

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

Kolapo Omidire

<https://orcid.org/0000-0003-0874-2925>

North-West University, South Africa

kbomidire@yahoo.com

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

UNISA 
UNIVERSITY OF SOUTH AFRICA

Comparative and International Law Journal of Southern Africa

<https://unisapressjournals.co.za/index.php/CILSA>

Volume 56 | Number 1 | 2023 | #11091 | 31 pages

<https://doi.org/10.25159/2522-3062/11091>

ISSN 2522-3062 (Online), ISSN 0010-4051 (Print)

© The Author 2023



Published by Unisa Press. This is an Open Access article distributed under the terms of the Creative Commons Attribution-ShareAlike 4.0 International License (<https://creativecommons.org/licenses/by-sa/4.0/>)

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.

1 Thomas Neuman, ‘The Impact of Entrepreneurship on Economic, Social and Environmental Welfare and its Determinants: a Systematic Review’ (2021) *Management Review Quarterly* 554.

2 Maksim Belitski and others, *Economic Effects of the COVID-19 Pandemic on Entrepreneurship and Small Business* (2021 IZA Institute of Labour Economics Bonn) 4.

3 Marie Christine Apedo-Amah and others, ‘Unmasking the Impact of COVID-19 on Businesses: Firm Level Evidence from Across the World’ (World Bank Group, Policy Research Working Paper 9434 (October 2020) 9.

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.⁴ 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.⁵ 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.⁶ This was, however, followed by a recurring question as to whether directors are obliged to consider extraneous interests other than that of the shareholders.⁷

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

4 Frank Evans, 'The Evolution of the English Joint Stock Limited Trading Company' (1908) *Columbia Law Review* 357, and L Levi, 'On Joint Stock Companies' (1870) *Journal of the Statistical Society of London* 16.

5 See Julian Velasco, 'The Fundamental Rights of the Shareholder' (2006–2007) *UC Davis L Rev* 417.

6 Maria Isabel Sáez Lacave and Damaso Riaño, 'Corporate Governance and the Shareholders' Meeting: Voting and Litigation' (2013) *European Business Organization Law Review* 346; and Michael Kahan and Edward B Rock, 'The Hanging Shards of Corporate Voting' (2008) *The Georgetown Law Journal* 1227.

7 See Geoffrey Nettle, 'The Changing Position and Duties of Company Directors' (2018) 41 *Melbourne University Law Review* 1402.

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.*⁹ 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 ...¹⁰

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.¹¹ Since then, attitudes began to change to accommodate the fact that a corporate organisation has a duty to also consider the interests of stakeholders.¹² 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.'¹³

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.¹⁴ Moreover, there is a common understanding that the purpose of business should not just

organisation responsible for promoting global health. See Zynia L Rionda and others, *What is Corporate Social Responsibility?* (USAID and Catalyst Consortium 2002) 5.

9 (1883) 23 Ch D 654. See also *Miles v Sydney Meat Preserving Co Ltd* (1913) CLR 639.

10 *ibid.*

11 See AA Berle, 'Corporate Powers as Powers in Trust' (1931) Harvard Law Review 1049; E Merrick Dodd, 'For Whom are Corporate Managers Trustees?' (1932) Harvard Law Review 1145; Joseph L Weiner, 'The Berle-Dodd Dialogue on the Concept of the Corporation' (1964) Columbia Law Review 1458; and Irene-Marie Esser and Jean du Plessis, 'The Stakeholder Debate and Directors' Fiduciary Duties' (2007) SA Merc LJ 346.

12 See *Evans v Bruner, Mond and Co. Ltd* [1921] Ch 359. The Supreme Court of the United States (SCOTUS) in *AP Smith Manufacturing Co v Barlow* (1953) 39 ALR 2d 1179 also adopted the stakeholder principle in determining that a gift made by a company to Princeton University was proper, being a voluntary fulfilment of the company's obligation to society.

13 Mark Anthony Camilleri, 'Socially Responsible and Sustainable Investing' in Mark Anthony Camilleri, *Corporate Sustainability, Social Responsibility and Environmental Management – An Introduction to Theory and Practice with Case Studies* (Springer International Publishing AG 2017) 62.

14 Mohammed Tariq Khan and others, 'Corporate Social Responsibility – Definition, Concepts and Scope – A Review' (2012) Universal Journal of Management and Social Sciences 41.

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.’¹⁵

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.¹⁶

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.’¹⁷ It should not be a Greek gift, ‘given with the intention of tricking and causing harm to the recipient.’¹⁸ 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

15 Anne Elizabeth Fordham and Guy M Robinson, ‘Mapping Meanings of Corporate Social Responsibility – An Australian Case Study’ (2018) *International Journal of Corporate Social Responsibility* 2.

16 Richard Holmes and Phillip Watts, *Corporate Social Responsibility: Making Good Business Sense* (World Business Council for Sustainable Development 2000) 8.

17 For the meaning of ‘philanthropy’ see <<https://www.collinsdictionary.com/dictionary/english/philanthropy>> accessed 16 March 2023.

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.¹⁹ 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.²⁰ 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.²¹ 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.’²²

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;²³ the Chernobyl disaster in a nuclear plant in Ukraine in 1986;²⁴ and the BP Gulf of Mexico oil spill in 2010.²⁵ 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,

19 Thomas P Lyon and John W Maxwell, ‘Corporate Social Responsibility and the Environment: A Theoretical Perspective’ (2008) *Review of Environmental Economics and Policy* 5.

20 Hannes Veinla, ‘Sustainable Development as the Fundamental Principle of Europe's Environmental Ius Commune’ (2005) *Juridica International* 117.

21 Rebecca Shah and Richard Batley, ‘Private-sector Investment in Infrastructure: Rationale and Causality for Pro-poor Impacts’ (2009) *Development Review Policy* 398.

22 See the OECD Guidelines for Multinational Enterprises <<https://www.oecd.org/corporate/mne/1922428.pdf>> accessed 23 February 2022.

23 Over forty tons of methyl isocyanate leaked from pesticide plant of Union Carbide Corporation, in Bhopal, India, killing over 3 000 persons, and subsequently attributable to morbidity and premature deaths of several others in the succeeding years. See Edward Broughton, ‘The Bhopal Disaster and its Aftermath – A Review’ <<https://ehjournal.biomedcentral.com/articles/10.1186/1476-069X-4-6>> accessed 16 May 2023.

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

26 See Green Paper: Promoting a European Framework for Corporate Social Responsibility DOC/01/9 of 18 July 2001 <<https://ec.europa.eu/transparency/regdoc/rep/1/2001/EN/1-2001-366-EN-1-0.Pdf>> accessed 25 February 2022.

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.

33 See Gideon Els and Suzette Viviers, ‘Responsible Investing in South Africa: Past, Present and Future’ (2017) *African Review of Economic and Finance* 129.

per cent growth over the 2018 figure,³⁴ and a projection that the figure would rise to USD 53 trillion by 2025.³⁵

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.³⁶ 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.³⁷ 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.³⁸ 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-19,³⁹ South Africa reported the highest number of cases in Africa with over four million, and more than 100 000 deaths.⁴⁰ 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

34 See Sophie Kiderlin, ‘Sustainable Investments Now Total \$35.3 Trillion, Roughly a Third of All Global Assets Under Management, Report Shows’ <https://markets.businessinsider.com/news/stocks/global-sustainable-investment-alliance-report-esg-assets-responsible-investing-2021-7> accessed 20 May 2023.

35 See Bloomberg Intelligence, ‘ESG assets may hit \$53 trillion by 2025, a third of global assets under management’ <<https://www.bloomberg.com/professional/blog/esg-assets-may-hit-53-trillion-by-2025-a-third-of-global-aum/>> accessed 16 May 2023.

36 See Anke Hoeffler, ‘Fragility and Development in Africa: An Introduction’ (2019) *Review of Development Economics* 1068.

37 Arnstein Aassve and others, ‘Epidemics and Trust: The Case of the Spanish Flu’ (2021) *Health Economics* 840; Douglas Almond, ‘Is the 1918 Influenza Pandemic Over? Long-term Effects of in Utero Influenza Exposure in the post-1940 US Population’ (2006) *Journal of Political Economy* 672.

38 See Statistics South Africa, *Business Impact Survey of the COVID-19 Pandemic in South Africa* (April 2020) <<http://www.statssa.gov.za/publications/Report-00-80-01/Report-00-80-01April2020.pdf>> accessed 24 February 2022.

39 Annalisa Merelli, ‘Why You are not Hearing About COVID-19 Outbreaks in Africa’ <<https://qz.com/africa/2079064/only-one-in-seven-cases-of-covid-19-in-africa-is-reported>> accessed 16 May 2023.

40 World Health Organisation South Africa, ‘WHO Corona Virus Disease (COVID-19)’ <<https://covid19.who.int/region/afro/country/za>> accessed 7 May 2023.

of virtually all economic activities.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.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.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 2020.⁴⁴ 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.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.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 2021.⁴⁷

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

41 See Zaakhir Asmal and Christopher Rooney, 'The Impact of COVID-19 on Industries Without Smokestacks in South Africa' in Africa Growth Initiative at Brookings, *AGI Working Paper No. 32* (April 2021) <<https://www.brookings.edu/wp-content/uploads/2021/07/21.07.27-South-Africa-Covid-Update.pdf>> accessed 16 May 2023.

42 *ibid.*

43 See Statistics SA, 'The Impact of COVID-19 on National Government Finances in the 2020/2021 Financial Year' <<https://www.statssa.gov.za/?p=15532>> accessed 16 May 2023.

44 Chuks I Ede and others, 'Implications of COVID-19 Lockdown on South African Business Sector' (2021) *International Journal of Financial Research* 17.

45 *ibid.*

46 From a South African perspective, a micro business is one employing fewer than ten persons with an annual revenue threshold that ranges from ZAR 5 million to ZAR 20 million. The businesses range from agriculture, transportation, storage, telecoms support, retail, motor trade and repair services, small manufacturing, electricity, gas and water and construction. See Department of Small Business Development, 'Impact of COVID-19 Micro and Informal Businesses South Africa' (2021) <<http://www.dsb.gov.za/sites/default/files/publications/Impact-of-covid19-on-businesses.pdf>> accessed 16 May 2023.

47 *ibid.*

Development Goals (SDGs),⁴⁸ especially those relating to the reduction of poverty,⁴⁹ the attainment of zero hunger levels,⁵⁰ good health and well-being,⁵¹ as well as sustainable cities and communities,⁵² 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.⁵³ 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.⁵⁴ 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.⁵⁵ 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.⁵⁶ 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

48 'Sustainable Development Goals' <<https://sdgs.un.org/goals>> accessed 7 May 2023.

49 SDG 1.

50 *ibid* 2.

51 *ibid* 3.

52 *ibid* 11.

53 Statistics SA, 'Business Impact Survey of the COVID-19 Pandemic in South Africa' <<http://www.statssa.gov.za/publications/Report-00-80-01/Report-00-80-01April2020.pdf>> accessed 16 May 2023.

54 See KPMG Nigeria, 'The Twin Shocks (COVID-19 Pandemic & Oil Prices Crisis) and Implications for Nigerian Family Business' <<https://assets.kpmg.com/content/dam/kpmg/ng/pdf/audit/impact-of-covid19-on-nigerian-family-businesses-and-enterprises.pdf>> accessed 8 May 2023.

55 United Nations Development Programme (UNDP) and National Bureau of Statistics (NBS) The Impact of COVID-19 on Business Enterprises in Nigeria 2021 <<https://nigerianstat.gov.ng/elibrary/read/1241076>> accessed 16 May 2023.

56 See Nkemdilim Itanyi and Uju Obuka, 'COVID-19 and its sweeping effect on businesses in Nigeria: Lessons for the future' (2022) *Business Law Review* 35.

sixty-three per cent of the population of Nigeria are multi-dimensionally poor.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 *Naira* resulting from poor economic policies that hardly address the difficulties faced by businesses, coupled with corruption of public officers.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.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.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.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.⁶²

57 National Bureau of Statistics, 'Nigeria Launches its Most Extensive National Measure of Multidimensional Poverty' <<https://nigerianstat.gov.ng/news/78>> accessed 16 May 2023.

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.

59 Babandi Ibrahim Gumel, 'Critical Challenges Facing Small Business Enterprises in Nigeria: A Literature Review' (2017) *International Journal of Scientific and Engineering Research* 9.

60 Kabiru Olusegun Akinyemi and others, 'Intrigues and Challenges Associated with COVID-19 Pandemic in Nigeria' (2020) *Health* 961.

61 UNDP (n 55).

62 *ibid.*

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 2008⁶³ 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;⁶⁴ in the best interests of the company;⁶⁵ and with the degree of care, skill and diligence that may be expected of a person'⁶⁶ carrying out the functions of a director.⁶⁷ In *Visser Citrus (Pty) Ltd v Goede Hoop Citrus (Pty)*,⁶⁸ the Western Cape High Court set an objective test, holding that the position in South African law has always been that

... 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.

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).

67 For a discussion of the duties of directors in South Africa, see Simphiwe S Bidie, 'Director's Duty to Act for a Proper Purpose in the Context of Distribution under the Companies Act 71 of 2008' (2019) PELJ 1.

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).

71 2007 ZACC 13.

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 Governance⁷⁹ 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.

78 See Regulation 2(c)(ix).

79 The King IV Report on Corporate Governance for South Africa 2016 <<https://www.iodsa.co.za/page/KingIVReport> > accessed 16 May 2023.

80 The listing requirements of the JSE were amended in 2017 to incorporate aspects of the King IV Code effective 19 June 2017. See ‘JSE Listing Requirements’ <<https://www.saica.co.za/Technical/LegalandGovernance/Legislation/JSEListingsRequirements/tabid/1912/language/en-US/Default.aspx>> accessed 16 May 2023.

81 The King IV Report (n 79).

82 Abel J Diale, ‘Corporate Social Responsibility in the South African Mining Industry: Necessity, Conformity or Convenience?’ (2014) *International Journal of Business and Development* 19.

Nigeria

The Constitution of the Federal Republic of Nigeria 1999⁸³ imposes obligations on all organs of government, as well as authorities exercising legislative, executive, or judicial powers to, among other things

... 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,⁸⁴ [and to] ...protect and improve the environment and safeguard water, air and land, forest and wildlife in Nigeria.⁸⁵

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.⁸⁶ Furthermore, while these institutions are obliged to make efforts ‘to conform to, observe and apply the provisions,’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

... 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.

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 2011⁸⁸ (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.’⁸⁹ Furthermore, the FRCN is required to ‘issue [a] code of corporate governance and guidelines; and develop a mechanism for

83 Hereafter ‘the Nigerian Constitution 1999’.

84 *ibid* s 16(1)(b).

85 *ibid* s 20.

86 *ibid* s 6(6)(c). See also *Archbishop Olubunmi Okogie v The Attorney General of Lagos State* (1981) 2 NCLR 337.

87 Nigerian Constitution 1999 s 13.

88 FRCN Act.

89 *ibid* s 7(2).

periodic assessment of the code and guidelines.’⁹⁰ It is also empowered to ‘monitor compliance with the reporting requirements specified in the adopted code of corporate governance.’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,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’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,⁹⁴ the Act requires qualified companies⁹⁵ 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.’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.⁹⁷ Though the totality

90 *ibid* s 51(c).

91 *ibid* s 8(1)(g).

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.

93 See the Introduction to the Code.

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.’

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.

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.

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.’

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. Amodu¹⁰¹ 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

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 *NIDOCCO Ltd v Gbajabiamila* (2013) LPELR 20899 (SC).

101 Nojeem A Amodu, *Corporate Social Responsibility and Law in Africa* (Routledge Taylor & Francis Group 2020) 124.

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.¹⁰⁴

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.¹⁰⁵ 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.¹⁰⁶ It comes as no surprise that law and litigation continually test the limits of corporate responsibility.¹⁰⁷

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.¹⁰⁸ 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

104 Nojeem A Amodu, 'Regulation and Enforcement of CSR in Corporate Nigeria' (2017) *Journal of African Law* 113.

105 See Oyeniyi Abe, *Implementing Business and Human Rights Norms in Africa: Law and Policy Interventions* (Routledge 2020) 6.

106 Halina Ward, *Corporate Responsibility and the Business of Law* (London, International Institute for Environment and Development 2005) 5.

107 See for example, the cases of *BP Southern Africa (Pty) Limited v MEC for Agriculture, Conservation, Environment & Land Affairs* (2004) ZAGPHC 18, and *Fuel Retailers Association of Southern Africa v Director General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* (2007) ZACC 13.

108 Archie B Carroll, 'Carroll's Pyramid of CSR: Taking Another Look' (2016) *International Journal of Corporate Social Responsibility* 1.

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 Rights¹¹⁴ (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

109 *ibid.*

110 *Guiding Principles on Business and Human Rights* 2011 UN/HR/PUB/11/04 <<https://www.google.com/search?client=safari&rls=en&q=Guiding+Principles+on+Business+and+Human+Rights&ie=UTF-8&oe=UTF-8>> accessed 13 May 2023.

111 UN Charter Art 1(3).

112 See UNGP Foundational Principles 11 and 14.

113 See Surya Deva, ‘From ‘Business or Human Rights’ to ‘Business and Human Rights’: What Next?’ in Surya Deva and David Birchall (eds), *Research Handbook on Human Rights and Business* (Cheltenham Edward Elgar 2020) 2.

114 Doc A/63/435 <https://treaties.un.org/doc/publication/ctc/ch_iv_3_a.pdf> accessed 13 May 2023.

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.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,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.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.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.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,

116 See Danwood Chirwa and Nojeem Amodu, 'Economic, Social and Cultural Rights, Sustainable Development Goals and Duties of Corporations: Rejecting the False Dichotomies' (2021) *Business and Human Rights Journal* 22.

117 Roselyn Cheruiyot-Koech and Colin David Reddy, 'Corporate Social Responsibilities in South Africa' (2022) *Sustainability* 2.

118 See The Preamble to African Charter on Human and Peoples' Rights 1981.

119 See Oyeniyi Abe, *The State of Business and Human Rights in Africa* (Addis Ababa, Friedrich Ebert Stiftung 2022) 10.

120 Roselyn Cheruiyot-Koech and Colin David Reddy, 'Corporate Social Responsibilities in South Africa' (2022) *Sustainability* 2.

enterprise and supplier development, as well as socio-economic development.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,¹²² and to encourage and promote strategic linkages of small-scale industries to finance, technology, technical skills development and management sources.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.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.¹²⁵ This figure was reduced to thirty-nine million,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.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

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.

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

123 *ibid* s 8(1).

124 See Compendium of SMEDAN's Activities 2018-2021 <<https://smedan.gov.ng/wp-content/uploads/2022/03/COMPENDIUM-OF-SMEDAN-ACTIVITIES.pdf>> accessed 19 May 2023.

125 National Bureau of Statistics National Survey of Micro Small & Medium Enterprises (MSMEs) (2017) <<https://nigerianstat.gov.ng/download/966>> accessed 18 May 2023.

126 See Okechukwu Nnodim, 'MSMEs Drop by Two Million in Four Years – SMEDAN' <<https://punchng.com/smedan/>> accessed 18 May 2023.

127 Shakeel Kalidas and others, 'How South African SMEs Can Survive and Thrive Post COVID-19' <<https://www.mckinsey.com/featured-insights/middle-east-and-africa/how-south-african-smes-can-survive-and-thrive-post-covid-19#>> accessed 18 May 2023.

by them. Similarly, investors need to take a long-term view of investment, as sustainability is about the future.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,’¹²⁹ which takes into cognisance the fiscal, social, and environmental elements in measuring performance, and the impact of businesses on society and the environment.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.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 *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.¹³² These considerations are features of CSR and its multiple variants, reinforcing the recognition that there is value in the principles propounded in CSR.

128 See Dirk Schoemaker, *Investing for the Common Good: A Sustainable Finance Framework* (Brussels, Bruegel 2017) 27.

129 See Chidiebele Innocent Onyali, ‘Triple Bottom Line Accounting and Sustainable Corporate Performance’ (2014) *Research Journal of Finance and Accounting* 195.

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).

131 Itanyi (n 54) 34.

132 See Companies Act 2006 (England) s 172(1)(a)–(f).

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.

References

- Aassve A, Alfani G, Gandolfi F and Moglie M, 'Epidemics and Trust: The Case of the Spanish Flu' (2021) *Health Economics* <<https://doi.org/10.1002/hec.4218>>
- Abe O, *Implementing Business and Human Rights Norms in Africa: Law and Policy Interventions* (Routledge 2020).
- Abe O, *The State of Business and Human Rights in Africa* (Friedrich Ebert Stiftung 2022) <<https://doi.org/10.4324/9781003290124-14>>
- Abdullahi MS and others, 'Challenges Affecting the Performance of Small and Medium Scale Enterprises (SMEs) in Nigeria' (2015) *Journal of Technology Management and Technopreneurship*.
- Abdul-Rashid NRN and others, 'Environmental Corporate Social Responsibility (ECSR) as a Strategic Marketing Initiative' (2014) *Social and Behavioural Sciences* <<https://doi.org/10.1016/j.sbspro.2014.04.058>>
- Akinyemi KO, Fakorede CO, Azeez Anjorin AA, Abegunrin RO, Adunmo O, Ajosoh SO and Akinkunmi FM, 'Intrigues and Challenges Associated with COVID-19 Pandemic in Nigeria' (2020) *Health* <<https://doi.org/10.4236/health.2020.128072>>

- Almond D, 'Is the 1918 Influenza Pandemic Over? Long-term Effects of in Utero Influenza Exposure in the Post-1940 US Population (2006) *Journal of Political Economy* <<https://doi.org/10.1086/507154>>
- Amodu NA, 'Regulation and Enforcement of CSR in Corporate Nigeria' (2017) *Journal of African Law* <<https://doi.org/10.4324/9781003009825>>
- Amodu NA, *Corporate Social Responsibility and Law in Africa* (Routledge Taylor & Francis Group 2020).
- Apedo-Amah MC, Avdiu B, Cirera X, Cruz M, Davies E, Grover A, Iacovone L, and Kilinc U, *Unmasking the Impact of COVID-19 on Businesses: Firm Level Evidence from Across the World* (World Bank Group – Policy Research Working Paper 9434 of October 2020) <<https://doi.org/10.1596/1813-9450-9434>>
- Asmal Z and Rooney C, 'The Impact of COVID-19 on Industries Without Smokestacks in South Africa' in *Africa Growth Initiative at Brookings – AGI Working Paper No 32 – April 2021* <<https://www.brookings.edu/wp-content/uploads/2021/07/21.07.27-South-Africa-Covid-Update.pdf>> accessed 16 May 2023.
- Belitski M and others, *Economic Effects of the COVID-19 Pandemic on Entrepreneurship and Small Business* (IZA Institute of Labour Economics Bonn 2021) <<https://doi.org/10.1007/s11187-021-00544-y>>
- Berle AA, 'Corporate Powers as Powers in Trust' (1931) *Harvard Law Review* <<https://doi.org/10.2307/1331341>>
- Bidie SS, 'Director's Duty to Act for a Proper Purpose in the Context of Distribution Under the Companies Act 71 of 2008' (2019) *Potchefstroom Electronic Law Journal* <<https://doi.org/10.17159/1727-3781/2019/v22i0a4221>>
- Bloomberg Intelligence 'ESG Assets May Hit \$53 trillion by 2025, a Third of Global Assets Under Management' <<https://www.bloomberg.com/professional/blog/esg-assets-may-hit-53-trillion-by-2025-a-third-of-global-aum/>> accessed 16 March 2023.
- Bowen HR and others, *Social Responsibilities of the Businessman* (University of Iowa Press 2013) <<https://doi.org/10.1353/book29080>>
- Broughton E, 'The Bhopal Disaster and its Aftermath – A Review' <<https://ehjournal.biomedcentral.com/articles/10.1186/1476-069X-4-6>> accessed 16 May 2023.
- Camilleri MA, 'Socially Responsible and Sustainable Investing' in Camilleri MA, *Corporate Sustainability, Social Responsibility and Environmental Management – An Introduction to Theory and Practice with Case Studies* (Springer International Publishing AG 2017) <https://doi.org/10.1007/978-3-319-46849-5_4>

- Canadian Water Network *Water and Hydraulic Fracturing Report: Where Knowledge Can Best Support Decisions in Canada* (Canadian Water Network 2015).
- Carroll AB, 'Carroll's Pyramid of CSR: Taking Another Look' (2016) *International Journal of Corporate Social Responsibility* <<https://doi.org/10.1186/s40991-016-0004-6>>
- Chepkwei AK and others, 'Corporate Social Responsibility: A Global Overview' (2018) *International Journal of Business Strategies*.
- Cheruiyot-Koech R and Reddy CD, 'Corporate Social Responsibilities in South Africa' (2022) *Sustainability* <<https://doi.org/10.3390/su14073792>>
- Chidiebele IO, 'Triple Bottom Line Accounting and Sustainable Corporate Performance' (2014) *Research Journal of Finance and Accounting*.
- Compendium of SMEDAN's Activities 2018-2021 <<https://smedan.gov.ng/wp-content/uploads/2022/03/COMPENDIUM-OF-SMEDAN-ACTIVITIES.pdf>> accessed 19 May 2023.
- Department of Small Business Development Impact of COVID-19 Micro and Informal Businesses South Africa (2021) <<http://www.dsbd.gov.za/sites/default/files/publications/Impact-of-covid19-on-businesses.pdf>> accessed 16 May 2023.
- Deva S, 'From 'Business or Human Rights' to 'Business and Human Rights': What Next?' in Deva S and David Birchall (eds), *Research Handbook on Human Rights and Business* (Cheltenham Edward Elgar 2020) <<https://doi.org/10.4337/9781786436405.00005>>
- Diale AJ, 'Corporate Social Responsibility in the South African Mining Industry: Necessity, Conformity or Convenience?' (2014) *International Journal of Business and Development*.
- Dodd EM, 'For Whom are Corporate Managers Trustees?' (1932) *Harvard Law Review* <<https://doi.org/10.2307/1331697>>
- Esser I and Du Plessis J, 'The Stakeholder Debate and Directors' Fiduciary Duties' (2007) *South African Mercantile Law Journal*.
- Ede CI and others, 'Implications of COVID-19 Lockdown on South African Business Sector' (2021) *International Journal of Financial Research* <<https://doi.org/10.5430/ijfr.v12n4p12>>
- Els G and Viviers S, 'Responsible Investing in South Africa: Past, Present and Future' (2017) *African Review of Economic and Finance*.
- Evans F, 'The Evolution of the English Joint Stock Limited Trading Company' (1908) *Columbia Law Review* <<https://doi.org/10.2307/1110068>>

Fordham AE and GM Robinson GE, 'Mapping Meanings of Corporate Social Responsibility – An Australian Case Study' (2018) *International Journal of Corporate Social Responsibility* <<https://doi.org/10.1186/s40991-018-0036-1>>

vin M, '5 Examples of Corporate Social Responsibility that were Successful' <<https://online.hbs.edu/blog/post/corporate-social-responsibility-examples>> accessed 13 May 2023.

Gumel BI, 'Critical Challenges Facing Small Business Enterprises in Nigeria: A Literature Review' (2017) *International Journal of Scientific and Engineering Research*.

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.

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.

Guiding Principles on Business and Human Rights 2011 UN/HR/PUB/11/04 <<https://www.google.com/search?client=safari&rls=en&q=Guiding+Principles+on+Business+and+Human+Rights&ie=UTF-8&oe=UTF-8>> accessed 13 May 2023.

Hoeffler A, 'Fragility and Development in Africa: An Introduction' (2019) *Review of Development Economics* 1068 <<https://doi.org/10.1111/rode.12616>>

Holmes R and Watts P, *Corporate Social Responsibility: Making Good Business Sense* (World Business Council for Sustainable Development 2000).

Hopkins M, *Corporate Social Responsibility: An Issues Paper* (World Commission on Social Dimension of Globalization Geneva 2004) 7 <http://oit.org/wcmssp5/groups/public/---dgreports/---integration/documents/publication/wcms_079130.pdf> accessed 25 February 2022.

Itanyi N and Obuka U, 'COVID-19 and it's Sweeping Effect on Businesses in Nigeria: Lessons for the Future' (2022) *Business Law Review* <<https://doi.org/10.54648/BULA2022004>>

Kahan M and Rock EB, 'The Hanging Shards of Corporate Voting' (2008) *The Georgetown Law Journal*.

Kalidas S and others, 'How South African SMEs Can Survive and Thrive Post COVID-19' <<https://www.mckinsey.com/featured-insights/middle-east-and-africa/how-south-african-smes-can-survive-and-thrive-post-covid-19#>> accessed 18 May 2023.

Khan MT and others, 'Corporate Social Responsibility – Definition, Concepts and Scope – A Review' (2012) *Universal Journal of Management and Social Sciences*.

Kiderlin S, 'Sustainable Investments Now Total \$35.3 Trillion, Roughly a Third of All Global Assets Under Management, Report Shows'

<<https://markets.businessinsider.com/news/stocks/global-sustainable-investment-alliance-report-esg-assets-responsible-investing-2021-7>> accessed 25 February 2022.

KPMG Nigeria, *The Twin Shocks (COVID-19 Pandemic & Oil Prices Crisis) and Implications for Nigerian Family Business*

<<https://assets.kpmg.com/content/dam/kpmg/ng/pdf/audit/impact-of-covid19-on-nigerian-family-businesses-and-enterprises.pdf>> accessed 8 May 2023.

KPMG UK, *The Numbers that are Changing the World* (KPMG LLP UK 2021).

Lacave MIS and Riaño D, 'Corporate Governance and the Shareholders' Meeting: Voting and Litigation' (2013) *European Business Organization Law Review*.

Levi L, 'On Joint Stock Companies' (1870) *Journal of the Statistical Society of London*

<<https://doi.org/10.2307/2338865>>

Lyon TP and Maxwell JW, 'Corporate Social Responsibility and the Environment: A Theoretical Perspective' (2008) *Review of Environmental Economics and Policy*

<<https://doi.org/10.1093/reep/ren004>>

Merelli A, 'Why You are not Hearing About COVID-19 Outbreaks in Africa'

<<https://qz.com/africa/2079064/only-one-in-seven-cases-of-covid-19-in-africa-is-reported>> accessed 16 May 2023.

National Bureau of Statistics Nigeria Launches its Most Extensive National Measure of Multidimensional Poverty <<https://nigerianstat.gov.ng/news/78>> accessed 16 May 2023.

National Bureau of Statistics National Survey of Micro Small & Medium Enterprises (MSMEs) 2017 <<https://nigerianstat.gov.ng/download/966>> accessed 18 May 2023.

Nettle G, 'The Changing Position and Duties of Company Directors' (2018) 41 *Melbourne University Law Review*.

Neuman T, 'The Impact of Entrepreneurship on Economic, Social and Environmental Welfare and its Determinants: a Systematic Review' (2021) *Management Review Quarterly*.

Nnodim O, 'MSMEs Drop by Two Million in Four Years – SMEDAN'

<<https://punchng.com/smedan/>> accessed 18 May 2023.

Obradović SL, 'Environmental Investments' in Filho WL and others, (eds), *Climate Action* (Springer Nature 2019).

OECD Guidelines for Multinational Enterprises

<<https://www.oecd.org/corporate/mne/1922428.pdf>> accessed 16 May 2023.

- Porter ME and Kramer MR, 'The Competitive Advantage of Corporate Philanthropy' (2002) Harvard Business Review.
- Rionda ZL and others, *What is Corporate Social Responsibility?* (USAID and Catalyst Consortium 2002).
- Schoenmaker D, *Investing for the Common Good: A Sustainable Finance Framework* (Bruegel 2017) <<https://doi.org/10.2139/ssrn.3125351>>
- Shah R and Batley R, 'Private-Sector Investment in Infrastructure: Rationale and Causality for Pro-poor Impacts' (2009) Development Review Policy <<https://doi.org/10.1111/j.1467-7679.2009.00453.x>>
- Statistics South Africa *Business Impact Survey of the COVID-19 Pandemic in South Africa* <<http://www.statssa.gov.za/publications/Report-00-80-01/Report-00-80-01April2020.pdf>> accessed 16 May 2023.
- Statistics South Africa, *The Impact of COVID-19 on National Government Finances in the 2020/2021 Financial Year* <<https://www.statssa.gov.za/?p=15532>> accessed 16 May 2023.
- The Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.
- The Code of Corporate Governance for the Telecommunication Industry (Nigeria) 2016.
- The Code of Corporate Governance for Public Companies in Nigeria 2011.
- The Johannesburg Stock Exchange (JSE), 'Listing Requirements' <<https://www.saica.co.za/Technical/LegalandGovernance/Legislation/JSEListingsRequirements/tabid/1912/language/en-US/Default.aspx>> accessed 16 May 2023.
- The King IV Report on Corporate Governance for South Africa 2016* <<https://www.iodsa.co.za/page/KingIVReport>> accessed 16 May 2023.
- UN 'Principles for Responsible Investment' (2013) <<https://www.unpri.org/pri/about-the-pri>> accessed 16 May 2023.
- UN World Commission on Environment and Development, 'Our Common Future' UN DocA/42/427, 1987 (the Brundtland Report) Annex <<http://www.un-documents.net/our-common-future.pdf>> accessed 16 May 2023.
- UNDP and NBS, 'The Impact of COVID-19 on Business Enterprises in Nigeria 2021' <<https://nigerianstat.gov.ng/elibrary/read/1241076>> accessed 16 May 2023.
- Veinla H, 'Sustainable Development as the Fundamental Principle of Europe's Environmental Ius Commune' (2005) *Juridica International*.
- Ward H, *Corporate Responsibility and the Business of Law* (International Institute for Environment and Development 2005).

Weiner JL, 'The Berle-Dodd Dialogue on the Concept of the Corporation' (1964) *Columbia Law Review* <<https://doi.org/10.2307/1120768>>

WHO, 'South Africa: WHO Corona Virus Disease (COVID-19)' <<https://covid19.who.int/region/afro/country/za>> accessed 7 May 2023.

Cases

AP Smith Manufacturing Co. v Barlow (1953) 39 ALR 2d 1179.

Archbishop Olubunmi Okogie v The Attorney General of Lagos State (1981) 2 NCLR 337.

BP Southern Africa (Pty) Limited v MEC for Agriculture, Conservation, Environment & Land Affairs (2004) ZAGPHC 18.

Batraco Limited v Spring Bank Limited and Another (2013) LPELR 20174 (CA).

Evans v Bruner, Mond and Co. Ltd [1921] 1 Ch 359.

Fuel Retailers Association of Southern Africa v Director General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others (2007) ZACC 13.

Gabcikovo-Nagymaros Project Case (Hungary/Slovakia) 1998 ILM 162.

Haston (Nig.) Ltd v A. C. B. Ltd (2002) FWLR (Pt. 119) 1476.

Hutton v West Cork Railway Co 1883) 23 Ch D 654.

Miles v Sydney Meat Preserving Co. Ltd. (1913) CLR 639.

NIDOCOCO Ltd v Gbajabiamila (2013) LPELR 20899 (SC).

Okeowo v Migliore (1979) LPELR 2441 (SC).

Visser Citrus (Pty) Ltd v Goede Hoop Citrus (Pty) 2014 (5) SA 179 (WCC).

Legislation

Broad-Based Economic Empowerment Act 53 of 2003.

Companies Act 71 of 2008.

Companies Act Chapter 46 of 2006 (England).

Companies and Allied Matters Act No. 3 of 2020 (Nigeria).

Constitution of the Republic of South Africa 1996.

Constitution of the Federal Republic of Nigeria 1999.

Financial Reporting Council of Nigeria Act No 6 of 2011.

National Environmental Management Act 107 of 1998.

Pension Funds Act 24 of 1956.

Small and Medium Scale Industries Development Agency (Establishment) Act 2003.