Corporate Social Responsibility as an Enabler of Socio-economic Restoration in Post-COVID-19 Business Environment in South Africa and Nigeria

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Abstract
The emergence of the COVID-19 pandemic early in 2020 has had unexpected consequences on virtually all aspects of human development, particularly businesses. Regrettably, the economies of most African countries are in a fragile state, and that fragility has had an effect on entrepreneurship, and in particular, small businesses that experienced the full brunt of the pandemic. This article seeks to examine the concept of corporate social responsibility (CSR), with a view to re-appraising the role of businesses, and to determine the extent to which CSR could facilitate post-pandemic socio-economic restoration and boost economic growth. To achieve this objective, the author engages in a qualitative study comprising a review of primary and secondary sources relating to CSR and its other variants. The role of CSR and how it can drive productive entrepreneurship, focusing on the two leading economies in Africa, namely South Africa and Nigeria will be examined. This is done with a view to making recommendations on the potential role of CSR in driving post-pandemic productive entrepreneurship, enhance sustainable development in society, and facilitate socio-economic restoration in a post-COVID-19 environment.

Keywords: Corporate social responsibility; COVID-19; economy; restoration; South Africa; Nigeria
Introduction

In a growing economy, entrepreneurship is the major foundation of macro-economic development, as innovative firms with high growth expectations create economic value.\(^1\) However, when there is a disruption of such as a natural or man-made disaster, the economy is bound to experience shocks which may curb the development and growth of entrepreneurship. Apart from human health, the advent of COVID-19 pandemic in 2020 had unanticipated consequences for all aspects of human endeavour, particularly economy and business. This was mostly felt by small firms in the hospitality, retail personal services and entertainment sectors.\(^2\) Other adverse consequences include business closures, reduced operating hours, job cuts, supply chain disruptions, truncated research, and development processes, as well as unanticipated changes in business models. Ultimately, the year of the pandemic and those immediately succeeding it are projected to ‘set a record for so-called mega bankruptcies’ for many business enterprises.\(^3\)

The foregoing demonstrates a need to interrogate possibilities which could facilitate a return to the pre-pandemic level of socio-economic development in South Africa and Nigeria. While this interrogation is expected to cover a scope of multiple dimensions, it should include a re-examination of the tenets of corporate social responsibility (hereafter CSR) on the part of corporate organisations and businesses, as adherence thereto has the propensity to boost the chances of local entrepreneurs to turn the tide of the COVID-19 pandemic and develop the economy, and ultimately society.

Part two of this article entails a discussion of the concept of CSR, examining its history, meaning, features, and the divergent concepts that have developed alongside or from CSR over the years. Part three discusses the adverse impact which COVID-19 had on businesses in South Africa and Nigeria while Part four considers the application of CSR and its variants in both countries. Part five examines how CSR can drive productive entrepreneurship and boost economic growth in South Africa and Nigeria in the post-pandemic era, while ensuring that sustainable development principles are not compromised. Part six is an assessment of the discussion in the article on which a conclusion is based, followed by recommendations on the potential role that CSR must play in driving socio-economic restoration in a post-pandemic business environment in South Africa and Nigeria.

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Corporate Social Responsibility

A History of CSR

The history of the origin and the development of companies as business entities points to the need for a board of directors and management to determine what is in the best interests of companies. Corporate law development was initially characterised by an increase in the flexibility associated with the exercise of directors’ powers. This largely left shareholders in control of the right to elect directors, which in itself appears to be limited, in that shareholders are not well-positioned to exercise this right. This is because the separation of ownership and control left shareholders with little or no influence regarding the management of an enterprise. This arrangement resulted in calls for a system which compels directors and managers to give more serious consideration to the interests of shareholders. This was, however, followed by a recurring question as to whether directors are obliged to consider extraneous interests other than that of the shareholders.

The competences and resources required for the realisation of the corporate mission necessitates, among others, that the business manager must be mindful of the organisation’s relationship with multiple stakeholders in the environment within which it operates. In that regard, the business manager must explain the enterprise’s obligations to the stakeholders, determining whether the obligations should be limited to those imposed by the law, or to go beyond the scope to consider matters which may be extraneous, or at least not directly related to the legalities of its business. Where extraneous interests other than those peculiar to shareholders are considered, the enterprise is said to be engaged in philanthropy.

8. Michael E Porter and Mark R Kramer, ‘The Competitive Advantage of Corporate Philanthropy’ (2002) Harvard Business Review 57. See also Ambrose Kipruto Chepkwei and others, ‘Corporate Social Responsibility: A Global Overview’ (2018) International Journal of Business Strategies 57. Initial instances of philanthropy in business depended largely on the goodwill and benevolence of business owners. For example, in the 1870s, the steel baron, Andrew Carnegie was appropriately called ‘the enlightened industrialist’ for his efforts at improving the lives of his employees by prescribing guidelines which became the forerunners for labour law principles in succeeding years. Similarly, prior to the establishment of the World Health Organisation, the Rockefeller Organisation applied its philanthropic resources to fight diseases in various countries, acting as the unofficial...
The initial position of the law in relation to whether a company has obligations to stakeholders other than the shareholders, is reflected in the decision of the English court in the case of *Hutton v West Cork Railway Co.* In this case, it was held that the company’s money cannot be spent except

… for the company’s purposes which are reasonably incidental to the carrying on of the business of the company, … otherwise you might have a lunatic conducting the affairs of the company, and paying away its money with both hands in a manner perfectly bona fide yet perfectly irrational …

However, the Berle-Dodd controversy in the 1930s has ultimately brought to the fore the consideration that corporate managers are subject to a duty to exercise the corporate powers of an enterprise in the interests of all stakeholders including the environment. Since then, attitudes began to change to accommodate the fact that a corporate organisation has a duty to also consider the interests of stakeholders. Consequently, business leaders (management) began to publicly acknowledge that they are servants of society, and that promoting the interests of shareholders cannot be the sole focus of their responsibilities. Thus, admitting that there are indeed ‘social responsibilities of business.’

### Meaning and Features of CSR

There is no consensus about the meaning of CSR. Many publications on this subject do not define CSR and in those that do, its meaning and interpretations vary considerably. While there is no universally accepted definition, the fact that it is a voluntary commitment on the part of business enterprises is not disputed. Hence, it can be summed up in the fact that businesses need to sacrifice part of their profit for social interest. Moreover, there is a common understanding that the purpose of business should not just...
be about turning a profit, but also to recognise that being part of a society and benefitting as such, it has an obligation to give back to society. Therefore, CSR can be understood as a concept which seeks to highlight the relationship between business and the operational environment, which comprises various stakeholders and society at large. It encapsulates a broad agenda addressing the impact of business on a range of issues spanning ‘national-level prosperity and international-scale problems.’

Taking into account the diversity of views on what constitutes CSR, there is a need for a common understanding of this concept. This would not only ensure that businesses are aware of their social responsibility but communities would be benefitting as a result. A description of CSR by the World Business Council for Sustainable Development is premised on the idea that businesses like humans, should form an integral part of the communities in which they operate. A CSR is therefore understood 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 of the local community and society at large.

Therefore, businesses should also be motivated by the desire to contribute to the development of communities, as opposed to focusing only on their corporate duty to enhance shareholders’ value. If this desire should be an important characteristic of CSR then the requirement of voluntariness or obligation should be looked at since philanthropy by its very nature should be based on ‘altruistic concern for human welfare and advancement.’ It should not be a Greek gift, ‘given with the intention of tricking and causing harm to the recipient.’ Regrettably, however, CSR appears to resemble a sheriff’s badge as business organisations seek to display to the world that they care about the welfare of their communities—whether sincerely or not.

**Divergent Concepts Originating from CSR**

The contemporary business environment is in a state of perpetual change, which continues to disrupt known processes of addressing corporate issues, hence the theories and concepts applicable to businesses continue to develop. Over the years, several concepts and principles have emerged which share some similarity with the concept of CSR in that there is an acknowledgement that a corporate entity owes obligations to the

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18 See <https://www.collinsdictionary.com/dictionary/english/greek-gift> accessed February 2022. For instance, the Yoruba people of western Nigeria have a saying that *a kii se ni l’oore ki a joko tii*, meaning that a giver of a gift ought not to expect a recompense.
environment in which it does business. These concepts, however, differ in nature, extent or limit of the obligations imposed on business managers. Furthermore, the emphasis on a broad relationship with society, of a corporation beyond philanthropy, commenced in the post-World War II period. This approach failed to meet the needs of the community in that issues affecting social conditions, the environment, health, education and gender issues have not been addressed. For instance, the OECD Guidelines for Multinational Enterprises encourage business organisations to conduct their operations ‘in consideration of relevant international agreements, principles, objectives, and standards, [taking] due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.’

The need to consider the environmental aspect when assessing the effectiveness of corporate decision-making was further heightened by a series of accidental poisonous gas explosions and escape at the Union Carbide pesticide plant in Bhopal, India in 1984; the Chernobyl disaster in a nuclear plant in Ukraine in 1986; and the BP Gulf of Mexico oil spill in 2010. In support of the goal of sustainable development, the European Council urged companies to be socially responsible, appealing to their ‘sense of social responsibility regarding best practices on lifelong learning, work organisation,

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24 The Chernobyl accident was caused by the explosion of a reactor of a nuclear plant, releasing five per cent of the radioactive reactor core into the environment, making the surrounding communities of the accident zone inhabitable for a period of time since the accident. See ‘Chernobyl Disaster – Facts and Information’ <https://world-nuclear.org/information-library/safety-and-security/safety-of-plants/chernobyl-accident.aspx> accessed 16 May 2023.
25 The BP Gulf of Mexico oil spill in 2010 caused the death of eleven workers on the Deepwater Horizon, making it the largest spill of oil in marine oil drilling operations. Over 4 million barrels of oil flowed into the gulf in an eighty-seven-day period, before it was finally capped. The United States filed a complaint against BP Exploration & Production and several other defendants alleged to be responsible for the spill, resulting in the record-setting settlement with BP Exploration & Production for an unprecedented USD 5.5 billion Clean Water Act penalty, and up to USD 8.8 billion in natural resource damages. See ‘Deepwater Horizon BP Gulf of Mexico Oil Spill’ <https://www.epa.gov/enforcement/deepwater-horizon-bp-gulf-mexico-oil-spill> accessed 23 February 2022.
equal opportunities, social inclusion and sustainable development.26 Accordingly, the emergence of ‘Environmental Social and Governance’ (ESG) concepts flowing from CSR demand that there ought to be awareness on the part of businesses to make efforts not to pollute the environment. Consequently, the emergence of a new model of responsible business based on four elements, namely value creation, good governance, societal contribution and environmental integrity is becoming a reality.27 The focus on Environmental Social and Governance (ESG) has moved into the mainstream of investment to the extent that as at the end of 2018, an estimated USD 30 trillion global value of sustainable investments were under professional management.28

It could be argued that an acknowledgment that shareholders’ interests should not be the sole focus of managers’ responsibilities in business administration, but constitute an admission that there are indeed ‘social responsibilities of business.’29 It forms the basis for the call that investment in business and development must be responsible, giving rise to ‘socially responsible investment’ (SRI) as a concept derivable from CSR. SRI means the incorporation of social and environmental goals into investment decisions, a process which involves the promotion of ‘social responsibility and laudable initiatives such as impact investing, shareholder advocacy, and community investing.’30 Other common terms comparable to SRI include ‘social investing’, ‘ethical investing’, ‘socially aware investing’, ‘socially conscious investing’, ‘green investing’, ‘value-based investing’ and mission-based investing.’31

Notably, stakeholders from the global investment industry under the auspices of the United Nations have developed six principles which eventually formed the core of the United Nations Principles for Responsible Investment 2013.32 The UN-PRI is the world’s leading proponent of responsible investing, helping stakeholders to understand the investment implications of ESG factors, and to facilitate the incorporation of those factors into investment and ownership decisions by its international network of investors’ signatories.33 The importance of SRI to the development of responsible practices on the part of business is evidenced by the fact that as at the end of 2020, the value of sustainable investments stood at USD 35.3 trillion, which represents a fifteen

27 Suzana Lović Obradović, ‘Environmental Investments’ in W Leal Filho and others (eds), Climate Action (Springer Nature Switzerland 2019) 2.
28 KPMG The Numbers that are Changing the World (KPMG LLP UK 2021) 4.
29 See Howard Rothman Bowen and others, Social Responsibilities of the Businessman (University of Iowa Press 2013) 45.
30 Camilleri (n 13) 61.
31 ibid.
32 Hereafter ‘the UN-PRI.’ For information on the UN-PRI, see <https://www.unpri.org/pri/about-the-pri accessed> 25 February 2022.
per cent growth over the 2018 figure, and a projection that the figure would rise to USD 53 trillion by 2025.

The Impact of the COVID-19 Pandemic on Businesses in South Africa and Nigeria

The economies of many African countries are in a fragile state, especially when considered against the background of the continent having the largest number of people living in extreme poverty, a consequence of low economic development and high population growth. The effect of the pandemic on the economy and society at large has the potential to linger for several years. Evidence of the long-term impact of pandemics cannot be denied. The rate of employment is an important long-term economic indicator, especially the impact on vulnerable workers with underlying health conditions and those more sensitive to labour market conditions. The following examines the adverse impact of COVID-19 on businesses in South Africa and Nigeria.

South Africa

Notwithstanding the contention regarding the correctness of the figures of infections and deaths reported by African countries from COVID-19, South Africa reported the highest number of cases in Africa with over four million, and more than 100 000 deaths. The initial ‘hard lockdown’ restricted mobility for all persons and operations of businesses other than those engaged in essential services which lasted for five weeks starting from 26 March 2020. The lockdown was characterised by a complete cessation

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of virtually all economic activities.\textsuperscript{41} This undoubtedly caused hardship for both people and businesses. The South African Rand was reportedly on the list of three hardest-hit currencies in 2020, adversely impacting imports and causing a reduction in the projected income of businesses engaged in export.\textsuperscript{42} Tax receipts at the national level saw a decline of ZAR 106 billion in the 2020/2021 tax year, compared to the previous year.\textsuperscript{43} This reduction is attributable to decreases in taxes from individuals’ income, value-added and excise taxes on goods and services, and taxes collected from corporations and other business enterprises.

The country’s private sector bore the brunt of the effect of the pandemic, with 89.6 per cent of businesses surveyed across different sectors of the economy reporting significant decline in revenues by April 2020.\textsuperscript{44} The impact on direct job losses could be ascribed to the effect of COVID-19 pandemic because the redundancy was over 1.7 million in the trade, manufacturing, real estate, and services.\textsuperscript{45} This exacerbated the inequalities which characterised the economic landscape of the country.

While the impact of the pandemic on structured businesses in the small and medium-sized enterprises (SMEs) sector can be analysed to a reasonable extent, the same cannot be said for the informal business sector, as these businesses are not registered, making it difficult to measure the impact that policies and the pandemic would have had on them. Nevertheless, many informal micro businesses including informal traders, street vendors, spaza shop operators, and hawkers were hard-hit by the pandemic.\textsuperscript{46} In a survey of 4 746 business owners across different demographic groups, it was found that small businesses suffered a decline in sales to near zero for a period of more than one year after the initial strict lockdown in 2021.\textsuperscript{47}

The potential consequence of the foregoing on the economy, particularly on small businesses will cause a failure in the rate of the realisation of the Sustainable

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\item[42] ibid.
\item[45] ibid.
\item[47] ibid.
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Development Goals (SDGs), especially those relating to the reduction of poverty, the attainment of zero hunger levels, good health and well-being, as well as sustainable cities and communities, among others. For instance, it was reported that not less than sixty-five per cent of businesses whose sources of income were diminished by the COVID-19 pandemic would have difficult chances of survival, compared to the effect that the global 2008/9 financial crisis had on businesses. It is therefore imperative that actions and strategies, including CSR, as enabling tools, should be employed for socio-economic restoration, and to facilitate a positive turnaround for businesses challenged by the pandemic.

Nigeria

The COVID-19 pandemic had multiple effects on the Nigerian economy, including pressure on government revenue, debt sustainability issues, as well as pressure on the exchange rate. Pressure on individual income and consumption affected businesses and rural enterprises, especially in the informal sector and were forced to close, with sixty-three per cent of the formal sector compared to fifty-six per cent of informal businesses. The consequences of redundancies, fewer working hours and limited access to credit made it difficult for individuals and families to sustain their livelihoods.

Furthermore, the failure of enterprises to operate during lockdown has significantly impacted their ability to honour their financial commitments, further compromising their access to credit in the future. While it may be argued that the affected businesses had recourse to force majeure as a mitigating element, this defence would only have been available if included in a contract.

A survey conducted by the National Bureau of Statistics showed that the adverse effects of the pandemic was felt more by the poorer segment of the population. The 2022 Multidimensional Poverty Index (MPI) survey revealed that 133 million individuals, or

49 SDG 1.
50 ibid 2.
51 ibid 3.
52 ibid 11.
sixty-three per cent of the population of Nigeria are multi-dimensionally poor.\textsuperscript{57} Evidence of that poverty is reflected in the fact that over half of the population still make use of dung, wood or charcoal as fuel, rather than cleaner energy. Access to sanitation, good health care, food security and quality housing are also lacking.

In Nigeria external support for small businesses is virtually non-existent. If support is available at all, it is usually from a network of family members, both nuclear and extended. Therefore, the long-term success of small businesses cannot be guaranteed. Any meaningful success in terms of growth by SME entrepreneurs is usually eroded in the long run by incessant devaluation of the Nigerian \textit{Naira} resulting from poor economic policies that hardly address the difficulties faced by businesses, coupled with corruption of public officers.\textsuperscript{58} These challenges have remained unaddressed by different governments the result of which often wipe out the entrepreneurial efforts of many who dare to engage in private business. The resultant effect of the challenges is that individuals and small businesses appear to have learnt to solve their problems without an expectation of much support from the government.\textsuperscript{59} Individuals and small businesses in Nigeria resisted government’s plan to extend the initial hard lockdown which lasted for five weeks, based on the argument that they had to fend for themselves as there was no support. The resistance was characterised by riots and revolts in different cities across the country. To mitigate the hardship faced by Nigerians, the government had to ease the rules pertaining to lockdown, a move considered by some to have worsened the spread of COVID-19 in the country.\textsuperscript{60}

Coincidentally, a third of the businesses in the informal sector restarted operations immediately the hard lockdown was relaxed, a pointer to the resilience of the sector, developed over the years as a survival mechanism to the lack of alternative means of subsistence or support from the government. A similar trend was witnessed regarding the impact of the pandemic on work force. While sixty-two per cent of businesses in the informal sector were able to keep their staff during the pandemic, the figure for formal enterprises was fifty-six per cent.\textsuperscript{61}

The effect of COVID-19 on businesses has the potential to be long-lasting. In Nigeria, it is estimated that at least ten per cent of businesses that closed during the pandemic would most likely remain permanently closed—a daunting prospect for all businesses.\textsuperscript{62}

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\item \textsuperscript{58} Mohammed Sani Abdullahi and others, ‘Challenges Affecting the Performance of Small and Medium Scale Enterprises (SMEs) in Nigeria’ (2015) Journal of Technology Management and Technopreneurship 53.
\item \textsuperscript{60} Kabiru Olusegun Akinyemi and others, ‘Intrigues and Challenges Associated with COVID-19 Pandemic in Nigeria’ (2020) Health 961.
\item \textsuperscript{61} UNDP (n 55).
\item \textsuperscript{62} ibid.
\end{itemize}
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Business enterprises, particularly the SMEs are not likely to be able to turn the tide of decline attributable to COVID-19 without support. It is therefore necessary to consider what could be done to achieve a socio-economic turnaround that would benefit both individuals and businesses. CSR initiatives by businesses, both large and small, could facilitate this in the long run, as CSR is about the commitment of businesses to behave ethically and contribute to the economic development of both its immediate environment and society at large.

Taking the above into account, it is essential to examine the extent to which CSR concepts are integrated into business management in South Africa and Nigeria. If such integration exists and has the potential to thrive, it could be an enabler to meet the challenges posed by COVID-19 pandemic. Moreover, this is likely to bring about socio-economic restoration in the post-pandemic business environment in South Africa and Nigeria and give direction to business enterprises in charting a course towards recovery. The next section looks at the extent to which CSR is integrated into business management in South Africa and Nigeria.

CSR in South Africa and Nigeria

South Africa

Section 76 of the South African Companies Act 2008\(^\text{63}\) prescribes the standards for directors’ conduct, indicating that the exercise of powers and performance of functions shall be carried out inter alia ‘in good faith and for a proper purpose,\(^\text{64}\) in the best interests of the company;\(^\text{65}\) and with the degree of care, skill and diligence that may be expected of a person’\(^\text{66}\) carrying out the functions of a director.\(^\text{67}\) In *Visser Sitrus (Pty) Ltd v Goede Hoop Sitrus (Pty)*,\(^\text{68}\) the Western Cape High Court set an objective test, holding that the position in South African law has always been that

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\ldots \text{directors occupy a fiduciary position and must thus exercise any power conferred upon them in what they bona fide consider to be the best interests of the company, for the purpose for which the power was conferred, and within any limits which may be imposed for the exercise of the power.}
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\(^{63}\) No 71 of 2008 (hereafter Companies Act 2008 [SA]).
\(^{64}\) ibid s 76(3)(a).
\(^{65}\) ibid s 76(3)(b).
\(^{66}\) ibid s 76(3)(c).
\(^{68}\) 2014 (5) SA 179 (WCC) para 58.
The provision in section 76 of the Companies Act, or any other legislation does not specifically address CSR in South Africa. However, section 24(b)(iii) of the Constitution of the Republic of South Africa, 1996, provides that

… everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable and legislative and other measures that secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

This provision appears to confer a constitutional imprimatur on the principles of sustainable development, and those expounded in CSR variants like ESG and SRI.

Furthermore, section 2 of the National Environmental Management Act 199869 provides for National Environmental Management Principles, which incorporate internationally recognised principles of environmental law including sustainable development that describe the relevant factors to be considered in the determination of whether or not development is sustainable.70 Notably, the courts have at different times upheld the constitutional and statutory provisions relating to sustainable development. For instance, in Fuel Retailers Association of Southern Africa v Director General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others,71 the Constitutional Court held that it is apparent from section 24 of the Constitution that there is an explicit recognition of the obligation to promote justifiable economic and social development as it is vital to the well-being of human beings, observing that the ‘promotion of development requires the protection of the environment.’72 The court cited with approval, several international reports and instruments dealing with sustainable development including the Declaration on the Right to Development,73 the Report of the World Commission on Environment and Development,74 and the Rio Declaration,75 as well as the opinion of the International Court of Justice in the Gabcikovo-Nagymaros Project Case (Hungary/Slovakia),76 to the effect that economic development should be engaged in, contemporaneously with sustainable development. These cases underscore the importance of sustainable development from a legal point of view.

In the same vein, Regulation 28 in terms of the Pension Funds Act 195677 imposes an obligation on pension funds to apply the principles, among others, that

69  Act No 107 of 1998, hereafter ‘the NEMA.’
70  ibid s 2(4).
72  ibid para 44.
73  ibid para 44.
74  Commonly referred to as the Brundtland Report.
75  2007 ZACC 13 para 49.
76  1998 ILM 162.
77  Act No 24 of 1956.
… before making an investment in and while invested in an asset [pension funds are to] consider any factor which may materially affect the sustainable long-term performance of the asset including but not limited to those of an environmental, social and governance character.\(^78\)

These judicial authorities, constitutional and statutory provisions as well as regulatory requirements give credence to the validity of CSR in ensuring that business enterprise and investments are carried on with consideration of the relevant stakeholders.

Interestingly, the King IV Code on Corporate Governance\(^79\) contains voluntary principles and practices relating to corporate governance, although certain aspects of the Code are binding for companies with a primary listing on the JSE Limited Securities Exchange.\(^80\) The King IV Code is largely applicable to different types of entities ranging from public to private, large and small as well as for-profit and not-for-profit. As per its objective, it should be ‘accessible and fit for implementation across a variety of sectors and organisational types.’\(^81\) Emphasis is placed on the continued existence of corporate entities as being entwined with three interdependent sub-systems, namely the economy, society, and the external environment, which are better addressed via an integrated approach in the voluntary principles and leading practices recommended in the Code. Principle 4 of the Code requires the governing bodies of organisations to appreciate among other things, that sustainable development is an ‘inseparable element of the value creation process.’ In the same vein, Principle 17 calls on the governing bodies of an institutional investor organisation to ensure that responsible investment is practiced, thereby promoting good governance and value creation by the companies in which it invests.

Undoubtedly, CSR and its variants have been beneficial to the South African economy. This is evident in the development of the country’s mining industry. The change in attitude of mining enterprises to address social and economic injustice has not only been influenced by post-apartheid regulations and development, but also by international declarations and standards encouraging continuous engagement with multiple interests in the industry and stakeholders in the socio-political environment.\(^82\) This illustrates the efficacy of CSR principles and their variants to bring about a change for the better to address the challenges caused by the pandemic.

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\(^78\) See Regulation 2(c)(ix).
\(^81\) The King IV Report (n 79).
Nigeria

The Constitution of the Federal Republic of Nigeria 1999\textsuperscript{83} imposes obligations on all organs of government, as well as authorities exercising legislative, executive, or judicial powers to, among other things

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  \item control the national economy in such manner as to secure the maximum welfare, freedom, and happiness of every citizen on the basis of social justice and equality of status and opportunity,\textsuperscript{84} [and to] protect and improve the environment and safeguard water, air and land, forest and wildlife in Nigeria.\textsuperscript{85}
\end{itemize}

Although these constitutional provisions encapsulate the features of CSR and its variants, it is unfortunate that the government and its agencies cannot be taken to court for their failure to comply with the stipulated obligations.\textsuperscript{86} Furthermore, while these institutions are obliged to make efforts ‘to conform to, observe and apply the provisions,’\textsuperscript{87} this obligation is not extended to private persons or organisations. However, although, the Constitution does not impose an obligation on business enterprises and corporate entities to implement activities compliant with CSR, the Nigerian Companies and Allied Matters Act 2020 (hereafter the CAMA) imposes a duty on company directors to consider CSR matters. Section 305(3) of the CAMA provides that

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  \item a director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skilful director would act in the circumstances and, in doing so, shall have regard to the impact of the company’s operations on the environment in the community where it carries on business operations.
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Accordingly, the CAMA sets an objective standard to test the exercise of directors’ powers to determine whether a company is responsive to the demands of the community in which it carries on business, a test traceable to the requirements of CSR. On the other hand, the Financial Reporting Council of Nigeria Act 2011\textsuperscript{88} (FRCN Act) establishes the Financial Reporting Council and empowers it, among others, ‘to enforce and approve enforcement of compliance with accounting, auditing, corporate governance and financial reporting standards in Nigeria.’\textsuperscript{89} Furthermore, the FRCN is required to ‘issue [a] code of corporate governance and guidelines; and develop a mechanism for

\textsuperscript{83} Hereafter ‘the Nigerian Constitution 1999’.
\textsuperscript{84} ibid s 16(1)(b).
\textsuperscript{85} ibid s 20.
\textsuperscript{86} ibid s 6(6)(c). See also \textit{Archbishop Olubunmi Okogie v The Attorney General of Lagos State} (1981) 2 NCLR 337.
\textsuperscript{87} Nigerian Constitution 1999 s 13.
\textsuperscript{88} FRCN Act.
\textsuperscript{89} ibid s 7(2).
periodic assessment of the code and guidelines.\textsuperscript{90} It is also empowered to ‘monitor compliance with the reporting requirements specified in the adopted code of corporate governance.’\textsuperscript{91} Pursuant to these statutory requirements, the FRCN developed the Nigerian Code of Corporate Governance 2018 (NCCG).

Mindful of the existence of sectoral codes issued by a number of industry regulators,\textsuperscript{92} the FRCN sets out the objective of the NCCG, which is to ‘promote public awareness of essential corporate values and ethical practices that will enhance the integrity of the business environment,’ and ‘to institutionalise corporate governance best practices in Nigerian companies’\textsuperscript{93} among others. The NCCG is drafted in a manner which makes it possible to be applied to companies of differing sizes, and its provisions are sufficiently flexible to facilitate its implementation in different circumstances. Pursuant to section 11(c) of the FRCN Act,\textsuperscript{94} the Act requires qualified companies\textsuperscript{95} to file returns annually, using a template for reporting compliance with the NCCG, adopting the ‘apply and explain’ approach to report how the specific activities of their companies have been undertaken to ‘achieve the outcomes intended by the corporate governance principles specified in the Code.’\textsuperscript{96}

The NCCG consists of seven parts and twenty-eight principles, which also incorporate the practices recommended for the implementation of each principle. Part E contains provisions setting standards for ‘business conduct with ethics,’ while parts F and G address matters of ‘sustainability’ and ‘transparency’ respectively.\textsuperscript{97} Though the totality

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  \item \textsuperscript{90} ibid s 51(c).
  \item \textsuperscript{91} ibid s 8(1)(g).
  \item \textsuperscript{92} For example, the Code of Corporate Governance for the Telecommunication Industry 2016, the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014, and the Code of Corporate Governance for Public Companies in Nigeria 2011.
  \item \textsuperscript{93} See the Introduction to the Code.
  \item \textsuperscript{94} The FRCN Act (n 88) s 11(c) provides that the objects of the Council shall include ensuring ‘good corporate governance practices in the public and private sectors of the Nigerian economy.’
  \item \textsuperscript{95} ‘Qualified companies’ are ‘all public companies (whether a listed company or not); all private companies that are holding companies of public companies or other regulated entities; all concessioned or privatised companies; and all regulated companies being private companies that file returns to any regulatory authority other than the Federal Inland Revenue Service (FIRS) and the Corporate Affairs Commission (CAC).’ See FRCN Guidance for Reporting on Compliance with the Nigerian Code of Corporate Governance (NCCG) 2018 <https://drive.google.com/file/d/1SHViyF0Qm6Hk8exKMaxYkdN2JEvj2r_Z/view> accessed 16 May 2023.
  \item \textsuperscript{96} See FRC/CG/001: Template for Reporting Compliance with the Nigerian Code of Corporate Governance 2018 <https://drive.google.com/file/d/1SHViyF0Qm6Hk8exKMaxYkdN2JEvj2r_Z/view> accessed 16 May 2023.
  \item \textsuperscript{97} Parts A and B relate to matters affecting the ‘board of directors and officers of the board.’ Part C is on ‘assurance,’ dealing with enterprise risk management and related matters. Part D addresses the ‘Relationship with Shareholders.’
\end{itemize}
of the NCCG addresses issues of corporate governance, principle 26 on ‘sustainability’ is directly related to CSR and its variants. The principle enjoins companies to pay

... adequate attention to sustainability issues including environment, social, occupational and community health and safety [ensuring] successful long term business performance and projects the company as a responsible private citizen contributing to economic development.

In Nigeria, directors hold the controlling power in the management of a company.\(^{98}\) The Court of Appeal gave a judicial imprimatur to the superiority of the board of directors’ power in corporate management in *Batraco Limited v Spring Bank Limited and Anor*,\(^ {99}\) holding that the board of directors does not require authorisation by the general meeting to manage the company. The Supreme Court has endorsed the position that directors of a company are under a duty to exercise the powers vested in them to manage the company.\(^ {100}\)

Although judicial decisions are lacking on the specific application of CSR principles to corporate management and the exercise of directors’ powers in Nigeria, the provisions of section 305(3) of CAMA on duties of directors, read together with Section 51(c) of the FRCN Act, and principle 26 of the NCCG provide a basis for their application.

CSR as Potential Enabler of Socio-economic Restoration in post-COVID-19 Business Environment in South Africa and Nigeria

Although there are varying sectoral codes to address the application of CSR in South Africa and Nigeria, many of them are not mandatory. Amodu\(^ {101}\) argues that their effectiveness is rather questionable to the extent that most of them lack the mandatory effect of legislation, and are thus ineffective in the guaranteeing of accountability and responsibility. Accordingly, he proposed the broadening of the responsibilities and obligations of businesses in one of two possible ways, to respond to societal pressure for effective CSR practices and sustainable development. First, harmonise the various codes of different institutions, the majority of which are in the form of soft law and regulatory framework, so as to secure the improved disclosure requirement and accountability.\(^ {102}\) The alternative is to enact an appropriate CSR legislation which will impose an enforceable obligation on businesses ‘to demonstrate transparency, accountability and responsibility in their operations.’\(^ {103}\) It is unfortunate that in 2007 a

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98 CAMA s 87(3).
99 (2013) LPELR 20174 (CA).
100 See *Okeowo v Migliore* (1979) LPELR 2441 (SC). See also *Haston (Nig) Ltd v A C B Ltd* (2002) FWLR (Pt 119) 1476. See also *NIDOCO Ltd v Ghajabiamila* (2013) LPELR 20899 (SC).
102 ibid 126.
103 ibid.
Nigerian CSR Bill, which sought to impose a levy on corporations to be administered by a government agency for the benefit of people and society, was rejected by corporates and the public because it was largely perceived as another form of corporate tax.  

The unsuccessful attempts to enact legislation to give impetus to CSR in South Africa and Nigeria do not imply that there is no need for such intervention. Indeed, there is a need for the improved legislative framework following the aftermath of the COVID-19 pandemic. Corporations operating in high-risk sectors in Africa, including mining, construction and oil and gas, have to a large extent in the past acted with impunity, with little or no regard for the environment and the communities within which they operate. Thus, the need for businesses to be held responsible cannot be overstated.

Developing an appropriate framework to regulate corporate activities will ensure that harm is not done to host communities, and that human rights are respected.

It is important to recognise that CSR by its nature cannot be a substitute for regulations or legal requirements relating to social rights and environmental standards. Proper legislative framework is necessary to create a level playing field that forms the basis of socially responsible practices. In this regard, legal rules applicable to misleading advertising, product liability, competition, and negligence will readily come to mind. It comes as no surprise that law and litigation continually test the limits of corporate responsibility.

In order to achieve CSR, Carroll devised a framework which categorises and prioritises values and obligations by way of a pyramid encapsulating the level of importance of each concern to facilitate a proper consideration of all relevant issues. Carroll identified four tiers of corporate responsibilities in the shape of a pyramid, that ranks importance and priorities with economic responsibility, or the need to be profitable at the base, followed by legal responsibility which requires that the corporation must obey the law, then ethical responsibility or the need for the organisation to do what is right and avoid harm. At the apex of the pyramid is the philanthropic responsibility of the corporation, which is the quest to contribute resources to the community and improve life. Of the four models, the ethical expectation of stakeholders is shaped by universal

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principles of moral philosophy like rights, justice and ethics, which render the philanthropic responsibilities of business organisations discretionary. 109 Notwithstanding the discretionary nature of ethical responsibilities, the firm is expected to consider its community and the environment, and to do what is right. The ethical obligation of businesses to do what is right is a critical element that should drive the desire for corporate success after the decline brought about by the consequences of COVID-19.

Similarly, the *Guiding Principles on Business and Human Rights* (the UNGPs) 110 developed by the Special Representative of the Secretary General of the United Nations (UN) on the issue of human rights and transnational corporations and other business enterprises seeks to establish a framework to implement a core aspect of the UN Charter to promote and encourage respect for human rights and fundamental freedoms for all. 111 One of the foundational principles of the UNGPs is premised on the responsibility of businesses to respect human rights, an obligation which applies to ‘all enterprises regardless of size, sector, operational context, ownership and structure.’ 112 However, while many businesses support the UNGPs, some have put up strong resistance to developing the substance of its principles into binding obligations. 113

A further reason for the belief that CSR obligations cannot be discretionary in South Africa and Nigeria lies in the countries’ adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 114 (the Optional Protocol). The Optional Protocol permits individuals or groups of individuals claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant to submit communications to the Committee on Economic, Social and Cultural Rights (the Committee) consequent upon the exhaustion of available local remedies, and belief that a member state has failed to observe its obligations under the Covenant. 115 The Optional Protocol therefore presents an opportunity to individuals or groups of individuals to take action to enforce states’ obligations to protect economic, social, and cultural (ESC) rights. Although the shareholder primacy business ideology as the underlying basis of corporate legislation in South Africa and Nigeria may hinder the effective fulfilment of the right to enforce a remedy for the violation of individual

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109 ibid.
111 UN Charter Art 1(3).
112 See UNGP Foundational Principles 11 and 14.
115 See Arts 2 and 3 of the Protocol.
rights by business enterprises, it has been argued that the obligation of states to protect ESC rights must as of necessity, be extended to business organisations.\textsuperscript{116}

Although studies are yet to indicate conclusively whether business enterprises from the Global South have different CSR preferences from those of the Global North,\textsuperscript{117} there is no contention that CSR is about the responsibility of business, including in South Africa and Nigeria. In these countries, there is evidence that statutory provisions and regulations require business organisations to consider elements having a bearing on the requirements of CSR in their undertakings. Accordingly, it is arguable that business entities in South Africa and Nigeria have an obligation to be responsible, and to consider the interest of people and the environment in their dealings.

Incidentally, both South Africa and Nigeria are members of the African Union, and are parties to the African Charter on Human and Peoples’ Rights 1981 (African Charter), which recognises the right to development on the basis that civil rights cannot be dissociated from economic, social, and cultural rights in their conception as well as their universality.\textsuperscript{118} As parties to the African Charter, both countries must be committed to the ideals of the African Charter’s protection of the right of all peoples to economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. Accordingly, business organisations in South Africa and Nigeria cannot ignore the obligations referred to above. Although the realisation that the complexity of the operations of some business enterprises create challenges for local communities regarding human rights violations, a commitment to the ideals of CSR and sustainable development should put corporations on the path to responsibility.\textsuperscript{119}

In South Africa for instance, the level of inequality is high, with an unemployment rate at thirty-five per cent, and about a third of the population, predominantly black, living in poverty.\textsuperscript{120} It is believed that the intervention of business enterprises is required to correct this anomaly. Accordingly, the Black Economic Empowerment (BEE, now B-BEEE or Broad-Based BEE) policy in South Africa was conceptualised to facilitate a structural economic empowerment of the black population. The BEE policy is a key institutional driver of CSR, designed to improve the position of black South Africans in different aspects of business-based black ownership, management, skills development,

\begin{footnotesize}
\begin{enumerate}
\item See The Preamble to African Charter on Human and Peoples’ Rights 1981.
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enterprise and supplier development, as well as socio-economic development.\textsuperscript{121} Obligation is imposed on business enterprises to conform to facilitate positive change.

Similarly in Nigeria, the Small and Medium Scale Industries Agency (the SMEDAN) was established, among others, to promote and facilitate development programmes, instruments, and support services to accelerate development,\textsuperscript{122} and to encourage and promote strategic linkages of small-scale industries to finance, technology, technical skills development and management sources.\textsuperscript{123} For instance, the SMEDAN engaged in an industrial development initiative on entrepreneurship training for 21 600 artisans in different technical skills in 108 centres across the country, connecting some of the trainees to businesses for which they could provide services.\textsuperscript{124}

Businesses, particularly, the SMEs are the engine for socio-economic growth. A survey conducted by Nigeria’s National Bureau of Statistics found that in 2017 there were over forty-one million SMEs in Nigeria.\textsuperscript{125} This figure was reduced to thirty-nine million,\textsuperscript{126} largely due to the impact of COVID-19. The situation is not materially different in South Africa where SMEs representing more than ninety-eight per cent of businesses, employ over fifty per cent of the country’s workforce, and contribute thirty-nine per cent to the GDP.\textsuperscript{127}

The adverse impact of COVID-19 on business and entrepreneurship makes the need for business sectors to be mindful of sustainable development even more compelling. Business activities which adversely impacts the environment even if profitable in the short run, are likely to harm and prejudice the interests of other stakeholders and the environment in the long run. The need to balance the trade-offs between economic, social, and environmental goals places fund and business managers in a position to optimise investment strategies in the determination of qualifying assets and enterprise to accelerate sustainability. Fund managers should therefore play an important role in exerting influence over corporate boards about the nature of an investment supported

\textsuperscript{121} See the Codes of Good Practice on Broad Based Economic Empowerment – Schedule 1 in terms of section 9(1) of the Broad-Based Economic Empowerment Act 53 of 2003, as amended by Act 46 of 2013, Gazette No 42496 of 31 May 2019.

\textsuperscript{122} Small and Medium Scale Industries Development Agency (Establishment) Act s 8(c).

\textsuperscript{123} ibid s 8(1).


by them. Similarly, investors need to take a long-term view of investment, as sustainability is about the future.\textsuperscript{128}

If businesses in South Africa and Nigeria are to be restored to match and surpass pre-COVID-19 socio-economic levels, corporate managers can no longer be solely focused on profit in the short run. They must be mindful of the ‘triple bottom line,’\textsuperscript{129} which takes into cognisance the fiscal, social, and environmental elements in measuring performance, and the impact of businesses on society and the environment.\textsuperscript{130} Furthermore, to engender a positive turnaround, business managers must be strategically minded to consider opportunities which might have been ignored hitherto. For instance, in a post-COVID-19 business environment in Nigeria, diverse opportunities are opening. Advances in technology and telecommunications have the potential to increase connections and interaction with stakeholders in remote locations.\textsuperscript{131} This should enable SMEs to take their products and services to locations which could not be reached due to infrastructure challenges.

Global developments have rendered the earlier position of English courts, typified by the case of \textit{Hutton v West Cork Railway Co}, untenable. Indeed, the British parliament legislated a shift in the legal position on the subject. Section 172(1) of the English Companies Act 2006 provides that directors have a duty to promote the success of their company, and that a director must act in good faith, to promote the success of the company for the benefit of its members. In carrying out their duties, directors should have regard inter alia, to the likely consequences of any decision in the long term, the interests of the company’s employees, the impact of the company’s operations on the community and the environment, the desirability of the company maintaining a reputation for high standards of business conduct, and the need to act fairly between members of the company.\textsuperscript{132} These considerations are features of CSR and its multiple variants, reinforcing the recognition that there is value in the principles propounded in CSR.

\begin{itemize}
  \item \textsuperscript{128} See Dirk Schoenmaker, \textit{Investing for the Common Good: A Sustainable Finance Framework} (Brussels, Bruegel 2017) 27.
  \item \textsuperscript{130} A good example of a business showing such concern is Salesforce, Inc through its ‘1-1-1 philanthropic model’ of CSR initiative, whereby one per cent of the company’s product, equity, and employees’ time respectively, to communities and the non-profit sector. The initiative has resulted in over five million man-hours of volunteer hours, USD 406 million in grants and donations to more than 40 000 non-profit organisations and educational institutions. Initiatives like these are bound to have multiplier effect which continue to improve the society and the environment. See Matt Gavin, ‘5 Examples of Corporate Social Responsibility that were Successful’ <https://online.hbs.edu/blog/post/corporate-social-responsibility-examples> accessed 13 May 2023).
  \item \textsuperscript{131} Itanyi (n 54) 34.
  \item \textsuperscript{132} See Companies Act 2006 (England) s 172(1)(a)–(f).
\end{itemize}
The position is exemplified by the British Companies Act and is a positive indicator for the governments of South Africa and Nigeria to chart a course, and for businesses to deal with the challenges presented by the impacts of COVID-19. The integration of CSR into the decision-making process of both financial and non-financial aspects of business will ultimately create value to the organisation, the environment, and society. Although, business enterprises may face difficulties initially because of the pandemic, it is important to take a long-term view of the benefits of CSR which are available to stakeholders at first, and ultimately to the corporate entities themselves in long run.

**Concluding Observations and Recommendations**

The COVID-19 pandemic caused major disruptions in business and curbed the development and growth of entrepreneurship. The fragility of many African countries’ economies will make them dependent on entrepreneurship, with small businesses likely to suffer most.

Although individual action and collaboration of both the public and private sectors that covered a wide range of measures, including strategic investment and re-skilling training programmes mitigated the effects of the pandemic, surviving businesses also have a role to play. Business enterprises must become more resilient to face the challenges that are bound to emerge. They must strive to support other stakeholders in society to survive, and ultimately for the economy to revert to and surpass the pre-pandemic levels as soon as possible.

The foregoing accentuates the necessity for businesses to be mindful of sustainable development to combat the adverse impact of the COVID-19 pandemic. Business activities which adversely impact the environment, even if profitable in the short run, are likely to harm and prejudice the interests of other stakeholders. Invariably, the application of CSR principles to business has the potential to benefit the economy and enable ailing businesses to weather the storm caused by the pandemic. The following recommendations will facilitate socio-economic restoration of the business environment in South Africa and Nigeria. The ethical obligation of businesses to do what is right is a critical element that should drive corporate success. Business enterprises in South Africa and Nigeria will benefit if they integrate CSR into their operations.

The facultative nature of the sectoral codes in South Africa and Nigeria contributes largely to their ineffectiveness. It is now imperative to enact an appropriate CSR legislation that will impose an enforceable obligation on businesses to demonstrate transparency, accountability, and responsibility in their operations. A move in that direction will facilitate efforts towards the recovery of businesses in the aftermath of the COVID-19 pandemic.

In the event of corporations failing their obligations and causing injury or damage which remains unremedied after exhausting local remedies, individuals or groups of
individuals have the opportunity of recourse to the Committee on Economic, Social and Cultural Rights established in terms of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

Business enterprises in South Africa and Nigeria should comply with the requirements of legislation and policies like the BEE and SMEDAN respectively, designed to facilitate the acceleration of development. The policies, if implemented correctly, have the potential to benefit all stakeholders in the economic environment, including businesses.

Diverse opportunities are opening as a result of development facilitated by efforts to address the challenges of COVID-19 in the business environment in South Africa and Nigeria. Business enterprises, particularly the SMEs should take advantage of new developments in technology and telecommunications.

Finally, CSR by its nature cannot be a substitute to regulations or legal requirements relating to social rights and environmental standards, as a proper legislative framework is necessary to create a level-playing field. Accordingly, appropriate legislation and regulations to address specific aspects of justice and human rights are required, in addition to CSR mandates, to engender responsibility on the part of business, especially taking into consideration that transnational corporations may operate with impunity in jurisdictions where there are gaps in the law.

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