatory framework for ESG issues in Nigeria particularly those that have implications for inequality. In so doing, the chapter analysed the strengths and weaknesses of the framework as well as the implications for inequality. Some of the identified weaknesses include, inadequate sanction, incompetent institutional constitution, and the existence of conflicts of interest in the performance of

[720] It is noteworthy that Sweden is among the countries doing well in terms of the World Equality Index.

[721] Lina Persson 'Interest Deduction Restrictions and Reduced Corporate Tax Become Reality' (2018) Ernst & Young Global Ltd.

duties by some government agencies. Thus, this chapter finds that the existing legal and regulatory framework for ESG issues in Nigeria is neither capable of adequately addressing the inequality challenges, nor promoting effectively inclusive development in the country. This chapter therefore affirms the need for a complementary approach to enforcing corporate environmental, social and governance issues in Nigeria since these issues have implication for the promotion of equality and inclusive development in the country.

CHAPTER FIVE- THE STRATEGIC ROLE OF THE FUND MANAGEMENT INDUSTRY IN COMBATING INEQUALITY IN NIGERIA

5.1 Introduction

The previous chapter examined the adequacy or otherwise of the legal and regulatory framework on environmental, social and governance (ESG) issues in addressing inequality challenges and promoting inclusive development in Nigeria. This chapter finds that the existing framework is grossly inadequate, and there is a need for a complementary approach to addressing inequality and promoting inclusive development in Nigeria. This thesis is proposing the Nigerian Fund Management Industry as an avenue for promoting greater equality and inclusive development in Nigeria, and the implementation of the principles for responsible investment as a complementary approach. Therefore, this chapter examines the strategies with which this may be achieved.

According to a recent report, only eight men own the same wealth as the poorest half of the world, and as economic growth benefits the richest, the rest of the society, especially those at the bottom of the economic pyramid suffers.[722] Nigeria is one of the countries mostly affected by the inequality problem. In spite of its expanding economy, with the abundance of human capital and economic potential to lift many people out of poverty, economic inequality in Nigeria has continued to soar.[723] The combined wealth of the five richest people in Nigeria is about $29.9billion and has been estimated as able to end extreme poverty in the country.[724] Meanwhile, about 5million people are suffering from hunger,

[722] Deborah Hardoon 'An Economy for the 99%' OXFAM Briefing Paper January 2017.
[723] Oxfam International 'Nigeria: Extreme Inequality in Numbers' May 17, 2017 available at *https://www.oxfam.org/en/even-it-nigeria/nigeria-extreme-inequality-numbers* [accessed March 17, 2019].
[724] *Ibid*.

112million are living in poverty, while the richest man[725] will have to spend $1million everyday for forty-two years to exhaust his fortune.[726] Moreover, the potential annual earning of Aliko Dangote is sufficient to lift 2million people out of poverty annually.[727] According to another report, the share of the income going to the lower 40% of the Nigerian population decreased from 4.6% to 4.55% between 2004 and 2013, and 4.14% in 2015. On the other hand, the share of income accrued by the upper 10% increased from 26.59% to 27.82% between 2004 and 2013, and 28.56% in 2015.[728] Thus, while the income share going to the upper 10% increased by 7.41%, that going to the lower 40% decreased by 10.5% within the period studied.[729]

Inequality in Nigeria worsened significantly between 2004 and 2010, with the upper class benefitting from tax waivers and legislators receiving earnings that were among the highest in the world.[730] The number of people living in poverty increased from 69million in 2004 to 112million in 2010 in spite of an average economic growth of over 7%. In the same period, the number of millionaires increased by 44%.[731]

Several factors have been reported as responsible for the high poverty and inequality rate in the country. The first is the misallocation and misappropriation of the abundant resources Nigeria possesses by which the benefits of the economy are reaped by a minority to the

[725] Nigeria's richest man is Aliko Dangote, Kerry A Dolan 'Fewer Billionaires, Poorer Billionaires on African Continent in 2019' Forbes January 9, 2019.
[726] *Ibid.*
[727] *Ibid.*
[728] Ben Aigbokhan 'The Price of Inequality in Nigeria' (2017) Address Delivered at the 58th Annual Conference of the Nigerian Economic Society Abuja 26-28 September 2017.
[729] *Ibid.*
[730] Oxfam International 'Inequality in Nigeria: Exploring the Drivers' (2017) available at *https://www.oxfam.org/en/research/inequality-nigeria-exploring-driver*s [accessed March 21, 2019].
[731] *Ibid*.

exclusion of the majority. For instance, the Nigerian tax system is largely retrogressive as the burden of taxation mostly falls on individuals and Small and Medium-sized Enterprises (SMEs) while the large companies are granted questionable tax waivers and tax holidays.[732] It was reported that Nigeria lost $1.17billion between 2009 and 2014, and $1.56billion between 2014 and 2016 to indiscriminate tax waivers.[733] In 2016, a tax policy which entitles any individual or corporate investment in any publicly owned infrastructure to tax breaks, provided a company owned by Aliko Dangote with a 30% tax break on a road project. This is in addition to a long history of tax incentives offered to another of his company, Dangote Cement.[734] Furthermore, it was estimated in 2017 that Nigeria was losing about 2.9billion dollars annually to questionable tax incentives.[735]

The second factor is the inadequate social spending by the government which deprives millions of Nigerians access to basic social services, and poor outcomes in human development. For instance, 57million of Nigeria's estimated population of 170million people lack access to potable water, over 130million people lack access to adequate sanitation, and the country tops the list of countries with out-of-school children with more than 10million children out of school.[736]

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[732] *Ibid*.
[733] Christiana Okojie *Illicit Transfers and Tax Reforms in Nigeria: Mapping of the Literature and Synthesis of the Evidence* (2018).
[734] 'Dangote to Repair Lokoja-Ilorin Road with 30% Tax Waiver' The Gazelle News May 19, 2016 available at *http://www,thegazellenews.com/2016/05/19/dangote-to-repair-lokoja-ilorin-road-with-30-tax-waiver/* [accessed March 18, 2019].
[735] Oxfam International Inequality in Nigeria: Exploring the Drivers, *op cit*.
[736] Oxfam International Nigeria: Extreme Inequality in Numbers, *op cit*.

Third, there is high incidence of unemployment in the country especially among young people. In 2016, between 12.1% and 21.5% of the Nigerian youth were out of a job.[737] The economic growth experienced by the country has not been translated into an effective tool for job creation. Fourth, several environmental challenges have contributed to the inequalities in Nigeria. For instance, activities such as fishing, farming, and hunting, which are the major sources of income and livelihood of the indigenous Niger Delta communities have drastically reduced in recent years. This is as a result of the grave destruction of agricultural produce both aquatic and farmlands in the region by oil exploration and production.[738] With the increasing soil infertility, health hazard and underdevelopment of the region, the local population are forced to abandon their land and seek non-existing alternative means of livelihood.[739] Also, the spills that occur form oil facilities in this region increase the health challenges of the local population. For instance, it was reported in 2011 that the drinking water in Ogoni land contained carcinogen at levels 900times above World Health Organisation guidelines.[740] Another study revealed that oil spills reduced the ascorbic acid content of vegetables and the crude protein content of cassava resulting in 24% increase in the prevalence of childhood malnutrition in the region.[741] Gas flaring resulting from oil exploration activities has also been revealed to pose serious health

[737] *Ibid.*
[738] MAO Aluko 'Social Dimensions and Consequences of Environmental Degradation in the Niger Delta of Nigeria' (2003) 14(4) *Journal of Human Ecology* 263; Chijioke Basil, Onuoha Ebong, Itoro Bassey & Henry Ufomba 'The Impact of Oil Exploration and Environmental Degradation in the Niger Delta Region of Nigeria: A Study of Oil Producing Communities in Akwa Ibom State' (2018) 18(3) *Global Journal of Human Social Science* 55.
[739] *Ibid*.
[740] United Nations Environmental Programme Environmental Assessment of Ogoni Land (2011) available at *https://www.unenvironment.org/explore-topics/disasters-conflicts/where-we-work/nigeria/environmental-assessment-ogoniland-report* [accessed March 21, 2019].
[741] B Ordinioha & S Brisibe 'The Human Health Implications of Crude Oil Spills in the Niger Delta, Nigeria: An Interpretation of Published Studies' (2013) 54 *Nigerian Medical Journal* 10.

risk implications. Oil spills and gas flares contaminate surface and ground water, air, and crops with hydrocarbons which can accumulate in aquatic organisms and food crops on which the local communities depend for survival.[742] Such unemployment and health hazards resulting from environmental degradation yields poverty and inequality in the region. This is more so because adequate compensations are not usually paid, and alternative income generating measures are also not put in place to serve as palliative measures thus leading to the continuous deterioration in the quality of life of the communities.[743]

Lastly, there is loss of potential public revenue to illicit financial flows (IFFs). According to the report of the 'High Level Panel on Illicit Financial Flows from Africa', Africa was losing over 50billion dollars through IFFs annually. The Panel reports Nigeria as the victim of about 70% of the IFFs from West Africa making it the worst affected by the impact of IFFs which include inequality.[744] According to the panel, the estimates may be lower than the actual amount because of lack of accurate data and as a result of discrete forms of IFFs which are not easy to track and estimate.[745] Specifically, it was reported that Nigeria lost about $2.2billion in revenue to IFFs from trade mis-invoicing in 2014. According to the

[742] E Dung, L Bombom & T Agusom 'The Effects of Gas Flaring on Crops in the Niger Delta, Nigeria' (2008) 73 *GeoJournal* 297; J Nriagu 'Oil Industry and the Health of Communities in the Niger Delta of Nigeria' in J Nriagu (ed) *Encyclopedia of Environmental Health* (2011) 240; AK Werner, S Vink & K Watt 'Environmental Health Impacts of Unconventional Natural Gas Development: A Review of the Current Strength of Evidence' (2015) 505 *Science of the Total Environment* 1127.
[743] Ordinioha & Brisibe, *op cit.*
[744] African Union/United Nations Economic Commission for Africa 'Report of the High Level Panel on Illicit Financial Flows from Africa' (2015) *https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf* [accessed March 21, 2019].
[745] *Ibid.*

report, this amount is about 4% of the total government revenue for the year studied.[746] Similarly, a recent investigation revealed that between 2010 and 2013, MTN, a major telecommunications company in Nigeria, had transferred about $119million of profits generated in Nigeria to its Dubai office where it had very negligible operations so as to avoid appropriate tax in Nigeria.[747] Furthermore, the recent 'panama paper' saga revealed a network of shell companies in offshore tax havens linked to Aliko Dangote and several other business men in the country.[748] In spite of the enormous tax incentives these businesses enjoy from the government, they still engage in the illegal transfer of most of their profits to shell companies in tax havens thereby depriving government of needed revenue to provide basic social amenities for the poor. Thus, the rich keep getting richer, and the poor poorer.

Therefore, in light of Nigeria's multi-dimensional inequalities,[749] an integrated approach that views inequality across environmental, social, and economic dimensions is needed to

[746] The report made use of data for the year 2014 being the last available year for which comprehensive data was available for Nigeria. Global Financial Integrity 'Nigeria: Potential Revenue Losses Associated with Trade Misinvoincing' October 2018 available at *https://www.gfintegrity.org/wp-content/uploads/2018/10/Nigeria-Report-2018.pdf* [accessed March 17, 2019].
[747] Oxfam International Inequality in Nigeria: Exploring the Drivers, *op cit.*
[748] Oladeinde Olawoyin 'Panama Papers: More than 1500million recovered by tax authorities worldwide, Nigeria excluded' Premium Times (Nigeria) December 29, 2017 available at *https://www.premiumtimesng.com/news/headlines/253906-panama-papers-500-million-recovered-tax-authorities-worldwide-nigeria-excluded.html* [accessed March 20, 2019].
[749] Inequality in Nigeria is multi-dimensional because several factors which occasion such inequality cut across social, environmental, and economic issues.

effectively address its challenges.[750] In other words, solutions cutting across environmental, social and economic issues are needed to address inequality effectively.[751]

The previous chapter introduces the concept of responsible investment. Since the last decade, the United Nations through the 'Principles for Responsible Investment' has been one of the major propagators at the forefront of the responsible investment agenda. The principles for responsible investment as developed by the United Nations urges institutional investors to:

i. Incorporate ESG issues into investment analysis and decision-making processes;
ii. Be active owners and incorporate ESG issues into their ownership policies and practices;
iii. Seek appropriate disclosure on ESG issues by the entities in which they invest;
iv. Promote acceptance and implementation of the principles within the investment industry;
v. Work together to enhance their effectiveness in implementing the principles;
vi. Report on their activities and progress towards implementing the principles.[752]

Simply put, the principles for responsible investment requires institutional investors to take account of corporate environmental, social, and governance responsibilities and performance in their choice of corporate investment portfolios. Thus, the principles are

[750] Amina Mohammed 'Deepening Income Inequality' Outlook on the Global Agenda 2015: Report of the World Economic Forum 2015 available at *www.reports.weforum.org/outlook-global-agenda-2015/wp-content/blogs-dir/59/mp/files/pages/files/trend-1.pdf* [accessed March 18, 2019].
[751] Such solutions may include fiscal policy, labour and financial market reforms, among others.

[752] The United Nations 'Principles for Responsible Investment' (2006) available at *www.unpri.org/about-pri/the-six-principles/* [accessed December 10, 2015].

arguably aimed at the improvement of corporate environmental, social, and governance culture and performance. Since corporate environmental, social, and governance issues, have been identified as having implications for inequality, the chapter concludes that responsible investment presents a strategic and viable mechanism for the fund management industry to contribute to alleviating the challenges of inequality globally. This is more so as several studies have revealed that institutional investors, particularly foreign institutional investors can play a central role in prompting change in corporate governance.[753]

An analysis of the total investors' stake in the Nigeria equity market between the first and third quarter of 2017 revealed the sum of N872.45billion, with institutional investors accounting for about N578billion of the sum.[754] Prior to 2017, it was reported in 2016 that institutional investors have been dominating the Nigerian capital market compared to their retail counterparts.[755] The foreign portfolio investment report of the Nigerian Stock Exchange for the year 2018 reveals the total foreign transactions on the equity market accounted for about 51% of the total transactions carried out in 2018 with N1.219trillion. The total domestic transaction on the other hand accounted for about 49% with N1.185trillion.[756] The report for January 2019 indicates that foreign participation on the

[753] Stuart Gillan & Laura T Starks 'Corporate Governance, Corporate Ownership, and the Role of Institutional Investors: A Global Perspective' (2003) *Journal of Applied Finance* 4; Reena Aggarwal, Isil Erel, Miguel Ferreira & Pedro Matos 'Does Governance Travel Around the World? Evidence from Institutional Investors' (2011) 100 *Journal of Financial Economics* 154; Alexander Dyck, Karl V Lins, Lukas Roth & Hannes F Wagner 'Do Institutional Investors Drive Corporate Social Responsibility? International Evidence (2018) *Journal of Financial Economics*.

[754] Ebenezer Adaramodu 'Institutional Investors Account for N578bn Stocks in Q3' Nigerian News Direct November 13, 2017.

[755] Nkiruka Nnorom 'Nigeria Stock Exchange- Why Institutional Investors Still Dominate Domestic Transaction' The Vanguard (Nigeria) February 8, 2016.

[756] The Nigeria Stock Exchange's Domestic & Foreign Portfolio Investment Report January 2019 available at *http://www.nse.com.ng/market_data-site/other-market-information-*

market accounted for 55% of the total transaction as against 45% participation of domestic investors.[757] This stake in corporate equities positions investors in Nigeria particularly institutional and foreign investors, as drivers and enablers of corporate practices that enhances the achievement of the goal of equality.

It is however noteworthy that the existence of implementation mechanisms has been identified as a determining factor for the effectiveness of legal tools or principles whether such tools or principles are binding or voluntary.[758] Likewise, the process of responsible investment involves the development of mechanisms which inform investors about the responsibility culture and practice of corporate organisations.[759]Therefore, this chapter discusses appropriate mechanisms by which the fund management industry in Nigeria can be informed about the responsibility culture and practice of corporate organisations. The chapter further discusses globally acceptable strategies for the effective implementation of the principles for responsible investment and how these strategies can be employed by the industry to combat inequality. In addition, the chapter examines the legitimacy of such implementation mechanisms within the general legal framework applicable to the fund management industry in Nigeria.[760]

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site/FPI%20Report/NSE%20Domestic%20and%20FPI%20Report%20January%202019.pdf [accessed March 21, 2019].

[757] *Ibid.*

[758] Elisa Morgera *Corporate Accountability in International Environmental Law* (2009) 206.

[759] John G Cullis, Alan Lewis & Adrian Winnett 'Paying to be good? U.K. Ethical Investments' (1992) 45(1) *Kyklos* 3.

[760] It is noteworthy in this regard that the legal framework applicable to the Nigerian Fund Management Industry generally, as against sector-specific regulations, consist of the Companies and Allied Matters Act 1990, Investment and Securities Act 2007, and the Nigerian Code of Corporate Governance 2018.

Thus, this chapter brings to light the strategic role the industry can play in the alleviation of the inequality challenges in Nigeria.

5.2 Mechanisms/Strategies for the Implementation of the Principles for Responsible Investment

5.2.1 Corporate Governance

Pursuant to several definitions of corporate governance that has been given by various institutions and international organisations,[761] corporate governance can be described as consisting of the legal and organisational framework within which, and the principles and processes by which corporations are governed.[762] On the basis of this description, corporate governance has increasingly attracted focus as a mechanism for incorporating social and environmental concerns into business decision-making processes.[763] Similarly, existing research has identified internal drivers and formal processes as some of the factors influencing the implementation of corporate responsibility practices.[764] Therefore, there is a need for institutional investors to have in place mechanisms within their corporate governance framework that indicate their formal commitment to the principles for responsible investment. Such corporate governance mechanisms may include board committees on responsible investment, and responsible investment management systems.

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[761] See section 2.4.3 of the previous chapter.
[762] *Ibid*.
[763] Amiram Gill 'Corporate Governance as Social Responsibility: A Research Agenda' (2008) 26 *Berkeley Journal of International Law* 452. See also United Nations Environmental Programme Finance Initiative 'Integrated Governance: A New Model of Governance for Sustainability' (2014) *Report of the Asset Management Working Group* 4; Yadong Luo 'Corporate Governance and Accountability in Multinational Enterprises: Concepts and Agenda' (2005) 11 *Journal of International Management* 2; Surendra Arjoon 'Corporate Governance: An Ethical Perspective' (2005) 61(4) *Journal of Business Ethics* 343.
[764] Natalia Vidal, Robert A Kozak & Eric Hansen 'Adoption and Implementation of Corporate Responsibility Practices: A Proposed Framework' (2015) 54(5) *Business and Society* 701, 705.

I. Board Committees on Responsible Investment

On the basis of the OECD Principles of Corporate Governance, the boards of organisations are responsible for guiding organisational strategy, monitoring managerial performance, achieving adequate returns for organisational stakeholders, and balancing competing demands on their organisations.[765] Also, organisational boards have the responsibility to oversee their organisations' risk management systems and other systems designed to ensure that organisations comply with relevant laws and regulations.[766] Similarly, the Nigerian Code of Corporate Governance (the Code) provides that every company shall be headed by a board that shall govern, direct and be in effective control of its affairs.[767] A board is required to exercise leadership, enterprise, integrity and judgment in directing the company so as to achieve continuing survival and prosperity of the company.[768] Since responsible investment constitute an ethical business strategy, as well as a means to the sustainability of a business, the responsibilities of the boards of fund management firms will generally encompass compliance with the principles for responsible investment.

The Code also requires the boards of companies to determine the extent to which their duties and responsibilities shall be undertaken through committees.[769] The boards of fund management firms may designate board committees on responsible investment who will be charged with the responsibility of ensuring that their institutions meet up with the

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[765] The *G20/OECD Principles of Corporate Governance* (2015) 51 available at *http://www.oecd.org/g20/meetings/antalya/Corporate-Governance-Principles-ENG.pdf* [accessed January 4, 2016].
[766] *Ibid*.
[767] The Financial Reporting Council of Nigeria 'Nigerian Code of Corporate Governance 2018 (2018) para 1 available at *https://www.financialreportingcouncil.gov.ng/* [accessed February 25, 2019].
[768] *Ibid*.
[769] *Ibid*, para 11.

requirements of the principles for responsible investment. Such board committees may further designate responsible investment officers who will be charged with the responsibility of implementing the principles for responsible investment in their institutions' investment analyses and decision-making processes. In order to effectively accomplish this, such responsible investment officers may seek the expertise of ESG analysts or auditors who will help in evaluating corporations in which the institutions have already invested, or they intend to invest against universally acceptable ESG benchmarks.

II. Management Systems

A system has been described as a set of objects whose relationships and attributes are related to each other and to their environment so as to form a whole.[770] It has also been described as 'a network of interdependent components that work together to try to accomplish the aim of the system'.[771] Thus, since corporate governance consists of the legal and organisational framework within which, and the principles and processes by which corporations are governed, management system could be referred to as a framework of policies and procedures that ensures that corporations accomplish their corporate objectives, and meet up with their corporate obligations. Since responsible investment requires specific obligations from institutional investors that commits to the principles for responsible investment,[772] a responsible investment management system represents a viable

[770] Peter P Schoderbek, Charles G Schoderbek, & Asterios G Kefalas *Management Systems: Conceptual Considerations* 4 ed (1990) cited in Gopal K Kanji 'Performance Excellence: Path to Integrated Management and Sustainable Success' in Klaus J Zink (ed) *Corporate Sustainability as a Challenge for Comprehensive Management* (2008) 21, 24.

[771] William E Deming *The New Economics: For Industry, Government, Education* 2 ed (2000) 50.

[772] To wit: incorporate ESG issues into their investments' analyses and decision-making processes; be active owners and incorporate ESG issues into their ownership policies and practices; seek appropriate disclosure on ESG issues by the entities in which they make investment; promote acceptance and implementation of the

mechanism within which institutional investors can meet up with the requirements of such obligations. In this regard, a responsible investment management system refers to a framework of policies and procedures that ensures that institutional investors meet up with their commitment under the principles for responsible investment. It allows institutional investors to integrate the principles for responsible investment into their corporate governance framework. Although there exists no specific responsible investment management system framework, various international organisations have stipulated guidelines[773] by which institutional investors can implement responsible investment management systems in line with management system standards developed by the International Organisation for Standardisation.[774] Accordingly, implementation of a

principles for responsible investment within the investment industry; work together to enhance their effectiveness in implementing the principles for responsible investment; report on their activities and progress towards implementing the principles for responsible investment.

[773] See for instance the United Nations 'United Nations Global Compact Management Model' available at *www.globalcompact.de/wAssets/docs/Reporting/un_global_compact_management_model.pdf* [accessed December 13, 2016]; the Sustainability Integrated Guidelines for Management (SIGMA) Project 'The SIGMA Guidelines: Putting Sustainable Development into Practice- A Guide for Organisations' available at *www.projectsigma.co.uk/guidelines/sigmaguidelines.pdf* [accessed December 13, 2016].

[774] Such as the ISO 14001 Environmental Management System, and ISO 9001 Quality Management System.

responsible investment management system consists of policy development,[775] planning,[776] and implementation.[777]

It is noteworthy that the Code recognises the responsibility of corporate boards for the performance and affairs of their companies. According to the Code, corporate boards have the responsibility to ensure that their companies are well managed. They are also to define their companies' strategic goals and ensure that their human and financial resources are effectively deployed towards attaining those goals.[778] Similarly, the ISA requires fund managers to organise and control the funds they manage in a responsible manner, and should have in place well-defined compliance procedures.[779] With regard to responsible investment, fund managers may ensure the responsible management of the funds they manage by defining their institution's responsible investment goals and strategies, and deploying the institutions' resources towards those goals. A responsible investment management system is an appropriate framework by which fund managers can set such goals, develop relevant strategies, and define relevant human and financial resources for meeting up with the set goals. In addition, a responsible investment management system

[775] Such responsible investment policy comprises of the core business values of the investment institution and statement of principles on corporate social responsibility and stakeholder relationships. It sets out the institution's mission with respect to responsible investment, and aligns its business strategy with the principles for responsible investment; See the UN Global Compact Management Model *op cit*., and the SIGMA Guidelines *op cit*. See also A Azapagic 'Systems Approach to Corporate Sustainability: A General Management Framework' (2003) 81(B) *Trans iChemE* 303, 305.

[776]Executives of investment institutions need to identify key personnel and assign responsibilities for implementing the institution's responsible investment strategies. In this regard, the executives could set up a responsible investment management team which would coordinate and monitor the implementation of the principles for responsible investment by the institution. Such a responsible investment management team would be responsible for identifying effective strategies the institution will adopt in implementing the principles for responsible investment. In addition, the executives will be required to allocate resources needed for effectively implementing the institution's responsible investment strategies; A Azapagic *ibid,* 310.

[777] The UN Global Compact Management Model *op cit*., and the SIGMA Guidelines *op cit*.

[778] The Financial Reporting Council of Nigeria 'Nigerian Code of Corporate Governance 2018' (2018) para 1.

[779] The Investment and Securities Act 2007, sec 157(1).

being an implementation mechanism for responsible investment passes for a well-defined compliance procedure as required by ISA.

5.2.2 Screening

Screening[780] is the practice of excluding or including companies from investment portfolios based on a range of ESG criteria.[781] Thus, investment screening is another method of incorporating ESG considerations into investment decision-making processes; this is by applying ESG screens to investment choices.[782] Passive screening involves investment decision-making based on indices with ESG benchmarks.[783] Here, institutional investors who wish to implement the principles for responsible investment direct their funds to companies that are rated high or positively on indices who rate companies based on ESG criteria.[784] Positive screening sets out inclusive ESG criteria[785] that must be met before an investment is included within a portfolio.[786] It allows investors to include in their investment portfolios companies that display good corporate citizenship based on ESG criteria.[787] Here, responsible institutional investors target those companies that adopt socially responsible practices in their business operations and activities for their

[780] Which may be passive, positive or negative.
[781] Steve Schueth 'Socially Responsible Investing in the United States' (2003) 43(3) *Journal of Business Ethics* 189, 190. See also Grant Michelson, Nick Wailes, Sandra van der Laan & Geoff Frost 'Ethical Investment Processes and Outcomes' (2004) 52 *Journal of Business Ethics* 1.
[782] United Nations Environmental Programme Finance Initiative *A Legal Framework for the Integration of Environmental, Social and Governance Issues into Institutional Investment* (2005) 25.
[783] *Ibid*.
[784] An example is the Dow Jones Sustainability Indices.
[785] Such as good employee relations, positive environmental performance, consistent product quality and safety.
[786] See the United Nations Environmental Program Finance Initiative, *op cit*. note 34.
[787] Stephanie Giamporcaro, Lise Pretorius & Martine Visser 'Responsible Investment: A Vehicle for Environmentally Sustainable Economic Growth in South Africa?' (2010) Environment for Development Discussion Paper Series No. 17, 3; Suzette Viviers, JK Bosch, EvdM Smit & A Buijs 'Is Responsible Investing Ethical?' (2008) 39 *South African Journal of Business Management* 15, 16.

investments. Positive screening may also involve selection of companies that are best in their industry with regard to ESG issues,[788] or selection of companies that have made a commitment to responsible products or services.[789]

In negative screening, responsible institutional investors apply set criteria to exclude companies from their investment portfolios based on corporate ESG performance.[790] Here, responsible institutional investors screen out such companies that operate on poor labour standards, are guilty of breaching human rights, or impact adversely on the environment, among others. Since responsible investment applies not only to investment decision-making but also investment analysis, screening maybe undertaken not only at the time of making the decision whether to invest, but also at the time of analysing subsisting investments' performance and may ultimately inform a decision to divest by an investment institution.

5.2.3 Due Diligence

Due diligence is described as 'the diligence reasonably expected from and ordinarily exercised by a person who seeks to satisfy a legal requirement or discharge an obligation'.[791] Due diligence is a very significant mechanism that can inform investors about the social responsibility practices and culture of corporate organisations. In order to satisfy the requirements of the principles for responsible investment,[792] institutional investors need to engage in a level of due diligence so as to ascertain whether the

[788] Also referred to as best of sector screening.
[789] The United Nations Environmental Program Finance Initiative, *op cit*. note 34.
[790] *Ibid*. See also Suzette Viviers *et al op cit*.
[791] See the *Black's Law Dictionary* 8 ed (2004) 488 available at *https://www.scribd.com/doc/199691370/Black-s-Law-Dictionary-8th-Edition* [accessed April 7, 2016].
[792] Particularly the requirement involving the incorporation of ESG issues in investments analyses and decision-making processes.

corporation in which they have invested, or intend to invest, can be said to be socially responsible particularly with respect to ESG issues. In conducting such a due diligence, institutional investors will need to look out for ESG indicators[793] in the corporations' business policies, activities and processes. Such ESG indicators will include, the existence of an environmental management programme; certification against standards such as ISO 14001,[794] and SA 8000;[795] reports on human and labour rights protection, among others.[796] As part of the due diligence process, and in order to get information with regard to these indicators, representatives of institutional investors may need to visit the companies' registries so as to take a look at the corporate policy documentations, sustainability reports, and management systems documentations. In addition, institutional investors may need to visit relevant regulatory bodies[797] to verify the accuracy of the information obtained at the companies' registries.

[793] According to the Merriam-Webster dictionary, an indicator is 'a sign that shows the condition or existence of something', see *www.merriam-webster.com/dictionary/indicator* [accessed January 4, 2016]. This indicates that ESG indicators are those signs or evidence that shows that a corporation engages in socially responsible business practices with regard to ESG issues.

[794] ISO 14001 is an international certification standard for corporate environmental management. It's requirements has been domesticated by the Standards Organisation of Nigeria into NIS ISO 14001, see Standards Organisation of Nigeria available at *http://son.gov.ng/inside-son/management-system-certification/* [accessed January 5, 2016].

[795] SA 8000 is an international certification standard for corporate social responsibility.

[796] For ESG indicators, see Columbia Threadneedle Investments 'Environmental ,Social and Governance Indicators and Key Issues Reference Document' (2015) available at *www.columbiathreadneedle.co.uk/media/4956293/en_esg_indicators_and_key_issues.pdf* [accessed January 4, 2016]; Social Accountability International SA8000: 2014 Standard Performance Indicator Annex (2014) available at *http://www.sa-intl.org/_data/n_0001/resources/live/Performance%20Indicator%20Annex_11_17_2014.pdf* [accessed January 5, 2016].

[797] Such as Securities Exchange Commission, Corporate Affairs Commission, National Consumer Commission, among others.

Hence, due diligence may serve as a prerequisite process for investment screening,[798] and shareholder activism.[799] On the basis of the information gathered from the due diligence process, be it positive or negative, institutional investors may decide to screen in or screen out certain companies from their investment portfolio as the case maybe.[800] Furthermore, based on the gathered information from the due diligence process, institutional investors may decide to leverage on their ownership power and influence to engage with companies in their investment portfolio as regard their performance on ESG-related issues.[801]

Fund management firms in Nigeria, may against the backdrop of the applicable legal framework, legitimately engage in screening and due diligence as an investment strategy. The Investment and Securities Act (ISA) requires fund managers to administer the funds they manage with skill, care and diligence, as well as in the interest of the fund owners and the securities industry.[802] Due diligence and screening constitute appropriate mechanisms for fund managers to exercise reasonable care and skill in the administration of the funds they manage.[803] Furthermore, due diligence and screening may count for fund managers acting in the best interests of the fund owners and the securities industry.[804] Also, due

[798] This is in respect of intended new investments by institutional investors, and is relevant where institutional investors decide to engage in positive or negative screening.
[799] This is with regard to institutional investors' subsisting investments in companies.
[800] This will be in cases where institutional investors are looking out for companies in which they intend to make new investments.
[801] This will be in respect of companies where institutional investors already have investments.
[802] The Investments and Securities Act *op cit*., sec 155(1). The Code also requires corporate boards to act in the best interest of their companies, and to act with care, skill and due diligence; The Financial Reporting Council of Nigeria 'Nigerian Code of Corporate Governance 2018' (2018) para 24.
[803] This is because due diligence and screening ensures that fund managers apply some level of skill, diligence and care in their choice of investment portfolios.
[804] Research indicates a positive relationship between responsible investment and financial performance. Thus, since fund owners interest is basically maximum return on their investment, implementing responsible investment may count for fund managers acting in the interest of fund owners. It also counts for fund

diligence and screening constitute an appropriate risk management approach for fund managers as required by the Code.[805]

5.2.4 Shareholder Activism

The system of employing shareholder activism as a vehicle for social change emerged in the United States in the 1960s when several social movements led to investors divesting from certain industries in alignment with held ethical positions.[806] Activism is defined as 'a doctrine or practice that emphasizes direct vigorous action especially in support of or opposition to one side of a controversial issue'.[807] It is also defined as the use of direct, and often confrontational action in opposition to or support of a cause.[808] Thus, shareholder activism has been described as the task of aggressive monitoring and controlling of a firm's management for the purpose of enforcing changes in the firm's structure of internal control and governance.[809] With regard to responsible investment, shareholder activism describes the actions taken by social investors in their role as corporate owners aimed at positively influencing corporate behaviour with regard to ESG issues.[810] In other words, it refers to

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managers acting in the interest of the securities industry because responsible investment enhances the sustainability of the industry.

[805] The Financial Reporting Council of Nigeria 'Nigerian Code of Corporate Governance 2018' (2018) para 17. This is because due diligence and screening ensure that fund managers do not invest the funds they manage in irresponsible investment portfolios which may affect their returns on such investment.

[806] Karen Heese 'The Development of Socially Responsible Investment in South Africa: Experience and Evolution of SRI in Global Markets' (2005) 22(5) *Development Southern Africa* 729, 730; Stephanie Giamporcaro & Lise Pretorius 'Sustainable and Responsible Investment (SRI) in South Africa: A Limited Adoption of Environmental Criteria' (2012) 75 *Investment Analysts Journal* 17.

[807] See the Merriam-Webster Dictionary at *http://www.merriam-webster.com/dictionary/activism* [accessed December 21, 2015].

[808] See the Free Dictionary at *http://www.thefreedictionary.com/activism* [accessed December 21, 2015].

[809] Malek Lashgari 'Corporate Governance: Theory and Practice' (2004) *The Journal of American Academy of Business* 46, 48.

[810] Steve Schueth *op cit*., 190-191.

institutional investors[811] taking actions to effect corporate change in respect of ESG-related issues. Such activism requires that institutional investors understand and attempt to influence the ESG performance of the organisations in which they invest.

Institutional investors can engage in shareholder activism through processes such as engagement with management by means of dialogue, pressure and support for responsible management through the exercise of voting rights, and collaborative engagement.[812] Such shareholder engagement with corporate management, exercise of shareholder voting rights, and collaborative engagement offer direct and visible ways by which institutional investors can influence corporate behaviour and culture with regard to ESG issues.[813]

I. Shareholder Engagement

Shareholder engagement is described as a conscious process in which areas of improvement are identified for individual companies by investors who then seek to persuade the companies to commit themselves to change, and the investors monitor the implementation of any commitments made by the companies.[814] Shareholder engagement also refers to the process through which investors use their influence as major shareholders to encourage companies in which they invest to improve their management of, and performance on ESG issues.[815] Unlike screening which allows institutional investors to invest only in companies

[811] As corporate shareholders.
[812] See the UNEPFI Legal Framework for the Integration of ESG Issues into Institutional Investment *op cit*.; Steve Schueth *op cit*., 191; Sean De Cleene & Dan Sonnenberg *Socially Responsible Investment in South Africa* 2 ed (2004) 5.
[813] *Ibid.*
[814] Duncan Green *Socially Responsible Investment and International Development: A Guide for Trustees and Fund Managers* (2001) 4.
[815] *Ibid*, 3. See also the United Nations *Introductory Guide to Collaborative Engagement: How Institutional investors can Effectively Collaborate in Dialogue with Companies* (2013) 3.

that have already taken a lead in corporate social responsibility, engagement allows institutional investors to invest in companies with poor corporate social responsibility practice so as to influence such companies positively to adopt more socially responsible business practices.[816] Such active investment in 'socially irresponsible' companies has been identified as possessing more power in ameliorating unethical and other socially irresponsible corporate practices than passive divestment whereby investors screen out such companies from their investment portfolios.[817]

Mechanisms available for the exercise of shareholder engagement include, corporate annual general meeting;[818] shareholder resolutions;[819] proxy voting;[820] extraordinary general meeting;[821] and the media.[822] Institutional investors may also engage with the companies in which they invest by engaging in direct dialogue with the companies.

[816] *Ibid*, 4.
[817] Bruce D Johnsen 'Socially Responsible Investing: A Critical Appraisal' (2003) 43(3) *Journal of Business Ethics* 219, 221.
[818] This entails that institutional investors are duly represented at annual general meetings of the companies in which they invest, raise questions in respect of ESG issues at such meetings, or discuss ESG issues of concern with management and other shareholders at such meetings.
[819] This entails that institutional investors propose resolutions in respect of ESG issues of concern at the general meetings of the companies in which they invest.
[820] This entails that institutional investors exercise their voting rights in relation to, and in favour of ESG issues.
[821] Where there is an ESG issue that needs to be addressed urgently, and cannot wait till the next annual general meeting, institutional investors can call an extraordinary general meeting of the company to discuss such ESG issues of concern.
[822] Institutional investors can also issue press briefings on their companies with regard to ESG issues so as to pressure the companies to conform to certain standard of responsibility with regard to such issues. See Duncan Green *op cit*., 8; Terrence Guay, Jonathan P Doh, & Graham Sinclair 'Non-governmental Organisations, Shareholder Activism, and Socially Responsible Investments: Ethical, Strategic, and Governance Implications' (2004) 52 *Journal of Business Ethics* 125.

II. Collaborative Engagement

Collaborative engagement refers to a group of institutional investors aligning together to engage in dialogue with companies on ESG issues.[823] It allows institutional investors pull forces together with other like-minded investors so as to gain more power and influence upon which they can leverage. Such collaboration is significant because it allows a more effective investors' communication to corporate management and results in a more informed and constructive dialogue with companies.[824] Furthermore, it enhances investors' influence, build their expertise, and improve efficiency of the engagement process by sharing the workload and costs of dialogue with companies.[825] In addition, research has indicated that institutional investors can increase the weight of their demands on ESG issues before corporate management through collaborative engagement.[826]

For maximum impact on the ESG performance of companies, an integrated analysis approach which combines screening and shareholder activism is required.[827] As such, activism is not an alternative to screening but an essential mechanism for obtaining information about corporate performance which in turn influence investment decisions.[828]

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[823] *Ibid*, 5.
[824] *Ibid*.
[825] *Ibid*, 4; Danyelle Guyatt 'Identifying and Mobilizing Win-Win Opportunities for Collaboration between Pension Fund Institutions and their Agents' (2007) University of Toronto Rotman International Centre for Pension Management Research Report available at *http://www.rijpm.com/admin/article_files/Danyell_Guyatt_Identifying_and_Mobilizing_Collaborative_Opportunities.pdf* [accessed December 22, 2015].
[826] See Gond Jean-Pascal & Piani Valeria 'Enabling Institutional Investors' Collective Action: The Role of the Principles for Responsible Investment Initiative' (2012) 52(1) *Business & Society* 64.
[827] See the UNEPFI Legal Framework for the Integration of ESG Issues *op cit*., 27.
[828] *Ibid.* It is noteworthy that this will be in respect of subsisting investment portfolios as against intended new investments. It is also noteworthy that investment decisions that will be influenced in such instances will include a decision whether to maintain the investment in the company concerned or to divest from such company.

The Companies and Allied Matters Act (CAMA) bestows on companies' shareholders the right to attend any general meeting of the company and vote at such meetings,[829] the right to file resolutions to be passed at such meetings,[830] the right to elect or reject directors and appoint new ones at such meetings.[831] These provisions empowers institutional investors in Nigeria to use the influence of such rights to accomplish their responsible investment goals. In so doing, institutional investors may incorporate ESG issues into the exercise of their ownership rights by filing resolutions with regard to such issues, attending the general meetings of their investee-companies and raising such issues for discussion at these meetings, voting for resolutions against the benchmark of such issues, and voting directors in or out on the basis of such issues.[832]

5.2.5 Reporting

The principles for responsible investment encourage institutional investors committing to the principles to report on their activities and progress towards implementing the principles.[833] Thus, institutional investors need to report the processes they undertake to consider ESG factors in their investment processes. Institutional investors may reasonably be expected to report on two key areas of ESG integration: identification of ESG risks and opportunities in their investment portfolios; and management and monitoring of the

[829] Companies and Allied Matters Act, Cap C20 Laws of the Federation of Nigeria 2004, sec 114.
[830] *Ibid*, sec 235.
[831] *Ibid*, sec 248.
[832] Voting directors in or out on the basis of such issues implies that institutional investors observe and take into cognisance in the exercise of their voting right the demeanor of incumbent directors or intending directors to ESG issues.
[833] See the United Nations Principles for Responsible Investment *op cit*., principle 6.

identified ESG risks and opportunities.[834] In this regard, the policies and processes for screening corporate stocks, engaging with companies in which they invest, proxy voting at their companies' general meetings, and evidence of the outcomes from these activities are expected to be reported by institutional investors.[835]

In addition, the principles for defining report quality as stipulated in the Global Reporting Initiative (GRI) Reporting Guidelines[836] is relevant in this regard. According to the GRI, the quality of information provided in a report is important to enable relevant stakeholders make sound and reasonable assessment of performance, and take appropriate actions.[837] Hence, the GRI provides for some principles that guide choices on ensuring the quality of information contained in a report which it deems as fundamental to achieving

[834] See Daniel Ingram, Faith Ward, Leanne Clements, & Karianne Lancee 'A Guide to Responsible Investment Reporting in Public Equity' (2015) 4 available at *http://www.plsa.co.uk/PolicyandResearch/DocumentLibrary/~/media/Policy/Documents/0424_guide_to_responsible_investment_reporting_in_public_equity_published.pdf* [accessed June 4, 2016].
[835] *Ibid*, 3.
[836] This is a globally applicable guideline for non-financial reporting, see Halina S Brown, Martin de Jong & Teodorina Lessidrenska 'The Rise of the Global Reporting Initiative: A Case of Institutional Entrepreneurship' (2009) 18(2) *Environmental Politics* 182; MaryAnn Reynolds & Kristi Yuthas 'Moral Discourse and Corporate Social Responsibility Reporting' (2008) 78(1/2) *Journal of Business Ethics* 47; Jean Raar 'Environmental Initiatives: Towards Triple-bottom Line Reporting' (2002) 7(3) *Corporate Communications: An International journal* 169.
[837] See the Global Reporting Initiative *G4 Sustainability Reporting Guidelines* (2013) 17 available at *https://www.globalreporting.org/resourcelibrary/GRIG4-Part1-Reporting-Principles-and-Standard-Disclosures.pdf* [accessed January 5, 2016].

organisational transparency.[838] These include the principle of balance,[839] comparability,[840] accuracy,[841] timeliness,[842] clarity,[843] and reliability.[844]

It is noteworthy in this regard that the Code requires corporate boards to ensure that their annual reports include a corporate governance report which provides clear information on the corporate governance structures, policies and practices, as well as environmental and social risks and opportunities.[845]

5.2.6 Community and Thematic Investing

Community investing refers "*to the supply of capital by investors to communities that do not have access to traditional financial services*".[846] It provides credit and capital to low-income earners and small businesses. It also provides capital for important public services

[838] *Ibid.*
[839] Pursuant to this principle, a responsible investment report should reflect the positive and negative aspects of the investment institution's performance to enable a reasoned assessment of the overall responsible investment performance.
[840] This connotes that investment institutions should select, compile and report on their responsible investment performance consistently and the report should be presented in a manner that enables stakeholders to analyse changes in the institution's performance over time.
[841] The information presented in the responsible investment report should be sufficiently accurate and detailed for stakeholders to assess the institution's responsible investment performance.
[842] This connotes that institutional investors should report on their responsible investment performance regularly so that information is available in time for stakeholders to make informed decisions.
[843] This connotes that institutional investors should report on their responsible investment performance in a manner that is understandable and accessible to stakeholders using the report.
[844] this connotes that institutional investors should gather, record, compile, analyse and disclose information and processes used in the preparation of the responsible investment report in a way that they can be subject to examination, and that establishes the quality and materiality of the information reported.
[845] The Nigerian Code of Corporate Governance *op cit*., para 28.
[846] Carsten Henningsen 'Investing as if the World Really Mattered' (2002) 9(2) *Corporate Environmental Strategy* 163.

that enhances poverty alleviation and economic development such as education, healthcare, affordable housing, among others.[847]

Thematic investing[848] on the other hand refers to investments that integrate social and environmental considerations into the choice of investment. It provides capital and operational assistance to companies that provide solutions to social and environmental challenges.[849]

Community and thematic investing have been identified as offering clearer ways for responsible investors because of their direct methods for impacting inequality. They are effective in making substantial contribution to the reduction of inequality through the provision of direct mechanisms to reach people and local businesses in indigenous communities.[850]

5.3 Responsible Investing Strategies and the Alleviation of Inequality in Nigeria

This section discusses how the Fund Management Industry can apply the strategies above to ESG issues hence, contributing to the achievement of equality in Nigeria.

5.3.1 Environmental Issues

As already discussed in the previous chapter, environmental issues consist of issues of environmental protection and conservation. This thesis identifies such issues as one of the major causes of the increasing inequality globally and in Nigeria particularly. As a result of

[847] Jon Daigle, Carrie Hall, Rania Jamal, Katja Silva-Leander & Elya Tagar 'Poverty Alleviation through Socially Responsible Investment: Case Studies of Community Investing and Social Venture Capital' (2004) Report to the World Bank Institute, 6, 8.
[848] Thematic investing is also referred to as social venture capital investing in the management literature.
[849] *Ibid.*
[850] *Ibid*.

the various adverse impacts of corporate activities on the environment, several people are being displaced from their communities, and sources of livelihood are lost.[851] In addition, some of these adverse impacts result in health deterioration for members of the host communities of corporations.[852] Of particular notoriety is the case of the oil and gas companies and the Niger Delta Region of Nigeria which has given rise to the institution of several court proceedings against the companies. For instance, in 2008, four Nigerians from Ikot Ada Udo, Goi and Oruma communities in the Niger Delta Region, together with Friends of the Earth Netherlands took Shell to court over oil spills that had polluted their fields and their fish farming ponds.[853] Consequently, those who were proud owners of flourishing farms got reduced to poverty and forced to survive on odd jobs. This is because the oil spills were never properly cleaned up and their land and fish ponds became unusable. Thus, the plaintiffs demanded that Shell cleans up the oil spills, compensates

[851] CO Opukri & Ibaba S Ibaba 'Oil Induced Environmental Degradation and Internal Population Displacement in the Nigeria's Niger Delta' (2008) 10 *Journal of Sustainable Development in Africa* 173; Vikram Kolmannskog 'Climate Change, Environmental Displacement and International Law' (2012) 24(8) *Journal of International Development* 1071; Saodat Olimova & Muzaffar Olimov 'Environmental Degradation, Migration, Internal Displacement and Rural Vulnerabilities in Tajikistan' (2012) International Organization for Migration Working Paper Series, available at *https://www.preventionweb.net/go/34067* [accessed March 5, 2019]; Roger Zetter & James Morrissey 'Environmental Stress, Displacement and the Challenge of Rights Protection' (2014) 45 *Forced Migration Review* 67; The UN Environment 'Displacement and Environment in Africa: What is the Relationship?' (2016) available at *https://www.unenvironment.org* [accessed March 5, 2019].

[852] Organization for Economic Cooperation and Development (OECD) 'Human Health and the Environment' in *OECD Environmental Outlook* (2001) 249; Farhana Masood, Elisabeth Grohmann, Rais Akhtar & Abdul Malik 'Environmental Deterioration and Human Health: An Overview' in Abdul Malik, Elisabeth Grohmann, & Rais Akhtar (eds) *Environmental Deterioration and Human Health* (2014) 3; Ogbija TE, Atubi AO & Ojeh VN 'Effects of Environmental Degradation on Human Health in Selected Oil Communities in Delta State' (2015) 5(9) *Journal of Environment and Earth Science* 72; Maryam Ishaku Gwangndi, Yahaya Abubakar Muhammad & Sule Musa Tagi 'The Impact of Environmental Degradation on Human Health and Its Relevance to the Right to Health Under International Law' (2016) 12(10) *European Scientific Journal* 4.

[853] Environmental Justice Organisations, Liabilities and Trade 'Court Verdict in the Netherlands: Ruling Against Shell Opens Prospects for Impacted Communities' December 23, 2015 available at *http://www.ejolt.org/2015/12/court-verdict-netherlands-ruling-shell-opens-prospects-impacted-communities/* [accessed March 21, 2019].

them for their losses and prevents new leakages by ensuring that the company's pipelines are properly maintained and patrolled.[854] In January 2013, the Hague court ruled that Shell was guilty of causing pollution on the land of Friday Alfred Akpan.[855] Similarly, an oil spill emanating from a Shell facility in Bonga community on December 20, 2011 led to the spilling of 40, 000 barrels of crude oil into the Atlantic ocean. This affected the community members who are mostly fishermen, and whose source of livelihood are the ocean bodies.[856] The directive from the National Oil Spill Detection and Response Agency ordering the fishermen out of the water led to a suspension of their activities causing hardship and loss of income for some 30, 000 fishermen across the region. This is because more than 60% of the local population in the Niger Delta Region depend on the natural environment for their livelihood.[857]

According to a recent report, most of the oil spills and consequent degradation of the Niger Delta environment are as a result of the recklessness and negligence of multinational oil corporations who fail to operate responsibly and in accordance with the provisions of Nigerian laws and international best practice standards.[858] Such occurrences constitute some of the factors responsible for the increasing inequality challenges around the world,

[854] *Ibid*.
[855] *Ibid.*
[856] Cases of Environmental Human Rights Violations by Shell in Nigeria's Niger Delta (2014) A Joint Written Statement of the Europe-Third World Centre (CETIM) and Environmental Rights Action/Friends of the Earth Nigeria at the 26th Session of the Human Rights Council, available at *www.cetim.ch/legacy/en/interventions/385/cases-of-environmental-human-rights-violations-by-shell-in-nigerias-niger-delta* [accessed March 21, 2019].
[857] *Ibid.*
[858] Amnesty International Negligence in the Niger Delta: Decoding Shell and ENI's Poor Record on Oil Spills (2018).

and in Nigeria.[859] Thus, environmental issues with regard to responsible investing borders on corporate environmental responsibility.

Corporate environmental responsibility is defined as the duty of corporate organisations to manage the adverse impacts of their business operations, products and facilities on their operating environment, as well as to eliminate waste and emissions and minimise business practices that can adversely affect the enjoyment of natural resources by future generations.[860] The operating environment of corporations has been defined to mean the total surroundings of external conditions within which an organisation exists including elements of cultural landscape[861] and natural elements.[862] Thus, corporate environmental responsibility refers to the obligations owed by corporate organisations to protect the land, air, water, climate, among others which they interact with in the course of their business operations. Even though national governments have been the principal actors with regard to environmental protection under international environmental law and policy, the challenges relating to natural resources depletion and environmental degradation as a result of business

[859] Kyriaki Remoundou & Phoebe Koundouri 'Environmental Effects on Public Health: An Economic Perspective' (2009) 6 *International Journal of Environmental Research and Public Health* 2160; Barun Kumar Thakur 'Impact of Environmental Degradation on Human Development' in Himanshu Sekhar Rout & S Bhyrava Murthy (eds) *Human Development in India: Challenges and Policies* (2010) 305.

[860] Peter Glavic & Rebeka Lukman 'Review of Sustainability Terms and their Definitions' (2007) 15 *Journal of Cleaner Production* 1875, 1879; David Vogel *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (2005) 110; Piotr Mazurkiewicz *Corporate Environmental Responsibility: Is a Common CSR Framework Possible?* (2004) 2; Subhabrata B Banerjee 'Corporate Environmentalism: The Construct and its Measurement' (2002) 55 *Journal of Business Research* 177.

[861] Such as lands, roads, settlements.

[862] Such as air, water, climate. See the Convention on Environmental Impact Assessment in a Transboundary Context 30 *International Legal Materials* 800 (1991) article 1(vii) available at *http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/Espoo_Convention_authentic_ENG.pdf* [accessed August 10, 2015]. See also Adrian Henriques *Corporate Impact: Measuring and Managing Your Social Footprint* (2010) 71; Susan Baker *Sustainable Development* (2006) 5; Robert Goodland 'The Concept of Environmental Sustainability' (1995) 26 *Annual Review of Ecology and Systematics* 1, 14.

activities has shifted the focus towards business as a major player.[863] The realisation of the adverse environmental impacts of business activities[864] has given rise to the trend presupposing that business organisations have responsibilities towards the environment.[865]

Since the Stockholm Conference, discussions have arisen on the role of business in the protection of the environment and the significance of integrating environmental concerns into corporate decision-making.[866] Thus, the Stockholm Declaration, Brundtland Report, Rio Declaration, and Reports of the various Earth Summits have been regarded as a call for business organisations to integrate environmental issues into their business policies, procedures and practices.[867] According to the Stockholm Declaration, the achievement of environmental sustainability will require the acceptance of responsibility by enterprises and

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[863] Laura J Spence, Gloria Agyemang & Leonardo Rinaldi *Environmental Aspects of Sustainability: SMEs and the Role of the Accountant* (2012) 5; Kel Dummett 'Corporate Environmental Responsibility' (2008) PHD Thesis RMIT University 48; Wallace N Davidson & Dan L Worrell 'Regulatory Pressure and Environmental Management Infrastructure and Practices' (2001) 40(3) *Business & Society* 315; Cynthia E Clark 'Difference between Public Relations and Corporate Social Responsibility: An Analysis' (2000) 26(3) *Public Relations Review* 363; Paul Johnston & David Santillo 'Ethical Standards and Principles of Sustainability' in Michael K Addo *Human Rights Standards and the Responsibility of Transnational Corporations* (1999) 351; Sanjay Sharma & Harrie Vredenburg 'Proactive Corporate Environmental Strategy and the Development of Competitively Valuable Organizational Capabilities' (1998) 19 *Strategic Management Journal* 729.

[864] Such impacts include climate change, water and air pollution, global warming, deforestation, among others. See Bill L Long *International Environmental Issues and the OECD 1950-2000: An Historical Perspective* (2000); Maths Lundgren & Bino Catasus 'The Banks' Impact on the Natural Environment: On the Space Between 'What Is' and 'What If' (2000) 9(3) *Business Strategy and the Environment* 186.

[865] Peter Lacy, Tim Cooper, Rob Hayward & Lisa Neuberger 'A New Era of Sustainability: CEO Reflections on Progress to Date, Challenges Ahead and the Impact of the Journey Toward a Sustainable Economy' (2010) *UN Global Compact –Accenture CEO Study 2010*; Jeffrey Unerman & Brendan O'Dwyer 'The Business Case for Regulation of Corporate Social Responsibility and Accountability' (2007) 31(4) *Accounting Forum* 332; Rob Gray, Collin Dey, Dave Owen, Richard Evans & Simon Zadek 'Struggling with the Praxis of Social Accounting: Stakeholders, Accountability, Audits and Procedures' (1997) 10(3) *Accounting, Auditing and Accountability Journal* 325.

[866] Elisa Morgera *Corporate Accountability in International Environmental law* (2009) 12.

[867] See Basman Mazahrih 'Incorporation of Environmental Issues into Banks' Lending Decisions' PHD Thesis The University of Waikato (2011) 18; Ricardo Carrere 'The Environmental and Social Effects of Corporate Environmentalism in the Brazilian Pulp Industry' in Peter Utting (ed) *The Greening of Business in Developing Countries: Rhetoric, Reality and Prospects* (2002) 77.

institutions at every level.[868] According to the resolution that convened the 1992 Rio Conference, in as much as industrial enterprises conduct activities in sectors that impact on the environment, they often hold technical skills for the preservation and enhancement of the environment. As such, such enterprises have responsibilities to protect and enhance the environment.[869] According to the United Nations Conference on Environment and Development, the full participation of business is required in the implementation and evaluation of activities to which the conference related.[870] The Conference further encouraged business enterprises to "*recognise environmental management as among the highest corporate priorities and as a key determinant to sustainable development*".[871] These provisions of the Agenda 21 have been argued as expressing a major desire that the private sector should no longer avoid responding to the challenge of sustainable development.[872] The role of the private sector in sustainable development was further discussed at the Johannesburg Summit and the summit affirmed that the private sector has a duty to contribute to the evolution of equitable and sustainable communities and

[868] See the Report of the United Nations Conference on the Human Environment 'Stockholm Declaration' (1972) para 7 of the preamble.
[869] United Nations General Assembly Resolution UN Doc A/RES/44/228 (1989) para 10 available at *www.un.org/documents/ga/res/44/ares44-228.htm* [accessed August 14, 2015].
[870] See United Nations Conference on Environment and Development 'Agenda 21' (1992) para 30.1 available at *https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf* [accessed August 14, 2015]. It is noteworthy that environmental sustainability is one of the core activities to which the Conference relates.
[871] Agenda 21 *ibid*, para 30.3. See also the International Chamber of Commerce 'Business Charter for Sustainable Development' principle 1 available at *https://www.iisd.org/business/tools/principles_icc.aspx* [accessed March 16, 2016].
[872] David M Ong 'The Impact of Environmental Law on Corporate Governance: International and Comparative Perspective' (2001) 12 *European Journal of International Law* 685; Nazli Choucri 'Corporate Strategies Toward Sustainability' in Winfred Lang (ed) *Sustainable Development and International Law* (1995) 198.

societies.[873] This has been interpreted to mean that the international community affirms a responsibility to protect environmental values by influencing the private sector directly and not through the States.[874] In addition, the Organisation for Economic Cooperation and Development (OECD) recognises sound environmental management as an important aspect of sustainable development and as a business responsibility.[875] Accordingly, the OECD requires business organisations to "*take due account of the need to protect the environment within the framework of laws, regulations and administrative practices in the country where they operate, and in consideration of relevant international agreements, principles and standards*".[876]

Subsequently, the traditional roles of actors are changing with the private sector increasingly being sought to be active participants in environmental protection.[877] Similarly, it is increasingly being argued that engaging in environmental sustainability practices is an important activity for business organisations because environmental sustainability is not of benefit to the society only but also in the interest of business in terms of economic performance and competitive advantage.[878] Thus, diverse corporate

[873] See the Report of the World Summit on Sustainable Development 'Johannesburg Declaration on Sustainable Development' (2002) para 27 available at *http://www.un-documents.net/jburgdec.htm* [accessed August 14, 2015].
[874] Andre Nollkaemper 'Responsibility of Transnational Corporations in International Environmental Law: Three Perspectives' in Gerd Winter (ed) *Multilevel Governance of Global Environmental Change: Perspectives from Science, Sociology and the Law* (2006) 179, 193.
[875] Organization for Economic Cooperation and Development *Guidelines for Multinational Enterprises* (2011) Commentary on the Environment, para 6 available at *http://www.oecd.org/corporate/mne/1922428.pdf* [accessed March 16, 2016].
[876] *Ibid*, chap VI.
[877] See Piotr Mazurkiewicz *op cit*.; Sharma & Vredenburg *op cit*.
[878] *Ibid*; Elizabeth Stubblefield Loucks, Martin L Martens & Charles H Cho 'Engaging Small and Medium Sized Businesses in Sustainability' (2010) 1(2) *Sustainability, Accounting, Management & Policy Journal* 178; Robert Rutherford, Robert A Blackburn & Laura J Spence 'Environmental Management and the Small

stakeholder groups have continuously called on corporate organisations to exhibit environmental responsibility and implement environmental sustainability strategies in their business operations and practices.[879] In so doing, corporate organisations are expected to change their traditional modes of operation to more environmental-oriented modes of operation, and company managers are required to manage their corporate environmental impacts in a manner that enhances the sustainability of the environment.[880]

According to the OECD, sound environmental management in its broadest sense embodies activities aimed at controlling both direct and indirect environmental impacts of business activities over the long term and includes both pollution control and resource management elements.[881] Thus, as discussed in the previous chapter, some common standards of pollution control and resource management including environmental impact assessment, environmental management systems, principles of precaution and prevention, environmental remediation, supply chain management, life cycle assessment, and sustainable use of natural resources, have been developed by various international instruments on the environment.

Firm: An International Comparison' (2000) 6(6) *International Journal of Entrepreneurial Behavior & Research* 310; Stuart L Hart 'A Natural-Resource-Based View of the Firm' (1995) 20(4) *The Academy of Management Review* 986.

[879] David Hackston & Markus J Milne 'Some Determinants of Social and Environmental Disclosures in New Zealand Companies' (1996) 9 *Accounting, Auditing & Accountability Journal* 77; Mark A White 'Environmental Finance: Value and Risk in an Age of Ecology' (1996) 5(3) *Business Strategy and the Environment* 198.

[880] Mohammed Belal Uddin, Riad Hassan & Kazi Tarique 'Three Dimensional Aspects of Corporate Social Responsibility' (2008) 3 *Daffodil International University Journal of Business and Economics* 199; Stephen Tully *Research Handbook on Corporate Legal Responsibility* (2005).

[881] The OECD Guidelines *op cit*., para 63, commentary on the Environment.

The Nigerian Fund Management Industry can strategically contribute to the enforcement of corporate environmental responsibility in the corporate sector. Such increase in corporate environmental responsibility can lead to a reduction in environmental degradation and pollution and by extension, a reduction in the inequality challenges in Nigeria. In so doing, environmental issues that fund managers in Nigeria must analyse in their investments include, whether their investee-companies duly carry out environmental impact assessment and life-cycle impact assessment in respect of their business activities; whether such companies implement and execute systems of environmental management appropriate to their sizes, activities, and industrial sector; whether such companies have in place systems of environmental management in their supply chain; and whether and how the investee-companies exploit natural resources in a sustainable manner. In addition, fund managers must assess whether the environmental impact and life-cycle assessment processes, environmental management systems, and supply chain management processes of their investee-companies comply with the requirements of relevant laws and/or regulations, and conform to internationally acceptable standards and guidelines.

Fund managers can adopt the due diligence strategy to carry out an evaluation of the performance of their proposed investee-companies with regard to these issues. Based on corporate environmental performance, they may screen out particular companies from their investment portfolios while admitting those they regard as environmentally responsible. In addition, fund managers must consider environmental issues when exercising their ownership rights in their investee-companies through the instrumentality of shareholder activism. This implies that fund managers be active owners by filing and supporting

resolutions that promote corporate environmental responsibility at the general meetings of their investee-companies, while withdrawing their support from those that may adversely impact the environment. They may also collaborate with other shareholders to push for corporate environmental responsibility in their investee-companies.

Furthermore, fund managers must disclose in their annual report the manner in which they are integrating environmental issues in their investment analyses and decision-making processes, and their performance at responsible investment.

5.3.2 Social Issues

Social issues within the context of responsible investment comprises of issues of corporate social responsibility that is, the responsibilities of corporations towards the society at large. It presupposes that responsible investors take into consideration how their investee-companies impact positively on the members of the society with whom they interact, and how they manage their negative impacts on the society at large. Of particular relevance is a group with whom all corporations interact significantly on a day-to-day basis, the employees. Employees contribute their skills and workmanship to the success of corporate organisations, and have their jobs and livelihood at stake in the organisations. Thus, they have a right to be considered in the management of corporate affairs, and to expect that their legitimate interests and expectations be met by the corporations with which they interact.[882] Such interests will include expectations that the company is managed in a manner that gives regard to their welfare, and guarantees their job security.

[882] Stuart Crainer & Des Dearlove *Financial Times Handbook of Management* 3 ed (2004); Gerald Vinten 'The Stakeholder Manager' (2000) 38(6) *Management Decision* 377.

This is however not the case in Nigeria which is plagued with so many forms of precarious employment. Although domestic laws and several international norms and treaties on human and labour rights make provisions that advance equality,[883] Nigerian workers have been unable to derive maximum benefits from these provisions and are still faced with deprivation of basic rights.[884] Precarious employment has been practiced in Nigeria for a long time, and is still in vogue especially in the oil and gas, and banking industries. As a result of the massive unemployment which characterizes the Nigerian labour market, a significant number of people stay in casual jobs for survival.[885] In fact, the employment order in the Nigerian labour market has been described as a function of 'who you know' on the basis of religion, tribe, and societal affiliation, which has far-reaching effect on discrimination.[886] The incidence of precarious employment in Nigeria include low wages, absence of allowances and other benefits, lack of job security, among others. Although the nature of such employment is very similar to that of a regular employment, casual employees in Nigeria are usually inadequately compensated for the job done.[887] Employers use casualization of workers as a means of reducing cost, maximizing profit, and preventing trade unionism in their workforce.[888]

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[883] Such as the Labour Act, the ILO Declaration on Fundamental Principles and Rights at Work, UN Declaration on Human Rights, among others.
[884] Tinuoye Adekunle 'Human Rights, Workers Rights and Equality in the Nigerian Workplace: An Overview' (2015) 5(17) *Developing Country Studies* 95.
[885] Kalejaiye P Oluwadare 'The Rise of Casual Work in Nigeria: Who Loses, Who Benefits?' (2014) 8 *African Research Review* 156.
[886] Yemi Oginni & Segun Adesanya 'The Workers' Rights in Nigeria: Myth or Reality?' (2013) 2 *International Journal of Business and Management Invention* 100.
[887] Emeka Okafor 'Emerging Non-Standard Employment Relations and Implications for Human Resource Management Functions in Nigeria' (2011) 6(26) *African Journal of Business Management* 7612; Tinuke Fapohunda 'Employment Casualization and Degradation of Work in Nigeria' (2012) 3(9) *International Journal of Business and Social Science*.
[888] *Ibid*.

Hence, this section explores how the Nigerian Fund Management Industry can address corporate social responsibility issues through the instrumentality of the strategies and mechanisms discussed above. This is because such issues have implication on the growing inequality around the world including Nigeria, and such issues are also significant for the reduction in inequality and the achievement of greater equality.

Corporate social responsibility plays a significant role in the achievement of equality in areas such as social welfare and community investment, labour and human rights protection, among others. A comprehensive collective bargaining system has been identified as one of the most effective means of achieving greater equality. Thus, fund managers must agitate for, and support policies that prevent employers' aggression against workers who desire to create or join trade unions. They must ensure that their investee-companies allow for the free operation of labour unions. Shareholder activism and advocacy represent a very viable strategy for fund managers to employ in achieving this. They must actively engage with their investee-companies and advocate for such policies where they are lacking while demonstrating strong support for and commitment to such policies where available. In the course of carrying out due diligence on a proposed investee-company, fund managers must include corporate policies on trade unionism and collective bargaining on their search criteria. Thus, fund managers may screen companies in their investment portfolios based on such policies.

Secondly, the achievement of equality requires the recognition and realisation of individual labour rights. Since precarious forms of employment undermine labour rights and promote

a low pay sector, fund managers can stop such forms of employment through protection against unfair dismissal, recognition of any de facto employment relationship, equal rights and privileges for part-time and regular workers, clear limitations on the use of temporary employment, etc. They need to ensure that their investee-companies implement minimum or living wages and other wage protections. They must also ensure compliance with globally acceptable labour standards in the workplace. Moreover, since educational attainment is significantly related to employment and income levels, fund managers must ensure the continued training and empowerment of workers of their investee-companies. These may be achieved through the instrumentality of shareholder activism. Fund managers need to clarify expectations and engage with corporations on their adherence to, and enforcement of fair treatment of their direct and indirect workforce. They need to also engage actively with their investee-companies and agitate for policies that prevent precarious employment and those that promote continued staff training. Fund managers can also file and support resolutions that prevent precarious employment and promotes the rights of workers including their continued training.[889] In addition, consequent upon a due diligence inquiry, fund managers can screen companies on the basis of their employment practices and culture. In so doing, fund managers need to support public policies that mandate disclosure of material labour relations data, and those that set reasonable standards for minimum or living wages.

[889] For instance, it is reported that in 2017, institutional investors filed shareholder's resolutions calling for the development of principles for minimum wage reform in several companies in the United States including Amazon, Home Depot, CVS Health, among others; see the 2017 Proxy Resolutions and Voting Guide (2017) Interfaith Centre on Corporate Responsibility New York, 135 available at *https://www.iccr.org/sites/default/files/2017iccrproxyresolutionsandvotingguidefinal3.pdf* [accessed March 9, 2019].

Social protection is generally acceptable as a significant redistributive policy with a positive impact on greater equality. It consists of any set of interventions aimed at the reduction of social and economic risks, and the alleviation of poverty and deprivation.[890] Such intervention could include pension for retired workers, income support for workers with dependents, universal health insurance coverage, among others. Although such social protection system may not guarantee the achievement of equality of outcomes, it however ensures that opportunity to participate in socio-economic activities are distributed more widely. In this regard, fund managers need to leverage on their ownership influence in their investee-companies to advocate for social protection systems for employees particularly, the low-income earners and those that are retired. They can achieve this through the instrumentality of shareholder activism. They may also carry out the screening of their investment portfolios in corporate organisations against the benchmark of the availability and practice of such social protection measures.

They also need to actively engage with their investee-companies to formulate corporate social responsibility policies that promotes social protection for members of the society. It has been argued that a major impact of business on inequality is the way business limits the size of the market for goods and services.[891] Thus, the growth of the market in a way that enables the poor or low income earner to pay for basic goods and services represent a social

[890] Paul Mosley, Robert Holzmann & Steen Jorgensen 'Social Protection as Social Risk Management: Conceptual Underpinnings for the Social Protection Sector' (1999) 11(7) *Journal of International Development* 1005; Stephen Devereux & Rachel Sabates-Wheeler Transformative Social Protection (2004) 3; Armando Barrientos 'Social Protection and Poverty' United Nations Research Institute for Social Development, Social Policy and Development Programme Paper No. 42 (2010).
[891] K Madden 'Measuring the Impacts of Business and Poverty' (2001) Resource Centre for the Social Dimensions of Business Practice, Issue Paper No. 3

protection measure. The argument is that the stimulation of commerce and development at the bottom of the economic pyramid can significantly improve the lives of many and bring about a more stable and equitable society.[892] In other words, business must be able to develop cost-effective products and services for the poor and low income consumers so as to stimulate a more inclusive and equitable society. Therefore, fund managers need to exercise their ownership rights in their investee-companies to influence such companies towards corporate policies that give room for such inclusive market system. Moreover, fund managers may target social entrepreneurs in their capital allocation processes.

Adopting the community investing strategy, responsible fund managers may need to identify specific challenges affecting their host communities, and find solutions to such challenges. This will be in addition to their effort at encouraging their investee-companies to invest in their host communities as a way of giving back to the society. Equitable access to public services is crucial to the improvement of welfare and the expansion of the productive capacities of individuals.[893] Moreover, Nigeria is plagued with high unemployment rate because the economic growth achieved in the country has not translated to job creation. An empirical research conducted in six middle-income countries indicates that investing in physical and social infrastructure could generate employment growth.[894] Investing in social and physical infrastructure creates new jobs and has the potential to

[892] CK Prahalad & A Hammond 'Serving the World's Poor Profitably' (2002) *Harvard Business Review* 48; CK Prahalad *The Fortune at the Bottom of the Pyramid* (2004); Rhys Jenkins 'Globalisation, Corporate Social Responsibility and Poverty' (2005) 81(3) *International Affairs* 525, 535.
[893] World Economic and Financial Surveys *Fiscal Monitor 2017: Tackling Inequality* (2017); Belinda Archibong 'Historical Origins of Persistent Inequality in Nigeria' (2018) 46(3) *Oxford Development Studies* 325.
[894] Jerome De Henau, Susan Himmelweit & Diane Perrons *Investing in the Care Economy: Simulating Employment Effects by Gender in Countries in Emerging Economies* (2017).

tackle some of the central economic and social problems confronting developing countries, especially for low-income earners and those living in remote areas.[895]

Thus, such community investment may include universal provision of basic amenities such as affordable housing, electricity, water, as well as social services such as education, healthcare, etc. It is noteworthy that these basic amenities and social services have implication on inequality, and an improved access by the poor to such basic amenities is essential to reducing inequality. For instance, education has been identified as one of the most powerful instruments for lifting people out of social and economic deprivation because educational attainment is related to employment and income levels.[896] This calls for an inclusive and equitable quality education and the promotion of lifelong learning opportunities for all persons. Consequently, there is need for educational facilities that are economically and physically accessible without discrimination against anyone. According to the United Nations, such facilities should be culturally appropriate and flexible to accommodate the needs of people in diverse socio-cultural settings.[897] Thus, community investment in educational facilities within the Nigerian context, may need to take into consideration the principles of Islamic education for instance. In addition, such community investment in educational facilities need to consider lifelong learning opportunities which will include education up to a higher degree level, as well as continued training and skill

[895] *Ibid*.
[896] United Nations Centre for Economic and Social Rights 'From Disparity to Dignity: Tackling Economic Inequality through the Sustainable Development Goals' (2016) United Nations Human Rights Policy Brief 25; International Monetary Fund 'Fiscal Policy and Income Inequality' (2014) available at *https://www.imf.org/external/np/pp/eng/2014/012314.pdf* [accessed March 9, 2019].
[897] Commission on Economic & Social Rights 'The Right to Education: General Comment No. 13' (1999) UN Doc E/C.12/1999/10.

acquisition. It is not suggested that the corporate sector should take over the responsibilities of government in the delivery of social services, however, it is important for corporations operating in Nigeria to recognise the environment and context in which they conduct business where social services are largely unavailable. It is important then for corporations to build their social capital and goodwill with host communities by making these community investments.

The significance of the informal sector in any economy cannot be overemphasised as it offers opportunities to the most vulnerable world population such as the poor, women, youth. The Nigerian informal sector has been estimated to constitute about 60% of the entire economy. The sector has grown in size at an annual average rate of about 8.5% between 2015 and 2017 making the growth faster than that of the formal sector which only grew by 0.8% within the same period.[898] Therefore, because of the growth rate of the sector, and the opportunities it offers the most vulnerable population, there is a need to develop the sector to spur job creation and economic inclusiveness. For instance, it has been argued that the development of the sector and its consequent job creation will imply a higher household income and lower poverty rate hence, greater equality.[899] The development of the sector would apparently require skills development, accessible credit, infrastructural development, among others. Hence, responsible fund managers need to take these issues into consideration in their investment decision-making processes. Adopting the thematic or social venture capital investment strategy, fund managers need to allocate more

[898] Obinna Chima 'FG Urged to Develop Informal Sector' This Day (Nigeria) August 16, 2018.
[899] *Ibid.*

capital to informal entrepreneurs. Micro-credits provide an entrepreneurial way out of poverty by providing cheap capital to poor people.[900] Thus, fund managers may target significant part of their investment portfolios towards the provision of micro-credit schemes to SMEs and other entrepreneurs in the informal sector. They also need to leverage on their economic power to lobby for government policies aimed at the reform and development of the sector.

5.3.3 Governance Issues

The Fund Management Industry can also contribute to the reduction of inequality by addressing some corporate governance issues, that have implication for inequality, in their investment management. The first of such corporate governance issue is that of taxation. Since tax contributes immensely to equality by making revenue available for government to implement inequality-reducing measures, fund managers need to understand how companies in their investment portfolios approach tax-related issues. They need to engage with their investee-companies to encourage improvements in their publication of tax-related information so as to aid investment decision-making. They need to identify and actively discourage any form of aggressive tax planning strategies, and illicit financial flows to tax havens in such companies. Since disclosure and transparency has been identified as a significant way of improving the development impact of business,[901] fund managers need to seek the disclosure of companies' perception and management of tax-related risks including

[900] Rob van Tulder 'The Role of Business in Poverty Reduction: Towards a Sustainable Corporate Story?' (2008) Background Paper Commissioned for the United Nations Research Institute for Social Development Flagship Report on Poverty 11.

[901] A Inamdar 'Improving the Development Impact of Transnational Corporations' Background Paper to the DFID White Paper on Globalisation available at *www.globalisation.gov* 11 [accessed March 9, 2019].

information on tax policies and governance. Although many companies do not provide disclosure beyond numbers in their annual reports, examples of good practices have emerged. For instance, such a disclosure is expected to cover areas such as compliance with relevant tax laws and regulations, specific disclosure on transfer pricing, in addition to the companies' tax policies and governance regime, among others.[902] In addition to seeking disclosure, fund managers must refrain from lobbying for, and withdraw their support from any corporate policy or practice that promotes tax evasion and unnecessary tax incentives. They need to also discourage the bribery of public officials by companies with the aim of avoiding tax payment.

Several investors have made tax-related data disclosure a priority in engagement and proxy voting. For instance, in 2017, the French National Pension Fund (ERAFP) was reported to have made the combat of aggressive tax optimization through the promotion of greater transparency in financial reporting one of its priorities for corporate engagement.[903] Similarly, the Local Authority Pension Fund Forum in the United Kingdom have adopted proxy-voting guidelines calling for companies to report fully on their tax strategies and

[902] The United Nations Principles for Responsible Investment Investors' Recommendations on Corporate Income Tax Disclosure (2017); The United Nations Principles for Responsible Investment *Evaluating and Engaging on Corporate Tax Transparency: An Investor Guide* (2018) 5.
[903] Establissement de Retraite Additionnelle de la Fonction Publique 'Guidelines for ERAFP'S Shareholder Engagement: 2017 Version' (2016) 17 available at *https://www.rafp.fr/en/sites/rafp_en/files/publication/file/rafp-lignes_directrices-2017-uk_1.pdf* [accessed March 9, 2019].

payments including a country by country breakdown of tax payments in each jurisdiction where they operate.[904]

It is noteworthy however that chasing revenue targets without considering the distributive consequences could also result in unequal outcomes. Thus, it has been argued that the imperative of equality requires that taxation is equitable and accountable.[905] In other words, it calls for the allocation of the maximum of available resources to progressively realise economic, social and cultural rights for all. Thus, fund managers in collaboration with civil society, need to engage with government in this regard while lobbying for policies and regulations that ensure the equitable redistribution of the revenue generated by government from taxation.

Second is the issue of executive pay. Fund managers need to engage with companies to ensure an alignment of executive pay with the long-term corporate strategy in order to protect and create value.[906] They need to foster regulations that facilitate investors input in the design of executive pay. In so doing, fund managers need to discourage widened compensation gap between senior executives and lower-level employees by advocating for policies that links the highest salaries in the company to the lowest salaries. Thus, the salary of an executive can only exceed that of the lowest paid employee by a stipulated reasonable maximum, and executives may only increase their salaries if they simultaneously increase

[904] Local Authorities Pension Fund Forum 'Policy Guide on Environmental, Social and Corporate Governance Issues' (2016) 19 available at *http://www.lapfforum.org/wp-content/about-us/2016_LAPF_Policies_Full_Version-pdf* [accessed March 9, 2019].
[905] Centre for Economic and Social Rights 'Human Rights and Tax Policy' available at *http://cesr.org/taxjustice* [accessed March 9, 2019].
[906] Athanasia Karananou & Olivia Mooney *Integrating ESG Issues into Executive Pay: A Review of Global Utility and Extractive Companies* (2016) 4.

the income of the lowest paid employee. Furthermore, fund managers need to ask for the disclosure of data on the ratio of CEO compensation to that of the average employee. This provides an avenue for addressing inequality. For instance, ERAFP has set strict standards with regard to the ratio of CEO compensation to that of an average employee, and also assesses the effect of CEO-employee compensation ratio on social cohesion.[907]

The third issue is that of corporate management. It has been argued that the achievement of equality requires the building of the capacity of the disadvantaged to exert influence on the powerful. In other words, it involves increasing the voice and influence of weaker groups in the society and a balance of social forces through accountability and other mechanisms that keep corporate power in check.[908] It is noteworthy that employees' representation on corporate boards represent a mechanism that can keep corporate power in check. Moreover, since the social element of responsible investing incorporates stakeholder inclusiveness and employees are corporate stakeholders, such employee representation will be legitimate. Thus, fund managers need to exercise their ownership influence to canvass for employees' representation on the boards of their investee-companies. This will better protect the rights and interests of employees and enhance the opportunity of greater equality.

Furthermore, director nominations and elections represent some of the most fundamental ownership rights for shareholders.[909] This encompasses the right to appoint and remove board members to represent their interests in promoting long-term value creation. Thus,

[907] ERAFP *op cit*., 34-35.
[908] Peter Utting 'CSR and Equality' (2007) 28(4) *Third World Quarterly* 697.
[909] The United Nations Principles for Responsible Investment *Engaging on Director Nominations: An Investor Guide* (2017) 5.

fund managers need to become involved in nominating and voting for desired candidates while also engaging with companies to ensure that nominees are best-suited to guide the long-term success of the company. Consequently, fund managers must seek disclosure on why a particular candidate is nominated and how such nominees could add value to the board and corporate management. In other words, fund managers may need to require companies to disclose specifically how the skills of nominees, support and promote the long-term business strategy of the company. Such disclosure provides clarity for investor in exercising their voting right in relation to board appointments.

In addition, it is noteworthy that corporate influence on the politics and policy of sustainable development is central to the protection and promotion of a reputation for responsible corporate behaviour. This is because it is expedient for a company taking a progressive internal stance on sustainable development to align its sustainability approach with its lobbying positions on issues of sustainable development.[910] Thus, fund managers need to be transparent about their positions on key sustainability issues; they must ensure that their lobbying activities and positions are consistent with the principles for responsible investment. In addition, they must take responsibility for the impact they have on public policy through their lobbying and other activities, and they need to pro-actively attempt to influence public policy in support of the sustainable development agenda. Such lobbying may enhance the level of regulation or acceptable standards of responsible investment within the industry thus reinforcing competitiveness by pushing other practitioners in the

[910] The Janus Programme, SustainAbility & Government Policy Consultants (GPC) *Politics and Persuasion: Corporate Influence on Sustainable Development Policy* (2001).

industry to operate above existing minimum requirements. Fund managers may influence public policies on sustainable development by designing and funding information campaigns; participating in consultations with government; negotiating amendments to legislations, sponsoring research, etc. Fund managers need to also seek a comprehensive disclosure of the positions and lobbying activities of their investee-companies on key sustainability issues. In so doing, they need to discourage those lobbying activities and refrain from supporting those positions that have adverse impacts on the achievement of sustainable and inclusive development.

5.4 Conclusion

This chapter discusses some globally acceptable strategies for implementing the principles for responsible investment. It proceeds to highlight the strategic role the fund management industry can play in addressing the challenges of inequality through the application of the strategies. Basically, it emphasises the leverage fund managers have to influence corporate culture and practice to be more responsible and inclusive through their corporate ownership rights. The chapter posits that fund managers can combat inequality in Nigeria by addressing those ESG issues that have implications on inequality in their corporate investment portfolios through strategies such as investment screening, shareholder activism, community and thematic investing, among others. Consequently, this chapter has been able to bring to the fore the practicability of fund managers addressing the inequality challenges in Nigeria.

CHAPTER SIX- PROPOSED LEGAL AND REGULATORY FRAMEWORK FOR THE GOVERNANCE AND ENFORCEMENT OF RESPONSIBLE INVESTMENT IN THE NIGERIAN FUND MANAGEMENT INDUSTRY

6.1 Introduction

Chapter three of this thesis examined various ESG laws and regulatory institutions in Nigeria that have implications for addressing inequality and promoting inclusive development in Nigeria. The chapter concluded that the identified weaknesses with these laws and institutions call for a complementary approach to addressing the inequality challenges and promoting inclusive development in the country. This is because often times, the existing institutions are too weak and lack the political will to enforce compliance with existing laws and regulations. For instance, the executive secretary of NEITI revealed in a recent interview that the NNPC has proven to be a challenge to the NEITI's process.[911] According to the 2016 NEITI Audit Report, outstanding liabilities of N70.015bn and $4.459bn due from the Nigerian Petroleum Development Company Ltd. (NPDC) to the federal government has not been remitted by the company, and this has resulted in hampered developmental programs of the federation and a loss in value of the money due to delayed remittance.[912] The report also revealed that a sum of $1.42bn consisting of dividends, loan and interest repayments by Nigeria Liquefied Natural Gas (NLNG) Ltd. to NNPC for 2014 was missing from the federation account. Altogether, the report revealed that a total sum of $15.823bn being payments of NLNG dividends, loan and

[911] Elisha Bala-Gbogbo & Ruth Olurounbi 'Nigeria State Oil Company Hasn't Explained Missing Billions' Bloomberg, March 12, 2018.
[912] NEITI *2016 Annual Progress Report* (2017) available at *www.neiti.gov.ng/index.php/resources/internal-resources/annual-neiti-eiti-reports* [accessed April 13, 2019].

interests paid to NNPC between 2000 and 2014 has not been remitted to the federation account by NNPC. In addition, the report revealed some incidences of late payment of liabilities including, royalty, penalty, and taxes, to the federation account by oil companies.[913]

Also, in spite of the various laws on environmental protection in Nigeria, the Niger Delta Region,[914] still suffers from severe environmental degradation. This is notwithstanding the fact that most of the oil companies operating in this region report compliance with existing environmental laws and international environmental standards.[915] Thus, Amnesty International recently carried out an investigation into the operational practices of the oil industry. In the course of the investigation, Amnesty analysed several documents and photographs relating to oil spill incidences of the largest oil companies in Nigeria.[916] The findings of the investigation revealed systemic flaws in the oil spill investigation process of both companies.[917] Shell and ENI often report third party interference as the major cause of spills from their facilities. The findings of Amnesty's investigation however indicate that the claim is based on flawed oil spill investigation processes. The findings revealed that if Shell and ENI had been more responsible, most of the spills could have been avoided. Also, the decreasing incidence of oil spill reported by both companies was attributed to

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[913] *Ibid*.
[914] The region is the hub of petroleum activities in Nigeria.
[915] For instance, Oando Plc. Sustainability Reports 2013-2016 available at *https://www.oandoplc.com/* [accessed April 13, 2019]; and Shell Sustainability Reports 2016-2018 available at *https://reports.shell.com/sustainability-report/* [accessed April 13, 2019].
[916] That is, Shell and ENI.
[917] Amnesty International 'Negligence in the Niger Delta: Decoding Shell and ENI's Poor Record on Oil Spills' (2018) available at *https://www.amnesty.org/en/documents/afr44/7970/2018/en/* [accessed April 13, 2019].

government intervention programme such as amnesty granted to militant groups, and not the sole achievement of the oil companies.[918]

The NOSDRA Act requires an oil company to report an oil spill to NOSDRA within 24 hours from the occurrence of an oil spill failure of which shall attract penalty in the sum of N2,000,000 for each day of failure to report the occurrence.[919] Similarly, failure to clean up an impacted site, to all practical extent including action plan for remediation within two weeks of the occurrence of an spill attracts a fine not exceeding N5,000,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.[920] However, Amnesty's report revealed that within the period investigated, Shell took an average of seven days to respond to oil spills while ENI, an average of two days. These companies did not provide any explanation for the delay in response. Thus, Amnesty concluded based on the analysis of the reports issued by Shell and ENI that much of the information they contained is unreliable and misleading.[921]

NOSDRA which is the regulator of oil spills in the oil industry has also been castigated for its attitude towards the performance of its responsibilities. According to an investigation by the Center for Peace and Environmental Justice (CEPEJ), it was revealed that NOSDRA is always very slow in responding to oil spill incidences, while the oil companies often are responsible for the provision of logistics for NOSDRA to assess sites of oil spillage.[922] This has made it easy for NOSDRA to collaborate with oil companies to cover up the real

[918] *Ibid.*
[919] The NOSDRA Act op cit., section 6(2).
[920] *Ibid*, section 6(3).
[921] Amnesty International *op cit*.
[922] Chidimma Okeke 'Agency Slow in Responding to Oil Spill' Daily Trust (Nigeria) August 29, 2018.

reasons behind spills. In fact, it was reported that oil companies in collaboration with NOSDRA often intentionally engage in vandalism of oil pipelines which are overdue for replacement and had constantly leaked oil, so as to cover up the reason behind the constant oil leakage from such pipelines.[923] In addition, the report revealed that those who are contracted by the oil companies to clean up oil spills sites, are usually granted permits for such clean up by NOSDRA despite that they are unqualified for the job.[924] Thus, no matter the volume of existing laws and regulations, lack of adequate implementation by regulatory institutions may hinder the effective enforcement of the laws. As such, corporate responsibility initiatives, such as responsible investing, may be explored as an avenue for enforcing corporate legal compliance hence, promoting greater equality and inclusive development.

The previous chapter proposes the Nigerian Fund Management Industry as an avenue for promoting equity and inclusive development in Nigeria, through the implementation of the principles for responsible investment. The effective implementation of responsible business practices involves not just efforts at the organisational level, but equally important, efforts at the national level. In other words, in order to ensure the effective implementation of responsible business practices,[925] there is the need to have in place mechanisms to efficiently integrate such business practices into corporate culture at the organisational level.[926] Second, there is a need to have in place mechanisms to ensure compliance with,

[923] *Ibid.*
[924] *Ibid.*
[925] Responsible business practices such as is being proposed in this research, the principles for responsible investment.
[926] That is, there is a need to have in place mechanisms for the private governance of such responsible business practices within individual organisations, as well as mechanisms by which individual organisations

and enhance the enforcement of, such business practices at the national level.[927] As indicated by the Organisation for Economic Cooperation and Development, it is necessary to have in place an effective corporate responsibility governance regime to ensure compliance with corporate responsibility principles.[928] Such a governance regime requires a sound legal, regulatory and institutional framework that encourages compliance with corporate responsibility principles.[929]

However, should investment institutions be allowed to directly subscribe individually to the United Nations Principles for Responsible Investment (UNPRI)? It is noteworthy in this regard that such investors may subscribe to the UNPRI without actually implementing the principles, so as to hide their 'irresponsibility' under the cover of the UNPRI logo. Moreover, the UNPRI is unenforceable and the only monitoring mechanism provided is a report on implementation progress.[930] Such system of reporting may lead to 'box ticking' by investment institutions without the actual practice of the principles since the United Nations does not have in place a system for monitoring and enforcing compliance in every country. In addition, investment institutions may decide to subscribe to the UNPRI so as to dissuade governmental regulatory intervention or public pressure from civil society actors, without actually implementing the principles. Thus, it is necessary that responsible

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can successfully implement such responsible business practices in their day-today business activities and operations.

[927] That is, countries seeking to implement responsible practices in their corporate sector must have in place mechanisms which may include, legislative and/or regulatory measures, which governs such implementation.

[928] See the Organisation for Economic Cooperation and Development *G20/OECD Principles of Corporate Governance* (2015) 13.

[929] *Ibid*.

[930] The United Nations 'Principles for Responsible Investment' (2006) available at *www.unpri.org/about-pri/the-six-principles/* [accessed December 10, 2015] principle 6.

investment be regulated in Nigeria in order to allow for the effective governance, monitoring and enforcement of its principles.

Typically, such governance comprises elements of legislation and regulation, self-regulation, and voluntary commitments. Chapter three discusses relevant strategies by which institutional investors can effectively implement the principles for responsible investment in their investment activities,[931] as well as a practicable mechanism for privately governing such implementation within individual institutions.[932] Chapter four presents the need to have a complementary approach to enforcing corporate compliance with relevant laws and regulations, and responsible investing is a viable approach. As a follow-up, the present chapter sets out a proposed legal and regulatory framework for the governance and enforcement of responsible investment in Nigeria. It is intended that the enforcement of responsible investment will on the long term enhance the efficiency of ESG laws and regulations particularly in relation to inequality reduction.

6.2 The Proposed Legal and Regulatory Framework

The volume of legislation and regulations on ESG issues in Nigeria indicates that absence of relevant legislation is not the reason for the high incidence of inequality challenges in Nigeria but the adequacy and implementation of the provisions of these laws. This calls for the strengthening of the human capacity of the administrators of these laws. Furthermore, the potential of the institutional investors may be harnessed to ensure compliance with these laws. Such potential may be harnessed through the instrumentality of responsible

[931] See the previous chapter for investment screening, shareholder engagement and activism, collaborative engagement, and investment reporting.
[932] See the previous chapter for responsible investment management system.

investment hence, the need for a formal regulation of responsible investment within the industry.

There is a consensus in the governance literature that effective governance, particularly in an era of globalisation, depends on multi-level processes and the collaboration of multiple actors whereby the influence exerted by such actors individually conspire to influence corporate behavior.[933] Thus, business, government civil society, and customers all have a legitimate and crucial role to play in clamouring and aiming for responsible investment.[934] Similarly, the influence of external factors on corporate governance cannot be ignored; hence, effective corporate governance is motivated by corporate cultures, government policies, market forces and civic pressures.[935] Thus, emphasis is increasingly being placed on a blend of these external[936] and internal[937] measures to regulate corporate governance and behavior.[938] Furthermore, the factors that encourage or incentivise corporate organisations to engage in socially responsible behavior has been identified to include

[933] Andy Gouldson, Rory Sullivan & Stavros Afionis 'The Governance of Corporate Responsibility' (2013) University of Leeds Sustainability Research Institute Paper No. 47 at 9; Ian Bache & Matthew Flinders (eds) *Multi-Level Governance* (2004); Judith Richter *Holding Corporations Accountable: Corporate Conduct, International Codes, and Citizen Action* (2001); Jane Nelson & Simon Zadek *Partnership Alchemy: New Social Partnerships in Europe* (2000); Gerry Stoker 'Governance as Theory: Five Propositions' (1998) 50 (155) *International Social Science Journal* 17.

[934] *Ibid.*

[935] For instance, government policy or regulation is significant in setting the legal context for corporate governance, stakeholder expectations exert substantial influence on corporate governance practices. See generally Rory Sullivan *Valuing Corporate Responsibility: How Do Investors Really Use Corporate Responsibility Information?* (2011); Andy Gouldson 'Understanding Business Decision Making on the Environment' (2008) 36 *Energy Policy* 4618.

[936] That is, government policy or regulation, market forces, and civic pressure.

[937] That is, corporate culture.

[938] Elinor Ostrom 'Beyond Markets and States: Polycentric Governance of Complex Economic Systems' (2010) 100(3) *American Economic Review* 641; Jouni Paavola, Andy Gouldson & Tatiana Kluvankova-Oravska 'Interplay of Actors, Scales, Frameworks and Regimes in the Governance of Biodiversity' (2009) 19(3) *Environmental Policy and Governance* 148; Julia Black 'Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes' (2008) 2(2) *Regulation & Governance* 137; Roderick AW Rhodes 'Understanding Governance: Ten Years On' (2007) 28(8) *Organisation Studies* 1243, 1247.

institutional factors such as State regulation, non-governmental regulation, and corporate self-regulation.[939] This is because, over the past years, actors such as governments, civil activists, the media, among others, have risen to prominence in holding corporate organisations accountable for the social impacts of their activities.[940]

On the basis of this premise, this thesis proposes a framework for the governance and enforcement of rules for responsible investment in the Nigerian fund management industry comprising of government regulation, industry self-regulation, non-governmental pressure, meta-regulation, the media, and market forces or sustainable consumerism. As noted earlier, these measures are not mutually exclusive, but they interact with one another to govern and ensure compliance with the principles for responsible investment in the industry.

6.2.1 State Regulation

The traditional view of corporate responsibility as a voluntary process driven by corporations themselves is increasingly becoming contestable as a result of the agitations[941]

[939] John L Campbell 'Why Would Corporations Behave in Socially Responsible Ways? An Institutional Theory of Corporate Social Responsibility' (2007) 32(3) *The Academy of Management Review* 946.

[940] Michael E Porter & Mark R Kramer 'Strategy and Society: The Link between Competitive Advantage and Corporate Social Responsibility' (2006) *Harvard Business Review* 1.

[941] As a result of their economic wealth, corporate organisations wield enormous power in the society. Therefore, stakeholders such as scholars, Non-governmental Organisations and other civil society actors, have continuously agitated for accountability and legitimacy as an integral aspect of corporate social responsibility. See Bryan Horrigan *Corporate Social Responsibility in the 21st Century: Debates, Models and Practices Across Government, Law and Business* (2010); Andreas G Scherer & Guido Palazzo 'Towards a Political Conception of Corporate Responsibility: Business and Society seen from a Habermasian Perspective' (2007) 32(4) *Academy of Management Review* 1096; Guido Palazzo & Andreas G Scherer 'Corporate Legitimacy as Deliberations: A Communicative Framework' (2006) 66 *Journal of Business Ethics* 71; Lez Rayman-Bacchus 'Reflecting on Corporate Legitimacy' (2006) 17(3) *Critical Perspectives on Accounting* 323.

of several stakeholders.[942] The first of such agitations is that corporate managers are public trustees and social stewards and as such, they have an obligation to assume responsibility for the public good.[943] Second are those who views corporations as corporate citizens and on the basis of such corporate citizenship, they are regarded as an integral part of the society in which they operate, and thus have duties and obligations in the society just as natural citizens of the society do.[944] Third is the agitation that all business organisations thrive on relationships with various stakeholder groups[945] who have a right to be considered in the management of corporate affairs, and their legitimate interests met by the corporations with which they interact.[946]

Such stakeholder agitations have increasingly emphasised a significant role for law and regulation in corporate responsibility.[947] Another viewpoint emphasises a paramount role for domestic regulatory authorities and administrative agencies in ensuring effective

[942] Adaeze Okoye 'Exploring the Relationship between Corporate Social Responsibility, Law and Development in an African Context: Should Government Be Responsible for Ensuring Corporate Responsibility?' (2012) 54(5) *International Journal of Law and Management* 364; Peter Utting 'The Struggle for Corporate Accountability' (2008) 39(6) *Development and Change* 959; Doreen J McBarnet, Aurora Voiculescu & Tom Campbell *The New Corporate Accountability: Corporate Social Responsibility and the Law* (2007) 55; Jem Bendell 'Barricades and Boardrooms: A Contemporary History of the Corporate Accountability Movement' (2004) UN Research Institute for Social Development, Technology, Business and Society Programme Paper No. 13.

[943] William C Frederick 'Corporate Social Responsibility: Deep Roots, Flourishing Growth, Promising Future' in Andrew Crane et al op cit note 36 at 522, 524; Peter F Drucker *The Practice of Management* (2006) 388; Steve Letza & Xiuping Sun 'Corporate Governance: Paradigms, Dilemmas, and Beyond' (2002) 2 *The Poznan University of Economics Review* 43.

[944] Duane Windsor 'Corporate Citizenship: Evolution and Interpretation' in Jorg Andriof & Malcom McIntosh (eds) *Perspectives on Corporate Citizenship* (2001) 39; Donna J Wood & Jeanne M Logsdon 'Theorising Business Citizenship' in Andriof & McIntosh ibid at 83; Dirk Matten, Andrew Crane & Wendy Chapple 'Behind the Mask: Revealing the True Face of Corporate Citizenship' (2003) 45(1-2) *Journal of Business Ethics* 109; Chris Marsden 'The New Corporate Citizenship of Big Business: Part of the Solution to Sustainability' (2000) 105 *Business and Society Review* 8, 11.

[945] Such stakeholder groups include the shareholders who provide financial capital, employees who contribute their skills and workmanship, customers who patronise the goods and services of corporations, and the local communities believed to present corporations with a social license to operate.

[946] Stuart Crainer & Des Dearlove *Financial Times Handbook of Management* 3 ed (2004); Gerald Vinten 'The Stakeholder Manager' (2000) 38(6) *Management Decision* 377.

[947] *Ibid*.

compliance with corporate responsibility principles.[948] According to this viewpoint, other forms of corporate regulation[949] can only complement State regulation and cannot substitute for them.[950] This complementary relationship between State regulation and other forms of corporate regulation indicates that corporate responsibility should be expanded from 'going beyond compliance with law' to include making efforts at raising compliance standards.[951] Similarly, factors that enhances the effectiveness and success of other forms of corporate regulation has been identified to include the existence of a legal foundation supporting such regulation.[952] Furthermore, the existence of strong and well enforced State regulation has been identified as one of the key conditions under which corporate organisations may engage in socially responsible behaviour.[953] In addition, the responsibility of national governments, under international law, for development in their jurisdictions implies a fundamental authority of governments to drive developmental policies within their jurisdictions.[954] Therefore, the role of governments in holding corporate organisations accountable for the social impacts of their activities remains very

[948] Yuval Feldman & Orly Lobel 'Behavioral versus Institutional Antecedents of Decentralized Enforcement in Organizations: An Experimental Approach' (2008) 2(2) *Regulation & Governance* 165; David Vogel 'The Private Regulation of Global Corporate Conduct' in University of Toronto Munk Centre for International Studies *Controversies in Global Politics & Societies* (2006) 1.
[949] Such as self-regulation and civil regulation.
[950] *Ibid*.
[951] David Vogel *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (2005) 171.
[952] Simon Wong *op cit*.; Barman & White *op cit*.; David Vogel *op cit*., 6.
[953] John Campbell *op cit*. See also Esteban Fernandez, Beatriz Junquera & Monica Ordiz 'Managers' Profile in Environmental Strategy: A Review of the Literature' (2006) 13 *Corporate Social Responsibility and Environmental Management* 261; Jacqueline Cramer Corporate Social Responsibility: Lessons Learned (2003) *13(2) Environmental Quality Management* 59; Simon Zadek 'Stalking Sustainability' (1999) 26 *Greener Management International* 1.
[954] Adaeze Okoye *op cit*., 374.

prominent and cannot be overemphasised.[955] Although other forms of corporate regulation can provide incentives for corporate organisations to implement corporate responsibility standards, government action remains significant to the effective regulation of corporate responsibility.[956]

Government can take action to facilitate corporate responsibility by setting a clear framework to guide business behaviour.[957] Such a framework may consist of best practice demonstration, non-regulatory activism, regulation and/or legislation.[958] Government may also adopt the use of policy instruments such as informational, economic and legal instruments in setting such a clear framework for corporate responsibility.[959] Informational instruments are based on the resource of knowledge and moral persuasion such as campaigns and trainings. Economic instruments[960] make use of financial incentives and market forces[961] to influence corporate behaviour. Legal instruments[962] prescribe the required rules of behaviour, as well as desired actions by making use of the State's

[955] Porter & Kramer *op cit*.
[956] Graham & Woods *op cit*.; Aron Cramer & Peder M Pruzan-Jorgensen 'Engaging Governments to Support Corporate Social Responsibility in Global Supply Chains' in Marc Epstein & Kirk Hanson (eds) *The Accountable Corporation* (2006) 75; Halina Ward *Public Sector Roles in Strengthening Corporate Social Responsibility: Taking Stock* (2004).
[957] Jeremy Moon & David Vogel 'Corporate Social Responsibility, Government, and Civil Society' in Andrew Crane, Abigail McWilliams, Dirk Matten, Jeremy Moon & Donald Siegel (eds) *The Oxford Handbook of Corporate Social Responsibility* (2008) 303, 313.
[958] Nikolay A Dentchev, Elvira Haezendonck & Mitchell van Balen 'The Role of Governments in the Business and Society Debate' (2015) *Business & Society* 1, 5; Gianni Zappala 'Corporate Citizenship and the Role of Government: The Public Policy Case' (2003) Australian Parliament Information and Research Services, Research Paper No. 4.
[959] Nikolay Dentchev *et al ibid*; Reinhard Steurer 'The Role of Governments in Corporate Social Responsibility: Characterising Public Policies on CSR in Europe' (2010) 43 *Policy Sciences* 49; Marie-Louise Bemelmans-Videc, Ray C Rist & Evert O Vedung *Carrots, Sticks and Sermons: Policy Instruments and their Evaluation* (1998); Michael Howlett & M Ramesh 'Patterns of Policy Instrument Choice: Policy Styles, Policy Learning and the Privatization Experience' (1993) 12 *Review of Policy Research* 3.
[960] This represent the 'carrots' in the metaphoric 'sticks and carrots' of governance.
[961] Financial incentives and market forces include taxes, subsidies and awards.
[962] This represent the 'sticks' in the metaphoric 'sticks and carrots' of governance.

legislative,[963] executive[964] and judicial powers.[965] Thus, the role of national governments with regard to corporate responsibility may be defined to include, mandating;[966] facilitating;[967] partnering;[968] and endorsing.[969]

Where a State decides to adopt legal instruments as a regulatory measure, it can be done through relevant administrative agencies or regulatory bodies. The SEC, being the apex regulatory body in the Nigerian financial sector, represents such an agency in Nigeria. The roles of the SEC include; regulation of investments and securities business; registration and regulation of the workings of venture capital funds and collective investments schemes in whatever form; among others.[970] The Act empowers SEC to establish specialised departments for the purpose of regulating and developing the financial sector.[971] The Commission is also explicitly empowered to make rules and regulations for the purpose of fulfilling its roles in the financial sector.[972]

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[963] Government action in this regard will be enacting a national law or legislation on corporate responsibility.
[964] Government action in this regard will be prescription of corporate responsibility directives or regulations through a State regulatory parastatal.
[965] Government action in this regard will be the imposition of sanctions for non-compliance with the required rules of behaviour or desired action through the judiciary.
[966] Defining minimum standards of corporate responsibility through the instrumentality of a regulatory and/or legislative framework.
[967] Providing incentives to organisations to engage in corporate responsibility initiatives through the use of economic instruments.
[968] Proposing complementary resources and competences to organisations on corporate responsibility. In this regard, governments may make use of informational instruments by partnering with non-governmental organisations and other civil society actors to advocate for, as well as organise trainings on corporate responsibility.
[969] Recognising the corporate responsibility efforts of organisations through awards, public procurement, among others. See Tom Fox, Halina Ward & Bruce Howard *Public Sector Roles in Strengthening Corporate Social Responsibility: A Baseline Study* (2002).
[970] The Investment and Securities Act *op cit*., sec 13.
[971] *Ibid*, sec 14.
[972] *Ibid*, sec 313(1).

Therefore, this thesis proposes the SEC as an appropriate channel for the formulation of a responsible investment regulation in the Nigerian investment industry. This thesis proposes that the regulation be formulated along one or more dimensions of legalisation as described by the 'Abbott's theory of legalisation'.[973] The theory proposes the legalisation of rules along three dimensions including obligation,[974] precision,[975] and delegation.[976] Thus, the SEC must define in clear terms the minimum standard of practice required from investment institutions with regard to responsible investment. In addition, the SEC must delegate the authority for the supervision and enforcement of the regulations in the investment industry. Since the Investments and Securities Act empowers the SEC to establish specialised departments for the purpose of regulating and developing the financial sector, the SEC may establish a responsible investment department of the Commission and bestow on it the authority of administering the execution of the regulation in the investment industry.

It is noteworthy that compliance with such regulations is likely to be more effective if the process of developing the regulation is based on negotiations and consensus among the State and relevant stakeholders.[977] Thus, to ensure and enhance the enforceability of the regulations, it is necessary for the SEC to formulate the regulations upon consultation and negotiation with representatives of the investment industry such as the Fund Managers

[973] See Kenneth W Abbott, Robert O Keohane, Andrew Moravcsik, Anne-Marie Slaughter & Duncan Snidal 'The Concept of Legalisation' (2000) 54(3) *International Organisation* 17.
[974] Obligation refers to a set of requirements that has legally binding effect. It means that subjects are legally bound by a rule and their conduct is subject to scrutiny under such rule.
[975] Precision means that such rules unambiguously define the conduct they require, authorise, or proscribe from the subjects.
[976] Delegation means that relevant parties have been granted authority to administer or supervise the execution of the rules. See Kenneth W Abbott *et al op cit*.
[977] John L Campbell *op cit*., Helen Keller *op cit*.

Association of Nigeria, and the Association of Investment Advisers and Portfolio Managers.

This chapter identifies management system standard as another mechanism for the State to control corporate social behaviour. To this end, this research further proposes the development of a responsible investment management system standard by the Standard Organisation of Nigeria.[978] Such a standard should prescribe the minimum substance of a responsible investment management system. Such minimum substance may be prescribed after identifying internationally acceptable best practices of responsible investment, as well as the corporate governance practices in the investment industry. Furthermore, the functions of the Standards Organisation of Nigeria (SON) should include evaluation and certification of investment institutions' responsible investment management systems against the standard as a way of accrediting the institutions' responsible investment culture.

Furthermore, governments may also employ the instrumentality of standardisation as a means of taking action on corporate responsibility governance. This is because standardisation is increasingly being recognised as a form of regulation, and standards as instruments of control.[979] Standards enhance policy or reform coordination by defining the appropriate features of such policy or reform thus, enabling the monitoring of those features and the possibility of sanctioning non-compliance with those features.[980] Thus, the

[978] The Standards Organisation of Nigeria was established by the Standards Organisation of Nigeria Act 1971 which vests it with the authority for standards elaboration and specification in Nigeria. See the Standards Organisation of Nigeria Act 1971, sec 1 & 5 available at *http://faolex.fao.org/docs/pdf/nig120908.pdf* [accessed March 4, 2016].
[979] See Nils Brunsson & Bengt Jacobsson *A World of Standards* (2000) 1.
[980] *Ibid*.

influence of social responsibility standards on enhancing socially responsible behaviour cannot be under-estimated.[981]

Particularly of significance to this research is the certified management standard which captures in a written and codified manner rules and features that those who adopt it should comply with, and entails an element of certification.[982] Thus, a certified management standard has the merit of creating explicit reference points for firms that wish to assess or implement socially responsible practices.[983] Secondly, it offers third-party certification to firms that comply with the prescribed rules and features thus, making corporate behaviour and practices transparent to the public.[984] At a minimum, such third-party certification indicates to the public that an organisation has implemented the rules and features prescribed by the management standard.

6.2.2 Meta-Regulation

Although several CSR initiatives emphasise voluntariness, the importance of accountability in ensuring the achievement of the potential role of business in development cannot be over-emphasised.[985] In order to ensure and enhance compliance with any law or regulation, it is expedient to put in place effective compliance mechanisms. Meta-regulation refers to different forms of regulatory policies that regulate existing regulations, rather than directly

[981] Rieneke Slager, Jean-Pascal Gond & Jeremy Moon 'Standardization as Institutional Work: The Regulatory Power of a Responsible Investment Standard' (2012) 33(6) *Organization Studies* 763; Frederique Dejean, Jean-Pascal Gond & Bernard Leca 'Measuring the Unmeasured: An Institutional Entrepreneur Strategy in an Emerging Industry' (2004) 57 *Human Relations* 741.
[982] See Brunsson & Jacobsson *op cit*.; Ann Terlaak 'Order without Law? The Role of Certified Management Standards in Shaping Socially Desired Firm Behaviors' (2007) 32(3) *The Academy of Management Review* 968.
[983] *Ibid*.
[984] *Ibid*.
[985] Peter Newell & Jedrzej George Frynas 'Beyond CSR? Business, Poverty and Social Justice: An Introduction' (2007) 28(4) *Third World Quarterly* 669.

regulating corporate or individual actions.[986] Also, meta-regulation encourages business enterprises to develop self-regulatory strategies to ensure compliance with existing formal regulations.[987] Arguably therefore, meta-regulation can be described as constituting regulatory mechanisms that ensure and enhance compliance with formal regulations. Meta-regulation has been identified as a significant feature of contemporary corporate responsibility governance.[988] This is because meta-regulation enhances and increases compliance with corporate responsibility regulations.

Several factors that may account for the compliance behaviour of a regulated actor have been identified to include the fear of a threatened sanction, and a rational calculation in pursuit of self-interest.[989] Thus, formal regulations may be meta-regulated through the processes of civil regulation, as well as through a law or the regulation being meta-regulated.[990] Meta-regulation through a law or regulation include such provisions on reporting on regulatory compliance, legal sanctions for non-compliance, provision and legal protection for whistleblowers, economic incentives and dis-incentives, and such other legal provisions.[991] Since reputational damage may matter more to modern business than the

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[986] Mia M Rahim 'Meta-Regulation Approach of Law: A Potential Legal Strategy to Develop Socially Responsible Business Self-Regulation in Least Developed Common Law Countries' (2011) 40 *Common Law World Review* 174; Bronwen Morgan 'The Economization of Politics: Meta-Regulation as a Form of Nonjudicial Legality' (2003) 12(4) *Social & Legal Studies* 490.
[987] See Mia M Rahim 'Harnessing SD and CSR within Corporate Self-Regulation of Weak Economies: A meta-Regulation Approach' (2013) 118(4) *Business & Society Review* 513.
[988] Christine Parker 'Meta-Regulation: Legal Accountability for Corporate Social Responsibility?' in Doreen McBarnet, Aurora Voiculescu & Tom Campbell (eds) *The New Corporate Accountability: Corporate Social Responsibility and the Law* (2007) 207; Christine Parker, Colin Scott, Nicola Lacey & John Braithwaite (eds) *Regulating Law* (2004).
[989] Helen Keller *op cit*.
[990] Mia Rahim *op cit*., 526.
[991] *Ibid*.

imposition of fine for a regulatory breach,[992] regulatory compliance may also be ensured and enhanced through civil regulatory activities. Such civil meta-regulation may include the development and maintenance of a corporate responsibility index by relevant NGOs and other civil society actors, 'naming and shaming' of defiant organisations, among others.[993]

Since the purpose of meta-regulation is to ensure and enhance compliance with regulatory provisions, SEC may meta-regulate responsible investment regulations by requiring investment institutions to submit periodic reports on their compliance with the regulations to the Commission. Furthermore, SEC may provide for administrative sanctions for non-compliance with the reporting requirement. Since SEC is responsible for the registration of investment institutions in Nigeria,[994] such sanction may be in the form of suspension or cancellation of certificate of registration, and/or payment of a prescribed fee as penalty for non-compliance.[995]

Non-governmental organisations[996] may also meta-regulate the responsible investment regulations and the code for responsible investment by developing a responsible investment index whereby they rate the compliance behaviour of investment institutions with the regulations and code. For such index to be effective, it must be publicised so that customers of investment institutions as well as the general public can be aware of the investment behaviour of investment institutions. This will encourage investment institutions to strive to

[992] Karin Buhmann 'Corporate Social Responsibility: What Role for Law? Some Aspects of Law and CSR' (2006) 6(2) *Corporate Governance: The International of Business in Society* 188, 196; Michael E Berumen *Do No Evil: Ethics with Applications to Economic Theory and Business* (2003) 10.
[993] Mia Rahim *op cit*.
[994] See the Investments and Securities Act *op cit*., sec 38 & 160(1).
[995] *Ibid*, sec 38(4), 163(1) & 174(1); the SEC Rules and Regulations *op cit.*, sec 34(1) which empowers the SEC to sanction defiant financial market operators in this regard.
[996] In particular, those that agitate for corporate responsibility and/or sustainable development.

be one of the 'best-in-class' in the industry so as to maintain a positive reputation with their customers and the public at large.

6.2.3 Non-Governmental Pressure

Non-governmental organisations (NGOs) refer to civil society groups whose primary purpose include the promotion of social goals as against the achievement of economic or political power.[997] Over the years, non-governmental organisations[998] having emerged as effective and often legitimate political actors have increasingly sought to influence the private sector.[999]In fact, it has been argued that a vibrant civil society is essential to the sustenance of socio-economic development especially in developing economies.[1000] Thus, non-governmental activities have become an important aspect of globalisation discourse and have been identified globally as a significant driver of the contemporary corporate responsibility agenda.[1001] Notwithstanding the above, conditions under which corporate

[997] David F Murphy & Jem Bendell 'Partners in Time? Business, NGOs and Sustainable Development' (1999) United Nations Research Institute for Social Development Discussion Paper No. 109 at 6; Arno Kourula & Salla Laasonen 'Nongovernmental Organizations in Business and Society, Management, and International Business Research: Review and Implications from 1998 to 2007' (2010) 49 *Business and Society* 35.

[998] Such as environmental organisations, human rights activists, consumer groups, among others.

[999] David Vogel *op cit*., 8; Richard Lambell, Gaby Ramia, Chris Nyland & Marco Michelotti 'NGOs and International Business Research: Progress, Prospects and Problems' (2008) 10 *International Journal of Management Reviews* 75; John W Selsky & Barbara Parker 'Cross-sector Partnerships to Address Social Issues: Challenges to Theory and Practice' (2005) 31 *Journal of Management* 849; Jessica Mathews 'Power Shift' (1997) 76 *Foreign Affairs* 50.

[1000] Jolade Adedoyin Omede & Rafiu Adebola Bakare 'The Impact of Civil Society Organizations on Sustainable Development in Developing Countries: The Nigerian Experience' (2014) 8 *African Research Review* 205.

[1001] Nicolas M Dahan, Jonathan P Doh, & Hildy Teegen 'Role of Nongovernmental Organizations in the Business-Government-Society Interface' (2010) 49 *Business & Society* 20; Doreen McBarnet 'Corporate Social Responsibility Beyond Law, Through Law, For Law' (2009) University of Edinburgh School of Law Working Paper Series 2009/03 at 8; Jonathan P Doh 'Nongovernmental Organizations, Corporate Strategy, and Public Policy: NGOs as Agents of Change' in Jonathan P Doh & Hildy Teegen (eds) *Globalization and NGOs: Transforming Business, Government, and Society* (2003) 1; Jonathan P Doh & Hildy Teegen 'Nongovernmental Organizations as Institutional Actors in International Business: Theory and Implications'

organisations are likely to act in socially responsible ways have been identified to include where there are private independent organisations such as NGOs who monitor their behaviour and mobilise to change it when necessary.[1002] While NGOs cannot replace the role of States, they can engage in several mechanisms to influence corporate culture.[1003] Usually, NGOs employ the use of a collaboration[1004] and confrontation[1005] nexus in influencing business conduct.[1006] Such collaborative measures employed by NGOs include dialogue and partnerships for advancing corporate responsibility agenda among others.[1007] Confrontational measures employed by NGOs include petitions, lobbying, campaigns and protest, among others.[1008] Furthermore, NGOs perform a variety of corporate responsibility services including lobbying governments and corporate organisations to secure a desired goal,[1009] monitoring government and corporate policies on corporate responsibility,

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(2002) 11 *International Business Review* 665; Jem Bendell *Terms for Endearment: Business, NGOs and Sustainable Development* (2000).

[1002] John L Campbell *op cit*.

[1003] Jeremy Moon & David Vogel *op cit.,* 310.

[1004] NGOs employ collaborative measures to develop a roadmap for corporate governance reform.

[1005] NGOs employ confrontational measures to incite the political will necessary for corporate governance reform.

[1006] Peter Utting 'Corporate Responsibility and the Movement of Business' (2005) 15(4) *Development in Practice*; Jem Bendell & David F Murphy 'Towards Civil Regulation: NGOs and the Politics of Corporate Environmentalism' in Peter Utting (ed) *The Greening of Business in Developing Countries: Rhetoric, Reality and Prospects* (2002) 245.

[1007] *Ibid*; Peter Utting 'Rethinking Business Regulation: From Self-Regulation to Social Control' (2005) UN Research Institute for Social Development, Technology, Business and Society Programme Paper No. 15 at 10; Kees Bastmeijer & Jonathan M Verschuuren 'NGO-Business Collaborations and the Law: Sustainability, Limitations of Law, and the Changing Relationship between Companies and NGOs' in Istemi Demirag (ed) *Corporate Social Responsibility, Accountability, and Governance: Global Perspectives* (2005) 314.

[1008] *Ibid*; Frank D Hond & Frank G De Bakker 'Ideologically Motivated Activism: How Activist Groups Influence Corporate Social Change Activities' (2007) 32(3) *The Academy of Management Review* 901; Verta Taylor & Nella van Dyke 'Get Up, Stand Up: Tactical Repertoires of Social Movements' in David A Snow, Sarah A Soule & Hanspeter Kriesi (eds) *Blackwell Companion to Social Movements* (2004) 262.

[1009] In this case, such desired goal may be corporate governance policy and reform.

research, consultancy and training on corporate responsibility issues, among others.[1010] In addition, NGOs play an important role in shaping corporate behaviour through the instrumentality of various multi-stakeholder initiatives such as the development of corporate responsibility standards and indices in collaboration with corporations, governments and other civil society actors.[1011] A nexus of these mechanisms is highly significant in focusing government attention on relevant issues, and influencing corporate behaviour with respect to those issues.[1012]

Thus, NGOs in Nigeria[1013] have a role to play in the acceptability and implementation of responsible investment practices in Nigeria. Although investment institutions may view such NGOs pressure as another form of regulation which poses a burden on investment management, research indicates that increased regulation designed to cater for ESG issues may serve to enhance economic performance and investor value especially on the long term.[1014] Thus, NGOs can engage in research on the link between ESG issues and financial performance, and report on such to the investment industry so as to enhance compliance with the principles for responsible investment. They may also engage in responsible investment consultancy and advisory services to the fund management industry and

[1010] Terrence Guay, Jonathan P Doh & Graham Sinclair 'Non-governmental Organisations, Shareholder Activism, and Socially Responsible Investments: Ethical, Strategic, and Governance Implications' (2004) 52 *Journal of Business Ethics* 125, 126; Debora L Spar & Lane T La Mure 'The Power of Activism: Assessing the Impact of NGOs on Global Business' (2003) 45(3) *California Management Review* 78, 79.
[1011] Peter Utting 'Regulating Business Via Multistakeholder Initiatives: A Preliminary Assessment' in Voluntary Approaches to Corporate Responsibility: Readings and a Resource Guide (2002) A Publication of the UN Non-Governmental Liaison Service and the UN Research Institute.
[1012] Andy Gouldson *et al op cit*., 4; David Bryer & John Magrath 'New Dimensions of Global Advocacy' (1999) 28 *Nonprofit and Voluntary Sector Quarterly* 168; Michael Edwards 'Does the Doormat Influence the Boot? Critical Thoughts on UK NGOs and International Advocacy' (1993) 3 *Development in Practice* 163.
[1013] Particularly those advocating for corporate responsibility and sustainable development.
[1014] Jeffrey Unerman & Brendan O'Dwyer 'The Business Case for Regulation of Corporate Social Responsibility and Accountability' (2007) 31 *Accounting Forum* 332.

individual investment institutions. In this regard, such NGOs may need to engage in a wider research on responsible investment generally so as to be informed on internationally acceptable best standards and practices on responsible investment.

Furthermore, NGOs can help in enhancing compliance with the principles for responsible investment by bringing to the awareness of the public ESG issues and responsible investment generally. This is because the customers of investment institutions and the general public need to be aware of the validity and legitimacy of ESG issues and responsible investment so that they can be persuaded to make responsible choices.

6.2.4 Self-Regulation

As a result of the challenges posed by the increasing globalisation of business,[1015] several international bodies and social groups, among others, have increasingly called for corporate self-regulation to complement formal State regulation.[1016] Self-regulation refers to various attempts by corporate organisations to establish rules constraining corporate behavior without the direct interference of the State.[1017] It encourages corporate organisations to regulate their own conduct in line with broad and internationally acceptable standards particularly, where there is absence of an effective government regulation or where those in

[1015] Such challenges include environmental degradation, human rights abuses, among others, and regulatory void as a result of the lack of will-power by States to regulate and/or enforce responsible corporate culture.
[1016] See generally, Christine Parker *The Open Corporation: Effective Self-Regulation and Democracy* (2002). See also Neil Gunningham & Joseph Rees 'Industry Self-Regulation: An Institutional Perspective' (1997) 19(4) *Law & Policy* 363.
[1017] David Graham & Ngaire Woods 'Making Corporate Self-Regulation Effective in Developing Countries' (2006) 34(5) *World Development* 868, 869.

existence are weak.[1018] It is argued that corporate organisations, may be able to control their conduct more efficiently than the traditional State regulation, by adopting internationally acceptable standards.[1019] Self-regulation may take various forms including corporate self-regulation at firm level, and industry or professional association self-regulation.[1020] Professional associations offer the opportunity to align firm-level self-regulation with acceptable business conduct because such associations usually define and administer standards of professionalism, and because of the legal status they enjoy in most jurisdictions.[1021] Furthermore, it has been argued that corporate organisations will be more likely to act in socially responsible ways if there are systems of well-organised and effective industrial self-regulation in place to ensure such behavior.[1022]

It is however noteworthy that the system of self-regulation is not without criticisms and identified demerits. First, it has been identified that industries develop standards and principles to self-regulate with their own interests as paramount rather than those of the general public. Moreover, it is argued that industries, while engaging in self-regulation, may subvert regulatory goals in favour of their business goals thereby leading to a form of 'regulatory capture' where the authority of industry regulators become ousted by the

[1018] *Ibid;* Harry Arthurs 'Private Ordering and Workers' Rights in the Global Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation' in Joanne Conaghan, Richard M Fischl & Karl Klare (eds) *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* (2002) 471.
[1019] Graham & Woods *op cit*.
[1020] Gunningham & Rees *op cit*., 364; Rhys Jenkins 'Corporate Codes of Conduct: Self-Regulation in a Global Economy' (2001) UN Research Institute for Social Development, Technology, Business and Society Programme Paper No. 2.
[1021] See Franco Furger 'Accountability and Systems of Self-Governance: The Case of the Maritime Industry' (1997)19(4) *Law & Policy* 445, 450.
[1022] John L Campbell 'Institutional Analysis and the Paradox of Corporate Social Responsibility' (2006) 49(7) *American Behavioral Scientist* 125.

industry they are to regulate.[1023] A further argument is the extent to which a self-regulatory body can ensure compliance with s self-regulation. Unless self-regulation is backed up by State regulation, its enforcement may prove difficult and uncertain.[1024]

Notwithstanding, this section examines the viability of various forms of self-regulation as a governance mechanism for the regulation and enforcement of the principles for responsible investment in Nigeria.

I. Industry Self-Regulation

Industry self-regulation describes a regulatory process which sets out rules and standards relating to the conduct of firms within an industry as opposed to individual firms.[1025] It refers to the development of an industry-wide normative framework consisting of a set of principles and practices that define right conduct and spell out the industry's commitment to moral restraint and aspirations.[1026] A very prominent instrument for corporate self-regulation,[1027] that has attracted great attention over the past years, is the corporate code of conduct.[1028] A code of conduct has been defined as a voluntary commitment made by

[1023] Angela J Campbell 'Self-Regulation and the Media' (1999) 51(3) *Federal Communications Law Journal* 711; Peter Utting 'Rethinking Business Regulation: From Self-Regulation to Social Control' (2005) United Nations Research Institute for Social Development, Technology, Business and Society Programme Paper No. 15; David Graham & Ngaire Woods 'Making Corporate Self-Regulation Effective in Developing Countries' (2006) 34(5) *World Development* 868; Jodi L Short & Michael W Toffel 'Making Self-Regulation More than Merely Symbolic: The Critical Role of the Legal Environment' (2010) 55 *Administrative Science Quarterly* 361.

[1024] *Ibid.*

[1025] Gunningham & Rees *op cit*.

[1026] *Ibid*, 376.

[1027] Whether at a firm or industry level.

[1028] Amiram Gill 'Corporate Governance as Social Responsibility: A Research Agenda' (2008) 26 *Berkeley Journal of International law* 452; Helen Keller 'Corporate Codes of Conduct and their Implementation: The Question of Legitimacy' in Rudiger Wolfrum & Volker Roben (eds) *Legitimacy in International Law* (2008) 219; Sean D Murphy 'Taking Multinational Corporate Codes to the Next Level' (2005) 43(2) *Columbia Journal of Transnational Law* 389; Mark J Somers 'Ethical Codes of Conduct and Organizational Context: A

corporations, business associations, or other organisations, which sets standards and principles of business conduct of the corporation, business association, or organisation, as the case may be.[1029] Also, it has been defined as guidelines, recommendations, or rules issued with the intent to affect business behavior in the society so as to enhance corporate responsibility.[1030] Furthermore, corporate code of conduct has been described as a formalised public statement of corporate principles and rules of conduct that govern inter-organisational and intra-organisational practices and relations.[1031] Pursuant to the definition and description of corporate codes of conduct, they have been identified as key element of ensuring effective corporate governance.[1032] Furthermore, they are perceived as tangible evidence that indicates that an organisation recognises and commits to particular business principles and aspirations.[1033] In addition, since they are used to influence corporate behavior and to define necessary corporate actions on certain issues,[1034] they constitute a

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Study of the Relationship Between Codes of Conduct, Employee Behavior and Organizational Values' (2001) 30 *Journal of Business Ethics* 185.

[1029] See United States Council for International Business *Corporate Codes of Conduct: Overview and Summary of Initiatives* (2000) 2.

[1030] See Ans Kolk, Rob van Tulder & Carlijn Welters 'International Codes of Conduct and Corporate Social Responsibility: Can Transnational Corporations Regulate Themselves?' (1999) 8 *Transnational Corporations* 143, 151. See also 'Codes of Conduct: A Barrier or Breakthrough for Corporate Behaviour?' (2013) A Publication of PricewaterhouseCoopers LLP available at *https://www.ibe.org.uk/userassets/surveys/pwccodesofconductreport2013.pdf* [accessed February 23, 2016].

[1031] Cynthia Stohl, Michael Stohl & Lucy Popova 'A New Generation of Corporate Codes of Ethics' (2009) 90(4) *Journal of Business Ethics* 607.

[1032] International Federation of Accountants *International Good Practice Guidance: Defining and Developing an Effective Code of Conduct* (2007) 3.

[1033] *Ibid*; Cynthia Stohl *et al op cit*.; Greg Wood 'A Cross Cultural Comparison of the Contents of Codes of Ethics: USA, Canada, and Australia' (2000) 25(4) *Journal of Business Ethics* 287.

[1034] See the definitions of codes of conduct above. See also Krista Bondy, Dirk Matten & Jeremy Moon 'MNC Codes of Conduct: CSR or Corporate Governance?' (2006) Nottingham University International Centre for Corporate Social Responsibility Research Paper Series, Paper No. 40; Muel Kaptein & Johan Wempe *The Balanced Company: A Theory of Corporate Integrity* (2002); Organization for Economic Cooperation and Development 'Private Initiatives for Corporate Responsibility: An Analysis' (2001) OECD Working Papers on International Investment, Paper No. 2001/01 available at *http://www.oecd.org/daf/inv/investment-policy/WP-2001_1.pdf* [accessed February 18, 2016]; Janelle Diller

significant mechanism for the implementation of corporate responsibility principles.[1035] Arguably therefore, a code of conduct constitute a very viable mechanism for the governance and enforcement of responsible investment at an industry level.

Codes of conduct maybe classified on several basis such as their focus, scope and coverage, and sector.[1036] On the basis of their focus, codes of conduct can be classified as performance-oriented,[1037] and/or process-oriented.[1038] Since corporate responsibility encompasses a wide range of issues, codes of conduct may also be classified on the basis of their scope and coverage.[1039] Furthermore, various corporate sectors face diverse issues, challenges and pressure from stakeholders, accounting for the development of diverse sectorial codes by several industries.[1040] Therefore, codes of conduct maybe further classified on the basis of the specific sector to which they relate, or which they address.[1041]

Several features of an effective code of conduct as identified in the literature include; clarity, conciseness, and accessibility. To ensure the effective implementation of a code of

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'A Social Conscience in the Global Marketplace? Labour Dimensions of Codes of Conduct, Social Labelling and Investor Initiatives' (1999) 138(2) *International Labour Review* 99; Craig Forcese 'Commerce with Conscience? Human Rights and Business Codes of Conduct' (1997) International Centre for Human Rights and Democratic Development, Canada, Paper No. 1.

[1035] *Ibid*.

[1036] See Deborah Leipziger *The Corporate Responsibility Code Book* 2 ed (2010).

[1037] Such codes define minimum standards of socially responsible behaviour. In other words, such codes identify a corporate responsibility theme and the desired outcomes from that theme.

[1038] Such codes define the procedures which an organisation should follow in meeting the minimum standards of a corporate responsibility theme. In other words, such codes relate to the 'how' of corporate responsibility. See Deborah Leipziger *op cit*., 41.

[1039] Scope and coverage of a corporate responsibility code ranges from the environment, to labour and human rights issues, as well as corporate governance, among others. See Deborah Leipziger *op cit.,* 43.

[1040] Deborah Leipziger *op cit*., 45; Prakash S Sethi 'Self-Regulation through Voluntary Codes of Conduct' in Prakash S Sethi (ed) *Globalization and Self-Regulation: The Crucial Role that Corporate Codes of Conduct Play in Global Business* (2011) 3, 4; Ann Florini 'Business and Global Governance: The Growing Role of Corporate Codes of Conduct' (2003) *Brookings* available at *http://www.brookings.edu/research/articles/2003/03/spring-business-florini* [accessed February 22, 2016].

[1041] Deborah Leipziger *op cit*., 45.

conduct, it is necessary that the code contains clearly defined standards of conduct, is clear about its purpose, concise in providing its principles and policies, and accessible to all the potential users.[1042] In addition, to ensure a successful implementation, there is need to set the tone of a code of conduct at the top. This is because ethical leadership has been identified as a key element for the successful introduction, implementation and institutionalisation of organisational change.[1043] Therefore, there should be assurances of support for, or endorsement of the code's principles and policies from industry leadership.[1044] While such industry leadership may be of paramount significance to the development of an industry code of conduct, it is necessary to involve, and seek the input of firms or institutions operating in the industry being the prospective users of the code.[1045] Such a consultative approach to developing a code invokes a broader sense of ownership of the code among industry members.[1046] In turn, this enhances the legitimacy of the code, and encourages such prospective users to engage more with its implementation rather than considering the code a mere imposition.[1047] Also, an outstanding code of conduct should

[1042] *Ibid*, 30. See also 'Developing and Implementing a Code of Ethical Conduct: A Guide for Businesses and other Organisations' (2014) A Publication of the Consultative Committee of Accountancy Bodies (CCAB) London available at *www.ccab.org.uk/PDFs/Code_Guidance_final_SG_Amends2.pdf* [accessed February 23, 2016]; Simon Wong 'Developing and Implementing Corporate Governance Codes' (2008) Global Corporate Governance Forum Private Sector Opinion, Issue 10.

[1043] Bob Doppelt *Leading Change toward Sustainability: A Change-Management Guide for Business, Government and Civil Society* (2003); Roger Gill 'Change Management or Change Leadership?' (2003) 3(4) *Journal of Change Management* 307; Livio D DeSimone & Frank Popoff *Eco-Efficiency: The Business Link to Sustainable Development* (2002); John P Kotter *Leading Change* (2012).

[1044] See Tanya Barman & Samantha White 'Implementing an Effective Corporate Ethics Policy' Chartered Global Management Accountant (CGMA) Magazine, June 13, 2014; Institute of Business Ethics 'Nine Steps for Preparing a New Code' available at *www.ibe.org.uk/nine-steps-for-preparing-a-new-code/103/52* [accessed February 23, 2016].

[1045] See the CCAB Publication *op cit*.; Deborah Leipziger *op cit*., 30.

[1046] *Ibid*.

[1047] *Ibid*; John L Campbell *op cit*.; Helen Keller *op cit*.

reflect internationally acceptable standards of behaviour and good practice.[1048] Furthermore, an outstanding industry code of conduct is not enough in itself to make a difference; it requires the desire and commitment of industry practitioners to change.[1049] Thus, there is a need for an industry-wide communication, campaigns and advocacy, to raise awareness on the rationale behind the code, as well as the purpose and benefits of implementing the code.[1050] Similarly, in order to ensure that the principles and policies of a new code gets embedded in organisational cultures, it is necessary to identify a strategy for introducing the code and its content to its users.[1051] An appropriate strategy in this regard will include formal training and reinforcement.[1052] This will provide information and guidance on the 'how' of implementing the code, and also familiarise industry practitioners with the intent or prospective outcome of implementing the code.[1053]

Moreover, an effective code of conduct should be developed with implementation in mind; this implies that the code should define a clear process for achieving compliance with its principles and policies.[1054] This may be achieved by providing mandatory disclosure requirement,[1055] and having in place a system of monitoring and assurance.[1056] Mandatory disclosure requirement implies regular reporting by industry practitioners on their activities

[1048] Deborah Leipziger *op cit*., 30; Institute of Business Ethics *op cit*.
[1049] Deborah Leipziger *op cit*., 32.
[1050] *Ibid*; the CCAB Publication *op cit*.; Barman & White *op cit*.; Institute of Business Ethics *op cit*.
[1051] Barman & White *op cit*.; the CCAB Publication *op cit*.
[1052] *Ibid*; Deborah Leipziger *op cit*., 30.
[1053] *Ibid*.
[1054] Deborah Leipziger *op cit*., 30; Helen Keller *op cit*.
[1055] Graham & Woods *op cit*., 876.
[1056] Peter Utting 'Business Responsibility for Sustainable Development' (2000) UN Research Institute for Social Development, Geneva 2000 Occasional Paper No. 2 at 34. See also Barman & White *op cit*.; Institute of Business Ethics *op cit*.

and progress towards implementing the code.[1057] A system of monitoring and assurance implies the designation of the authority or personnel responsible for monitoring implementation of the code by industry practitioners.[1058]

Lastly, in order to ensure that a code consistently brings about high standard of required behaviour, an effective disciplinary approach is important to support it.[1059] Such a disciplinary approach may involve a system of 'naming and shaming' implying the publicity of defiant industry practitioners' non-compliance. On the other hand, high standards of compliance should be rewarded.[1060] Such reward may be in form of a responsible investment award to industry practitioners that are highly compliant with the principles and policies of the code. Therefore, there is need to have in place a performance appraisal process which provides the opportunity to review how industry practitioners are meeting up with the principles and policies of the code, and demonstrating competence in responsible decision-making.[1061] Such a system of discipline and reward may also be a useful in achieving ongoing awareness of the code within and without the industry.[1062] Similarly, complaints may constitute an important feedback from industry practitioners signalling a need to propose changes to the code based on the lessons drawn from its

[1057] Simon Wong *op cit*.; Marie-Claire C Segger & Ashfaq Khalfan 'Addressing Implementation Challenges' in Marie-Claire C Segger & Ashfaq Khalfan (eds) *Sustainable Development Law: Principles, Practices, and Prospects* (2004) 228.
[1058] *Ibid*.
[1059] The CCAB Publication *op cit*.; Barman & White *op cit*.
[1060] The CCAB Publication *op cit*.
[1061] *Ibid*.
[1062] *Ibid*.

implementation.[1063] Regular meetings and dialogue by industry practitioners on their progress and challenges in implementing the code may be of significance in this regard.

The Investments and Securities Act[1064] empowers the Securities and Exchange Commission (SEC)[1065] to promote and register self-regulatory organisations including capital market trade associations, among others.[1066] Pursuant to this, SEC makes it mandatory for every registered financial market operator to be a member of a self-regulatory organisation or trade association relevant to its function.[1067] In addition, SEC requires every such self-regulatory organisation and trade association to carry out some functions in respect of their members including;

a. Making rules and issuing guidelines for the regulation of its members;
b. Enforcing its rules, and the rules and regulations of the Commission in relation to its members;
c. Carrying out periodic inspection and examination of the records and affairs of, or call for information from any of its members;
d. Taking disciplinary actions on erring members;

[1063] Simon Wong *op cit*.; Deborah Leipziger *op cit*.
[1064] The Investments and Securities Act is the principal legislation on investments and securities dealings in Nigeria. See the Investments and Securities Act 2007, available at *http://sec.gov.ng/wp-content/uploads/2016/02/THE-INVESTMENTS-AND-SECURITIES-ACT-2007_NIGERIA.pdf* [accessed March 3, 2016].
[1065] The Investments and Securities Act established the Securities and Exchange Commission (SEC) as the apex regulatory body for the Nigerian financial sector, the Investment and Securities Act, sec 1.
[1066] Investments and Securities Act, sec 13(O).
[1067] Nigeria: Securities and Exchange Commission Rules and Regulations 2013, sec 25(1) available at *http://www.sec.gov.ng/files/SEC%20Consolidated%20(JUNE2013)%20SIGNED(WEBSITE)%20(1).pdf* [accessed March 3, 2016].

e. Imposing sanctions as specified in its rules.[1068]

There are few of the various professional associations and self-regulatory organisations that operate in the Nigerian financial sector that are relevant to the fund management industry. First is the 'Association of Investment Advisers and Portfolio Managers' (AIAPM),[1069] which was formed in 1981 by investment institutions including portfolio and asset managers, investment and fund managers, trust, and insurance corporations, lawyers, and accountants to promote professionalism in the practice and administration of investments in Nigeria.[1070] The objectives of the AIAPM include cooperating with the federal government and other operators in the financial sector towards the development of the sector, and contributing to the growth of the financial sector in Nigeria among others.[1071]

Second is the Fund Managers Association of Nigeria (FMAN) which comprises of collective investment schemes and mutual funds managers registered in Nigeria. Furthermore, there is the Pension Fund Operators Association of Nigeria (PenOp). PenOp is an independent, non-governmental, and non-profit body established to promote the operations of the pension industry, provide self-regulation and ensure that international best practices relating to the industry are observed by the operators registered in Nigeria.[1072]

Since these professional bodies consist of institutions which manages funds and other investments on behalf of customers, they can collaborate in a multi-stakeholder initiative to

[1068] *Ibid*, sec 278.
[1069] Formerly known as the 'Association of Pension Funds and Investment Managers'.
[1070] See Association of Investment Advisers and Portfolio Managers available at *http://www.aiapm.org/about-us.php* [accessed March 2, 2016].
[1071] *Ibid*.
[1072] See the Pension Fund Operators Association of Nigeria available at *http://www.penop.com.ng/who-we-are* [accessed March 2, 2016].

develop a 'Code for Responsible Investing' which will be applicable to their members.[1073] In developing such a code, regard must be had to the major attributes of an effective code as identified in the literature.[1074] Also of significance is the legitimacy of the code.[1075] In this sense, legitimacy refers to the intrinsic authoritative value of the code as perceived by members of the investment industry.[1076] Such intrinsic authoritative value of the code maybe the function of the substance of the code, or derive from belief in the validity of the procedure by which the code was developed.[1077] Hence, legitimacy may be achieved by involving members of the industry in a process of dialogue and deliberation on the validity and propriety of responsible investment.[1078] Legitimacy of the code may also be achieved by involving members of the industry in the process of developing the code.[1079] Furthermore, it has been identified earlier in this chapter that a code is likely to be more successful when it has a legal underpinning.[1080] Such existence of a legal foundation has been identified to be of particular importance in emerging markets such as Nigeria, where enforcement strategies of the code may be weak.[1081] The provisions of the SEC Rules and

[1073] The Code proposed is that similar to the Code for Responsible Investing in South Africa (CRISA), which specifies the principles for responsible investing required to be implemented by the Fund Management Industry as well as practice recommendations relevant to the industry. This is different from the FRCN Code which specifies the principles of corporate governance expected of the Nigerian corporate sector and in relation to governance issues generally. The proposed Code is specific to the Fund Management Industry and provides specifically for responsible investing as against governance issues generally.
[1074] This chapter, in the section on industry self-regulation, highlights major attributes of a code as identified in the literature such as clarity and conciseness, reference to relevant internationally acceptable standards, among others.
[1075] This is because a regulated actor's compliance behaviour may be motivated by an inner sense of moral obligation when such actor believes in the legitimacy of the rules. See Ian Hurd 'Legitimacy and Authority in International Politics' (1999) 53(2) *International Organization* 379, 387.
[1076] Helen Keller *op cit*.
[1077] *Ibid*.
[1078] *Ibid.*
[1079] *Ibid*.
[1080] Simon Wong *op cit*.
[1081] *Ibid*.

Regulations in respect of self-regulatory organisations and trade associations as highlighted above may provide such legal foundation.

These professional bodies may also make use of the expertise of corporate responsibility and responsible investment experts, as well as NGOs and such other organisations who consult on corporate responsibility issues. These may be of help in determining the substance and structure of the code. They may also employ the services of the media to publicise the industry's commitment to responsible investment policies, and to obtain relevant public opinion.

Without prejudice to the above, this thesis proposes that these industry associations should adopt the principles for responsible investment as developed by the United Nations, and domesticate it into a code for responsible investment in Nigeria. However, it will be necessary to provide a guidance document on implementation which will take into consideration the peculiarity of the Nigerian investment industry.[1082] It is noteworthy that the previous chapter provides possible implementation mechanisms that could be accommodated under the Nigerian legal system as applicable to the investment industry. Thus, in developing the guidance document, there is a need to take into consideration such implementation mechanisms.[1083]

Lastly, in order to ensure and enhance compliance with the code, it is necessary to have in place a compliance monitoring system such as periodic inspection and examination of the records and affairs of investment institutions. In this regard, it is necessary for the industry

[1082] Such as the industry's legal system.
[1083] These include; screening, shareholder activism, collaborative engagement, among others.

associations to set up a responsible investment committee which will be charged with administering the execution of the code by industry members.

6.2.5 The Media

Public reaction about corporate responsibility comes not just from corporate customers, but also from advocacy groups such as the media which shapes public opinion.[1084] This is because such advocacy organisations are capable of damaging brand value and corporate reputation if ignored.[1085] Thus, the media, being held out as one of the most influential institutions in modern society, have become one of the prominent actors in holding corporate organisations accountable for the social impacts of their activities.[1086] Likewise, the media constitutes one of the independent organisations who monitor corporate behaviour and mobilise to change such behaviour when necessary.[1087] More than just reporting stories for public consumption, the media can fulfil several roles that can further the cause of corporate responsibility especially,[1088] since corporate responsibility is about changing corporate culture, adopting new policies and taking action.[1089] For such corporate responsibility to be ensured and enhanced, it is necessary for the public to be well-informed

[1084] The Economist Intelligence Unit *Global Trends in Sustainability Performance Management* (2010) 6.
[1085] Jacob Rowbottom 'To Punish, Inform, and Criticise: The Goals of Naming and Shaming' in Julian Petley (ed) *Media and Public Shaming: Drawing the Boundaries of Disclosure* (2013) 1.
[1086] Porter & Kramer *op cit*.; Kizito Ogedi Alakwe & Silk Ugwu Ogbu 'Media and Society: Deconstructing the Role of the Media in Fostering Social Cohesion in Contemporary Nigerian Society' (2017) 7(18) *Research on Humanities and Social Sciences* 49.
[1087] John L Campbell *op cit*.
[1088] Firstly, the media may play a role in shaping corporate policy since corporate organisations would want to avoid the public pressure and/or reputational damage that may result from any adverse advertisement of the media. Secondly, media advocacy can induce government to introduce corporate governance reforms or enforce existing laws and regulations so as to avoid being shamed in the eyes of public opinion. See Alexander Dyck & Luigi Zingales 'The Corporate Governance Role of the Media' in World Bank Institute Development Studies *The Right to Tell: The Role of Mass Media in Economic Development* (2002) 107.
[1089] Leo R Cayaban 'The Role of Media in Sustainable Development' (2003) 10(2) *Tropical Coasts* 2.

on corporate responsibility issues and principles.[1090] Because of its capacity to reach a wide audience, the media may be very instrumental in building such corporate responsibility awareness.[1091]

Furthermore, customers' behavioural change is necessary to ensure corporate responsibility. The media plays a crucial role in educating and making corporate customers conscious of corporate responsibility issues and policies and encouraging them to take action directed at ensuring corporate responsibility.[1092] The various forms of media, whether print or visual, are relevant in this regard. However, it is noteworthy that in this digital age, the internet expands easy global communication and makes for instant publicity.[1093] Thus, social media provides a ready forum for instant publicity of corporate responsibility issues and criticism of corporate activities through the development of relevant websites and blogs. It is also significant to note that with social media, even a single person can have a major impact on corporate responsibility. In fact, it has been reported that corporations are beginning to reinvent their communication strategies globally as a result of the pressure from stakeholders based on social media communication.[1094]

[1090] *Ibid.*; Tim Bodt 'Role of the Media in Achieving a Sustainable Society' in *Media and Public Culture: Proceedings of the Second International Seminar on Bhutan Studies* (2007) Centre for Bhutan Studies, Thimphu 459, 471-72.
[1091] *Ibid*; Dyck & Zingales *op cit*.; Maxwell McCombs *Setting the Agenda: The Mass Media and Public Opinion* (2013); Catherine Happer & Greg Philo 'The Role of the Media in the Construction of Public Belief and Social Change' (2013) *Journal of Social and Political Psychology* 321.
[1092] Tim Bodt *op cit*., 478.
[1093] See Doreen McBarnet *op cit*.
[1094] Chigozi Ijeomah Eti 'Objectivity and Balance in Conflict Reporting: Imperatives for the Niger Delta Press' (2009) 3 *Journal of African Studies* 391.

It is noteworthy that over the last decade, the growing use of social media by Nigerians has opened up the consciousness of Nigerians on social issues in new ways.[1095] Social media is being used to organise, motivate and send out information on various socio-political, environmental and economic issues across the country.

6.2.6 Responsible Consumerism

Customers have been identified as one of the most important stakeholders necessary for corporate survival.[1096] Likewise, customers, through their market-place decisions, are the ultimate determinant of the success of any corporate responsibility policy or regulation.[1097] In other words, just as customer demand affects business financial value, customer pressure may also change business behaviour. Thus, customer preferences and market expectations generally constitute an abstract but powerful factor that exerts influence on corporate culture.[1098] Such responsible consumerism may also take the form of customer boycotts whereby fund owners divest from or refrain from investing in fund management firms who

[1095] Noel Ihebuzor 'Social Media: Emerging Pattern of Use and Abuse' The Punch (Nigeria) March 30, 2012; Martin Harrysson, Estelle Metayer & Hugo Sarrazin 'How 'Social Media Intelligence' Can Guide Decisions' (2012) *McKinsey Quarterly* 1-9; Uzoechi Nwagbara 'The Effects of Social Media on Environmental Sustainability Activities of Oil and Gas Multinationals in Nigeria' (2013) 55(6) *Thunderbird International Business Review* 689, 693.

[1096] Ronald K Mitchell, Bradley R Agle & Dona J Wood 'Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts' (1997) 22(4) *Academy of Management Review* 853; Max E Clarkson 'A Stakeholder Framework for Analyzing and Evaluating for Corporate Social Performance' (1995) 20 *Academy of Management Review* 92.

[1097] Edward Morrison & Larry Bridwell 'Consumer Social Responsibility: The True Corporate Social Responsibility' (2011) 9 *Competition Forum* 144.

[1098] The Economist Intelligence Unit *op cit*.; Rodrigo Lozano 'A Holistic Perspective on Corporate Sustainability Drivers' (2015) 22 *Corporate Social Responsibility and Environmental Management* 32, 35; Jogita S Hussain & Jamal Hussain 'A Conceptual Framework on the Power of Consumers in Pushing Corporate Social Responsibility towards Sustainable Development' (2015) 8 *Indian Journal of Corporate Governance* 68.

do not invest responsibly.[1099] Such consumer boycotts represent a form of social control on corporations especially in highly competitive markets.

However, such customer influence on corporate culture will be most effective when customers are highly aware of and conscious about corporate responsibility.[1100] Hence, there is a need for customer awareness so as to bring about a change in customers moral concerns and ethical values.[1101] Such responsible consumerism in Nigeria may help improve the enforceability of the regulations and code.

6.3 Conclusion

This chapter examined the governance and enforcement strategies of responsible investment. With regard to the investment industry in Nigeria, it proposes State regulation through the regulatory body that supervises the financial sector in Nigeria. In addition, it proposes industry self-regulation through a multi-stakeholder initiative consisting of the trade associations operating in the Nigerian investment industry as well as NGOs and other civil society actors that agitate corporate responsibility and sustainable development. Furthermore, it proposes a regulatory compliance system consisting of legal and civil meta-regulation as well as sustainable consumerism. The discussion of these governance and enforcement strategies overlaps in some instances because these strategies are not mutually exclusive but inclusive of one another. In conclusion, a combination of these strategies will go a long way in the governance of responsible investment in the Nigerian Fund

[1099] Craig N Smith 'Consumers as Drivers of Corporate Social Responsibility' in Andrew Crane, Dirk Matten, Abigail McWilliams, Jeremy Moon & Donald Siegel (eds) *The Oxford Handbook of Corporate Social Responsibility* (2008) 282, 284.
[1100] Henri Servaes & Ane Tamayo 'The Impact of Corporate Social Responsibility on Firm Value: The Role of Customer Awareness' (2013) 59(5) *Management Science* 1045.
[1101] Michael Berumen *op cit*.

Management Industry. In addition, these mechanisms will enhance and ensure compliance with the principles for responsible investment in the industry.

CHAPTER SEVEN: SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

7.1 Summary of Findings and Recommendations

In chapter one of this thesis, I presented a general introduction and background to the study. In so doing, I evaluated the state of economic inequality in Nigeria and highlighted why the study is important. In chapter two, I examined the concept of economic inequality in Nigeria, highlighted the causes and effects of, as well as the solutions to inequality. In so doing, I found that environmental, social and governance issues are some of the causes of inequality, and addressing these issues have implication for the achievement of equity and inclusive development. I further highlighted environmental, social and governance issues as some of the challenges of inequality applicable to Nigeria. In chapter three, I discussed the concept of responsible investment, its constituent elements and nature. I also addressed environmental, social and governance issues, which are some of the causes of inequality, and are the constituent elements of responsible investing. Therefore, I concluded that the principles for responsible investment present a viable strategy for the Fund Management Industry in Nigeria to contribute to the achievement of equity and inclusive development in the country. The Nigerian fund management industry should engage in the implementation of the principles for responsible investment as part of their corporate social responsibility and accountability.

In chapter four, I analysed the provisions of relevant ESG laws, and identified various ESG regulatory institutions in Nigeria. In so doing, the strengths and weaknesses of the various laws and regulatory bodies were highlighted particularly with regard to ESG issues that

have implications for inequality. I found that the existing legal and institutional framework is grossly inadequate for addressing inequality challenges and promoting inclusive development in the country. Therefore, this calls for legal and regulatory reforms pertaining to ESG issues in a way that promotes equity and inclusive development.

7.1.1 Legal and Regulatory Reforms

I. Legal and Regulatory Reforms on Corporate Governance

One of these regulatory reforms should include increased corporate taxation in order to address Nigeria's low social spending which has resulted in very poor outcomes for citizens. Since taxation is meant to be a source of social capital in any economy, and in Nigeria specifically, there is a need for an initiative similar in nature to NEITI, as discussed in chapter four, to be rolled out in all sectors which will be responsible for monitoring all categories of tax payment to the government, and will be involved in the process of expending the funds for social benefits. Such initiative will ensure that such social capital generated from taxation are inclusively redistributed for the benefit of all persons and particularly, the marginalized members of the society.

As discussed in chapter four, the EITI standard requires an effective multi-stakeholder oversight for the implementation of its principles. Accordingly, the NEITI Act prescribes the governing body of NEITI as the National Stakeholders Working Group (NSWG) which shall include representatives of the extractive industry companies, civil society, labour unions in the extractive industries, experts in the industries and one member from each geopolitical zone. However, according to EITI, stakeholder groups impacted by or having significant interest in the extractive industries should be adequately represented in

overseeing the process. Consequently, SOEs which are participants in the extractive industries should be one of the most important stakeholders to be consulted and involved in the national EITI processes. It is therefore recommended that NNPC, being a major player in the extractive industry, should be specifically represented in the NSWG provided by the NEITI Act as against the provision for a representative of the extractive industries generally. Such NNPC representation and involvement in the NEITI process ensures the efficient and effective implementation of the objectives of the NEITI Act.

In chapter two and four, I identified illicit financial flows (IFFs) and tax evasion by multinational enterprises (MNEs) as one of the major causes of inequality in Nigeria. These reduce the revenue available to government through tax and thus limit the amount of social spending by government. In chapter four, I found that the identity of the beneficial owners of extractive companies[1102] is often hidden by various unaccountable corporations thus, enhancing IFFs and tax evasion in Nigeria. Presently, the Companies and Allied Matters Act (CAMA) requires the disclosure of the legal owners of companies in Nigeria while limiting beneficial ownership disclosure to public companies. Even then, CAMA does not provide for the details to be disclosed, nor does it define who a beneficial owner is. There is therefore a need to amend CAMA to accommodate provision for mandatory beneficial ownership disclosure by all registered companies, along with other kinds of disclosure required to be made by the Corporate Affairs Commission (CAC). A definition of beneficial ownership is essential to the beneficial ownership framework and its application.

[1102] Emphasis is laid on extractive companies because they constitute the majority of multinational enterprises operating in Nigeria.

Thus, the definition must not be ambiguous, and must be wide enough to ensure its applicability to all sectors of the economy. It should also provide for the details of beneficial owners to be disclosed and a threshold for beneficial ownership disclosure appropriate to companies in all sectors. Similarly, it is necessary for politically exposed persons to disclose beneficial ownership in companies because their positions and influence in government presents a high risk for potential involvement in corruption particularly, IFFs and tax evasion. It is therefore recommended that the amendment to CAMA specify reporting obligations of politically exposed persons.

Similarly, Nigeria has ratified tax treaties with only thirteen countries globally as at December 2018.[1103] Since this may lead to a high incidence of double taxation by several MNEs operating in Nigeria, it is grossly inadequate and capable of encouraging aggressive tax planning, tax avoidance and evasion by such MNEs. It is therefore recommended that the Nigerian government intensifies its effort in ratifying tax treaties with many more countries globally, especially those with whom the country enjoys high incidence of international trade.

II. Legal and Regulatory Reforms on the Environment

In chapter two, I identified environmental degradation as one of the major causes of economic inequality in Nigeria. Globalisation and industrialisation has left several adverse impacts on the environment including environmental pollution, depletion of natural resources, among others. This has resulted in grave negative effects, such as internal displacements, loss of income, adverse health impact, among others, on members of local

[1103] *https://www.firs.gov.ng/TaxResources/TaxTreaties* [accessed April 9, 2019].

communities. In the same chapter, I identified environmental protection and conservation as one of the solutions to addressing economic inequality. In chapter three, I identified some internationally acceptable standards of environmental protection and conservation including environmental assessment, environmental management system, life-cycle assessment, among others. In chapter four, I evaluated the provisions of environmental laws and regulations in Nigeria particularly with regard to issues of environmental protection and conservation. I found the provisions weak and inadequate. Hence, environmental law reform is recommended.

First, the Environmental Impact Assessment (EIA) Act (the Act) requires an environmental assessment to be conducted in respect of projects that may likely impact the environment adversely. However, the Act based the determination of what projects may impact the environment on the volume of the project or the land mass to be covered by the project. This has the effect of defeating the purpose of the Act. Thus, there is a need to amend the Act such that the requirement for an environmental assessment is based on the potential of a project to cause significant environmental impact as against the volume or land mass of the project.

Second, although the Act requires an environmental assessment of proposed projects, it fails to provide for a system of life-cycle assessment which ensures that the assessment runs throughout the life-cycle of a project. It is recommended that the proposed reform of the Act make provision for life-cycle assessment of projects. This is expedient because it

ensures that adverse impacts that were unforeseen during the initial assessment are not left unattended during implementation of a project.

Third, internationally acceptable standards on environmental assessment requires an assessment process to include the design of an environmental management plan (EMP), which is a corrective action plan. Thus, an EMP ensures that an assessment is not carried out in vain; it ensures that steps are put in place to address identified impacts. In other words, an EMP ensures that the purpose of an environmental assessment that is, environmental protection, is not defeated. The Act however fails to pay attention to the details of an EMP in its requirement. The Act mentions the development of a follow-up program which it describes as a program for verifying the accuracy of the assessment and determining the effectiveness of measures taken to mitigate adverse environmental impacts. It is therefore recommended that the proposed reform of the Act pay detailed attention to the requirement of an EMP such that the purpose of the Act is not defeated. Particularly, the provision for an EMP or a follow-up program is recommended to require the definition of resources, roles and responsibilities for the management of environmental impacts and the implementation of mitigation measures.

III. Legal and Regulatory Reforms on Social Issues

In chapters two and four, I identified precarious employment and labour market policies as some of the causes of economic inequality in Nigeria. As a result of the high unemployment rate in the country, many individuals are unemployed in one form of precarious employment or another while several are underemployed. Since there is no law in Nigeria that protects workers from such forms of employment, many employers take

advantage of this to the detriment of their workers. Such workers are paid low wages and offered no form of social security. There is therefore a need for a comprehensive labour law reform, such that adequately caters for workers' welfare and protection. Particularly, such labour law reform need to illegalise any form of precarious employment, and put in place mechanisms to ensure that employers, especially those in the private sector, comply with the national minimum wage policy of the federal government.

Second, in chapter four, I established that the contributory pension scheme policy of government, which offers a form of social security for workers in Nigeria, is not of universal application. The contributory pension scheme is made applicable by the enabling law to only workers in the public sector, and those in the private sector who work in an organisation with fifteen (15) or more workers. It is recommended that the Pension Reform Act be reformed to enable a universal application of such viable social safety net for all workers in Nigeria.

Third, in chapter two, I identified unemployment as a leading cause of the growing economic inequality in Nigeria. In chapter four, I evaluated the role the National Directorate of Employment (NDE), an agency of the Federal Ministry of Labour responsible for designing and implementing programmes to combat mass unemployment in Nigeria, among other responsibilities. I found that the NDE focuses on skills acquisition and development as a means to alleviate unemployment in the country. It however fails to provide funding for start-up capital for such trained entrepreneurs. An absence of any form of accessible capital may render the purpose of the skills acquisition and objective of NDE

futile as acquired skills may not be adequately explored for income generation. It is therefore recommended that the Federal government makes annually adequate budgetary allocations in this regard. It is further recommended that the government implement policies that enable such entrepreneurs have access to various long and mid-term loans devoid of any form of impediments such as high interest rates, stringent collateral requirements, among others.

IV. Legal and Regulatory Reforms on Human Rights

In chapter four, I found that several socioeconomic rights, which are necessary for the realisation of the goal of equity, are provided for in chapter two of the Nigerian Constitution. These provisions are however made non-justiciable by the same Constitution. Thus, citizens cannot legally enforce these provisions, neither can any form of legal redress be obtained where denied of these rights by the government. Since the realisation of these socioeconomic rights, such as the right to education, health, environment, among others, are significant to alleviating economic inequality, it is recommended that the legislature reviews the Constitution so as to make justiciable socioeconomic rights in Nigeria.

7.1.2 Implementation and Regulation of the Principles for Responsible Investment

Having established the need for a complementary framework for addressing inequality, and identified responsible investment as a viable framework in chapters three and four, I discussed in chapter five, internationally acceptable strategies for fund managers to effectively implement the principles for responsible investment in their investment analyses and decision-making processes. Consequently, it is recommended that fund managers incorporate responsible investment into their corporate governance framework by

implementing a responsible investment management system and displaying such at their places of business and on their websites, and designating relevant responsible investment officers. Likewise, fund managers should engage in due diligence and adopt appropriate screening, activism and collaboration techniques in the course of their investment activities.

In order to aid effective and efficient implementation, in chapter six, I explored the possible institutional and regulatory framework within which responsible investment can be governed and enforced in the Nigerian Fund Management Industry. In so doing, I identified State regulation, industry self-regulation, civil regulation and meta-regulation as possible regulatory mechanisms for the governance and enforcement of responsible investment in the industry. Therefore, it is recommended that a combination of the identified regulatory mechanisms be adopted in Nigeria so as to ensure the effective and successful governance and enforcement of responsible investment in the industry. Particularly, it is recommended that the Securities and Exchange Commission formulate a responsible investment regulation which will constitute a legal foundation for other forms of regulation relevant for responsible investment. Also, it is recommended that the Standards Organisation of Nigeria develop a responsible investment management system standard that will aid the development and implementation of responsible investment management systems by fund management institutions.

Furthermore, it is recommended that the various professional associations within the investment industry collaborate to develop a code of conduct for responsible investment which will guide the practice of responsible investing in the industry, and also enhance

compliance by fund managers with the principles for responsible investment. To ensure accountability, it is recommended that the Securities and Exchange Commission mandate responsible investment reporting by fund management institutions.

In addition, non-governmental organisations can help identify ways to encourage fund managers to change their investment culture through appropriate mechanisms such as impactful engagement, campaigns, lobbying, partnerships, as well as advisory and consultancy services. Similarly, the media can challenge fund managers to do more about their investment culture and hold them to a higher standard when evaluating and reporting about their activities.

However, without prejudice to the above recommendations, various barriers to the effective implementation of responsible investment have been identified in the literature including; fiduciary responsibilities, availability and quality of ESG information, lack of demand for responsible investment options, and lack of evidence of improved risk-adjusted returns of responsible investment portfolios.[1104] Similarly, drivers and enablers of responsible investment have been identified in the literature to include; stringent responsible investment regulation/legislation, increased advocacy,[1105] cooperative initiatives, mainstream responsible investment benchmarks, responsible investment training

[1104] Suzette Viviers 'A Critical Assessment on Socially Responsible Investing in South Africa' (2007) Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University, Port Elizabeth cited in S Viviers, NS Eccles, D de Jongh, JK Bosch, EvdM Smit & A Buijs 'Responsible Investing in South Africa- Drivers, Barriers and Enablers' (2008) 39(4) *South African Journal of Business Management* 37, 38.

[1105] Stakeholders in this case will include trustees of mutual funds, fund owners, civil society actors, among others.

and collaboration with civil society organisations.[1106] Therefore, this thesis further recommends as follows:

I. Fiduciary Duty

In spite of the significant progress in the responsible investment agenda globally, several challenges have been identified as preventing many investors from fully integrating ESG issues in their investment activities. Of particular significance is the perception of fiduciary duty as a legitimate barrier to responsible investment because ESG issues are characterised as non-financial factors.[1107] Traditionally, fiduciary duty has been reinforced as forbidding fiduciaries from acting for any other purpose than the highest return consistent with their investment portfolio.[1108] It has also been argued that while fiduciaries maybe permitted to act on environmental and social issues where such issues have financial relevance, there is no legal justification for them to continually do so as a matter of principle.[1109] However, fiduciary norms have constantly evolved in response to changes in the society, economy

[1106] Suzette Viviers op cit note 1.

[1107] See Rory Sullivan, Will Martindale, Elodie Feller & Anna Bordon 'Fiduciary Duty in the 21st Century' (2015) A Joint Report of the United Nations Global Compact, United Nations Principles for Responsible Investment, United Nations Environmental Programme Finance Initiative & United Nations Environmental Programme Inquiry available at *http://dx.doi.org/10.2139/ssrn.2724866* [accessed April 22, 2016]; Magnus Jansson, Joakim Sandberg, Anders Biel & Tommy Garling 'Should Pension Funds' Fiduciary Duty be Extended to Include Social, Ethical and Environmental Concerns? A Study of Beneficiaries' Preferences' (2014) 4(3) *Journal of Sustainable Finance and Investment* 213; Joakim Sandberg 'Re-Interpreting Fiduciary Duty to Justify Socially Responsible Investment for Pension Funds?' (2013) 21(5) *Corporate Governance: An International Review* 436; FairPensions 'Protecting our Best Interests: Rediscovering Fiduciary Obligation' (2011) available at *http://www.shareaction.org/wp-content/uploads/2016/01/BestInterests.pdf* [accessed April 22, 2016].

[1108] See John H Langbein & Richard A Posner 'Social Investing and the Law of Trusts' (1980) 79 *Michigan Law Review* 72. This traditional view has been thought to forbid fiduciaries from taking non-financial factors into consideration in performing their duties, see Joakim Sandberg ibid.

[1109] James P Hawley & Andrew T Williams *The Rise of Fiduciary Capitalism: How Institutional Investors can make Corporate America more Democratic* (2000).

and knowledge.[1110] Similarly, the consideration of fiduciary duty as imposing obligations on fiduciaries to maximise investment returns only is changing due to the materiality of ESG issues to financial performance.[1111] Furthermore, as the expectations of beneficiaries change,[1112] it becomes more likely that the fiduciary duties owed by fiduciaries will evolve to reflect those changing expectations.[1113]

Although various commentators have suggested that the current fiduciary framework already permits institutional investors to engage in socially responsible investment,[1114] other commentators are of the opinion that fiduciary duty as it currently stands precludes

[1110] Keith L Johnson *Introduction to Institutional Investor Fiduciary Duties* (2014) 10. Some of the changes that drives the fiduciary duty evolution include, growth of the assets managed by institutional fiduciaries globally and the related influence they possess, the emergence of climate change as a threat to economic sustainability, the recognition that environmental degradation is not conducive to economic productivity and several persisting social challenges that threaten economic sustainability and pose financial risks to investment portfolios, see James P Hawley, Keith L Johnson & Edward J Waitzer 'Reclaiming Fiduciary Duty Balance' (2011) 4(2) *Rotman International Journal of Pension Management* 4; United Nations Principles for Responsible Investment & United Nations Environmental Programme Finance Initiative 'Universal Ownership: Why Environmental Externalities matter to Institutional Investors' (2010) available at *http://www.unepfi.org/fileadmin/documenrts/universal_ownership_full.pdf* [accessed April 22, 2016].

[1111] See the United Nations Principles for Responsible Investment Initiative 'Responsible Investment and Fiduciary Duty' available at *www.unpri.org/wp-content/uploads/3.Responsibleinvestmentandfiduciaryduty.pdf* [accessed April 22, 2016]; United Nations Environmental Programme Finance Initiative 'A Legal Framework for the Integration of Environmental, Social and Governance Issues into Institutional Investment' (2005) available at *http://www.unepfi.org/fileadmin/documents/freshfields_legal_resp_20051123.pdf* [accessed April 22, 2016].

[1112] In this case, investors refer to those who invest in mutual funds and such other investment funds. The expectations of such investors are prone to change as more evidence begins to emerge on the materiality of ESG issues to investment performance, and as they begin to realise the benefits, on the environment and society, of integrating such issues in investment activities.

[1113] See the United Nations Principles for Responsible Investment Initiative op cit note 8.

[1114] A set of such commentators believes that it is wrong to think of responsible investment as incompatible with the duty to seek maximum returns, see for instance, the United Nations Environmental Programme Finance Initiative op cit note 8, Prakash S Sethi 'Investing in Socially Responsible Companies is a must for Public Pension Funds' (2005) 56 *Journal of Business Ethics* 99. Another set believes that it is a mistake to equate fiduciary duty with the duty of seeking maximum returns, see for instance, Stephen Viederman 'Fiduciary Duty' in Cary Krosinsky & Nick Robins (eds) *Sustainable Investing: The Art of Long-Term Performance* (2008) 189; Benjamin J Richardson 'Do the Fiduciary Duties of Pension Funds hinder Socially Responsible Investment?' (2007) 22 *Banking and Finance Law Review* 145.

socially responsible investing.[1115] Thus, it has been argued that the concept of fiduciary responsibility needs to be reformed in a way that reinforces environmental and social issues as fiduciary issues.[1116] Such reformation may re-interpret fiduciary duty to put a stronger emphasis on the social and environmental dimensions of fiduciary responsibility.[1117] Such reformation may also reinforce the non-financial interests of beneficiaries of investment funds.[1118]

Therefore, it is recommended that sustainability issues, particularly environmental and social issues, be reinforced as part of fiduciary issues in the Nigerian corporate sector generally. This requires that policymakers and regulators in the sector formulate a policy on fiduciary responsibility which will require that fiduciaries pay attention to general long-term value drivers, including environmental and social issues, in their corporate activities. In Nigeria, investment institutions are corporate bodies registered under the Companies and Allied Matters Act,[1119] and thereby subject to the regulatory and supervisory jurisdiction of the Corporate Affairs Commission.[1120] The Companies and Allied Matters Act provides for

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[1115] See for instance, Joakim Sandberg op cit note 4.

[1116] See Steve Lydenberg 'Reason, Rationality and Fiduciary Duty' (2014) 119(3) *Journal of Business Ethics* 365; Joakim Sandberg 'Socially Responsible Investment and Fiduciary Duty: Putting the Freshfields Report into Perspective' (2011) 101 *Journal of Business Ethics* 143; Benjamin J Richardson 'Keeping Ethical Investment Ethical' (2009) 87 *Journal of Business Ethics* 555; Carlos Joly 'The Greening of Financial Markets' in United Nations (ed) *Finance for Sustainable Development: Testing New Policy Approaches* (2002) 283.

[1117] Ibid.

[1118] Since the duties of fiduciaries include that they act in ways that promote the interests of their beneficiaries, fiduciary responsibility may be reformed to require fiduciaries to attend to broader interests of their beneficiaries including their welfare interests and quality of life, see Steve Lydenberg op cit note 13, Carlos Joly op cit note 13.

[1119] See the provision of sec 158(1) of the Investments and Securities Act which requires investment institutions to be registered under the Companies and Allied Matters Act.

[1120] According to the Companies and Allied Matters Act, the functions of the Corporate Affairs Commission shall be to *inter alia*, administer the Act including the regulation and supervision of the registration and management of companies pursuant to the Act, see sec 7(1) Companies and Allied Matters Act.

the fiduciary responsibilities of directors of companies.[1121] Therefore, it is recommended that the Corporate Affairs Commission issue a directive to the corporate sector pursuant to its regulatory function, clarifying the fiduciary responsibilities of corporate directors to include non-financial issues such as environmental and social issues. This will ensure that both companies and investment institutions alike fully integrate environmental and social issues in their respective business and investment activities.

II. Creating Awareness on the Materiality of ESG Issues

A second challenge that has been identified as preventing investors from engaging in responsible investment is the limited knowledge of evidence indicating the strength of the relationship between ESG issues and financial performance.[1122] In this regard, it is recommended that civil society actors and/or the Securities and Exchange Commission sponsor and promote research, as well as create awareness on the materiality of ESG issues to investment performance. This will familiarise the investment industry and the public with the business case for investing responsibly. In turn, this will encourage beneficiaries of mutual funds and such other investment funds to press for their funds to be invested responsibly, and investment institutions to implement responsible investment culture.

Likewise, to ensure and enhance the financial performance of responsible investment funds and in turn, the business case for responsible investment, it is recommended that civil society actors steer up aggressive campaigns and awareness on responsible consumerism

[1121] See the provisions of sec 279 Companies and Allied Matters Act. It is noteworthy that since investment institutions are companies registered under the CAMA, such fiduciary responsibilities extend to directors of investment institutions.
[1122] See Rory Sullivan et al op cit note 4.

and corporate sustainability.[1123] This will ensure that responsible corporations attract maximum patronage from the public thereby enhancing their profitability. This will in turn increase the social licence to operate by such corporations. On the other hand, this will also ensure that beneficiaries invest more in funds that are managed and invested responsibly.

In addition, such campaigns and financial materiality awareness will gear individual shareholders towards responsible investment. This will encourage them to utilise their ownership rights individually or in collaboration with institutional shareholders to press for the consideration of ESG issues by their investee-companies.

III. Embedding ESG Language in Investment Management Contracts

According to the Investments and Securities Act, an investment fund shall be invested by a fund manager in accordance with the provisions of the trust deed or custodial agreement.[1124] Thus, it is recommended that awareness be created among investment funds by the Securities and Exchange Commission and civil society actors so as to empower trustees or custodians of investment funds to make ESG consideration a covenant in their trust deeds or custodial agreements with investment institutions. This will ensure that investment institutions integrate ESG considerations in their investment analyses and decision-making processes in order not to breach their agreement with the fund owners.

It is also recommended that beneficiaries of investment funds implement their commitment to responsible investment by integrating ESG factors in the selection process of investment

[1123] Such campaigns and awareness raising is necessary to appeal to the ethics of consumers of corporate products and services, and beneficiaries of investment funds alike.

[1124] The Investments and Securities Act, sec 171(1). A trust deed or custodial agreement refers to the agreement drawn up between the trustees or custodian of an investment fund and an investment institution for the regulation of the investment fund, see sec 152 of the Investments and Securities Act.

managers,[1125] issuance of investment mandates,[1126] and in the monitoring process of investment managers.[1127] Such commitment of beneficiaries to responsible investment has been identified as capable of accelerating the development of responsible investment throughout the investment chain.[1128]

IV. Embedding ESG Issues in Corporate Bonds and Project Financing

Where investment institutions invest in corporate bonds or finance corporate projects,[1129] it is recommended that they make ESG consideration a covenant in the bond deed and include ESG consideration as a term of the project financing agreement. As such, based on the general principles of the law of contract, the investee-companies will be bound to take ESG issues into consideration in carrying out their business activities and in executing such business projects. Thus, investment institutions in such instances may be able to indirectly influence the behaviour of their investee-companies notwithstanding their lack of voting and other ownership rights.

[1125] That is, appointing those investment managers that have shown formal commitment to responsible investment to manage their funds.
[1126] That is, integrating ESG considerations in the investment mandates issued to their trustees.
[1127] That is, monitoring the investment activities of their managers to ensure that they take account of ESG issues.
[1128] The United Nations Principles for Responsible Investment 'How Asset Owners can Drive Responsible Investment: Beliefs, Strategies and Mandates' (2016) available at *http://ww.iisearches.com/MarketInsights/3539619/United-Nations-Principles-For-Responsible-InvestmentHow-Asset-Owners-Can-Drive-Responsible-Investment.html* [accessed May 25, 2016].
[1129] It is noteworthy that in such instances, institutional investors are not vested with any ownership right as a result of such investment and as such may not be able to exercise any voting or other ownership rights to influence corporate behaviour.

V. Reforming the Nigerian Stock Exchange Listing Requirements

The Nigerian Stock Exchange (NSE) is a member of the United Nations Sustainable Stock Exchanges (UNSSE) Initiative.[1130] In joining the UNSSE Initiative, the NSE pledged to promote sustainability among NSE-listed organisations[1131] in line with its commitment to create sustainable value for stakeholders.[1132] Therefore, it is recommended that the NSE make a responsible investment management system duly certified by the Standards Organisation of Nigeria part of its listing requirements for investment institutions. Secondly, the NSE should develop and maintain a corporate responsibility index based on ESG benchmarks so as to aid investment institutions in making investment decisions particularly when engaging in investment screening. In addition to aiding investment institutions in the screening of investment portfolios, such an index will also enhance responsible corporate culture as companies will strive to be at the top of the index. However, it is recommended that such an index be developed and maintained in collaboration with NGOs and other civil society actors so as to give room for fairness and transparency in the ratings of companies on the index. It is also recommended that the media be involved in the maintenance of the index so as to ensure its widespread publicity.

Further, in order to encourage responsible investment and corporate responsibility generally, it is recommended that the NSE should reconsider the definition of growth

[1130] The Sustainable Stock Exchanges Initiative is organised by the United Nations Conference on Trade and Development, the United Nations Global Compact, the United Nations Environmental programme Finance Initiative and the Principles for Responsible Investment Initiative as a learning platform for exploring how exchanges in collaboration with investors, regulators and corporate organisations can enhance corporate transparency and performance on ESG issues and encourage sustainable investment, see *www.sseinitiative.org/about/* [accessed April 26, 2016].

[1131] Investment institutions constitute some of the corporate organisations listed on the Nigerian Stock Exchange.

[1132] See *www.unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=637* [accessed April 26, 2016].

beyond financial performance and reflect this in evaluating its listed stocks. In other words, the NSE should take into consideration corporate environmental and social responsibility issues in evaluating the performance of its listed stocks.

i. Incentives

The Securities and Exchange Commission can incentivise investment institutions to engage in responsible investment by publicly endorsing institutions that invest responsibly and by having in place a reward system for responsible investment.[1133]

ii. Longer-Term Share Ownership

As a result of factors such as annual financial performance ratings, shareholder expectations, markets and public commitments, among others, corporate management may be pressurised to favour short-term profitability over long-term sustainability.[1134] Thus, it is recommended that the Nigerian government through the NSE considers the adoption of minimum shareholding periods so as to encourage longer-term share ownership. In so doing, the NSE may issue a directive indicating minimum periods for which different categories of shares may be held by investors. In order to ensure compliance with such a directive, the government through the legislature may implement an excise tax[1135] as a

[1133] Such a system may be having in place a periodic forum for celebrating and awarding institutions that engage in responsible investment.
[1134] 'Long-Term Thinking in a Short-Term World: A Guide for Executives' (2015) A Report of the Network for Business Sustainability, Canada available at *http://nbs.net/wp-content/uploads/NBS-Long-Term-Thinking-ER.pdf* [accessed May 31, 2016]. Arguably, corporate management may be pressurised to favour short-term profitability so as to discourage shareholders' divestment.
[1135] An excise tax could refer to a penalty tax applied to ineligible transactions, see *www.investopedia.com/terms/e/excisetax.asp* [accessed April 26, 2016].

penalty for investors who dispose of their shareholding earlier than the prescribed minimum period.

In addition, the government through the legislature should encourage longer-term shareholding by revising capital gains tax provisions in ways that can discourage excessive share trading and encourage longer-term shareholding. One of such ways may be by setting capital gains tax rate in respect of corporate securities on a descending scale. In other words, the tax rate on capital gains on corporate securities should be set based on the number of years such securities are held.[1136] Secondly, the limitation on capital loss deductibility may be removed for long-term shareholdings.[1137]

7.2 Conclusion

This thesis provides a substantive and procedural framework for the Nigerian Fund Management Industry to contribute to the reduction of inequality in Nigeria through the

[1136] The Nigerian Capital Gains Tax Act provides for a 10% tax on the chargeable capital gains accruing to any person on a disposal of assets, see sec 1 & 2 of the Capital Gains Tax Act, Cap C1 Laws of the Federation of Nigeria 2004 available at *http://www.babalakinandco.com/resources/lawsnigeria/LAWS/9042CAPITAL%20GAINS%20TAX.htm* [accessed April 26, 2016]. Section 1(3) of the Act defines a person to include a corporate organisation and section 3 defines chargeable assets to include incorporeal property which include corporate securities. Therefore, what is recommended is that instead of the 10% tax prescribed for capital gains generally, capital gains tax rate in respect of corporate securities should reflect the number of years for which the security was held. For instance, the provision may be such as capital gains tax on securities held for one to five years is 10%, six to ten years is 7%, eleven to fifteen years is 5%, and so on.

[1137] Section 5 of the Capital Gains Tax Act prohibits capital loss deductibility which means that the capital loss accrued on disposal of an asset cannot be deducted from the capital gain accrued on disposal of another asset. Thus, where an investor records loss on the sale of a share, such investor cannot deduct such loss from any gain recorded on the sale of another share. However, to encourage longer-term share ownership, it is recommended that such limitations be removed in respect of long-term shareholdings. Thus, where a share has been held for a long period of time and the eventual sale of the share leads to a loss, such an investor should be permitted to deduct such a loss from the capital gains accrued by the investor on the sale of another share.

implementation of the principles for responsible investment. In so doing, the thesis situates responsible investment within a wider framework of corporate responsibility, accountability and sustainability thereby providing a background and justification for the research. Also, the thesis identifies implementation strategies as a significant aspect of making responsible investment. Hence, this thesis identifies various strategies and mechanisms which fund managers can adopt so as to effectively implement the principles for responsible investment. Similarly, the thesis avers that as much as the mechanisms and strategies for implementation are significant, so also is a suitable institutional and regulatory framework for the governance and enforcement of responsible investment. Hence, the thesis identifies and recommends a relevant institutional and regulatory framework within which responsible investment can be effectively and successfully governed and enforced in Nigeria.

In conclusion, the thesis makes relevant and practical recommendations for the effective and successful implementation of the principles of responsible investment by investment institutions in Nigeria. Taking a clue from the loopholes identified in the existing legal and regulatory framework on ESG issues in Nigeria, a comprehensive review of relevant legal and regulatory framework is also recommended.

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